

TYSONS CORNER CENTER PROFFERS
RZ 2004-PR-044
CDPA/FDPA 2004-PR-044
PCA 2004-PR-044-02

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TABLE OF CONTENTS

GENERAL	1
1. <u>CONCEPTUAL/FINAL DEVELOPMENT PLAN</u>	1
2. <u>CONCEPTUAL/FINAL DEVELOPMENT PLAN AMENDMENT</u>	1
3. <u>MINOR MODIFICATIONS</u>	1
4. <u>FUTURE APPLICATIONS</u>	1
PROPOSED DEVELOPMENT	2
5. <u>THE EXISTING SHOPPING CENTER, PHASES 1 AND 2</u>	2
6. <u>PHASES 3 AND 4</u>	3
7. <u>AVAILABLE SQUARE FOOTAGE</u>	4
8. <u>CONVERSION</u>	4
9. <u>TRANSFER</u>	4
10. <u>PHASING</u>	4
11. <u>OWNERS' ASSOCIATIONS</u>	5
12. <u>THE EXISTING SHOPPING CENTER, PHASE 1 AND THE PROFFERS</u>	5
13. <u>MIX OF USES</u>	5
14. <u>COMMUNITY SPACE</u>	7
15. <u>INCUBATORS</u>	8
16. <u>METRORAIL TAX DISTRICT BUYOUT FOR CERTAIN RESIDENTIAL USES</u>	8
17. <u>HOURS OF OPERATION OF THE EXISTING SHOPPING CENTER CORRIDOR AND ELEVATED PEDESTRIAN BRIDGES</u>	8
18. <u>RESIDENT/OCCUPANT GOODS AND SERVICES</u>	8
19. <u>CHILD CARE CENTER</u>	9



TABLE OF CONTENTS
(CONTINUED)

	PAGE
BUILDING ARCHITECTURE & TELECOMMUNICATIONS EQUIPMENT	9
20. <u>ARCHITECTURE</u>	9
21. <u>SITE PLAN REVIEW</u>	9
22. <u>BIRD-FRIENDLY DESIGN</u>	9
23. <u>MAXIMUM BUILDING HEIGHTS</u>	10
24. <u>ANIMATED FAÇADE AREAS</u>	10
25. <u>RETAINING WALLS</u>	10
26. <u>TELECOMMUNICATIONS EQUIPMENT</u>	11
LIGHTING	11
27. <u>LIGHTING</u>	11
28. <u>PARKING STRUCTURE LIGHTING</u>	11
29. <u>CONSTRUCTION LIGHTING</u>	11
NOISE ATTENUATION	12
30. <u>NOISE ATTENUATION</u>	12
PARKING	13
31. <u>PARKING</u>	13
LOADING	14
32. <u>LOADING</u>	14
SIGNAGE	14
33. <u>SIGNAGE</u>	14
FIRE SAFETY	14
34. <u>TRAFFIC SIGNAL PREEMPTION EQUIPMENT</u>	14
ELEVATED PEDESTRIAN CONNECTIONS TO NEIGHBORING PROPERTIES	15
35. <u>CONNECTIONS ACROSS INTERNATIONAL DRIVE AND I-495</u>	15
36. <u>TOWERS CRESCENT</u>	15
LANDSCAPING	16
37. <u>LANDSCAPE PLAN</u>	16
38. <u>STREETSCAPING</u>	16
39. <u>SIGHT DISTANCE</u>	18
40. <u>FIRE MARSHAL</u>	19



TABLE OF CONTENTS
(CONTINUED)

	PAGE
SANITARY SEWER AND STORMWATER MANAGEMENT	19
41. <u>SANITARY SEWER COORDINATION</u>	19
42. <u>STORMWATER MANAGEMENT MASTER PLAN</u>	19
TRANSPORTATION	21
43. <u>GRID OF STREETS</u>	21
44. <u>OFF-SITE ROAD IMPROVEMENTS – ACQUISITION OF RIGHT-OF-WAY AND EASEMENTS</u>	22
45. <u>ROAD IMPROVEMENTS</u>	23
46. <u>SIGNAL TIMING PLANS</u>	28
47. <u>ON-SITE TRAFFIC SIGNALS</u>	28
48. <u>WESTPARK BRIDGE, PEDESTRIAN AND VEHICULAR IMPROVEMENTS</u>	28
49. <u>RAMP COMMECTION FROM TCC ENTRANCE ON ROUTE 123 (INTERSECTION #2) ONTO I-495</u>	28
50. <u>TYSONS TRANSPORTATION FUND</u>	29
51. <u>TRANSPORTATION CONTRIBUTIONS</u>	29
52. <u>ROUTE 7 RIGHT-OF-WAY</u>	30
53. <u>CONGESTION MANAGEMENT</u>	31
TRANSPORTATION DEMAND MANAGEMENT	31
54. <u>TRANSPORTATION DEMAND MANAGEMENT</u>	31
55. <u>TRANSPORTATION DEMAND MANAGEMENT FOR RETAIL/HOTEL USES</u>	47
56. <u>TRANSPORTATION DEMAND MANAGEMENT PROGRAM SPECIFIC TO THE EXISTING SHOPPING CENTER</u>	48
57. <u>INTELLIGENT TRANSPORTATION SYSTEMS</u>	51
PEDESTRIAN/BICYCLE IMPROVEMENTS	52
58. <u>ON-SITE TRAILS</u>	52
59. <u>LOOP TRAIL</u>	54
60. <u>ROUTE 123 SIDEWALK/TRAIL</u>	54
61. <u>BICYCLE RACKS</u>	54
62. <u>ON-SITE SHOWER AND LOCKER FACILITIES</u>	55
PUBLIC TRANSPORTATION	55
63. <u>BUS SHELTERS</u>	55



TABLE OF CONTENTS
(CONTINUED)

	PAGE
64. <u>BUS SHELTER CONTRIBUTIONS</u>	55
65. <u>METRORAIL STATION-RELATED FACILITIES</u>	56
RECREATIONAL FACILITIES	56
66. <u>ON-SITE RECREATIONAL FACILITIES CONTRIBUTIONS</u>	56
67. <u>PUBLIC AMENITIES AND FACILITIES</u>	56
68. <u>SEMI-PRIVATE AMENITIES AND RECREATION FACILITIES</u>	58
69. <u>OFF-SITE RECREATIONAL FACILITIES CONTRIBUTIONS</u>	60
70. <u>ONE-TIME CONTRIBUTIONS</u>	60
71. <u>PROFFER NOTIFICATION</u>	61
GREEN BUILDING PRACTICES	61
72. <u>GREEN BUILDINGS</u>	61
PUBLIC SCHOOLS CONTRIBUTION	63
73. <u>PUBLIC SCHOOLS CONTRIBUTION</u>	63
AFFORDABLE HOUSING	63
74. <u>AFFORDABLY PRICED RENTAL UNITS</u>	63
MISCELLANEOUS PROFFERS	65
75. <u>ADVANCE DENSITY CREDIT</u>	65
76. <u>SUCCESSORS AND ASSIGNS</u>	65
77. <u>COUNTERPARTS</u>	65
78. <u>ESCALATION</u>	65



