Tysons Westpark, LC
RZ 2013-PR-009
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October 23, 2014

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PROFFERS

Tysons Westpark, LC

RZ 2013-PR-009

October 23, 2014

Pursuant to Section 15.2-2303(A) of the Code of Virginia, 1950, as amended, and Section 18-204 of the Zoning Ordinance of Fairfax County 1978, as amended (hereinafter referred to as the "Zoning Ordinance"), the property owner and Applicant, for itself and its successors and/or assigns (hereinafter referred to as the "Applicant"), hereby proffer that the development of the parcels under consideration and shown on the Fairfax County tax maps as Tax Map 29-3 ((15)) 8 (the "Property") shall be in accordance with the following conditions if, and only if, Rezoning application 2013-PR-009 (this "Rezoning") is granted.

GENERAL

1. Conceptual Development Plan. The Property shall be developed in substantial conformance with certain elements of the Westpark Plaza Conceptual Development Plan ("CDP") dated April 4, 2013 as revised through October 1, 2014, prepared by Walter L. Phillips, Inc., MTFA Architecture, Inc. and LandDesign, Inc. The proffered elements of the CDP are limited to the grid of streets, general location of the points of access, the general location of the buildings and build-to-lines, the maximum gross floor area ("GFA"), the mix of uses, minimum and maximum building heights, the general quality and character of the streetscape, the amount and general location of urban park land, and only a future amendment to such elements shall require a subsequent Conceptual Development Plan Amendment ("CDPA") or Proffered Condition Amendment ("PCA"). Other elements of the CDP may be adjusted or modified with approval of future Final Development Plans ("FDPs") in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance.

2. Minor Modifications. Minor modifications to the proffered elements of the CDP may be permitted when necessitated by sound engineering or that may become necessary as part of FDP approval or final site design or engineering, pursuant to Section 16-403(4) of the Zoning Ordinance.

3. Declarations/Owners Associations. The Applicant shall cause the recordation of one or more declarations creating an umbrella owners' association ("UOA") and as necessary, condominium owners' associations ("COA") or declarations of covenants and agreements dealing with the governance of maintenance and operation of the Property or other governance documents which will legally bind the Property, (collectively referred to as the "Governance Documents"). Such Governance Documents shall be prepared, be legally effective and recorded prior to the issuance of the first Non-Residential Use Permit ("Non-RUP") or Residential Use Permit ("RUP") for new construction on the Property. The respective Governance Documents (including budgets provided in any offering or sale materials) shall specify the various proffer and maintenance obligations

set forth in these Proffers, including the maintenance of certain streets, associated sidewalks and streetscapes, and site amenities such as, but not limited to, the publicly accessible park areas as well as funding, implementation and monitoring of the TDM program. Purchasers shall be advised in writing of these obligations, and other restrictions, prior to entering into a contract of sale, whether purchasing residential or commercial property.

PROPOSED DEVELOPMENT

4. Existing and Interim Development.

A. The Property is developed with the existing Westpark Hotel which contains approximately the 158,921 square feet of gross floor area ("GFA") and surface parking lots (collectively, the "Existing Development"). The Existing Development is shown on Sheet P.201 and may remain in operation in its current form. The Applicant may make minor modifications to the Existing Development (which may require site plan approvals and building permits) and make interior and exterior improvements to, the Existing Development shown on Sheet P.201 without the need for a CDPA or FDP.

B. Any use permitted in the PTC District may also be permitted as an interim use in the existing building subject to the Use Limitations in Section 6-505 of the Zoning Ordinance, as may be modified or waived.

C. Commercial off-street parking may be provided on an interim basis in the existing parking areas on the Property without approval of an FDP as described in Proffer 37.

5. Proposed Development.

A. The maximum gross floor area ("GFA") permitted on the Property is 1,489,500 square feet (the "Proposed Development"). The primary uses on the Property shall be residential and hotel. Retail/Service uses shall be ancillary uses. The GFA of the various uses within each building shall not be less than the minimum GFA or greater than the maximum GFA identified for each building in the development tabulations on Sheet P.102 of the CDP (the "Development Tabulations").

B. Retail/Service use as identified in the Development Tabulations may include any non-residential use permitted by-right, by special exception or by special permit in the PTC District, as limited by Section 6-505 "use limitations," or uses accessory to the primary uses. Such Retail/Service uses shall be located as generally shown on Sheets A.102 and A.103 of the CDP as may be refined and adjusted with the FDP for each building as further described in Proffer 6 and shall be designed with entry doors on the ground floor to activate the streetscape.

C. Uses allowed by special exception or special permit in the PTC District may be authorized through a separate special exception or special permit process without the need for a PCA or CDPA, as determined by the Zoning Administrator.

6. Final Development Plans. FDPs approved for individual building sites on the Property shall establish the maximum GFA and the minimum and maximum number of residential units for each building within the limits established by these Proffers and the CDP. The specific GFA and/or number of residential units for each building shall be established at final site plan. If the GFA or number of units approved with the FDP is less than the maximum shown on the CDP, the excess GFA may be utilized in another building or building(s) on the Property, provided: 1) the excess GFA or units can be accommodated within the maximum building height(s) for the building shown on the CDP; 2) the minimum building height for the building providing the excess GFA or dwelling units as shown on the CDP is maintained; and 3) FDP(s) or FDPA(s) for the building(s) transferring and utilizing the excess GFA are approved. In addition, the following information shall be provided with each FDP.

A. Tabulation. A tabulation indicating the development status of all property subject to this Rezoning to include a listing of all proposed buildings, along with the GFA uses, and parking approved on the CDP, FDP and site plan as may be applicable. The tabulation shall identify the reassignment of any excess GFA (as compared with what was originally shown on the applicable CDP) and shall be updated with each subsequent FDP and site plan approved for the Property.

B. Tree Canopy Calculations. A tabulation indicating the tree canopy calculations of all property subject to this rezoning to be updated with each subsequent FDP, FDPA and site plan approved for the Property.

C. TDM Supplement. A copy of the previous TDM Annual Report, if available, to determine progress toward attaining TDM goals and any planned modifications to the TDM program.

D. Functional Drawings/Sight Distance. Functional drawings to include the proposed right-of-way lines associated with public streets, vehicular sight distance lines at all intersections within, and adjacent to, the FDP area overlaid on the Landscape Plan; and details with respect to utilities and/or vegetation conflicts with building entrances and/or intersections as presented on the CDP.

E. Utilities. Approximate location of existing and proposed utilities to serve the area of the FDP overlaid on the Landscape Plan including the location of the any electrical vaults, stormwater management facilities and associated maintenance access points.

F. Proposed Uses. A list of proposed uses and demonstration of how such uses meet the applicable "Use Limitations" of Section 6-505 of the Zoning Ordinance.

G. Architectural Elements. Specific information on architectural elements, build-to lines and building heights as provided in Proffers 10 and 11.

H. Build-to-Lines. Refinement of the build-to-lines based on proposed uses, location of possible outdoor dining areas, and identification of awnings and canopies that extend beyond the building zone

I. Streetscape. A graphic depiction of, and any adjustments to, the activated streetscape elements as provided in Proffer 9 and refinement of, and adjustments to, streetscape elements as provided in Proffer 20.

J. Garage Treatments. Proposed parking garage façade treatments as provided in Proffer 10.

K. Landscaping. Detailed landscape plans as provided in Proffer 19.

L. Streetscape Furnishings. Submission of a "Streetscape Furnishing and Materials Plan" as provided in Proffer 20.

M. Interim Conditions. Identification of specific proposed interim conditions within the FDP area and outside the FDP area.

N. Phasing. Identification of specific proposed phased improvements in accordance with Proffer 7.

O. Parks and Recreation. For on-site parks and active recreation facilities, depiction of special amenity features as provided in Proffer 48.

P. Provisions for Bicycles and Buses. Bicycle parking, storage and bicycle lane dimensions as provided in Proffers 30 and 31, and location and design of bus shelter(s), if any.

Q. Parking Spaces. Refinement of the number of parking spaces as provided in Proffer 35.

R. Stormwater Management. Identification of specific stormwater management facilities as provided in Proffer 54 and calculations of an FDP's implementation of the Comprehensive Plan goals for the project stormwater boundary and rainfall depth retained or reused onsite for the project stormwater boundary as shown on the CDP, accounting for previously approved FDP's on the Property.

S. Fencing. Identification of proposed fencing, screening or barriers serving active recreational uses on roofs and adjacent to streets that exceed seven (7) feet in height.

7. Development Phasing. The Proposed Development includes three (3) buildings, which are identified on the CDP as Buildings D1, D2 and D3. Building D1 shall be constructed first. Development of Buildings D2 and D3 may proceed in any order provided that each such building provides the phasing conditions depicted on the Sheets L.013 and L.013A (the "Phasing Sheets") and that all proffers that apply to such building are addressed with the redevelopment of that building. Where a proffer establishes an obligation that applies to a building, reference to "Applicant" in such proffer shall mean the party undertaking the development of such building.

The Applicant shall construct the grid of streets and provide pedestrian improvements, public parks, and public facilities on the Property in conjunction with the redevelopment of each individual building in accordance with the Phasing Sheets as further described in these Proffers. In addition, interim improvements as outlined in Proffer 21 and as may be determined at time of FDP approval shall be provided commensurate with the construction of each building. Adjustments to the phasing may be approved with FDP approvals without the requirement for a PCA or CDPA, provided the adjustments do not materially adversely affect the other phases.

For purposes of these Proffers "construct" shall mean that: i) a committed road improvement is substantially complete and is available for use by the public for travel whether or not the improvement has been accepted for maintenance by the state, and ii) a committed publicly accessible park space improvement is substantially complete and open to use by the public for use whether or not the improvement has been accepted by Fairfax County (the "County") or the Fairfax County Park Authority ("FCPA").

8. Fire Marshal Evaluation. The Applicant has coordinated the layouts depicted on the CDP with the Fire Marshal. Further changes to the CDP and future FDPs shall be permitted without the requirement for a PCA, CDPA and/or FDPA in response to the review of site plans by the Fire Marshal, including adjustments to the streetscape and perimeter building areas as necessary to allow for required emergency vehicle access, provided such modifications are made in consultation with the Department of Planning and Zoning ("DPZ"), the Fairfax County Department of Transportation ("FCDOT") and the Office of Community Revitalization ("OCR") and are in substantial conformance with the intent of the CDP, future FDPs and these Proffers.

ARCHITECTURAL AND URBAN DESIGN

9. Activated Streetscapes and Ground Floor Elements. Activated streetscapes shall be provided by designing and constructing streetscapes and exterior facades of ground floor areas adjacent to streets as generally described below. The provision of the referenced streetscape elements are subject to approval by VDOT and permission by the various entities controlling existing utility easements. Modifications and further refinements may be permitted with the approval of FDPs.

A. Route 7 shall be designed with:

(i) a generally continuous open landscape amenity panel adjacent to Route 7 a minimum of eight (8) feet in width, with street trees and areas for bike racks;

(ii) a minimum ten (10) foot wide clear pedestrian sidewalk;

(iii) a building zone a minimum of fifteen (15) feet wide, with a second row of street trees located in alternating raised planters and tree grates;

(iv) retention of the existing street lights adjacent to the curb;

(v) the ground floors of Buildings D1 and D3 having a minimum floor to floor height of 15 feet to accommodate service commercial, retail, office and/or residential amenity uses where such uses are shown on the CDP;

(vi) where Building D3 fronts Route 7 near Westpark Drive, display windows shall activate the streetscape;

(vii) commercial entries and/or commercial lobbies with recessed and/or welcoming entries incorporating awnings or canopies as appropriate;

(viii) functioning entry doors into such applicable uses with a maximum separation of 100 feet or greater if shown on an approved FDP or as may be permitted by the Zoning Administrator;

(ix) a minimum of 50% transparent glazing of the street wall up to a height of 12 feet above the adjacent sidewalk with building entrance openings and display windows considered to meet a portion of the transparency guidelines;

(x) the above grade garage between Buildings D1 and D3 shall incorporate amenity uses visible through transparent glazing above the ground level Retail/Service uses;

(xi) a public elevator and park identification signage between Buildings D1and D3 providing pedestrians access to the upper level public park; and

(xii) a landscaped/hardscaped plaza (Dittmar Gateway Plaza) at the corner of Route 7 and Westpark Drive as conceptually shown on Sheets L.002 and L.004 of the CDP. A substantial portion of this plaza area is located within VDOT controlled excess right-of-way and its use and design is subject to approval from VDOT.

B. Westpark Drive between Route 7 and Park Avenue shall be designed with:

(i) a generally continuous open landscape amenity panel adjacent to Westpark Drive a minimum of eight (8) feet in width, including street trees and medium sized deciduous and evergreen shrubs to provide separation from the travel lanes;

(ii) a minimum eight (8) foot wide clear pedestrian sidewalk;

(iii) a variable width building zone (minimum four (4) feet in width) that will provide additional hardscape adjacent to ground floor retail/service tenants and landscaped areas adjacent to residential uses;

(iv) service commercial, retail, office and/or residential amenity uses at the corner of Westpark Drive and Park Avenue with a minimum of 40% transparent glazing up to a height of 12 feet above the adjacent sidewalk

and building entrance openings be considered to meet a portion of the transparency guidelines;

(v) a public stairway and park identification signage between Buildings D2 and D3 directing pedestrians to the upper level public park; and

(vi) if any individual residential units have direct access to the streetscape, they shall utilize design features to provide interior privacy (such as by having a ground floor elevation above the sidewalk grade).

Notwithstanding that an underground electric vault is shown extending into the proposed right-of way on Sheets P.301 and P.303 of the CDP, no part of an electric vault shall be located within the proposed right-of way.

C. Park Avenue from Westpark Drive to Madison Street shall be designed with:

(i) a minimum eight (8) foot wide landscape amenity panel;

(ii) a minimum eight (8) foot wide clear pedestrian sidewalk;

(iii) a variable width building zone (all a minimum four (4) feet in width) adjacent to buildings (not park spaces) that provides additional hardscape adjacent to ground floor retail/service/office tenants and hardscape/landscaped areas adjacent to residential uses;

(iv) the ground floor of Building D2 shall have a minimum floor to floor height of 15 feet and a minimum 40% transparent glazing of the street wall up to a height of 12 feet above the adjacent sidewalk with building entrance openings considered to meet a portion of the transparency requirements with a portion of the transparency to include a two story atrium providing a visual connection between the Park Avenue sidewalk and the Neighborhood Park (as generally depicted on the CDP); and

(v) a landscaped/hardscaped plaza (Civic Square) at the corner of Park Avenue and Madison Street as conceptually shown on Sheets L.002 and L.004 of the CDP.

D. Madison Street shall be designed with:

(i) a minimum six (6) foot wide landscape amenity panel;

(ii) a minimum six (6) foot wide clear pedestrian sidewalk;

(iii) a variable width building zone (all a minimum four (4) feet in width) adjacent to buildings (not park spaces) that will provide additional hardscape adjacent to ground floor residential lobby/amenity uses and landscaped areas adjacent to residential uses;

(iv) residential lobby/amenity uses as shown on the CDP with a minimum of 40% of the lobby/amenity façades constructed with transparent glazing up to a height of 12 feet above the adjacent sidewalk with building entrance openings considered to meet a portion of the transparency requirements;

(v) residential facades to include a percentage of transparent glazed facades typical of windows required for dwelling units;

(vi) if any individual residential units have direct access to the streetscape, they shall utilize design features to provide interior privacy (such as by having a ground floor elevation above the sidewalk grade);

(vii) loading/trash/service areas located within the parking structure thereby eliminating public views of such areas from streets; and

(viii) screening of the above grade parking structures with a combination of architectural systems designed to limit or block views into the garage spaces, changes in topography and/or extensive landscaping, with details provided at FDP.

E. Prior to the issuance of the first RUP or Non-RUP for the Property, the Applicant shall designate an employee to manage the loading operations for Buildings D1, D2 and D3 for the purpose of minimizing loading conflicts with pedestrian and vehicular movements and keeping the loading/trash/service areas clean and well maintained at all times.

10. Architecture.

A. The architectural treatment of all buildings within the Proposed Development shall create a sense of identity and place, and shall create human scale through the use of unifying elements such as materials, textures, color, window treatments, decorative details, lighting, and landscaping as generally illustrated on the CDP. Buildings shall be designed with high quality architecture and building materials that, at the time an individual FDP is approved, are typically used on the exterior residential, retail and hotel buildings of a high quality. FDPs shall include specific design information on building materials, architecture, and specific features designed to activate streetscapes. A minimum of 10 percent (10%) of all dwelling units shall be designed and constructed with some Universal Design features, as determined by the Applicant.

B. Build-to-lines ("BTL") have been established as depicted on the CDP, to create an urban, pedestrian-oriented environment where buildings are located close to the street and pedestrian/streetscape areas are located between the buildings and the streets. In general, building facades are intended to be configured in such a way as to provide a continuous street wall along this line, but modifications to either side of the BTL shall be permitted provided such are in general conformance with the CDP and are shown on an approved FDP. Awnings and other architectural canopies attached to the building frontage that project out from the BTLs shall not

extend beyond the building zone, except as may be shown on an approved FDP. At the time of FDP approval, the Applicant shall identify possible locations along the street level for expanded areas for outdoor dining adjacent to cafes and restaurants and shall provide appropriate building zones for such uses, such that these outdoor dining areas do not encroach into the sidewalk.

C. New above grade parking structures shall either (1) incorporate Retail/Service uses, residential dwellings or associated amenity spaces, hotel uses, offices or public uses, among other uses at the ground level as depicted on the CDP; or (2) be architecturally treated; or (3) utilize landscaping/green screening or decorative material to screen the garage areas from street view. Alternate garage façade treatments may be permitted with FDP approval.

11. Building Height. Building heights, as measured from the average grade, shall not be less than the minimum heights or greater than the maximum heights identified for each building in the Development Tabulations. Building heights provided in the Development Tabulations include rooftop structures that are typically excluded from the maximum height regulations as set forth in Sect. 2-506 of the Zoning Ordinance, such as penthouses and architectural design elements. Buildings D1 and D2 shall each incorporate an architectural feature adjacent to the Civic Square which will be the tallest element of each building, as well as two additional tower elements, one lower than the other, in order to provide height variation as generally shown on Sheet A.101. Building heights shall be refined with each FDP and the final heights shall be determined at the time of site plan approval. All building penthouses and rooftop structures shall be integrated into the architecture of the building, and the height and extent of any rooftop penthouse or architectural feature shall be provided on the FDP.

12. Telecommunications Equipment. Telecommunications equipment may be placed on the proposed residential and hotel buildings' rooftops. Any such facilities must comply with the applicable requirements of the Zoning Ordinance and be screened and/or setback sufficiently from the perimeter of the roof and penthouse such that they are not visible from the surrounding streets at street level. Other screening measures may be used such as including the facilities as part of the architecture of the buildings, utilizing compatible colors, or employing telecommunication screening material and flush mounted antennas.

BUILDING PRACTICES

13. Residential Building Certifications.

A. The Applicant shall include, as part of the building plan submission(s) for residential Buildings D1 and D2, a list of specific credits within the most current version of the U.S. Green Building Council's Leadership in Energy and Environmental Design New Construction (LEED-NC) rating system or LEED for Homes rating system at the time of the project's registration, or other LEED rating system determined to be applicable by the U.S. Green Building Council (USGBC), or its equivalent (as determined by the Applicant and the County), that the Applicant anticipates attaining. All references herein to LEED-NC include

both LEED-NC or its equivalent as determined by the Applicant and the County and all references to USGBC include the applicable equivalent agency.

Except as otherwise provided below in Paragraph E as an alternative, a LEED or equivalent-accredited professional (the "LEED-AP") who is also a professional engineer or architect shall provide certification statements at the time of building plan review confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED-NC certification of the building

B. Prior to site plan approval, the Applicant shall designate the Chief of the Environment and Development Review Branch ("EDRB") of DPZ as a team member in the USGBC's LEED Online system, if available for the rating system selected. This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team, but will not be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork.

C. Prior to the building plan approval for the building to be constructed, the Applicant shall post a "green building escrow" in the form of cash or a letter(s) of credit from a financial institution acceptable to the Department of Public Works and Environmental Services ("DPWES") as defined in the Fairfax County Public Facilities Manual ("PFM"), in the amount of $2.00/square foot of GFA, as shown on the approved site plan. This green building escrow shall be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of LEED certification, by the USGBC, under the project's registered version of the LEED-NC or LEED for Homes rating system or other LEED rating system determined, by the USGBC, to be applicable to each building. The provision to the EDRB of documentation from the USGBC that each building has attained LEED-NC certification will be sufficient to satisfy this commitment.

D. At the time LEED certification is demonstrated to EDRB, the escrowed funds and/or letter(s) of credit shall be released to the Applicant.

If prior to bond extension, reduction or final bond release for the applicable building site, whichever occurs first, the Applicant provides to EDRB documentation demonstrating that LEED certification for the applicable building has not been attained but that the building has been determined by the USGBC to fall within three (3) points of attainment of LEED certification, 50% of the green building escrow will be released to the Applicant; the other 50% will be released to the County and will be posted to a fund within the County budget supporting implementation of county environmental initiatives. If the certification is still in progress at the time of application for bond extension or reduction, which given the construction timelines associated with the Proposed Development there is the potential for multiple bond extensions or reductions prior to the Proposed Development's completion, the time frame for the provision of the documentation described above shall be automatically extended to the time of the next bond

extension or reduction. However, the documentation must be provided prior to the final bond release for the applicable building site.

If prior to bond extension, reduction or final bond release for the applicable building site, whichever occurs first, the Applicant fails to provide documentation to EDRB demonstrating either attainment of LEED certification or that the building has fallen short of LEED certification by three (3) points or less, the entirety of the escrow for that building will be released to the County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives. If the certification is still in progress at the time of application for bond extension or reduction, which given the construction timelines associated with the Proposed Development there is the potential for multiple bond extensions or reductions prior to the Proposed Development's completion, the time frame for the provision of the documentation described above shall be automatically extended to the time of the next bond extension or reduction. However, the documentation must be provided prior to the final bond release for the applicable building site.

E. As an alternative to the actions outlined in the Paragraphs A, C and D above, the Applicant may choose at its sole discretion to pursue a certification level higher than LEED certification, in which case the LEED-AP will provide certification statements at the time of building plan review confirming that the items on the list of specific credits will meet at least the minimum number of credits necessary to attain LEED Silver certification.

Prior to building plan approval for the building to be constructed, the Applicant shall submit documentation, to the Environment and Development Review Branch of DPZ, regarding the USGBC's preliminary review of design-oriented credits in the LEED program. This documentation will demonstrate that the building is anticipated to attain a sufficient number of design-related credits that, along with the anticipated construction-related credits, will be sufficient to attain LEED-NC Silver certification. Under this alternative, the Applicant is not required to provide a "green building escrow" unless the Applicant fails to provide the above referenced documentation that the building is anticipated to attain LEED-NC Silver certification.

Prior to final bond release of each building site, the Applicant shall submit documentation to EDRB, confirming the status of LEED certification.

F. As an alternative to the actions outlined in the Paragraphs A, C, D and E above, if applicable and if the project meets the eligibility criteria for the rating system, the Applicant may select, subject to EDRB approval, an alternate residential rating system such as Earth Craft or the 2012 National Green Building Standard (NGBS) using the ENERGY STAR® Qualified Homes path for energy performance that may be implemented without an escrow. If one of the alternate residential rating systems listed herein is selected, as an alternative to the previous paragraphs, the Applicant shall note the selected system and provide a completed checklist of the

anticipated options to be pursued for the specified rating system at the time of site plan and building plan review. The Applicant shall demonstrate attainment of the selected certification from a rater recognized through the selected process prior to bond extension, reduction or final bond release of each building site, whichever occurs first. If the certification is still in progress at the time of application for bond extension or reduction, which given the construction timelines associated with the Proposed Development there is the potential for multiple bond extensions or reductions prior to the Proposed Development's completion, the time frame for the provision of the documentation described above shall be automatically extended to the time of the next bond extension or reduction. However, the documentation must be provided prior to the final bond release for the applicable building site.

14. Non-Residential Building Certifications.

A. The Applicant shall include, as part of the building plan submission for Building D3, a list of specific credits within the most current version of the U.S. Green Building Council's Leadership in Energy and Environmental Design Core and Shell (LEED-CS) rating system at the time of the project's registration, or other LEED rating system determined to be applicable by USGBC, or its equivalent (as determined jointly by the Applicant and Fairfax County), that the Applicant anticipates attaining. All references herein to LEED-CS include both LEED-CS or its equivalent as determined by the Applicant and the County and all references to USGBC include the applicable equivalent agency.

Except as otherwise provided below in Paragraph E as an alternative, a LEED or equivalent-accredited professional (the "LEED-AP") who is also a professional engineer or architect shall provide certification statements at the time of building plan review confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED-CS Silver certification of the building.

B. The Applicant shall designate the Chief of EDRB as a team member in the USGBC's LEED Online system. This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team, but will not be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork.

Prior to the building plan approval for Building D3, the Applicant shall post a "green building escrow" in the form of cash or a letter(s) of credit from a financial institution acceptable to DPWES as defined in the PFM, in the amount of $2.00/square foot of GFA, as shown on the approved site plan. This green building escrow shall be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of LEED-CS Silver certification, by the USGBC, under the project's registered version of the LEED-CS rating system or other LEED rating system determined, by the USGBC, to be

applicable to Building D3. The provision to the EDRB of documentation from the USGBC that Building D3 has attained LEED-CS Silver certification will be sufficient to satisfy this commitment.

C. At the time LEED Silver certification is demonstrated to the EDRB, the escrowed funds and/or letter(s) of credit shall be released to the Applicant.

If, prior to bond extension, reduction or final bond release for the Building D3 site plan, whichever occurs first,, the Applicant provides to EDRB documentation demonstrating that LEED certification for the building has not been attained but that the building has been determined by the USGBC to fall within three (3) points of attainment of LEED Silver certification, 50% of the green building escrow will be released to the Applicant; the other 50% will be released to the County and will be posted to a fund within the County budget supporting implementation of county environmental initiatives. If the certification is still in progress at the time of application for bond extension or reduction, which given the construction timelines associated with the Proposed Development there is the potential for multiple bond extensions or reductions prior to the Proposed Development's completion, the time frame for the provision of the documentation described above shall be automatically extended to the time of the next bond extension or reduction. However, the documentation must be provided prior to the final bond release for Building D3 site plan.

If prior to bond extension, release or final bond release for the Building D3 site plan, whichever occurs first, the Applicant fails to provide documentation to EDRB demonstrating attainment of LEED Silver certification or demonstrating that the building has fallen short of LEED Silver certification by three (3) points or less, the entirety of the escrow for the building will be released to the County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives. If the certification is still in progress at the time of application for bond extension or reduction, which given the construction timelines associated with the Proposed Development there is the potential for multiple bond extensions or reductions prior to the Proposed Development's completion, the time frame for the provision of the documentation described above shall be automatically extended to the time of the next bond extension or reduction. However, the documentation must be provided prior to the final bond release for Building D3 site plan.