TYSONS CORNER CENTER PROFFERS
CDPA/FDPA 2004-PR-044
PCA 2004-PR-044-02

Pursuant to Section 15.2-2303 (A), Code of Virginia (1950, as amended) and Sect. 18-204 of the Zoning Ordinance of Fairfax County (1978, as amended), the property owners and applicants for themselves and their successors and/or assigns (collectively referred to as the "Applicant") proffer that the development of the parcels under consideration and shown on the 2015 Fairfax County Tax Maps as Tax Map 29-4 ((1)) 35A, 35C, 35D, 35E, and 35F and 39-2 ((1)) 2, 4, and 5 (the "TCC Property") shall be in accordance with the following conditions if, and only if, Conceptual/Final Development Plan Amendment application 2004-PR-044 (the "CDPA/FDPA Application") and Proffered Condition Amendment 2004-PR-044-02 (the "PCA") are granted. In the event that the CDPA/FDPA and/or PCA are denied, these Proffers shall be immediately null and void and of no further force or effect. The proffered conditions are:

GENERAL

1. Conceptual/Final Development Plan. Phases 1 and 2, as defined in Proffer 5 below, shall be developed in substantial conformance with the Conceptual/Final Development Plan entitled "Development With Rail Option – 1 of 2," approved with Rezoning RZ 2004-PR-044 (the "Rezoning"), dated November 15, 2004, as revised through January 8, 2007, and prepared by Patton, Harris, Rust & Associates (the "CDP/FDP").
2. Conceptual/Final Development Plan Amendment. Phases 3 and 4, as defined in Proffer 6 below, shall be developed in substantial conformance with the Conceptual/Final Development Plan Amendment dated December 19, 2014 as revised through June 5, 2015, and prepared by Stantec, Inc. (the "CDPA/FDPA").
3. Minor Modifications. Minor modifications to the CDP/FDP and CDPA/FDPA may be permitted pursuant to Section 16-403(4) of the Zoning Ordinance when necessitated by sound engineering or when necessary as part of final site engineering. Building footprints may be decreased, and the number of units and square footage within each building may be adjusted, as long as the minimum open space tabulations provided in the CDP/FDP and CDPA/FDPA are not reduced, the minimum building setbacks from the property lines (as shown on the CDP/FDP and the CDPA/FDPA) are maintained, and the number of residential units and the building heights do not exceed the maximums indicated in the CDP/FDP, the CDPA/FDPA and these Proffers.
4. Future Applications. Any portion of the TCC Property may be the subject of a Conceptual Development Plan ("CDP"), Final Development Plan ("FDP"), Proffered Condition Amendment ("PCA"), Rezoning ("RZ"), Special Exception ("SE"), Special Permit ("SP"), Variance or other zoning action without the joinder and/or consent of the owners of the other land areas, provided that such application complies with Section 18-204 Paragraph 6 of the Zoning Ordinance. Previously approved proffered conditions or development conditions applicable to a particular portion of the Property which are not the subject of such an application shall remain in full force and effect.

PROPOSED DEVELOPMENT

5. The Existing Shopping Center, Phases 1 and 2.

- A. The Existing Shopping Center. The TCC Property is approximately 78 acres in size and is currently developed with an approximately 2,475,527 square-foot super regional mall (the “Existing Shopping Center,” the “Center” or the “Mall”) (including an un-built expansion of up to 75,000 square feet).
- B. Phase 1*. Phase 1 includes an apartment building with ground-floor Retail/Commercial uses, as defined in Proffer 13 herein (“Residential Building 1-A”), an office building with ground-floor Retail/Commercial uses (“Office Building 1-B”), a hotel with plaza-level Retail/Commercial uses and conference space (“Hotel Building 1-C”), a one-story Retail/Commercial building (“Retail/Commercial Building 1-D”), and an elevated public plaza (the “Phase 1 Plaza”), all as more particularly shown on the CDP/FDP and described in these Proffers (Residential Building 1-A, Office Building 1-B, Hotel Building 1-C, Retail/Commercial Building 1-D and the Phase 1 Plaza collectively, “Phase 1”).

Residential Building 1-A (up to 429 units)	512,393 SF, including up to 13,118 SF of Retail/Commercial uses
Office Building 1-B	554,138 SF, including up to 21,000 SF of Retail/Commercial uses**
Hotel Building 1-C (300 rooms)	270,913 SF, including 8,000 SF of Retail/Commercial uses and 25,000 SF of conference space
Retail/Commercial (including carts, kiosks, Lord & Taylor entrance, Mall concourse entrance, restrooms and Building 1-D)	6,034 SF**
Available Residential	42,900 SF ***
Total	1,385,600 SF

*Phase 1 program above is as approved per the Rezoning, as modified by administrative interpretations.

** Office Building 1-B was constructed with 778 SF less than entitled; Office Building 1-B square footage indicated above includes this 778 square feet. The Applicant reserves the right to use the leftover 778 SF for Retail/Commercial Uses in the Plaza; the Retail/Commercial Uses have been adjusted accordingly.

*** See Proffer 7, below.

- C. Phase 2. Phase 2 contains a residential building (“Residential Building 2-A”), an office building with other commercial uses (“Office Building 2-B), two commercial buildings (“Retail/Commercial Buildings 2-C and 2-D”) and an elevated plaza (the “Phase 2 Plaza”), all as more particularly shown on the CDP/FDP and described in these Proffers (Residential Building 2-A, Office Building 2-B, Retail/Commercial Buildings 2C and 2D and the Phase 2 Plaza, collectively “Phase 2”). Phase 2 was approved and fully entitled

with the Rezoning but at the time of this CDPA/FDPA and PCA, has not yet been constructed.

Residential Building 2-A (up to 374 units)	518,000 SF
Office Building 2-B	512,090 SF
Retail/Commercial Buildings 2-C and 2-D	24,700 SF
Total*	1,054,790 SF

*Does not include 13,000 square feet approved for the South Entrance Transit Pavilion, which has since been constructed and title transferred to Fairfax County for use by the Metrorail Entities.

6. Phases 3 and 4. The Applicant shall be permitted to develop Phases 3 and 4 with a mix of uses and structures consisting of the following:

	Phase 3	Phase 4	Combined Phases 3 and 4
Residential	361,225 SF	358,260 SF	719,485 SF
Office	0	219,660 SF	219,660 SF
Retail/Commercial	76,625 SF	56,420 SF	133,045 SF
Total	437,850 SF	634,340 SF	1,072,190 SF

A. Phase 3. Phase 3 includes a new residential building containing a mix of residential and retail/commercial uses ("Residential Building 3-A"), a one-story building with retail/commercial uses ("Phase 3 Retail/Commercial Building"), and a common green (the "Common Green"), all as more particularly shown on the CDPA/FDPA and described in these Proffers (Residential Building 3-A, Phase 3 Retail/Commercial Building and the Common Green, collectively "Phase 3").