D. As an alternative to the actions outlined in the Paragraphs A, C and D above, the Applicant may choose at its sole discretion to pursue a certification higher than LEED Silver certification, in which case the LEED-AP will provide certification statements at the time of building plan review confirming that the items on the list of specific credits will meet at least the minimum number of credits necessary to attain LEED Gold certification.

Prior to building plan approval for Building D3, the Applicant shall submit documentation, to EDRB demonstrating that LEED Gold precertification under

the Core and Shell program has been attained for the building. This documentation will demonstrate that the building is anticipated to attain a sufficient number of design-related credits that, along with the anticipated construction-related credits, will be sufficient to attain LEED-CS Gold certification. Under this alternative, the Applicant is not required to provide a "green building escrow" unless the Applicant fails to provide the above referenced documentation that the building is anticipated to attain LEED-CS Gold certification.

However, if the Applicant is unable to provide the precertification documentation prior to the building permit approval but does anticipate receiving the documentation prior to the attainment of the certification, the Applicant may, prior to the issuance of the building permit, post an escrow identical to the one described in paragraph C above. This escrow will be released upon submission of the documentation to EDRB from the USGBC demonstrating that the building is anticipated to attain a sufficient number of credits to attain LEED Gold certification.

15. Energy Sustainability. To promote efficient, renewable and sustainable energy practices, the Applicant shall provide the following:

A. Electric Vehicle Charging Infrastructure. A minimum of four (4) electric vehicle recharging stations to serve eight (8) parking spaces shall be provided in the parking garage. Conduit and the necessary electrical power to facilitate additional future recharging stations in the garage shall also be provided.

B. Shared Energy. For any site plan that includes more than one building, provide an assessment of the potential, within the area subject to the site plan, of shared energy systems, including but not limited to combined heat and power (CHP) (co-generation), micro-CHP, distributed energy resources, and district heating and/or cooling, and, if a shared energy strategy will not be pursued, provide a narrative discussion regarding the reason(s) for this outcome. At a minimum, the Applicant shall ensure that a utility sleeve through the foundations of the proposed buildings, are sized to accommodate a pipe/facility, a maximum of 12 inches in diameter, allowing potential future energy sharing or alternate energy sources.

C. Energy and Water Data. To the extent there are master electric, gas and water meters for entire buildings, upon request by the County the Applicant shall provide to the County aggregated non-proprietary energy and water consumption data, as practicable, for each building and the entire Property.

16. Noise Attenuation. The Applicant has submitted a Preliminary Phase II Noise Analysis of the Property prepared by Phoenix Noise & Vibration, LLC dated October 22, 2013 (the "Preliminary Noise Analysis"). The analysis indicates that projected traffic noise will be greater than a day-night averaged noise level ("Ldn") of 65 decibels ("dBA") for some dwelling units exposed to Route 7 and Westpark Drive but that no dwelling units or

hotel units on the Property will be impacted by transportation generated noise greater than 75 dBA.

A. At the time of building plan application for the full shell building permit for each residential or hotel building, the Applicant shall submit an acoustical study prepared by a qualified acoustical consultant (the "Refined Noise Study") addressing indoor noise levels and proposing noise attenuation measures designed to reduce interior DNL to no more than 45 dBA for the residential components of Buildings D1 and D2 and for the guest room components of Building D3. The Refined Noise Study shall be prepared in accordance with County specified acoustical study guidelines. The Applicant shall submit the Refined Noise Study to DPWES, for information only, and to the Chief of EDRB for approval. In addition, the Applicant shall notify the Chief of EDRB by letter that such submission has been made. The Applicant shall not obtain full-shell building permit until the Chief of EDRB has approved the applicable Refined Noise Study. Failure by the Chief of EDRB to review and respond to the Applicant within 60 days of receipt of a Refined Noise Study shall be deemed approval of such study.

B. Based on the findings of the Refined Noise Studies, the Applicant shall provide the following noise attenuation measures, unless otherwise modified by the findings of the Refined Noise Studies.

(i) In order to reduce interior noise to a level of approximately 45 dBA Ldn, dwelling units and hotel guest rooms anticipated by the Refined Noise Studies to be impacted by noise having levels projected to be between 65 and 70 dBA Ldn, shall be constructed with the following acoustical measures:

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

b. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any façade exposed to noise levels of 65 to 70 dBA Ldn. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of up to 39 as dictated by the percent of glass.

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

(ii) In order to reduce interior noise to a level of approximately 45 dBA Ldn, dwelling units and hotel guest rooms anticipated by the Preliminary Noise Analysis to be impacted by noise having levels projected to be between 70 dBA Ldn and 75 dBA Ldn shall employ the following acoustical measures:

a. Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 45.

b. Doors and glazing shall have a laboratory STC rating of at least 37 unless glazing constitutes more than 20% of any façade. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of up to 45 as dictated by the percent of glass.

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

17. Notification of Exterior Noise Levels. The Applicant shall notify potential tenants or purchasers of individual residential units with balconies, either in the lease or sales contract, that exterior noise levels may exceed 65 dBA, which is the policy established by the County for outdoor recreation in residential areas impacted by high noise levels.

18. Bird-Friendly Design Elements. In an effort to reduce bird injury and death due to in-flight collisions with buildings, the Applicant shall include one or more bird friendly design elements, as determined by the Applicant, in the design plans of each building on the Property. The bird friendly design elements may include, but not be limited to, the use of color, texture, opacity, fritting, frosting, patterns, louvers, screens, interior window treatments, or ultraviolet materials that are visible to birds, the angling of outside lights, curbing of excessive or unnecessary night-time illumination in commercial buildings, reduction of bird attracting vegetation, the use of decoys, and breaking of glass swaths. Nothing herein shall require the Applicant to obtain a bird-friendly LEED credit. Upon the issuance of a building permit for each building, the provisions of this Proffer shall be deemed satisfied as to such building.

SITE DESIGN AND AMENITIES

19. Conceptual Landscape Plan. The CDP includes a conceptual landscape plan for the Property consisting of an overall plan and details regarding streetscapes, plazas, publicly accessible park areas, courtyards and private amenity areas. As part of subsequent FDP approvals, more detailed landscape plans for each building phase shall be provided in general conformance with the concepts included on Sheets L.003 through L.004 with adjustments permitted so long as the quality of the landscaping remains consistent with that shown on the CDP.

As part of the site plan submission for each building phase, the Applicant shall submit to the Urban Forestry Management Division of the DPWES ("UFMD") for review and approval a detailed landscape plan that is in substantial conformance with the quantity and quality of plantings and materials landscaping shown on the approved FDP, and shall include, among other things, irrigation information, design details for tree wells and other similar planting areas on structures and along streets. These details shall include the composition of planting materials, methods for providing suspended pavement over tree

root zones to prevent soil compaction, and methods for ensuring the viability of plantings on structures. Adjustments to the type and location of plantings shall be permitted to avoid conflicts with utilities and other site engineering considerations.

20. Streetscaping. Streetscaping shall be installed throughout the Property as conceptually illustrated on Sheets L.010 and L.011. Streetscape elements shall include: a landscape amenity panel located immediately behind the face of curb; a clear pedestrian sidewalk adjacent to the landscape amenity panel; and a building zone between the pedestrian sidewalk and the face of the building that is designed to allow access to the building and/or additional landscaping adjacent to residential uses and also storefront browsing, outdoor display, outdoor dining, and similar uses adjacent to Retail/Service uses. Streetscaping elements may be adjusted at the time of FDP approval provided the quality of the streetscape and minimum clear sidewalks are consistent with that shown on the CDP.

A. Street Trees. Tree planting sites are set forth on the CDP, subject to revisions as may be approved on the FDP, at site plan review by the UFMD or necessitated by providing bus stop shelters, clear zone requirements, etc. The Applicant shall retain the services of a certified arborist or Registered Consulting Arborist to monitor the design and inspect the planting of the street trees and shall notify UFMD in writing or by electronic mail no later than three business days prior to tree pit construction to allow for County inspection. Where minimum planting widths of 8 feet are not provided, structural cell technology, or other measures acceptable to UFMD, shall be used to satisfy the following specifications for all planting sites:

(i) A minimum of 4 feet open surface width and 16 square feet open surface area for Category III and Category IV trees, with the tree located in the center of the open area, or as an option a grated covering of the open surface area as may be approved with the FDP;

(ii) A minimum rooting area of 8 feet wide (may be achieved with techniques to provide un-compacted soil below hardscape areas within the pedestrian realm), with no barrier to root growth within four feet of the base of the tree;

(iii) A minimum soil depth of four (4) feet as measured to the shallow most point of the tree pit as more specifically depicted in the tree planting details found on Sheets L.014 through L.016 of the CDP;

(iv) Soil volume for Category III and Category IV trees (as defined in Table 12.19 of the PFM) shall be 700 cubic feet per tree for single trees, but may be reduced to a minimum of 400 cubic feet where necessary, such as where paving above rooting zones is necessary to accommodate pedestrian traffic or where utility locations preclude greater soil volume. For two trees planted in a contiguous planting area, a total soil volume of at least 600 cubic feet per tree shall be provided. For three or more trees planted

in a contiguous area, the soil volume shall equal at least 500 cubic feet per tree. A contiguous area shall be any area that provides root access and soil conditions favorable for root growth throughout the entire area.

(v) Soil specifications in planting sites shall be provided in the planting notes to be included in all site plan submissions;

(vi) All shade trees shall be a minimum of 3 to 3.5 inches in caliper at the time of planting; all flowering trees shall be a minimum of 2 inch caliper at the time of planting; and all new evergreen trees shall be a minimum of eight (8) feet in height at the time of planting; and,

(vii) Street trees planted within existing utility easements that are removed to facilitate repairs of utilities in these easements shall be replaced.

B. Non-Invasive Plant Materials. Invasive species, as defined by the PFM, shall not be used within the streetscape and landscaped open space areas.

C. Utility Locations. Utilities, including, but not limited to water, sanitary sewer and storm sewer utility lines, shall be installed within the street network to the maximum extent feasible as determined by DPWES or shall be placed in locations that do not conflict with the landscaped open space areas and streetscape elements shown on the CDP and/or subsequent FDP as determined by DPWES. If there is no other option, utilities may be placed within open space or streetscape areas provided that the long-term health of trees and other plantings is ensured by the provision of sufficient soil volume as shown on the CDP, as determined by the UFMD. A conceptual utility plan shall be overlaid on the landscape plan submitted in the FDP. Adjustments to the type and location of plantings and the use of raised planters shall be permitted to avoid conflicts with utilities and other site engineering considerations. If at the time of site plan approval, street trees shown on the FDP are in conflict with new proposed utilities and alternative locations for the street trees satisfactory to UFMD cannot be accommodated, the Applicant shall modify the location of utilities to ensure that the trees shown on the FDP can be provided.

Maintenance access points to SWM Facilities and electric vaults beneath the streetscape shall be located outside of the clear pedestrian walkway zone of the streetscape to the extent feasible. If the access points must be located in the walkway zone, they shall be designed as a lift out panel with the same paving materials as the walkway (subject to ADA requirements), be flush with the walkway, and meet ADA accessibility requirements. These maintenance points shall be shown on each FDP.

D. Sight Distance Considerations. Sight distance requirements shall be provided with the landscape plan submitted with each FDP, so as to identify and avoid conflicts with street tree locations. If at the time of site plan approval, street tree locations approved on the FDP are determined to conflict with sight distance

requirements, the Applicant shall make efforts to gain approval of said trees by UFMD by making minor adjustments to their locations or by removing their lower branches. In the event VDOT does not approve the tree locations even after the changes anticipated above, the Applicant shall be permitted to relocate the affected street tree and any associated stormwater management facilities without the need for confirmation from DPZ, subject to approval by UFMD. If the deleted street tree(s) result in a tree canopy below 10% on the Property, the street tree(s) must be accommodated in another location on the Property, as approved by DPZ in consultation with UFMD.

E. Streetscape Furnishings, Materials and Lighting. Unified and high quality streetscape materials shall be provided and may include, but not be limited to, unit pavers, seat walls, tree space edging, lighting, traffic signal poles, benches, trash receptacles and other hardscape elements. A Streetscape Furnishing and Materials Plan shall be provided as part of all FDPs. These plans shall include general product information and approximate locations of furnishings and materials to be located in the streetscape between the building face and the curb, and in other public realm open spaces. Materials, furnishings, and lighting, excluding the existing street light fixtures along Route 7 to remain, shall be compatible with those already identified in the Tysons Corner Urban Design Guidelines ("UDG") dated January 24, 2012, as may be amended and or modified and shall be coordinated with any streetscape design efforts put forth by the Tysons Partnership, but shall not be subject to approval by Tysons Partnership.

All new streetscape lighting shall be energy efficient and shall meet the UDG, unless alternatives are approved by OCR, DPZ and DPWES. Street lighting shall be consistent with that provided with the redevelopment on adjacent property subject to rezoning application RZ 2010-PR-022. All on-site, outdoor and parking garage lighting shall not exceed 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. Recessed lighting shall be directionally shielded to mitigate the impact on the adjacent properties.