Residential Building 3-A (282 units)	430,295 SF
Phase 3 Retail/Commercial Building	7,555 SF
Total Phase 3	437,850 SF

B. Phase 4. Phase 4 includes two new residential buildings containing a mix of residential and retail/commercial uses ("Residential Building 4-A" and "Residential Building 4-B"), a new office building containing a mix of office and retail/commercial uses ("Office Building 4-C"), additional retail/commercial uses ("Optional Retail/Commercial Uses"), and an amenity terrace (the "Amenity Terrace"), all as more particularly shown on the CDPA/FDPA and described in these Proffers (Residential Building 4-A, Residential Building 4-B, Office Building 4-C, Optional Retail/Commercial Uses and the Amenity Terrace, collectively "Phase 4").

Residential Building 4-A	309,110 SF
Residential Building 4-B	84,050 SF
Office Building 4-C	233,080 SF
Optional Retail/Commercial Uses	8,100 SF
Total Phase 4	634,340 SF

7. Available Square Footage.

- A. Existing Mall. The Applicant may allocate Residential, Office and Retail/Commercial uses which were entitled with the Rezoning but unused in Phases 1, 2, 3 or 4 (the "Available Square Footage") as Retail/Commercial uses within the existing Center (Phase 1, 2, 3 and 4 collectively, the "Project"). So that it may accommodate tenant expansions and/or improvements, the Applicant may allocate the Available Square Footage in installments of up to 10,000 square feet without the need for a CDPA, FDPA, PCA or other zoning approval, legislative or administrative, so long as no single allocation exceeds 10,000 square feet. The Zoning Administrator shall pre-approve the allocation for any expansion larger than 10,000 square feet. As of the date of this CDPA/FDPA and PCA, the Available Square Footage is 70,010 square feet, which includes 27,110 square feet of unused Residential and Office uses from Phases 3 and 4 and 42,900 square feet of unused Residential uses from Phase 1; however, the Available Square Footage shall automatically increase to include unused square footage after construction of Phase 3 and/or Phase 4, if any.
- B. Phase 2. In the alternative, the Applicant may use up to 42,900 square feet of the Available Square Footage for up to 60 additional residential units in Residential Building 2-A (nine percent of which shall be APRUs in accordance with Proffer 74 herein), as depicted on the site plan that includes that building. In such event, the Available Square Footage which may be allocated to the Existing Mall may be reduced by the same amount.

8. Conversion. The Applicant may elect to convert up to 50,000 square feet of Residential and/or Retail/Commercial uses from Phases 2, 3 or 4 to additional office square footage in Office Building 4-C, so long as (i) the maximum square footage for the Project is not exceeded; (ii) the minimum building heights are not reduced; (iii) the overall urban form and building types depicted on the CDP/FDP and CDPA/FDPA are maintained; and (iv) any such conversion is consistent with these Proffers, as approved by the Zoning Administrator.

9. Transfer. As an alternative to Proffer 8 above (Conversion), the Applicant may transfer up to 75,000 square feet of a planned use from any phase of the Project to the same use in any other phase of the Project or, if Retail/Commercial uses, to the Existing Mall, so long as (i) the maximum square footage for the Project is not exceeded; (ii) the minimum building heights are not reduced; (iii) the overall urban form and building types depicted on the CDP/FDP and CDPA/FDPA are maintained; and (iv) any such transfer is consistent with these Proffers, as approved by the Zoning Administrator.

10. Phasing. Development of Phases 2, 3 and 4, as well as the buildings included therein, may proceed in any order provided that all proffers that apply to each such phase and/or building are provided with the redevelopment of that phase and/or building. To the extent that the buildings in Phase 4 are constructed in phases, the Applicant shall coordinate with the Fairfax County Department of Transportation ("FCDOT") and the Office of Community Revitalization ("OCR") to ensure that after construction of each building and prior to completion of the phase, the interim conditions along International Drive are attractive and functional.

11. Owners' Associations

- A. Umbrella Owners' Association. The Applicant established an Umbrella Owners' Association with Phase 1, whose members are each of the owners of land and/or buildings within the Property (the "UOA"). All successor entities, if any, shall be members of the UOA; or, if the Applicant establishes separate UOAs for the individual phases or the Mall which it may, but shall not be required to do, the appropriate UOA.
- B. Homeowner and Condominium Owners' Associations. For each residential building in which units are held for sale, the Applicant shall cause either a homeowners' association and/or a condominium owners' association ("HOA/COA") to be formed for that building. Each of these associations shall be members of the respective UOA.
- C. Disclosures. UOA and HOA/COA documents (including budgets provided in any offering or sale materials) shall specify the proffer and maintenance conditions and obligations set forth in these Proffers. Purchasers shall be advised in writing of these proffer conditions and obligations prior to entering into a contract of sale.
- D. UOA TDM Obligations. All residents, tenants, owners, employers and employees living, working, operating a business or owning property within the Property shall be advised of the TDM Plan described in Proffer 54 herein. All UOA and HOA/COA members shall be informed of any funding obligations for the TDM program prior to entering into a contract of sale, and all such obligations shall be included in UOA and HOA/COA documents.

12. The Existing Shopping Center, Phase 1 and the Proffers. These Proffers and the CDP/FDP include a number of road and other improvements that shall be implemented in conjunction with the development of new buildings and facilities. A 75,000 square foot un-built expansion to the Existing Shopping Center and/or other exterior or interior renovations or other improvements to the Existing Shopping Center (including those referenced in Proffers #7, 8 and 9) may be carried out without requiring the construction or implementation of the phased road and other improvements that are specifically proffered herein.

13. Mix of Uses. The Property shall consist of a mix of residential, office, commercial, retail, service and hotel uses and may include the following uses, subject to the limitations prescribed in the Zoning Ordinance and provided that the maximum square footages shown on the CDP/FDP, CDPA/FDPA and described in Proffers 5 and 6 above, shall not be exceeded:

- Accessory uses
- Amusement arcades
- Automobile-oriented uses
- Bank teller machines
- Billiard and pool halls

- Bowling alleys
- Business service and supply service establishments
- Child care centers and nursery schools in accordance with Proffer 19
- Churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school or private school of general or special education with approval of a Special Exception
- Colleges and universities
- Commercial swimming pools, tennis courts and similar courts
- Community clubs, centers, meeting halls, swimming pools, archery ranges
- Cultural centers, museums and similar facilities
- Dwellings as indicated on the CDP/FDP and CDPA/FDPA
- Eating establishments
- Fast food restaurants (without drive-through)
- Financial institutions
- Financial institutions, drive-ins, shall be permitted with site plan approval (subject to the provisions of the Zoning Ordinance) provided that (1) with submission of the site plan that depicts the drive-in facility, the Applicant provides plans and information to the Providence District Supervisor and the Director of the Departments of Planning and Zoning ("DPZ") and Transportation ("FCDOT") that adequately illustrate the proposed circulation, ingress/egress, traffic flow and access for the drive-in facility; (2) the addition of the drive-in facility does not adversely affect the Pedestrian Realm (as defined in Proffer 38.C below); (3) no additional vehicular entrances to the parking structures or Property entrances/exits are required to serve the drive-in facility; and (4) any such drive-in shall only be provided in a new parking structure on the TCC Property.
- Garment cleaning establishments (restricted to an establishment that provides drop-off/pick-up service only with no on-site processing/cleaning)
- Health clubs
- Hotels
- Independent living facilities with the approval of a Special Exception
- Indoor archery ranges, fencing and other similar indoor recreational uses

- Institutional uses
- Miniature golf courses
- Offices
- Personal service establishments
- Private clubs and public benefit associations
- Private schools of general education with approval of a Special Exception
- Private schools of special education with approval of a Special Exception
- Public uses
- Quasi public parks, playgrounds, athletic fields and related facilities
- Quick-service food stores
- Repair service establishments
- Retail sales establishments
- Skating facilities
- Super-regional shopping center
- Swimming clubs, and tennis clubs/courts
- Theatres
- Vehicle rental establishments permitted with no more than twenty-five (25) total vehicles on the Property at any one time and with no individual vehicle rental establishment to exceed more than 10 cars on the site at any one time; the location of the storage spaces for the rental vehicles shall be shown on the applicable site plan.

Uses depicted on the CDP/FDP as “Commercial” or “Retail” and uses identified on the CDPA/FDPA and/or noted in these Proffers as “Retail/Commercial” shall include, but shall not be limited to retail sales establishments, super-regional shopping center, eating establishments, fast food restaurants, health clubs and personal service establishments.

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

maintenance for this space at no cost to the County. The Applicant shall also continue to provide basic office furniture, including desks, chairs and tables.

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

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

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

18. Resident/Occupant Goods and Services. The Applicant will provide goods and services such as produce, meats, prepared foods, staples (milk, eggs, flour, sugar, butter etc.), household products, dry-cleaning, optical and personal grooming/hair care services to occupants, shoppers and residents of the TCC Property. Given the unique and fluid nature of the Project, the Applicant may provide these items in one or more outlets, including permanent locations within the Shopping Center or the buildings, seasonal events on the Phase 1 Plaza, farmers' markets, pop-up retail locations or by other means, without the need for an FDPA so long the loading and massing for the Project remain consistent with the CDP/FDP and CDPA/FDPA. The Applicant agrees to provide to the Providence District Supervisor an annual report and forecast detailing



the components delivered and a forecast or schedule of components for the next year beginning with the first January after approval of this PCA.

19. Child Care Center. Prior to final bond release for Phase 2, the Applicant shall provide a child care center on the TCC Property. The Applicant may, but shall not be required to, provide more than one child care center on the Property so long as the total daily enrollment of all child care centers provided on the TCC Property does not exceed 150 children.

- A. The child care center or centers shall be marketed primarily to the employees, tenants and residents of the Property, which terms may be modified with approval of an SE, but without a PCA;
- B. The child care center or centers shall meet the applicable standards in the Zoning Ordinance, including those standards governing outdoor recreation areas; and,
- C. The outdoor recreation areas provided to serve the child care center or centers shall be in addition to the Public Amenities and Facilities provided pursuant to Proffer 67 herein.

BUILDING ARCHITECTURE & TELECOMMUNICATIONS EQUIPMENT

20. Architecture. As depicted on the CDPA/FDPA, buildings shall be designed with high-quality architecture and building materials. The exterior building materials used in the development of the new residential, office and hotel buildings shall consist of glass, steel, brick masonry, architectural pre-cast, stone masonry, architectural concrete and/or other materials of similar quality that are typically used on the exterior of Class A office buildings and residential and hotel buildings of a similar quality. No Exterior Insulation and Finish Systems (EIFS) shall be utilized on any of the new proposed residential, office or hotel buildings. At or prior to submission of building plans for Phases 2, 3 and 4, the Applicant shall, after consulting with the Providence District Supervisor, provide to the Planning Commission for review and comment information on (i) the building architecture and materials in that phase; (ii) the parapet walls or screening walls in that phase, if any; (iii) the Animated Façade Areas as specified in Proffer 24, in that phase; and (iv), as to Residential Building 3-A and Office Building 4-C only, roll-down doors or similar treatments for the loading docks. Building plans shall not be approved by the County until the Planning Commission indicates support for the architecture included in that phase. In the course of its architectural review, the Planning Commission shall consider, among other things, whether the building heights, building articulation and other architectural design characteristics of the proposed buildings are in furtherance of the objectives of the County's Comprehensive Plan in enhancing the Tysons Corner skyline.

21. Site Plan Review. At the time of each initial site plan submission and with each subsequent revision thereof, the Applicant shall submit to the Providence District Supervisor for her review and comment to the Department of Public Works and Environmental Services ("DPWES") a copy of each initial site plan or revision, as applicable.

22. Bird-Friendly Design. At the time of submission of each core and shell building permit, the Applicant shall inform OCR as to what bird-friendly design strategies, if any, will be employed with that building.

23. Maximum Building Heights. The maximum heights of the proposed buildings shall not exceed the building heights indicated on the CDP/FDP and CDPA/FDPA. Pursuant to Section 16-502(1)(A)(8) of the Zoning Ordinance, proposed building heights include penthouses of up to 30 feet. Penthouses shall be similar in material and color to the building, so the penthouse structure is consistent with the rest of the architecture of the building and is architecturally integrated with the building. The Applicant shall screen mechanical equipment located on the rooftops of the proposed buildings from ground level view, using opaque parapet walls and other screening walls, materials or devices.

24. Animated Façade Areas. The Applicant shall provide animated façade areas throughout the Property, as generally shown on the CDP/FDP and CDPA/FDPA. Notwithstanding anything in this Proffer to the contrary, the requirements specified in Subparagraphs A, B and C below are approximate and the Applicant shall be permitted to adjust and/or modify them to accommodate tenant improvements without the need for a CDPA, FDPA, PCA or other zoning approval, legislative or administrative, as long as the Applicant maintains the character of the animated façade areas as proffered herein.

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

B. Entry Elements. The Animated Façade Areas shall include functioning entry doors into the applicable Retail/Commercial space.

C. Glazing Requirements and Transparency Levels. Along the Animated Façade Areas, not less than 50% of the surface area of any street wall at the ground floor level occupied by a commercial tenant shall use clear or low emissivity glass except for decorative or architectural accent.

D. Ground-Floor Heights for Retail Uses. To further activate the streetscape, Residential Buildings 3-A, 4-A and 4-B and Office Building 4-C, but not the parking structures associated with such buildings, shall generally be constructed with ground floors having a minimum floor to floor height of 16 feet to accommodate proposed retail uses.