F. Signage and Wayfinding. Signage for the Property shall be provided in accordance with the requirements of Article 12 of the Zoning Ordinance. Alternatively, the Applicant may seek approval of a Comprehensive Sign Plan ("CSP"). The placement of all signage on existing/planned public streets shall be coordinated with VDOT for review and approval. Wayfinding signage and elements may be provided as a part of a larger CSP for the Tysons area. Such wayfinding signage shall be coordinated with the Tysons Partnership so to facilitate a consistent wayfinding and signage system throughout the district, but shall not be subject to approval by Tysons Partnership. Wayfinding shall provide direction to locations of prominent attractions, parks, cultural arts destinations, and other public amenities.

G. Maintenance. The Applicant or UOA shall maintain and replace in-kind all pedestrian realm elements on the Property and in the right-of-way immediately adjacent to Property (including street trees currently maintained by the County). The pedestrian realm includes all areas between the back of curb and the back of the building zone whether located within the public right-of-way or on private land with public access easements. The Applicant shall enter into the appropriate agreement, in a form approved by the Office of the County Attorney, with the County (or other public entity, as needed) to permit the Applicant to perform such maintenance. An alternative maintenance agreement, such as a Business Improvement District, may be entered into upon written agreement of both the County and the Applicant without the requirement for a PCA. Maintenance commitments shall commence coincidental with the Applicant's streetscape installation and shall include, but not be limited to:

(i) All plantings including trees, shrubs, perennials, and annuals;

(ii) All associated irrigation elements;

(iii) All hard surfaces;

(iv) All streetscape furnishings including benches, bike racks, trash and recycling receptacles and non-standard structures;

(v) All lighting fixtures, poles and brackets;

(vi) All non-VDOT standard sign posts, traffic signal poles, pedestrian signal poles, mast arms, signal heads and control boxes;

(vii) Snow removal;

(viii) Leaf removal;

(ix) Trash, recycling and litter removal;

(x) Decorative retaining walls;

(xi) Special drainage features, such a Low Impact Design facilities; and

(xii) All urban park amenities including horticultural care, maintenance of all water features, irrigation, lighting, furnishings, paving, and art.

Phasing of streetscaping is provided within the context of individual building phases as depicted on the Phasing Exhibits. As determined at the time of FDP approval, where the final streetscape design cannot be fully implemented during certain phases of development, the Applicant shall provide interim streetscape improvements as described in Proffer 21.

21. Interim Conditions and Standards. Due to the time anticipated for the build-out of the Proposed Development, phased redevelopment may result in various interim conditions on the Property. Many of the anticipated interim conditions are identified on the CDP. At the time of FDP submission, the Applicant shall identify the specific proposed interim conditions within the FDP area and outside the FDP area and shall ensure such conditions provide reasonable pedestrian connections, vehicular circulation, temporary streetscaping and landscaping, public park treatments, and screening/treatment of exposed/partially complete above grade parking structures.

A. If interim improvements not located on the Property are contemplated with any FDP, such FDP shall specify how and when such improvements are to be constructed.

B. Interim conditions shall generally comply with the following general standards provided that the improvements are acceptable to the County, VDOT, and all other utility companies as may be appropriate:

(i) Construction of interim sidewalks a minimum of a five (5) feet in width and installation of interim street lights along the interim sidewalks, as needed to ensure a safe, convenient pedestrian path to the Metro Station

(ii) Installation of street trees, with a minimum size of 2 inch caliper, approximately every 50 feet, to the extent feasible as determined by UFM based on existing conditions and utility easements. Interim street tree planting shall not be required to meet the minimum planting width/area standard for permanent street trees.

(iii) Provision of interim designs for publicly accessible open spaces will include interim landscaping, pedestrian pathways, seating, signage, lighting and recreational facilities as determined at FDP. Signage will inform the public that the park space is temporary. The Applicant shall work with the FCPA to permit and coordinate activities and events within the interim publicly accessible park areas.

(iv) Provision of peripheral and interior parking lot landscaping in accordance with Article 13-203 of the Zoning Ordinance for interim surface parking lots, unless waived or modified at the time of site plan approval.

(v) Application of a screening system (which may be removable) where above grade garage structures that will be interior when later phases are complete and exposed at phase lines. This screening system shall be applied to all levels above grade and shall be composed of an architecturally designed system that may reflect basic architectural lines of the permanent facades, and that shall partially obscure the garage view from outside the garage until the next phase is constructed. The use of temporary art works as a part of the screening system shall also be considered as part of the interim screening system. The specific screening system to be utilized for each

building shall be determined at the time of FDP approval and graphically depicted on the FDP. Alternate temporary garage screening may be approved with FDP approval.

(vi) Grading and seeding of areas on the Property where existing improvements are removed to accommodate a portion of the Proposed Development, and are not scheduled to commence construction within 24 months.

(vii) Where appropriate, provision of attractive temporary construction fencing, which may include public art, signage or wayfinding elements. Signage shall be in keeping with Article 12 of the Zoning Ordinance or alternatively in accordance with an approved Comprehensive Sign Plan.

C. Interim improvements shall be substantially complete and in place within 12 months of the issuance of the first RUP or Non-RUP for the applicable building, unless: 1) a site plan for the permanent building to be constructed in the area of the interim improvements has been approved and bonded; or 2) seasonal/weather related conditions have delayed the completion of the interim improvements. In the case of a seasonal/weather related delay, the interim improvements shall be completed as soon as possible.

TRANSPORTATION IMPROVEMENTS

22. Grid of Streets. The Applicant shall construct and place into operation a new grid of streets throughout the Property including portions of streets identified on the CDP as Park Avenue and, Madison Street, and shall make improvements to existing Westpark Drive. For the purposes of these proffers, Route 7 and Park Avenue shall be considered to run east to west and Westpark Drive and, Madison Street Station Place shall be considered to run north to south. The functional classification of the streets is provided below:

Street	Classification
Route 7 (Leesburg Pike)	Low Speed Boulevard
Westpark Drive	Avenue
Park Avenue	Collector
Madison Street	Local

A. Public Streets and Right-of-Way. The Applicant shall dedicate right-of-way along the Property's frontage for Route 7, Westpark Drive, Park Avenue and Madison Street (the "Public Streets"), as shown on Sheet P.301 or to such standard as may be approved on the FDP. All improvements proposed to Public Streets herein shall be subject to VDOT approval and be designed to be in general conformance with the standards included in Attachment D (*Transportation Design Standards for Tysons Corner Urban Center)* of the Memorandum of Agreement approved by the Board of Supervisors on September 13, 2011, as may be amended (the "Design Standards"), subject to modifications/waivers as may be granted

The Applicant shall work diligently with VDOT, Dominion Power and the County during the FDP and site plan approval processes to determine if the area of the landscape amenity panel/sidewalk can be accepted by VDOT as a part of the public streets and whether the proposed underlying utilities and facilities in the right-of-way are acceptable to the utility companies. The Applicant shall dedicate and convey in fee simple right-of-way including the area of the landscape amenity panel/sidewalk to the Board of Supervisors at the time of site plan approval, with the following exceptions:

(i) If at the time of site plan approval it is determined that stormwater management facilities, electric vaults or other similar facilities proposed to be located beneath the landscape amenity panel/sidewalk prevent VDOT and/or the County from accepting the landscape amenity panel/sidewalk within the right-of-way, the Applicant shall provide dedication measuring 18 inches from the proposed face of curb line and shall grant a public sidewalk and utility easement in a form acceptable to the Office of the County Attorney, over the area of the amenity panel/sidewalk. This easement shall allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicant shall provide easements within the amenity panel for bus pads and shelters as determined at the time of FDP or site plan.

(ii) If at the time of site plan approval it is unclear whether stormwater management facilities, electric vaults or other similar facilities proposed to be located beneath the landscape amenity panel/sidewalk will be acceptable to VDOT and/or the County, the Applicant shall provide dedication measuring 18 inches from the proposed face of curb line at the time of site plan approval and shall reserve for potential future dedication the landscape amenity panel and sidewalk areas. A temporary public access easement in a form acceptable to the County Attorney shall be recorded over the reserved landscape amenity panel/sidewalk areas until such time as such areas are dedicated. Conveyance of the amenity panel/sidewalk areas to the Board of Supervisors shall occur following construction of the street and streetscape improvements and final street acceptance inspection by the County and/or VDOT subject to the stipulations in these Proffers.

(iii) Should it be determined following final street acceptance inspection that the landscape amenity panel and sidewalk areas are not acceptable to VDOT and/or the County to be included in the right-of-way, the reservation of potential future dedication of the landscape amenity panel and sidewalk areas shall be released and a public sidewalk and utility easement, in a form acceptable to the County Attorney, shall be granted in its place. This easement shall allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the

Applicant shall provide easements within any privately-owned amenity panel/sidewalk area for bus shelters identified on the CDP or any subsequent FDP, as determined at the time of site plan.

B. Definition of Construct. For purposes of this Proffer "construct" shall mean that the committed road improvement is open to use by the public for travel whether or not the improvement has been accepted for maintenance by the state.

C. Naming. The Applicant reserves the right to provide different names for the streets than those shown on the CDP.

D. Street Closures. The Applicant may temporarily close part or all of any streets to accommodate construction activity on the Property provided safe and adequate pedestrian and vehicular access is maintained.

E. Parking Lanes. The Applicant shall provide on-street parking throughout the limits of the Property as generally located on the CDP with full build-out of the Property. If requested by the County and/or VDOT, the Applicant shall install signs restricting parking subject to VDOT approval.

23. Westpark Drive. The Applicant shall construct improvements along the Property's Westpark Drive frontage to accommodate a half section of six lanes of traffic (three lanes in each direction) with a dedicated bike lane. The curb lane shall be 13 feet in width (including the gutter pan) and shall act as a combination right turn lane and Circulator lane as shown in the typical section on Sheet P.302 of the CDP. The final design of the improvements to Westpark Drive as generally described above shall be further refined in conjunction with the submission of any FDP and all site plans for those portions of the Property fronting Westpark Drive and construction shall be provided concurrent with the development of buildings with frontage on Westpark Drive as shown on the Phasing Sheets.

24. Park Avenue The Applicant shall construct Park Avenue through the Property connecting Westpark Drive with Madison Street as follows:

A. If not previously constructed or designed by others, then in conjunction with the submission of the site plan for Building D2, the Applicant shall submit a site plan or Public Improvement Plan (the "Road Plan"), for the ultimate improvement of Park Avenue generally from Westpark Drive to Madison Street. The Road Plan shall be coordinated with the applicant in adjacent rezoning application RZ 2010-PR-022, or its successors and assigns (collectively "the RZ 2010-PR-022 Property"). In conjunction with the RZ 2010-PR-022 Property, the Applicant shall be responsible for the construction of Park Avenue between Westpark Drive and Madison Street ("Park Avenue West"). Park Avenue West shall be constructed as generally reflected on Sheet P.301 of the CDP, the typical section presented on CDP Sheet P.302, and as shown the Phasing Sheets. The final design of the improvements to Park Avenue West as generally described above and its connection with Westpark Drive shall be determined in conjunction with the

submission of the site plan for the Building D2 and the Applicant's construction of Park Avenue West shall be completed, except where modified by FDP, prior to the issuance of the first RUP or Non-RUP for Building D2.

B. If Park Avenue West is to be constructed by the RZ-2011-PR-022 Property prior to the Applicant's obligation to construct as stated above, then upon written demand by the County, the Applicant shall dedicate and convey right-of-way and ancillary easements necessary to facilitate such construction by the RZ-2011-PR-022 Property at no cost, provided: (a) sufficient interim access to/from the existing on-site uses is constructed and maintained at all times; and (b) such improvements to the Property are coordinated with the Applicant prior to site plan approval for the improvement of Park Avenue West. In addition, should the ultimate improvements to Park Avenue West be constructed by the RZ-2011-PR-022 Property, the Applicant shall demonstrate that it has provided fifty percent (50%) of the cost of designing and constructing Park Avenue West to the RZ-2011-PR-022 Property prior to the issuance of the building permit associated with Building D2. The specific streetscape improvements along the Building D2 frontage shall be constructed by the Applicant with the development of Building D2.

25. Madison Street.

A. Madison Street between Park Avenue and Route 7 shall be designed with an ultimate section measuring 38 feet from face of curb to face of curb to accommodate two lanes of traffic (one lane in each direction) with parallel parking along both sides of the street, as may be approved by VDOT and FCDOT. The Applicant shall construct Madison Street along its Property frontage in an interim section as shown on Sheet P.303 of the CDP with two travel lanes and no parking lanes. Such interim section shall be constructed prior to issuance of the first RUP or Non-RUP for Building D1. It is anticipated that additional pavement to complete the ultimate section will be provided by others with the development of the adjacent RZ-2011-PR-022 Property. The final design of the improvements to Madison Street, as generally described above, shall be further refined in conjunction with the submission of any FDP and all site plans for those portions of the Property fronting Madison Street. .

B. If an improvement to the section of Madison Street between Park Avenue and Route 7 is to be constructed by the RZ-2011-PR-022 Property prior to the Applicant's obligation to construct as stated above, then the Applicant upon written demand by the County, shall dedicate and convey right-of-way and ancillary easements necessary to facilitate such construction by the RZ-2011-PR-022 Property provided: (a) sufficient interim access to/from the existing uses is constructed and maintained at all times; and (b) such improvements to the Property are coordinated with the Applicant prior to site plan approval for the improvement of this section of Madison Street. In addition, should the ultimate improvements to Madison Street be constructed by the RZ-2011-PR-022 Property prior to the Applicant constructing the interim section described in paragraph A

above, the Applicant shall demonstrate that it has provided its share of the cost of designing and constructing Madison Street along the Property's frontage to the RZ-2011-PR-022 Property prior to building permit issuance for the Building D1. The specific streetscape improvements along the Madison Street frontage, shall be constructed by the Applicant with the development of the Building D1.