25. Retaining Walls.

A. Phase 1 Retaining Wall. With Phase 1, the Applicant designed and after review, comment and approval from the Planning Commission, installed a retaining wall along Route 123 which provides a high-quality attractive façade. The Applicant shall continue to maintain the Phase 1 Retaining Wall, and may modify the treatment, screening and/or landscaping of the Phase 1 Retaining Wall after consultation with the Providence District

Supervisor and the Planning Commission provided that the quality of the new treatment is in substantial conformance with that shown on the CDP/FDP.

- B. Phase 2 Retaining Wall. The Applicant shall design the retaining wall along Route 123, adjacent to Phase 2 (the "Phase 2 Retaining Wall") to provide a high-quality, attractive facade. The Phase 2 Retaining Wall shall be compatible with the Phase 1 Retaining Wall, and be similarly designed. At the time of site plan submission for Phase 2, and after the Applicant has consulted with the Providence District Supervisor, the Applicant shall provide the proposed design, building materials and elevations of the Phase 2 Retaining Wall to the Planning Commission for review and comment. Building Plan approval shall not be granted for the Residential Building 2-A or Office Building 2-B without a positive recommendation about the Phase 2 Retaining Wall from the Planning Commission.

26. Telecommunications Equipment. Telecommunications equipment serving the Property may be placed on the proposed building(s) rooftop(s); however, any such facilities must (a) comply with the Zoning Ordinance and (b) be screened, designed and/or set back sufficiently from the perimeter of the roof and penthouse such that they shall not be visible from the surrounding streets at street level. Screening measures may be used such as (i) including the facilities as part of the architecture of the building(s), (ii) employing telecommunication screening material, and (iii) flush-mounted antennas utilizing colors consistent with the building treatment in the area where the antennas are to be installed.

LIGHTING

27. Lighting. All new streetscape lighting shall be energy efficient. All on-site, outdoor and parking garage lighting shall meet or be less than that permitted under the Outdoor Lighting Standards of Section 14-900 of the Zoning Ordinance. All parking lot and building-mounted security lighting shall utilize full cut-off fixtures. Wall-washer type lighting shall use fixtures with shielding such that the lamp surface is not directly visible. New lighting fixtures on the Amenity Terrace shall utilize full cut-off fixtures and appropriate heights to mitigate the lighting impact.

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

29. Construction Lighting. During construction, the Applicant shall attempt to reduce glare from OSHA, VOSHA, VUSBA and local ordinance required superstructure lighting to the extent possible without violating aforementioned laws, regulations or policies. Such measures as cut-off shields, lower intensity or lower number of light bulbs, dimming or extinguishing lighting after operating hours of the Existing Shopping Center will be presented to appropriate inspectors for their consideration. Additionally, during construction, the Applicant shall direct its contractor to erect opaque covering over windows that face The Regency at McLean and the Encore of McLean condominiums if the windows are illuminated after 10:00 PM.

NOISE ATTENUATION

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

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

A copy of the applicable approved Noise Study shall be included with the submission of the building plans for the construction of each building on the Property subsequent to the approval of this PCA. The building plan shall identify the affected occupied spaces and the noise attenuation measures, including materials, to be provided to ensure that each such affected occupied space meets the standards outlined below. Supporting information that documents that the proposed noise attenuation measures will be sufficient to attain the interior noise standards shall also be provided. The Applicant shall not obtain building permits until such time as the County has approved the study and the noise attenuation measures for each building.

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

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

- B. Noise Levels within Residential Units, Hotel Rooms and the Office Buildings. The Applicant shall provide noise attenuation measures in order to reduce interior noise in all residential units and hotel rooms to approximately 45 dBA Ldn or less. The Applicant shall provide noise attenuation measures to reduce interior noise in the office buildings to approximately 50 dBA Ldn or less.
- C. Identification of Affected Buildings and Units. The buildings in which noise attenuation measures are required for some or all of the residential units, hotel rooms or office space contained therein shall be identified on the site plans. The specific units or areas requiring such attenuation, and the proposed measures to attenuate the noise, shall be indicated on the appropriate building plans, as determined by DPWES. This information shall also be disclosed in the UOA documents.
- D. Residential Balconies. No balconies shall be provided in any area of the residential buildings projected to exceed 75 dBA Ldn. The Applicant shall disclose in sales contracts/rental agreements that some of the residential balconies may be located in areas where noise levels exceed 65 dBA Ldn. HOA/COA documents shall identify the units with balconies with noise levels higher than 65 dBA Ldn.
- E. Areas in Excess of 75 dBA Ldn. If the noise study reveals that there are residential units located within an area that exceeds 75 dBA Ldn projected to 2026, then the residential units in that location shall not be built, and the Applicant shall (i) pursue a Proffered Condition Amendment to change the location of the residential units or (ii) replace the residential units with non-residential or office uses as long as the non-residential or office square footage as indicated in Proffers 5 and 6 are not exceeded.

PARKING

31. Parking.

- A. Parking Management. The Applicant shall separate the parking associated with office, residential and retail/commercial uses (including the Existing Shopping Center) to ensure that each of these uses will have sufficient parking per the tabulations indicated on the CDP/FDP and CDPA/FDPA. Parking tabulations shall be provided with each site plan. Parking provided for the office and residential uses shall be located in close proximity to the respective uses and will have controlled access. Spaces allocated for the residential uses shall not be accessible by patrons of the Existing Shopping Center or the new Retail/Commercial uses. Patrons of the Existing Shopping Center may utilize the parking spaces set aside for office uses during hours other than normal business hours, as determined feasible by the Applicant and the office tenants.
 - i. The Applicant shall provide on-site signage to direct drivers to appropriate parking locations, the various uses on the Property, and to the off-site road



network. The Applicant shall provide signage to direct visitors from the parking terraces to the Existing Shopping Center. Clearly marked pedestrian routes or paths from the parking spaces available to retail/commercial patrons in the proposed parking structures to the Existing Shopping Center shall be provided. These routes shall be open and accessible the same hours as the Existing Shopping Center as described in Proffer 5 above. These routes shall not require patrons to walk through residential buildings.

- B. Parking Ratios. Pursuant to Section 11-101(1) of the Zoning Ordinance, parking for the Property shall be provided in accordance with the parking tabulations provided with the CDP/FDP and CDPA/FDPA, and/or as approved by the Zoning Administrator. The Applicant may provide additional below-grade parking levels in the Phases 3 and/or Phase 4 parking structures, or in one (1) additional above-grade level in Phase 4 so long as the maximum number of spaces for the Project, as established using the ratios shown on the CDP/FDP, are not exceeded.
- C. Phasing. After completion of construction of any or all of the phases is completed, the parking provided in that phase or on the Property (taken as a whole) shall not exceed the parking requirements in the Zoning Ordinance and/or as approved the Zoning Administrator, except that the Applicant may provide more parking than required by the Zoning Ordinance (i) in any phase to the minimum extent necessary to avoid construction of partial floors of parking structures; and, (ii) to the extent necessary to provide sufficient parking for future phases, provided that that the number of spaces provided does not exceed 110% of the number of spaces required by the Zoning Ordinance and/or as approved by the Zoning Administrator. However, parking may exceed 110% of the Zoning Ordinance requirements during construction of Phase 2.

LOADING

32. Loading. The Applicant shall manage and coordinate the loading operations for Residential Buildings 4-A and 4-B so as to minimize potential conflicts. Prior to occupancy of the second of the two buildings, the Applicant shall provide evidence of compliance with this Proffer in the form of a letter from the TCC Property manager.

SIGNAGE

33. Signage. The Applicant shall provide signage as permitted by Article 12 of the Zoning Ordinance or as approved in a Comprehensive Sign Plan.

FIRE SAFETY

34. Traffic Signal Preemption Equipment. Prior to the approval of the first site plan for the first building in Phase 3 or 4, whichever is earlier, the Applicant shall contribute Fifty Thousand Dollars (\$50,000.00) to the Capital Project titled "Traffic Light Signals – FRD Proffers in Fund 300-C30070, Public Safety Construction" for use in the installation of preemptive signal devices on traffic signals within the Providence Magisterial District, as determined by the Fire and

Rescue Department. The Applicant shall have no obligation for the installation or maintenance of the devices.

ELEVATED PEDESTRIAN CONNECTIONS TO NEIGHBORING PROPERTIES

35. Connections Across International Drive and I-495.

- A. International Drive. Should the owners of the property identified in the Comprehensive Plan as Sub-Area 5 (Watson Street) of the Tysons Central 123 District, South Sub-District, whether it be the Applicant or others, choose to provide an elevated pedestrian bridge across International Drive that would connect to the TCC Property (the "Bridge") and DPZ determines that such Bridge is warranted and desirable, then the Applicant shall attempt in good-faith to identify a landing site for the Bridge on the TCC Property (the "Landing Site"). The Landing Site shall be provided only if permitted by the Zoning Administrator, approved by the Virginia Department of Transportation ("VDOT") and determined by the Applicant in its sole discretion to be feasible and not in any way detrimental to the redevelopment of the Project.
- B. I-495. Prior to issuance of the 130th RUP or Non-RUPs for 244,000 square feet of office space in Phase 2, the Applicant shall contribute \$305,000.00 to Fairfax County for a study, design and/or construction of a future pedestrian and bicycle connection across I-495 in the vicinity of the TCC Property. If, after 10 years following the date of approval of this PCA, these funds have not been spent as described above, then the County may use such funds for other transportation improvements in the Tysons Central 123 District. The Applicant shall coordinate and cooperate with VDOT on the study and design of this facility and shall grant necessary easements to the County, at no cost to the County or to the Commonwealth of Virginia, so as to permit construction of this facility and to provide pedestrian access from it to the on-site pedestrian network.

36. Towers Crescent. As recorded in Deed Book 19114 Page 0003, the Applicant provided easements and funds for construction of a pedestrian connection between the property located on the Fairfax County 2015 Tax Map as 39-2 ((29)) 1A1, 1E and 1G (the "Towers Crescent Property") and the westerly end of Parking Terrace C on the Property (the "Towers Crescent Proffered Bridge") with Phase 1, which has since been constructed pursuant to Site Plan No. 5055-SPV-004-E-1.

- A. Ongoing Obligation. The Applicant shall continue to permit access across the Towers Crescent Bridge during the same hours as the mall corridors are open in the Existing Shopping Center as described in Proffer 5.
- B. Additional Elevated Bridge Location. The Applicant may construct another bridge, including pedestrian pathways across Parking Terrace C, in addition to the Towers Crescent Proffered Bridge (the "Additional Elevated Bridge") in the approximate location depicted on the CDPA/FDPA or an alternative location approved by the Zoning Administrator so long as (1) the Additional Elevated Bridge is constructed in accordance



with designs and plans approved by the Zoning Administrator; and (2) the location does not interfere with the operation of the traffic control devices planned with Phase 3 development.

LANDSCAPING

37. Landscape Plan. The CDP/FDP and CDPA/FDPA each include a conceptual landscape plan for the Property. As part of the site plan submission for each phase, the Applicant shall submit to the Urban Forest Management Division of DPWES ("UFM") for review and approval a more detailed landscape plan that is in substantial conformance with the quantity and quality of plantings and landscaping materials shown on the CDP/FDP and CDPA/FDPA. The detailed landscape plan 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 and methods for ensuring the viability of plantings and structures. Adjustments to the type and locations of plantings shall be permitted to avoid conflicts with utilities, VDOT standards and other site engineering and design considerations.

38. Streetscaping. The Applicant shall install streetscapes throughout the Property, as conceptually illustrated on the CDP/FDP and CDPA/FDPA. Streetscapes (including alternatives) shall be installed along any street frontage incrementally and consistent with the construction of any building adjacent thereto, or pursuant to a single public improvement or site plan.

- A. Street Tree Caliper Size. Trees along Route 7 shall be a minimum four-inch caliper. All other trees shall be a minimum three-inch caliper.
- B. Alternative Tree Planting Details. Tree planting open areas proposed in the streetscape and other areas with restricted root growth shall have a minimum open surface area of four feet by four feet (including tree grates).
 - i. Except as provided in Proffer 38(C) herein (International Drive), rooting area shall be a minimum of eight feet wide at the narrowest point, taking into consideration sloped sides as may be needed to support adjacent compacted soils used to support roadways and pedestrian walkways. Trees in planting areas less than eight feet wide shall utilize non-compacted soils (including structural cells, cantilevered slabs or a comparable technology using non-compacted soils) to meet minimum soil volume requirements. Planting soil depth shall be three-four feet.
 - ii. For Category III and IV trees that do not meet the minimum planting area required by the Public Facilities Manual Table 12.17, the Applicant shall provide the following soil volumes: 700 cubic feet per tree for single trees, 600 cubic feet per tree for two trees planted in a contiguous planting area and 500 cubic feet per tree when three or more trees are planted in a contiguous planting area. A contiguous planting area shall be any area that provides root access and soil conditions favorable for root growth throughout the entire area. Soil volumes may be reduced to a minimum of four hundred (400) cubic feet per tree where paving



above root zones is necessary to accommodate pedestrian traffic or where utility locations preclude greater soil volume.

- iii. Soil in planting sites shall be as specified in planting notes to be included with site plans reviewed and approved by Urban Forest Management.
- iv. The Applicant shall contact UFM at least three business days prior to installation of trees, and provide an opportunity for UFM staff to verify conformance with these requirements.
- v. At the time of site plan submission, the Applicant shall provide written documentation, including information about the non-compacted soils (including structural cells, cantilevered slabs or comparable technology using non-compacted soils) to UFM indicating that a qualified and appropriately-licensed company designed the structural system. The Applicant shall provide 72-hour notice to UFM prior to installation of the structural system to allow verification that the system is installed correctly. The Applicant shall provide written confirmation from a certified arborist and/or landscape architect demonstrating and verifying the installation of the structural system.