26. Traffic Signals.

A. The Applicant shall conduct a warrant study for the intersection of Westpark Drive/Park Avenue within twelve (12) months after the issuance of the initial RUP or Non-RUP for any of Buildings D1, D2 and D3 constructed concurrently with, or after, the construction of the Westpark Drive/Park Avenue intersection in its ultimate configuration as shown on Sheet P.301 of the CDP.

B. The Applicant shall conduct a warrant study for the intersection of Park Avenue/Madison Street within twelve (12) months after the issuance of the initial RUP or Non-RUP for any new building constructed on the Property concurrent with, or after, the construction of the Park Avenue/Madison Street intersection in its ultimate configuration as shown on Sheet P.301 of the CDP.

C. If a signal is deemed warranted at either of these intersections by VDOT after having reviewed the warrant study and approving the same for installation, then such traffic signals, including pedestrian enhancements as may be required by VDOT, shall be designed, equipped and installed by the Applicant, utilizing any escrowed contributions for the signal received by the County, no later than five (5) years after approval of the warrant.

D. For any signal warranted by VDOT, the Applicant shall provide VDOT with the requisite traffic signal plans for review and approval. All right-of-way associated with signal equipment (poles, equipment boxes, etc.) on the Property not already dedicated shall be reserved for dedication in fee simple to the Board of Supervisors in accordance with Proffer 22.

E. If the County, upon request of the Applicant or on its own initiative, determines that such signal installations as proffered will be detrimental to traffic operations, the Zoning Administrator may (1) agree to a later date for completion of the traffic signal installation(s) or (2) permit the Applicant to proceed without the signal installations.

F. If a signal at either of the identified intersections is not warranted within twenty-four (24) months after the issuance of the initial RUP or Non-RUP for the last new building to be constructed on the Property, then the Applicant's obligation to construct such signal is deemed null and void and the Applicant shall instead escrow money towards the cost of future signalization of either applicable intersection(s) by others based on the Applicant's pro-rata traffic share. The escrow amount to be provided by the Applicant for each intersection is as follows:

(i) Westpark Drive/Park Avenue: $37,500.00

(ii) Park Avenue /Madison Street: $25,000.00

G. If a signal at the Greensboro Drive/Madison Street intersection is not warranted within twenty-four (24) months after the issuance of the initial RUP or Non-RUP for the last new building to be constructed on the Property, based on warrant studies conducted by others, the Applicant shall escrow $5,000.00 towards the cost of future signalization by others of the Greensboro Drive/Madison Street intersection.

27. Tysons Grid of Streets Transportation Fund. The Applicant shall make a contribution to the County's Tysons Grid of Streets Transportation Fund for each residential unit and each square foot of new non-residential space constructed on the Property in keeping with the rates and applicable rate adjustments set forth in the *Guidelines for the Tysons Grid of Streets Transportation Fund* endorsed by the Board of Supervisors on January 8, 2013 (the "Grid Guidelines"). This contribution is not subject to further adjustment outlined in Proffer 60 and shall not apply to any public-use facilities constructed on the Property. The contribution associated with each building shall be paid on or before the issuance of each initial RUP or Non-RUP for the subject building based on the actual GFA of non-residential space and/or the actual number of residential units in the building.

The Applicant shall receive and deduct such credits against the contributions as approved by the County in keeping with the Grid Guidelines.

28. Tysons-wide Transportation Fund. The Applicant shall make a contribution to the County's Tysons-wide Transportation Fund for each residential unit and each square foot of new non-residential space constructed on the Property in keeping with the rates and applicable rate adjustments set forth the *Guidelines for the Tysons-wide Transportation Fund* endorsed by the Board of Supervisors on January 8, 2013 (the "Tysons-wide Guidelines"). This contribution is not subject to further adjustment outlined in Proffer 60 and shall not apply to any public-use facilities constructed on the Property. The contribution associated with each building shall be paid on or before the issuance of each initial RUP or Non-RUP for the subject building based on the actual GFA of non-residential space and/or the actual number of residential units in the building.

The Applicant shall receive and deduct such credits against the contributions as approved by the County in keeping with the Tysons-wide Guidelines.

29. Route 7 Improvement. The Applicant shall provide a contribution toward the construction of improvements to Route 7 to accommodate a future State Street crossing, or other access improvement, equal to $0.07 for each square foot of building constructed on the Property. Said contribution to Fairfax County shall be made upon site plan approval for each of the three buildings and shall be based on the site plan approved GFA for each building.

BICYCLE FACILITIES, BUS SHELTERS AND PEDESTRIAN IMPROVEMENTS

30. Bicycle Circulation. In combination with the street and streetscape improvements identified in these Proffers, the Applicant shall provide on-street bicycle lanes and associated signage along the Property's frontage with Westpark Drive and along Park Avenue as shown on the CDP and as may be adjusted with approval of FDPs. Such striping shall be subject to approval by VDOT.

31. Bicycle Parking. The Applicant shall provide bicycle racks and bike storage areas throughout the Property, the specific locations of which shall be determined at the time of FDP approval and finalized with site plan approval. The bike racks shall be inverted U-style racks or other design compatible with the UDG and approved by Fairfax County Department of Transportation ("FCDOT"). The total number of bike parking/storage spaces shall be consistent with the Fairfax County Policy and Guidelines for Bicycle Parking. Signage shall be posted on the exterior side of buildings closest to entrances to bike parking/storage space to indicate bike parking/storage.

32. Bus Shelters. Bus shelter locations shall be evaluated for feasibility at the time of site plan approval in consultation with FCDOT. Identified bus shelter locations shall be primarily located within the landscape amenity panel of the streetscape, and may necessitate adjustments to street tree locations and other street furnishings to that shown on the CDP. An alternate location for the bus shelter outside the landscape amenity panel may be approved at FDP, if determined appropriate. Should a bus shelter location be determined appropriate at the time of site plan approval, the Applicant shall install said shelter.

33. Marked Crosswalks. The Applicant shall install marked pedestrian crosswalks at all signalized intersections adjoining the Property, subject to VDOT approval.

34. Initial Pedestrian Connection. In addition to the streetscapes being provided with the Proposed Development, the Applicant shall stripe a pedestrian pathway from the Westpark Hotel to the sidewalk along Route 7 to facilitate pedestrian connectivity to the adjacent Greensboro Metro Station as depicted on Sheet L.012. In addition, the Applicant shall stripe a pedestrian crosswalk across the current SAIC Street/future Madison Street intersection with Route 7. These pathway/crosswalks shall be provided within six (6) months of the approval of this Rezoning.

PARKING

35. Zoning Ordinance Requirements. Parking on the Property shall be provided in accordance with the parking requirements for the PTC District set forth in Section 6-509 and Article 11 of the Zoning Ordinance, and as shown on the CDP. All of the Property located shall be parked at the rates established in Section 6-509 for land located between 1/8 and ¼ mile from a metro station. The exact number of spaces to be provided shall be refined with approval of FDPs and determined at the time of site plan approval based on the specific uses, number of residential units and bedroom mix. If changes in the mix of uses or bedroom mix result in parking greater than that anticipated on the CDP, the

additional parking spaces shall be accommodated within the proposed parking structures, without increasing the height or mass of the parking structures.

36. Phasing of Parking. Parking shall be provided in phases concurrent with development of the Property. Parking spaces in excess of the maximum parking rates set forth in the Zoning Ordinance may be provided in the early phases of development of the Property, provided that at the complete build-out of the Property, the maximum parking rates are not exceeded.

    The existing Westpark Hotel which will remain for an interim period of time, may continue to park at the parking rates applicable in the non-PTC zoning districts, or may elect to reduce the number of off-street parking spaces to a number between the rates for non-PTC zoned properties and the applicable minimum rates specified for the PTC District.

37. Commercial Off-Street Parking. The Applicant may provide commercial off-street parking on an interim basis in existing surface lots on the Property without approval of an FDP. The area of potential commercial off-street parking is depicted on Sheet P.201 of the CDP. The existing parking lots shall not be required to meet PFM requirements for peripheral and interior parking lot landscaping subject to approval of a modification/waiver by DPWES; however existing peripheral and interior parking lot landscaping shall remain. At the time of site plan approval for commercial off-street parking in existing surface lots, the Applicant shall provide an operational traffic analysis ("Operational Analysis") of points of access to the parking site to VDOT and FCDOT. Such Operational Analyses shall be limited to an assessment of those driveways and/or turn lanes serving the particular parking site. Any establishment of such facilities shall provide for an ADA compliant ramp and pedestrian access from the parking lot to the existing sidewalk along Route 7 and striped pedestrian paths within the parking lot. Other interim improvements as set forth in Proffer 21 shall not be required for interim commercial off-street parking.

38. Parking Spaces along Private Street. The Applicant reserves the right to restrict the use of spaces along the drive aisle/private street adjacent to Civic Square (Park 1), through appropriate signage or such other means as the Applicant determines, that otherwise are not required to satisfy the parking requirements for use as temporary or short term parking, "car share" parking and/or similar uses.

39. Parking Stipulations.

    A. The Applicant shall be permitted to install and maintain parking controls and fencing on its existing surface parking lots, without the requirement for a FDP, in order to control Metro-related parking by the general public.

    B. The Applicant shall provide controlled access to the new parking garages and shall ensure that the control equipment is capable of counting vehicles entering and exiting the garage.

C. The sale or lease rates of parking spaces shall be "unbundled" from the purchase price or lease rate of the individual dwelling units; meaning a unit's purchase price or lease rate shall be exclusive of parking costs.

40. Future Parking Revisions.

A. Zoning Ordinance Revisions. The Applicant reserves the right to provide parking at revised rates as may be permitted by a future amendment to the Zoning Ordinance. Optional use of revised rates shall not require a CDPA or PCA, provided there is no increase in the size or height of above-grade parking structures.

B. Increases. The Applicant reserves the right to seek a special exception for an increase in parking for the Property; such special exception application shall not require a CDPA or PCA, provided there is no increase in the size or height of above-grade parking structures.

TRANSPORTATION DEMAND MANAGEMENT

41. Tysons Transportation Management Association. The Applicant shall contribute to the County funds for the establishment of a future transportation management association (the "TMA") as outlined below, which may be established for the Tysons Corner Urban Center and which all other Tysons property owners will also be required to contribute to:

A. The Applicant shall make a one-time contribution to the establishment of this future TMA based on a participation rate of $0.05 per gross square foot of new residential uses to be constructed on the Property.

B. The contribution shall be paid on a building by building basis at the time of site plan approval for the each new residential building constructed on the Property, but in any event no later than ten (10) years from the date of rezoning approval.

C. If subsequent to the approval of this Rezoning, FCDOT approves the TMA as the administrator of TDM programs for the Tysons Corner Urban Center, then the Applicant may, in its sole discretion, join or otherwise become associated with such entity and transfer some functions of this TDM Program to the TMA. Further, if determined by FCDOT that a proactive, private TDM program is no longer necessary, the TDM structure in this proffer may be rendered null and void in whole or in part without the need for a PCA.

42. Transportation Demand Management. The Applicant shall fund, implement and administer a transportation demand management program for the Property as described in this Proffer (the "TDM Program"). It is intended that the first new building to be constructed on the Property will initiate implementation of what will become a Property-wide TDM program that later buildings to-be-constructed on the Property will join.

A. Implementation Plan. The proffered elements of the TDM Program as set forth below are more fully described in the *Westpark Plaza Transportation Demand*

Management Plan prepared by Wells + Associates, Inc. dated July 31, 2014 (the "TDM Plan"). It is the intent of this Proffer that the TDM Plan adapt over time to respond to the changing transportation related circumstances of the Property, the surrounding community and the region, as well as to technological and/or other improvements, all with the objective of meeting the trip reduction goals as set forth herein. Accordingly, modifications, revisions, and supplements to the TDM Plan as may be approved by the FCDOT can be made without the need for a PCA provided that the TDM Plan continues to reflect the proffered elements of the TDM Program as set forth below.

B. Responsible Party. The Applicant, or any successor other than the UOA or its equivalent, shall remain obligated under this Proffer until such time as three consecutive post Stabilization trip counts reveal that the applicable vehicle trip reduction goals are being met (the "Applicant Control Period"). At the end of the Applicant Control Period, the UOA or equivalent shall become obligated under this Proffer and Applicant, or any successor other than the UOA or equivalent, shall have no further obligation with respect to this Proffer.

C. Definitions. For purposes of this Proffer, "Stabilization" shall be deemed to occur one-year following issuance of the last initial RUP or Non-RUP for the final new office or residential building to be constructed on the Property. "Pre-stabilization" shall be deemed to occur any time prior to Stabilization.

D. Trip Reduction Objective. The objective of this TDM Program shall be to reduce the vehicle trips generated by new residents and new office tenants of the Property, during weekday peak hours, by meeting the percentage vehicle trip reductions set forth below. These trip reduction percentages shall be multiplied by the total number of vehicle trips that would be expected to be generated by the uses developed on the Property as determined by the application of the Institute of Traffic Engineers, 8th Edition, *Trip Generation* rates and/or equations (the "ITE Trip Generation"), and the number of trips determined by the product of such equation shall be referred to herein as the "Maximum Trips After Reduction". For purposes of this calculation, the maximum number of dwelling units or gross floor area proposed to be constructed in each new residential or new office building on the Property as determined at the time of site plan approval for each building shall be applied to the calculation described in the preceding sentence. The target reductions shall be as follows:

Development Levels	Percentage Vehicle Trip Reduction
Up to 65 million GSF	35%
65 million GSF	40%
84 million GSF	45%
90 million GSF	48%
96 million GSF	50%
105 million GSF	53%
113 million GSF	55%

The trip reduction goals outlined above are predicated on the achievement of specific development levels within the Tysons Corner Urban Center as anticipated in the Comprehensive Plan. Development levels in Tysons Corner shall be assessed in consultation with the County prior to undertaking trip measurements in order to determine the appropriate vehicle trip reduction goal. The assessed development levels shall be based on the RUP or Non-RUP issued within the Tysons Corner Urban Center.