C. International Drive. In lieu of Proffer 38(B) above, the Applicant shall install the streetscape along International Drive in accordance with the plans and sections identified as "International Drive Streetscape" on the CDPA/FDPA, provided that it may, in its discretion, instead install the streetscape along International Drive in accordance with the plans and sections identified on the CDPA/FDPA as "International Drive – Alternate," or some combination of the two. The Applicant shall provide and maintain one of these two alternatives for the International Drive streetscape at all times. Trees planted in the four foot-wide landscape bed are not included in the ten-year tree canopy coverage calculations unless such trees are provided with a minimum eight-foot wide rooting zone. Tree planting open areas proposed in the streetscape and other areas with restricted root growth shall have a minimum open surface area of four feet by four feet (including tree grates). In addition, the Applicant shall provide the following with the International Drive streetscaping:

- i. Trees installed along International Drive are not required to have a minimum eight-foot wide rooting zone; however, soil volume shall meet requirements described in subparagraph 38(C)(ii) below. Planting soil depth shall be a minimum of three to four feet.
- ii. For trees that do not meet the minimum planting area required by the Public Facilities Manual Table 12.17, the Applicant shall use non-compacted soils (including structural cells, cantilevered slabs or a comparable technology using non-compacted soils) if needed to provide the following soil volumes: 700 cubic feet per tree for single trees, 600 cubic feet per tree for two trees planted in a contiguous planting area and 500 cubic feet per tree when three or more trees are planted in a contiguous planting area. A contiguous planting area shall be any area that provides root access and soil conditions favorable for root growth throughout



the entire area. Soil volumes may be reduced to a minimum of four hundred (400) cubic feet per tree where paving above root zones is necessary to accommodate pedestrian traffic or where utility locations preclude greater soil volume.

- a) The Applicant proposes to provide Category II trees along International Drive unless UFM approves Category III or IV trees at the time of site plan review.
- iii. Soil in planting sites shall be as specified in planting notes to be included with site plan reviewed and approved by UFM.
- iv. The Applicant shall contact UFM at least three business days prior to installation of trees, and provide an opportunity for UFM Staff to verify conformance with these requirements.
- v. At the time of site plan submission, the Applicant shall provide written documentation, including information about the non-compacted soils (including structural cells, cantilevered slabs or comparable technology using non-compacted soils) to UFM indicating that a qualified and appropriately-licensed company designed the structural system. The Applicant shall provide 72-hour notice to UFM prior to installation of the structural system to allow verification that the system is installed correctly. The Applicant shall provide written confirmation from a certified arborist and/or landscape architect demonstrating and verifying the installation of the structural system.
- vi. Non-Invasive Plant Materials. Invasive species, as defined in the PFM, shall not be used within the streetscape and landscaped open space areas.
- vii. Maintenance of the Pedestrian Realm. The "Pedestrian Realm" shall be defined as all areas between the back of curb and the building façade, including the landscape amenity panel (located next to the curb), the pedestrian sidewalk (for pedestrian movement) and the building zone (located between the sidewalk and the building façade) (the landscape amenity panel, pedestrian sidewalk and building zone, collectively the "Pedestrian Realm"). The Applicant shall maintain all elements in the Pedestrian Realm in good repair and replace, in kind, as needed, all proffered elements located within the Pedestrian Realm.
- viii. Maintenance Agreement. The Applicant shall enter into an appropriate agreement, in a form approved by the Office of the County Attorney, with the County (or other applicable public entity) to permit it to maintain any portion of the Pedestrian Realm which is in the public right-of-way. The Applicant shall not be required to repair or restore any elements of the Pedestrian Realm within publicly-owned areas that are damaged by public employees, contractors, or permittees that are not acting under its direct authority.

39. Sight Distance. If determined at the time of site plan approval that street tree locations conflict with sight distance requirements, the Applicant shall make efforts to gain approval of such trees by making minor adjustments to their locations or removing their lower branches.

However, in the event such conflict occurs along public streets and VDOT, Fairfax County or any applicable utility company does not approve such tree locations, the Applicant shall be permitted to relocate tree location(s) in consultation with UFM and without the need for the issuance of a minor modification approved by DPZ or approval of a PCA, CDPA or FDPA, provided that the 10-year tree canopy requirements as shown on the approved CDP/CDPA are met.

40. Fire Marshal. If determined at the time of site plan approval that street tree locations conflict with Fire Marshal access, the Applicant shall make efforts to gain approval of said trees by making minor adjustments to their locations or removing their lower branches. However, in the event the Fire Marshal does not approve such tree locations, the Applicant shall be permitted to relocate tree location(s) in consultation with UFM and after notifying DPZ and OCR, but without the need for the issuance of a minor modification approved by DPZ or approval of a PCA, CDPA or FDPA, provided that the 10-year tree canopy requirements as shown on the approved CDP/CDPA are met.

SANITARY SEWER AND STORMWATER MANAGEMENT

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

42. Stormwater Management Master Plan. At the time of review of the first site plan, the Applicant obtained approval from DPWES of a Stormwater Management Master Plan (the "Stormwater Plan") for the entire Property (entitled "Phase 1 Metro S Pavilion Pad, 6399-SP-016"). At the time of site plan review for each subsequent site plan, the Applicant shall update the Stormwater Plan as necessary as determined by DPWES. These updates shall include new computations supporting any modifications to the stormwater detention or stormwater quality treatment proposed since the County approval of the previous Stormwater Plan. This plan shall address water quality and quantity management and phasing of construction of the proposed stormwater mitigation measures in accordance with the CDP/FDP and CDPA/FDPA. The Stormwater Plan shall use computational methods acceptable to the County to demonstrate satisfaction of this Proffer for the entire Property.

- A. Water Quantity Goals. As of the date of the Rezoning, there was no on-site detention of water on the Property. Using underground detention methods similar to those shown on the CDP/FDP and/or detention in the existing shared pond south of Terrace C and off-site detention in a VDOT stormwater detention pond, the Stormwater Plan shall demonstrate at full build-out of the Phases 1-4, a Forty-Three Percent (43%) reduction in the existing (at the time of Rezoning) peak rate of stormwater discharge for the Property for the 10-year design storm, with phased reductions provided at each phase as indicated on the CDP/FDP and CDPA/FDPA. The Applicant reserves the right to utilize any combination



of measures to meet this goal, subject to the review and approval of DPWES; the goal may be met on an individual building basis or based upon the total area of the Property.