If through an amendment to the Comprehensive Plan, the Board of Supervisors should subsequently adopt a goal for trip reductions that is lower than that committed to in this Proffer, then the provisions of this Proffer shall be adjusted accordingly without requiring a PCA.

E. TDM Program Components – Property-Wide. The TDM Program shall include, but not necessarily be limited to, the following Property-wide components, each of which is more fully described in the TDM Plan.

(i) Property-wide TDM Program Management.

(ii) TDM Program Branding.

(iii) Transportation Program Web Site.

(iv) Promotion of Real-time Transit Information.

(v) Site-based Transportation Access Guides.

(vi) Customized Commute Profiles.

(vii) Bicycle Accommodations.

(viii) Vehicle Parking Management.

F. TDM Program Components – New Residential. The TDM Program shall include, but not necessarily be limited to, the following residential components, each of which is more fully described in the Implementation Plan.

(i) Residential Transportation Coordinator(s).

(ii) Business Center.

(iii) Metrorail SmarTrip cards and Try Transit campaign for new residents.

(iv) Live/work/play marketing to new tenants.

G. Process of Implementation. The TDM Program shall be implemented as follows, provided that modifications, revisions, and supplements to the implementation

process as set forth herein as may be approved by the FCDOT can be made without the need for a PCA.

(i) TDM Program Manager. The Applicant shall appoint and continuously employ, or cause to be employed, a TDM Program Manager (TPM) for the Property. If not previously appointed, the TPM shall be appointed by the Applicant no later than sixty (60) days after the issuance of the first building permit for the first residential building to be constructed on the Property. During the initial stages of development, the TPM duties may be part of other duties associated with the appointee. The Applicant shall notify FCDOT in writing within 10 days of the appointment of the TPM. Thereafter the Applicant shall do the same within ten (10) days of any change in such appointment. Following the termination of the Applicant Control Period, the UOA shall be responsible for employment of the TPM.

(ii) TDM Work Plan, Annual Report and TDM Budget. The TPM shall prepare and submit to FCDOT an initial TDM Work Plan ("TDMWP") and TDM Budget no later than 180 days after issuance of the first building permit for the first residential building on the Property. The TDMWP shall include, at a minimum:

a. Details as to the start-up components of the TDM program that will be put into action effective with the first residential building on the Property;

b. The budget needed to implement the program;

c. A summary of the currently existing/approved development levels in the Tysons Corner Urban Center in consultation with the County (based on RUPS and Non-RUPs issued) in order to determine the appropriate vehicle trip reduction goals.

d. A determination of the applicable Maximum Trips After Reduction for the Property in accordance with Paragraph D above;

e. Provision of the specific details associated with the monitoring and reporting requirements; and

f. Submission of the results of any Person Surveys and Vehicular Traffic Counts conducted on the Property.

The TDMWP and Budget shall be reviewed by FCDOT. If FCDOT has not responded with any comments within sixty (60) days after submission then the TDMWP and Budget shall be deemed approved and the TDM program shall be implemented. If FCDOT responds with comments on the TDMWP and Budget, then the TPM will meet with FCDOT staff within fifteen (15) days of receipt of the County's comments. Thereafter, but no later than thirty (30) days after the meeting, the TPM shall submit

such revisions to the TDMWP and Budget as discussed and agreed to with FCDOT and begin implementation of the approved program.

Each calendar year thereafter, but no later than February 1, the TPM shall submit a report which summarizes the results of the previous year's TDM Program, incorporates any new construction on the Property, proposes modifications or enhancements to program elements, and establishes a budget to cover the costs of implementation of the program for the succeeding year (the "Annual Report"). The Annual Report and TDM Budget shall be submitted to FCDOT and reviewed in the same manner as outlined above for the TDMWP and TDM Budget. The expected annual amounts of the Budget are further described in Section 3.0 of the Implementation Plan.

(iii) Coordination with RZ 2010-PR-022. At such time as the adjacent parcels identified as Fairfax County Tax Map 29-3 ((15)) 4D1, 4E1, 4F1, 4G, 7A1, 7B1, 7C1, and 7E1 subject to approval of RZ 2010-PR-022 (the "adjacent property") implements a TDM Program, the Applicant shall coordinate its TDM programmatic efforts with the adjacent property, as appropriate, under one Administrative Group ("AG"). The AG will appoint a single TDM Program Manager ("Joint TPM") who will be responsible for submitting a collective Annual Report for both properties. The Joint TPM may or may not be the same individual designated as the Applicants' TDM Program Manager in accordance in Paragraph G(i) and whose duties are described elsewhere in this Proffer. The Joint TPM shall serve as the FCDOT point of contact for both developments and the Applicant shall notify FCDOT of the appointment of the Joint TPM in accordance with the timing requirements outlined in Paragraph G(i).

The collective Annual Report shall contain those elements described in Paragraph G(ii) for each individual development and, additionally, shall include a description of the internal trip reductions achieved between the two properties under the AG. Each applicant shall be responsible for preparing its individual TDM Budget, as described in Paragraph G(ii), and each TDM Budget shall be included with the collective Annual Report submitted by the Joint TPM.

Notwithstanding the above, the Applicant is in no way responsible for the implementation and success of the TDM Program associated with the adjacent property and any remedial measures and/or penalties associated with the adjacent property are not the responsibility of this Applicant.

H. TDM Account. If not previously established, the Applicant, through the TPM, shall establish a separate interest bearing account with a bank or other financial institution qualified to do business in Virginia as approved by the County (the "TDM Account") within 30 days after approval of the Annual Report and TDM Budget. All interest earned on the principal shall remain in the TDM Account and

shall be used by the TPM for TDM purposes. The TDM Account shall be funded solely by the Applicant, through the TPM, until the end of the Applicant Control Period. At the end of the Applicant Control Period, a line item for the TDM Account shall be included in the UOA, or its equivalent, budget. The governing documents that establish and control the development shall provide that the TDM Account shall not be eliminated as a line item in the governing budget and that funds in the TDM Account shall not be utilized for purposes other than to fund TDM strategies/programs and/or specific infrastructure needs as may be approved in consultation with FCDOT.

Funding of the TDM Account shall be in accordance with the budget for the TDM Program elements to be implemented in a given year. In no event shall the TDM Budget for the Property overall be required to exceed $81,375 (this amount shall be adjusted annually as specified in Proffer 60). The TPM shall provide written documentation to FCDOT demonstrating the establishment of the TDM Account within ten (10) says of its establishment. The TDM Account shall be replenished annually thereafter following the establishment of each year's TDM Budget. The TDM Account shall be managed by the TPM.

I. TDM Remedy Fund. At the same time the TPM creates and funds the TDM Account, the TPM shall establish a separate interest bearing account (referred to as the "TDM Remedy Fund) with a bank or other financial institution qualified to do business in Virginia. Funding of the TDM Remedy Fund shall be made one time on a building by building basis at the rate of $0.30 per gross square foot of new residential uses on the Property. Funding shall be provided by the building owners prior to the issuance of the first initial RUP for each applicable residential building. This amount shall be adjusted annually in accordance with Proffer 60. Funds from the TDM Remedy Fund shall be drawn upon only for purposes of immediate need for TDM funding and may be drawn on prior to any TDM Budget adjustments as may be required.

J. TDM Incentive Fund. The "TDM Incentive Fund" is an account into which the Applicant, through the TPM, shall deposit contributions to fund a multimodal incentive program for initial purchasers/lessees within the Westpark Plaza development. Such contributions shall be made one time on a building by building basis at the rate of $0.02 per gross square foot of residential uses to be constructed on the Property at the time of issuance of the first initial RUP for each building.

K. TDM Penalty Fund. The "TDM Penalty Fund" is an account in to which the Applicant shall, through the TPM, deposit penalty payments as may be required to be paid pursuant to the this Proffer for non-attainment of trip reduction goals. The County may withdraw funds from the TDM Penalty Fund for the implementation of additional TDM program elements/incentives and/or congestion management in Tysons Corner. To secure the Applicant's obligations to make payments into the TDM Penalty Fund, the Applicant shall provide the County with a letter of credit or a cash escrow as further described below.

Prior to the issuance of the first RUP for each residential building on the Property, the Applicant (or its successor owner or developer, but not the UOA) shall:

(i) Establish the TDM Penalty Fund, if not previously established by the TPM, and

(ii) Deliver to the County a clean, irrevocable letter of credit issued by a banking institution approved by the County or escrow cash in an interest-bearing account with an escrow agent acceptable to DPWES to secure the Applicant's obligations to make payments into the TDM Penalty Fund (the "Letter(s) of Credit or Cash Escrow(s)"). The Letter(s) of Credit or Cash Escrow(s) shall initially be issued in an amount equal to $0.05 for each gross square foot of residential GFA shown on the approved site plan for each residential building on the Property. Until the Letter of Credit or Cash Escrow for each residential building shall have been posted, the figures in the preceding sentence shall escalate annually from the first day of the calendar month following the date on which the first RUP for the first residential building within the Property has been issued and shall change on each anniversary of said date as specified in Proffer 60. The Letter(s) of Credit or Cash Escrow(s) shall name the County as the beneficiary and shall permit partial draws or a full draw. The foregoing stated amount(s) of the Letter(s) of Credit or Cash Escrow(s) shall be reduced by the sum of any and all previous draws under the Letter(s) of Credit or Cash Escrow(s) and payments by the Applicant (or the TPM) into the TDM Penalty Fund.

L. Monitoring. The TPM shall verify that the proffered trip reduction goals are being met through the completion of Person Surveys, Vehicular Traffic Counts of new residential uses and/or other such methods as may be reviewed and approved by FCDOT. The results of such Person Surveys and Vehicular Traffic Counts shall be provided to FCDOT as part of the annual reporting process. Person Surveys shall be conducted and Vehicular Traffic Counts collected for the Property one year following issuance of the final initial RUP for the first new residential to be constructed on the Property. Person Surveys shall be conducted every three (3) years and Vehicular Traffic Counts shall be collected annually until the results of three consecutive annual traffic counts show that the applicable Maximum Trips After Reduction for the Property are not exceeded. At such time as three consecutive traffic counts show that the applicable Maximum Trips After Reduction for the Property has not been exceeded, the Applicant Control Period associated with the Property shall terminate. At such time and notwithstanding the provisions below, Person Surveys and Vehicular Traffic Counts shall thereafter be provided every five (5) years. Notwithstanding the aforementioned, at any time prior to or after Stabilization, FCDOT may suspend such Person Surveys and/or Vehicular Traffic Counts if conditions warrant.

M. Remedies and Penalties

(i) Pre-Stabilization. If the TDM program monitoring reveals that the Maximum Trips After Reduction for the Property is exceeded, then the Applicant shall meet and coordinate with FCDOT to address, develop and implement such remedial measures as may be identified in the TDM Plan and Annual Report.

a. Such remedial measures shall be funded by the Remedy Fund, as may be necessary, and based on the expenditure program that follows:

Maximum Trips Exceeded	Remedy Expenditure
Up to 1%	No Remedy needed
1.1% to 3%	1% of Remedy fund
3.1% to 6%	2% of Remedy Fund
6.1% to 10%	4% of Remedy Fund
Over 10%	8% of Remedy Fund

b. If the results of the Vehicular Traffic Counts conducted during Pre-Stabilization show that the trip reduction goals have been met site-wide for three (3) consecutive years in accordance with the goals outlined on the table below, then a portion of the Remedy Fund as outlined in the same table below shall be released back to the building owner(s) through the TPM. The amount released will be relative to the amount contributed by those buildings constructed and occupied at the time of Vehicular Traffic Counts. Any funds remaining in the Remedy Fund after such release will be carried over to the next consecutive three (3) year period.

Up to 65,000,000 Square Feet of GFA in Tysons		65-84,000,000 Square Feet of GFA in Tysons		84-90,000,000 Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned	Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned	Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned
0% - 4.9%	30%	0.0% - 4.9%	50%	0.0% - 4.9%	65%
5% - 10%	50%	5% - 10%	65%	5% - 8%	80%
10.1% - 15%	65%	10.1% - 13%	80%	8.1% - 10%	90%
15.1% - 18%	80%	13.1% - 15%	90%	>10%	100%
18.1 - 20%	90%	>15%	100%		
>20%	100%				

90-96,000,000 Square Feet of GFA in Tysons		96-113,000,000 Square Feet of GFA in Tysons		113,000,000+ Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned	Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned	Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned
0.0% - 4.9%	80%	0.0% - 4.9%	90%	> 0.0%	100%
5% - 8%	90%	5%	100%		
>8%	100%				

c. There is no requirement to replenish the TDM Remedy Fund at any time. Any cash left in the Remedy Fund will be released to the TPM for final distribution to the owners once three consecutive annual Vehicular Traffic Counts conducted after Stabilization show that the trip reduction goals have been met.

(ii) Following Stabilization.

a. *Remedies.* If the TDM program monitoring reveals that the Maximum Trips After Reduction for the Property is exceeded, then the TPM shall meet and coordinate with FCDOT to address, develop and implement such remedial measures as may be identified in the Implementation Plan and Annual Report and funded by the Remedy Fund as may be necessary commensurate

with the extent of deviation from the Maximum Trips After Reduction goal and as set forth in accordance with the expenditure schedule outlined above.

b. If the results of the Vehicular Traffic Counts conducted upon Stabilization show that the trip reduction goals have been met site-wide for three (3) consecutive years in accordance with the goals outlined in the table above, then any remaining Remedy Funds shall be released back to the building owners through the TPM.

c. *Penalties*. If despite the implementation of remedial efforts, the applicable Maximum Trips After Reduction (based on the development levels then existing) are still exceeded after three (3) consecutive years, then, in addition to addressing further remedial measures as set forth in this Proffer, the TPM shall be assessed a penalty according to the following:

Exceeded Trip Goals	**Penalty**
Less than 1%	No Penalty Due
3.1% to 6%	10% of Penalty Fund
6.1% to 10%	15% of Penalty Fund
Over 10%	20% of Penalty Fund

Penalties may be incurred in subsequent Stabilization years during the Applicant Control Period when the applicable Maximum Trips After Reduction for the Property continue to be exceeded and provided there are funds still available in the TDM Penalty Fund.

(iii) The Applicant shall make the payments required by this Proffer into the TDM Penalty Fund upon written demand by the County, and the County shall be authorized to withdraw the amounts on deposit in the TDM Penalty Fund. If the Applicant fails to make the required penalty payment to TDM Penalty Fund within thirty (30) days after written demand, the County shall have the ability to withdraw the penalty amount directly from the Letter(s) of Credit or Cash Escrow(s).

(iv) The maximum amount of penalties associated with the Property, and the maximum amount the Applicant shall ever be required to pay pursuant to the penalty provisions of this Proffer, including prior to and after Stabilization, shall not in the aggregate exceed the amount of the Letter(s) of Credit or Cash Escrow(s) determined and computed pursuant to the provisions above. There is no requirement to replenish the TDM Penalty Fund at any time. Upon the end of the Applicant Control Period, the Letter(s) of Credit and/or any cash left in the Cash Escrow(s) shall be released to the Applicant.

N. Additional Trip Counts. If an Annual Report indicates that a change has occurred that is significant enough to reasonably call into question whether the applicable vehicle trip reduction goals are continuing to be met, then FCDOT may require the Applicant (or UOA after termination of the Applicant Control Period) to conduct additional Trip Counts (pursuant to the methodology set forth in the Implementation Plan) within 90 days to determine whether in fact such objectives are being met. If any such Trip Counts demonstrate that the applicable vehicle trip reduction goals are not being met, then the Applicant or 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.

O. Review of Trip Reduction Goals. At any time concurrent with remedial actions and/or the payment of penalties as outlined in this Proffer, the Applicant may request that FCDOT review the vehicle trip reduction goals established for the Property and set a revised lower goal for the Property consistent with the results of such surveys and traffic counts provided for by this Proffer. In the event a revised lower goal is established for the Property, the Maximum Trips After Reduction shall be revised accordingly for the subsequent review period.

P. Continuing Implementation. At the termination of the Applicant Control Period, the UOA shall bear sole responsibility for continuing implementation of the TDM Program and compliance with this Proffer. The UOA shall continue to administer the TDM Program in the ordinary course in accordance with this Proffer including submission of Annual Reports.

Q. Notice to Owners. All owners of the Property shall be advised of the TDM Program set forth in this Proffer. UOA members shall be informed of their funding obligations pursuant to the requirements of this Proffer prior to the purchase of units and the requirements of the TDM Program, including the annual contribution to the TDM Program (as provided herein), shall be included in all initial purchase documents and within the UOA documents.

R. Enforcement. If the TPM fails to timely submit a report to FCDOT as required by this Proffer, the TPM shall have sixty (60) days within which to cure such violation. If after such sixty (60) day period the TPM has not submitted the delinquent report, then the Applicant shall be subject to a penalty of $100 per day not to exceed $36,500 for any one incident. Such penalties shall be payable to the County to be used for transit, transportation, or congestion management improvements within the vicinity of the Property.

43. Transportation Demand Management for Retail/Service/Hotel Uses. As provided in this Proffer, certain components of the TDM Plan are applicable to and will benefit the proposed retail/hotel uses on the Property. Therefore, the Applicant shall provide an additional TDM program that is tailored to specifically serve the Retail/Service/Hotel Uses (the "Retail/Service/Hotel TDM Program"). In no event will monitoring or penalties be assessed against the Retail/Service/Hotel Uses, which may be established on the Property.

44. Intelligent Transportation Systems. To optimize safe and efficient travel in Tysons, the Applicant shall incorporate and maintain a system (or utilize a third party source) that provides pertinent traffic and transit information that allows users to make informed travel decisions. This information shall be provided at initial occupancy of each building. The delivery of this information shall be made convenient for building occupants and visitors, such as via computer, cell phone, monitors, or similar technology. Such devices may provide, but not be limited to, information on the following:

A. Traffic conditions, road hazards, construction work zones, and road detours.

B. Arrival times and delays on Metrorail, Tysons Circulator, and area bus routes.

C. Bus stops pre-wired for real-time arrival/departures information.

The Applicant shall work with FCDOT and/or the Tysons Partnership to identify sources and facilitate electronic transmittal of data. Furthermore, the Applicant shall participate in efforts to implement any future dynamic traffic management program for the Tysons area.

AFFORDABLE/WORKFORCE HOUSING

45. Affordable Dwelling Units. If required by the provisions of Part 8 of Article 2 of the Zoning Ordinance, Affordable Dwelling Units ("ADUs") shall be provided pursuant to said regulations unless modified by the ADU Advisory Board.

46. Workforce Dwelling Units. In addition to any ADUs that may be required pursuant to these Proffers, the Applicant shall also provide for-sale and/or rental housing units on the Property in accordance with the Board of Supervisors' Tysons Corner Urban Center Workforce Dwelling Unit Administrative Policy Guidelines dated June 22, 2010. Workforce Dwelling Units ("WDUs") shall be provided such that the total number of ADUs, if any, plus the total number of WDUs results in not less than twenty percent (20%) of the total residential units constructed as part of the Proposed Development. For all dwelling units constructed on the Property, the 20% applies to the total number of dwelling units to be constructed in that portion of the proposed development. If ADUs are provided in the development, both the ADUs and the ADU bonus units shall be deducted from the total number of dwelling units on which the WDU calculation is based.

The WDUs generated by each residential building on the Property shall be provided within said building. A minimum of ten percent (10%) of the dwelling units designated as ADUs and WDUs shall be designed and constructed with Universal Design features, as determined by the Applicant. The WDUs shall have a bedroom mix similar to that provided in the market rate units. Additionally, in the event that parking spaces are made available for lease to individual market rate dwelling units, at least one (1) parking space shall be made available for lease by each ADU and/or WDU in the development.

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

47. Non-Residential Contribution for Workforce Housing. For the new hotel building to be constructed on the Property, the Applicant shall select, within their sole discretion, one of the following two options for contributing toward the provision of affordable and/or workforce housing within Tysons Corner. This contribution shall be made to the Board of Supervisors to be deposited in a specific fund to be used solely for this purpose within Tysons Corner and shall be payable at the time of issuance of the Non-RUPs for the new hotel building constructed on the Property. The options shall consist of either (i) a one-time contribution of $3.00 for each square foot of GFA of new hotel use excluding any ground level retail/services uses and public uses, or (ii) an annual contribution of $0.25 for each square foot of GFA of new hotel excluding any ground level retail/services uses and public uses continuing for a total of sixteen (16) years.

PARKS AND RECREATIONAL FACILITIES

48. Publicly Accessible Parks. The Applicant shall provide a variety of park space on the Property that will be open and accessible to the public as depicted on the CDP. For areas that are not specifically dedicated to the Board of Supervisors for park purposes, the Applicant shall retain the area(s) in fee simple, record public access easement(s) ensuring that the park space is open to the public for periods of time consistent with urban parks, and provide for perpetual private maintenance. The Applicant shall also work with the FCPA to plan and coordinate activities and events within the publicly accessible park areas. A wayfinding and signage system shall be developed in coordination with FCPA at the time of site plan approval and installed by the Applicant to ensure the public can easily identify and access all publicly accessible park spaces, with particular emphasis placed on the area identified as Neighborhood Park.

The variety and quantity of recreational facilities and amenities provided in the publicly accessible parks shall generally follow the Public Urban Park Programming list found on Sheet L.002. This shall serve as a guide, but the recreational facilities and amenities to be provided shall be subject to refinement and adjustment at the time of FDP and site plan, provided they result in a similar variety and level of physical activity.

The construction of the publicly accessible parks shall occur in phases as generally shown on the Phasing Sheets and described below, with adjustments permitted with FDP approval. The following publicly accessed parks shall be provided as identified on Sheet L.002 of the CDP:

A. Civic Square (Park 1) – This street level park of approximately 14,892 square feet is located at the corner of Park Avenue and Madison Street. As shown on Sheet L.004 of the CDP, this urban plaza is in close proximity to other planned public parks and thus the Applicant shall coordinate the design of the Civic Square shall with the design of the Magnetic Park proposed with RZ 2010-PR-022. The Civic Square shall provide a multi-purpose lawn panel, enhanced hardscaping, landscaping, outdoor seating, sculptural lighting and space for outdoor exhibits and events. More specific details shall be determined at time of FDP approval for Buildings D1 and D2. Construction of interim improvements to Civic Plaza shall occur with the construction of Building D1, and the ultimate plaza improvements shall be provided concurrent with the development of Building D2.

B. Neighborhood Park (Park 2) –This approximate 77,455 square foot park shall include a variety of active recreational uses including a multi-purpose lawn, a running/walking loop trail, multi-purpose sport courts, bocce courts, chess tables, and children's playground. The park also provides landscaping, pergola and shade structures, benches and moveable furniture. At the Applicant's discretion, a light well allowing daylight to penetrate the hotel drop-off area beneath the park may be provided. If provided, such light well shall include fencing and landscaping for safety considerations and a sculptural element and/or artistic lighting to create a visual focal point, the details of which shall be determined at FDP.

Primary public access to Park 2 shall be provided via: 1) a well-marked public stairway on Westpark Drive; 2) sidewalks through the Civic Square; and 3) a well-marked public elevator along Route 7. Public access easements shall be recorded over the stairwell from Westpark Drive, the access from Civic Square and the public elevator to permit public access to the park during the hours the Neighborhood Park is open. To provide a visual connection to the park from Park Avenue, Building D2 shall be designed with a predominately glass façade along a limited portion of the ground floor so that pedestrians can "see through" to activity in the park as generally shown in the perspective views on Sheet A.206 of the CDP. The design details depicted on Sheet L.004 may be adjusted at time of FDP approval for Buildings D1, D2 and D3. Partial construction of Park 2 shall occur with the construction of Building D1, with the ultimate improvements completed concurrently with the construction of Buildings D2 and D3. Access easements for public use shall not be recorded on the Neighborhood Park until the ultimate improvements are completed with the construction of Buildings D2 and D3.

C. Dittmar Gateway Park (Park 3) – This street level gateway plaza, approximately 10,320 square feet in size, is located at the intersection of Route 7 and Westpark Drive. With a combination of unique hardscape paving berms, sculptural lighting, and landscaping this park will provide multiple seating opportunities and opportunities for event/performance space. The design details may be adjusted at time of FDP approval for Buildings D3 and construction of this park shall occur with the construction of Building D3. A substantial portion of this plaza area is

located within VDOT controlled excess right-of-way and its use and design is subject to approval from VDOT.

49. Private Park Space. In addition to the publically accessible parks described in the proffer above, the Applicant shall provide private park space as described on Sheet L.002. Specific details and amenities to be provided in this private park space shall be determined at time of FDP for the Building D1 and construction shall be concurrent with the development of Building D1.

50. Amenities and Facilities for Residents. The Applicant shall provide on-site recreational facilities for the future residents of the Property. Pursuant to Paragraph 2 of Section 6-110 and Paragraph 2 of Section 16-404 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall expend a minimum of $1700.00 per market-rate and workforce residential unit on such recreation facilities. Prior to final bond release for the Property, the balance of any funds not expended on-site, as determined by DPWES shall be contributed to the Board of Supervisors for the provision of recreation facilities serving Tysons Corner.

The specific facilities and amenities to be provided for each individual residential building or shared between the two buildings shall be determined at the time of FDP approval and provided concurrent with construction of the individual residential buildings. Amenities to be provided may include, but not be limited to:

A. Private exterior recreational areas to be provided on the upper level of the parking podiums and/or the roof level (which may be the same as the private park spaces in Proffer 49), to include, but not be limited to lounge areas, specialty landscaping, lawn areas, hardscape areas, passive recreation areas, and swimming pools;

B. Clubroom(s), game room(s) and informal spaces for community gatherings;

C. Media/entertainment center(s) and business center(s); and

D. Fitness center(s) with exercise equipment such as stationary bikes, treadmills, weight machines, free weights, etc. and/or sports courts.

51. Athletic Field Contribution. To address the Comprehensive Plan's recommendations regarding the provision of athletic fields in Tysons, the Applicant shall contribute to the acquisition and development of athletic fields serving the Tysons area in accordance with one of the following options.

A. The Applicant may enter into a private agreement with the applicant in adjacent rezoning application RZ 2010-PR-022 to provide a rectangular athletic field on property identified among the Fairfax County 2014 tax assessment records as 39-2 ((1)) 13D and 13E (collectively, the "Athletic Field Site"). Prior to the issuance of RUP or Non-RUP for the first new building to be constructed on the Property, the Applicant shall demonstrate that it has entered into an agreement with the RZ 2010-PR-022 Property.

B. The Applicant may establish an interest-bearing account referred to herein as the "Athletic Field Fund" and deposit:

(i) a fixed sum for one or more buildings on or before June 30, 2015. The fixed contribution for each building as set forth below shall not be subject to adjustment pursuant to Proffer 60:

a. Building D1 - $930,000.00

b. Building D2 - $1,058,000.00

c. Building D3 - $218,000.00

The above contribution amounts are based on the mid-point of the GFA range for each building as shown in the Development Tabulations. If at the time of issuance of the first RUP or Non-RUP for any building for which a discounted payment was made in 2015, it is determined that the actual GFA of such building exceeds the mid-point GFA for the building, then the Applicants shall make an additional contribution to the Board of Supervisors equal to $2.38 per square foot of excess GFA. Such additional per square foot contribution shall be subject to adjustment pursuant to Proffer 60.

(ii) the sum of $2.38 for each square foot of GFA for which a contribution is not made prior to June 30, 2015. The contribution shall be based on the actual GFA constructed and shall be due at the issuance of the first RUP or Non-RUP for the applicable building. This contribution shall be subject to adjustment as described in Proffer 60.

(iii) Upon thirty (30) day written notice from Fairfax County, the Applicant shall release the funds in the Athletic Field Fund, including any accrued interest, to Fairfax County or its designee for use in the acquisition, design and construction of athletic fields serving the Tysons area.

PUBLIC FACILITIES

52. Public Facility- Library Space. The Applicant shall provide a contribution to the Board of Supervisors (the "Public Facility Contribution") for the design and construction, by others, of a new Fairfax County Community Library (the "New Library") to be located within a building on adjacent property subject to RZ 2010-PR-022. The Applicant shall establish an interest-bearing account referred to herein as the "Public Facility Fund" in to which the Public Facility Contribution(s) shall be deposited. The fixed contribution for each building, subject to adjustment pursuant to Proffer 60 is:

A. Building D1 - $940,000.00

B. Building D2 - $1,050,000.00

C. Building D3 - $244,000.00

The Public Facility Contribution associated with each building shall be due at the issuance of the first RUP or Non-RUP for the applicable building. However, in the event the New Library is designed, approved and a building permit issued for its construction prior to the Applicant's obligation to fully contribute funds as set forth in this Proffer and at least one of Buildings D1, D2 or D3 has been constructed, the Applicant shall deposit the remaining Public Facility Contribution due into the Public Facility Fund upon twelve (12) months written notice from the County.

Upon thirty (30) day written notice from Fairfax County, the Applicant shall release the funds in the Public Facility Fund, including any accrued interest, to Fairfax County or its designee for design and construction of the New Library (or other public facility as noted below).

Should it be determined by Fairfax County that this contribution is not needed for a New Library on the adjacent property as noted above, the Public Facility Contribution may be dedicated to a library located elsewhere in Tysons or to other public facilities serving the Tysons area as determined by the Board of Supervisors.

53. Public School Contribution. Per the Residential Development Criteria Implementation Motion adopted by the Board of Supervisors on September 9, 2002, and revised July, 2006, the Applicant shall contribute $10,488.00 per expected student (based on a ratio of 0.110 students per residential unit) to the Fairfax County School Board to be utilized for capital improvements to schools that any students generated by the Property will attend. Such contribution shall be made prior to the issuance of the first RUP for each residential building and shall be based on the actual number of dwelling units built in each building.

If, prior to site plan approval for the respective residential buildings, Fairfax County should modify, on a county-wide basis, the expected ratio of students per subject multi-family unit or the amount of the contribution per student, the amount of the contribution shall be modified for that building to reflect the then current ratio and/or contribution. This contribution is not subject to the provisions of Proffer 60. If the County should decrease the ratio or contribution amount, the amount of the contribution shall be decreased to reflect the current ratio and/or contribution.

STORMWATER MANAGEMENT

54. Stormwater Management.

A. Stormwater Management ("SWM") measures for the Property shall be designed to protect receiving waters downstream of Tysons by reducing runoff from impervious surfaces using a progressive approach. This progressive approach shall, to the maximum extent practicable, subject to the determination of the DPWES, retain on-site and/or reuse the first inch of rainfall. Proposed SWM and Best Management Practice ("BMP") facilities shall follow a tiered approach as identified by the County which may include infiltration facilities (where

applicable), rainwater harvesting/detention vaults, runoff reducing and other innovative BMPs.

Plans submitted subsequent to this rezoning shall identify the use of certain Low Impact Development ("LID") techniques that will aid in runoff volume reduction and promote reuse throughout the site. As a part of the LID techniques proposed, the Applicant may provide a variety of innovative solutions, possibly including green roofs (intensive and/or extensive), bio-retention facilities (traditional and urban), soil amendments, dry swales, pervious hardscapes/streetscapes, rainwater harvesting, infiltration and other innovative measures.

Additionally, the SWM facilities shall be designed to match not just the pre-developed (existing) peak release rates, but also strive to preserve and/or improve the pre-developed (existing) runoff volumes and reduce pollutant runoff as contemplated within the stormwater management-related credits of the project's registered version of the USGBC's applicable LEED rating system. The above noted SWM Facilities shall be designed, to the maximum extent practicable, to meet the requirements of the stormwater management-related credits of the project's registered version of the USBGC's applicable LEED rating system for ultimate development as shown on the CDP.

B. At the time of each FDP, the Applicant shall demonstrate that progress is being made toward implementation of the ultimate stormwater management design shown on the CDP. With each FDP, the Applicant shall: 1) provide calculations for that phase showing the proposed runoff volume reductions; and 2) work cooperatively with DPWES and DPZ to ensure that stormwater management measures sufficient to meet the requirements of Paragraph A will be provided and that the first inch of rainfall within the project stormwater boundary will be retained or reused to the maximum extent practicable. Supporting information shall be included, as part of each FDP submission, that is of sufficient detail, subject to DPWES's determination in coordination with EDRB, to demonstrate the viability of the proposed stormwater management strategy for the area subject to the FDP. This information shall include the following:

(i) For any BMP involving infiltration of water into the ground, soil testing information documenting that the soil will be able to support the proposed infiltration measure(s).

(ii) For any measure involving storage and reuse of stormwater runoff, documentation supporting assumed levels of water usage.

C. The requirements of Paragraph B may be met on an individual building basis (to include a reasonable boundary defined by the Applicant, which may consist of proposed building and parking garages as well as other areas within the Property where ultimate build-out is achieved) or be based upon the total area of the Property. It is further understood that interim or temporary SWM and BMP

measures may be used during any interim phase of the Proposed Development to satisfy the requirements of these proffers or applicable PFM requirements.

Each FDP shall include the location and preliminary design of the SWM facilities including underground vaults. Access points to underground vaults shall be located outside of the landscape amenity panel and sidewalk zone of the streetscape.

D. With each subsequent site plan, the Applicant shall provide refined calculations illustrating conformance with the proposed volume reductions shown on the FDP. The specific SWM facilities shall be determined at the time of site plan, and as may be approved by the DPWES. While it is anticipated that compliance with the goal of retaining and/or reusing the first inch of rainfall and meeting the requirements of the aforementioned LEED credits will be confirmed at site plan by utilizing the proposed retention credits identified by the County as part of its stormwater spreadsheet, the Applicant reserves the right to utilize any combination of LID measures (existing and future) to meet this goal, subject to the review and approval of DPWES. Similarly, if all other County suggested stormwater alternatives have been attempted, the Applicant reserves the right to over detain the runoff from a one-inch rainfall to a release rate that mimics that of a "good" forested condition.

Where it is the Applicant's intent to use a rainwater harvesting system ("RWHS") for stormwater credit, variations in reuse water demand may create fluctuations in draw down of the RWHS tank(s). If storage time will exceed 10 days, due to seasonal variation in demand, the Applicant shall have the right to drain remaining water in cistern off site during non-rainfall periods.

55. Tree Replacement. As shown on the CDP, the Applicant is requesting a modification of PFM Section 12-0505.6B to allow for trees located above any proposed percolation trench or bio-retention area to count toward the 10-year tree canopy requirement. In the event that any of the said trees may need to be removed for maintenance or repair of those facilities, the Applicant shall replace removed trees as determined by the UFMD to sustain the 10-year canopy UFMD to sustain the 10-year canopy.

MISCELLANEOUS

56. Tree Preservation and Planting Fund Contribution. At the time of site plan approval for the first building on the Property, the Applicant shall make a one time contribution of $2,980.00 to the Fairfax County Tree Preservation and Planting Fund.

57. Metrorail Tax District Buyout for Certain Residential Uses. At least sixty days prior to registration with the Common Interest Community Board of any residential condominium documents that would change the use of all or any portion of the Property that either i) is zoned to permit multi-family residential use but is not yet used for that purpose or ii) from use as a multi-family residential real property that is primarily leased or rented to residential tenants or other occupants by an owner who is engaged in such a business, in

either case therefore taxable for purposes of the now existing Phase I Dulles Rail Transportation Improvement District (the "Phase I District") to a use that is not subject to the Phase I District tax, 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 register such condominium documents for that portion of the Property. Prior to registering the condominium documents, the Applicant shall pay to Fairfax County a sum equal to the then-present value of Phase I District taxes estimated by the County to be lost as a result of that change in use.

58. Condemnation Procedures. Should the development of the Property in accordance with these Proffers require the acquisition of property, rights-of-way and/or easements from parcels that are not part of the Property (collectively referred to as "Off-Site Parcels"), the Applicant shall use its good faith efforts and offer a reasonable fair market value for said property, right-of-way and/or easements. In the event the Applicant is not able to acquire the property, rights-of way and/or easements from Off-Site Parcels necessary to fulfill the obligations described herein, the Applicant shall demonstrate its efforts in writing and submit a written request to Fairfax County to acquire the property, rights-of way and easements by means of its condemnation powers.

In conjunction with any such request, the Applicant shall forward to the appropriate County agency: (a) plat, plans and profiles showing the necessary property, rights-of way and/or easements to be acquired; (b) an appraisal, prepared by a MAI (Member of the Appraisal Institute) independent appraiser approved by the County, of the value of the property, rights-of way and/or easements to be acquired and of all damages, if any, to the residue of the Off-Site Parcels; (c) a sixty (60) year title search certificate of Off-Site Parcels from which the property, rights-of way and/or easement is to be acquired; and (d) cash in an amount equal to appraised value of the property, rights-of-way and easements and of all damages to the residue of the Off-Site Parcels; and (e) a copy of written offers and counteroffers and evidence of owners refusal of such offers and counteroffers. In the event the Owner of the Off-Site Parcels are awarded more than the appraised value of the Off-Site Parcels and of the damages to the residue in a condemnation suit, the Applicant shall pay the amount of the award in excess of cash amount to the County within fifteen (15) calendar days of said award. It is understood that the Applicant, upon demand, shall pay all other costs incurred by the County in acquiring the easements to the County.

Prior to and during any potential condemnation proceedings, the Applicant, its successors and assigns, shall be permitted, at its own risk, to submit, process and receive approval of the Site Plan and related subdivision plat(s), easement plats, development permits, building plan approvals and building permits for other portions of the Property.

59. Zoning Administrator Consideration. Notwithstanding the foregoing, upon demonstration by the Applicant that, despite diligent efforts or due to factors beyond the Applicant's control, the required transportation improvements proffered have been delayed (due to, but not limited to an inability to secure necessary permission for utility relocations and/or VDOT approval for traffic signals, etc.) beyond the timeframes specified, the Zoning Administrator may agree to a later date for completion of these transportation improvement(s).

60. Adjustment in Contribution Amounts. All monetary contributions specified in these proffers shall adjust on a yearly basis from the base year of 2016 and change effective each January 1 thereafter, based on changes in the Consumer Price Index for all urban consumers (not seasonally adjusted) ("CPI-U"), both as permitted by Virginia State Code Section 15.2-2303.3, except for contributions to the Tysons Grid of Streets Transportation Fund, the Tysons-wide Transportation Fund, and public schools, which are subject to separate annual adjustments by the Board of Supervisors.

61. Advanced Density Credit. Advanced density credit is reserved consistent with the provisions of the Zoning Ordinance for all eligible dedications described herein or as may be required by the County or VDOT.

62. Severability. Pursuant to Section 18-204 of the Zoning Ordinance, any portion of the Property 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 portions of the Property, provided that such PCA, SE, SP or FDPA does not materially adversely affect the other phases. Previously approved zoning applications applicable to the balance of the Property that is not the subject of such a PCA, SE, SP or FDPA shall otherwise remain in full force and effect.

63. Successors and Assigns. These Proffers will bind and inure to the benefit of the Applicant and their 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 the owners from time to time of any portion of the Property during the period of their ownership. Once portions of the Property are sold or otherwise transferred, the associated proffers become the obligation of the purchaser or other transferee and shall no longer be binding on the seller or other transferee. With respect to any portion of the Property subject to a COA, the COA shall have liability for performance of any applicable proffers, but not the individual condominium owners.

64. 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 BEGIN ON NEXT PAGE]

APPLICANT/TITLE OWNER OF
TAX MAP 29-3 ((15)) 8

TYSONS WESTPARK, L.C.

By: Robert A. Clohan, III
Its: Manager

By: Anthony J. Offutt
Its: Manager

[SIGNATURES END]