- B. Best Management Practices (“BMP”). Sand filters, Filterra devices, and/or other such other low impact development (“LID”) methods as may be approved for water quality treatment credit by the County shall provide water quality treatment for the site. Using methods similar to those shown on the CDP/FDP and CDPA/FDPA, the Stormwater Plan shall demonstrate at full build-out of all four phases, a net Fourteen Percent (14%) reduction from the existing (at the time of Rezoning) stormwater phosphorous loading for the discharge leaving the Property with phased reductions provided at each phase as indicated on the CDP/FDP and CDPA/FDPA. The Applicant reserves the right to utilize any combination of BMPs to meet this goal, subject to the review and approval of DPWES; the goal may be met on an individual building basis or based upon the total area of the Property.
- C. Low Impact Development (“LID”). In addition to the BMPs in Paragraph B, above, the Applicant shall incorporate the LID strategies as generally shown on the CDP/FDP (Sheets 57 and 58) and CDPA/FDPA (Sheets 48 and 49) to mitigate environmental impacts of existing and proposed development on-site.
- i. The LID facilities shown on Sheet 48 of the CDPA/FDPA shall be constructed in accordance with the phasing as shown in the Overall SWM/BMP Implementation Summary.
 - ii. The LID facilities shown on Sheet 49 of the CDPA/FDPA shall be constructed as follows: (a) pervious pavements, compost amended soil and stormwater planter to be constructed with Phase 3; (b) stormwater planter and compost amended soil to be constructed with Phase 4.
 - iii. LIDs associated with each phase shall be constructed prior to final bond release of the last or only building within the phase.
- D. Intensive Green Roof. In addition to the LIDs noted in Paragraph C above, the Applicant shall install and maintain two intensive green roof areas over the designated parking structures as shown on CDPA/FDPA. One such green roof shall be in Phase 3 (in the Community Green); the other shall be in Phase 4 (in the landscaped portions of the Amenity Terrace). These two roofs shall include landscape plantings in a natural soil matrix over an under-drain system. The intent of these intensive green roofs is to (1) incorporate into otherwise impervious areas of the Property a soil matrix and plantings intended to provide stormwater pollutant removal; (2) reduce the heat island effect on site; (3) naturalize and add aesthetically pleasing elements to be used by citizens; and (4) function in conjunction with the programmed uses in these areas. Details concerning these areas shall be included on the Landscape Plan that will be provided pursuant to Proffer 37 herein.



- E. Infiltration. The Applicant shall install infiltration as generally shown on the CDPA/FDPA, provided there is sufficient soil permeability, or alternative measures such as amended soils and bioretention areas with underdrains that may be utilized subject to the review and approval of DPWES.
- F. Additional LID Techniques. As it develops plans for the buildings, the Applicant may consider incorporating additional LID techniques and facilities such as rainwater re-use in office building HVAC systems, planter beds and evapotranspiration through plants so as to further support the County's initiatives regarding enhanced stormwater management.
- G. Applicant Maintenance Responsibility.
- i. Regular Maintenance. The Applicant shall assume responsibility for the perpetual maintenance of all of the stormwater management structures associated with this Proffer and shall execute an agreement with the County in a form satisfactory to the County to this effect at the time of its first site plan approval (the "SWM Agreement") and with subsequent site plans as required. The Applicant shall be responsible for maintenance of the BMP and LID devices and underground detention devices. The Applicant shall be required to contract with one or more maintenance and management companies to perform regular routine maintenance of the stormwater management devices, and the Applicant shall provide a maintenance report annually to the Fairfax County Maintenance and Stormwater Management Division of DPWES. The UOA documents shall include the UOA's maintenance responsibility for the stormwater management structures.
 - ii. County Agreement. The SWM Agreement for the underground detention facilities as indicated on the CDP/FDP and CDPA/FDPA shall address the following issues to the satisfaction of DPWES: (1) future replacement when warranted; (2) liability and insurance in an amount reasonably acceptable to Fairfax County; and (3) allowance for County inspection to ensure that the facilities are maintained by the Applicant in good working order.

TRANSPORTATION

43. Grid of Streets. The Applicant shall improve/enhance the streets within and/or along the perimeter of the TCC Property, as reflected on the CDP/FDP and CDPA/FDPA and described in these Proffers. Frontage improvements along International Drive and Route 7 and any other public street may, in the Applicant's sole discretion, be constructed pursuant to a single VDOT roadway improvement plan (the "Road Plan") or with an adjacent or proximate individual building or phase. The functional classification of the streets within and abutting the TCC Property is summarized below:

<u>Street</u>	<u>Classification</u>
Chain Bridge Road (Route 123)	Low Speed Boulevard (Public)
Leesburg Pike (Route 7)	Low Speed Boulevard (Public)
International Drive	Avenue (Public)
Fletcher Street (on-site)	Collector (Private)
Fashion Boulevard	Collector (Private)
Tysons One Place	Collector (Private)
Inner Ring Roads	Local/Service (Private)
Inner Loop Roads	Local/Service (Private)
Private Alley	Service Street (Private)

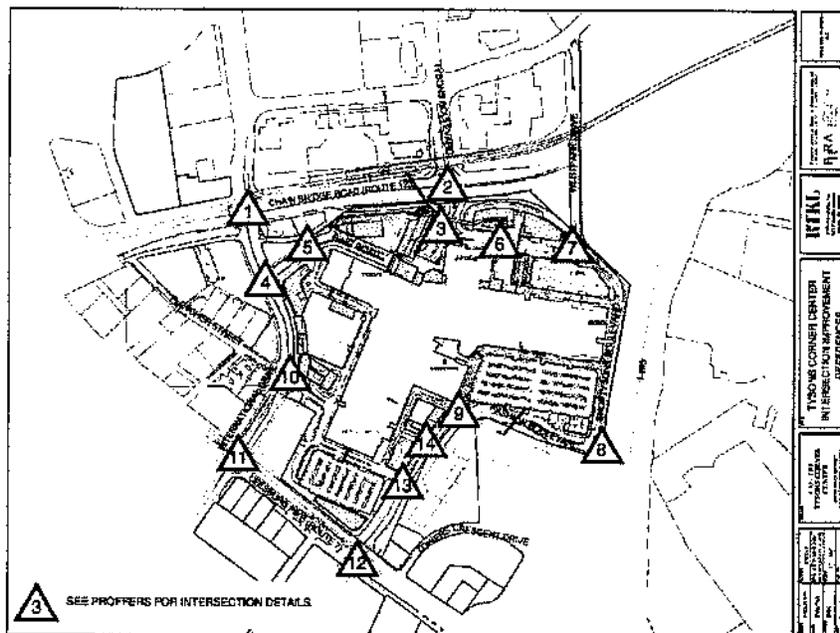
44. Off-site Road Improvements – Acquisition of Right-of-Way and Easements

- A. At the time of submission of a site plan, the Applicant shall attempt to acquire, and then if successful, shall dedicate such off-site right-of-way and easements as are necessary to complete the improvements described on the CDP/FDP and CDPA/FDPA and referenced in the Proffers for each phase. The Applicant shall use its good faith efforts to obtain such rights-of-way and easements at fair market value.
- B. If, subsequent to the filing of each site plan, the Applicant is unable to bring about the dedication by others and the necessary rights-of-way and easements, then the Applicant shall request the Board of Supervisors condemn the necessary land and/or easements.
- C. It is understood that the Applicant's request to the Board of Supervisors for condemnation will not be considered until it is forwarded in writing to the Division of Land Acquisition or other appropriate County official, accompanied by (1) plans, plats and profiles showing the necessary right-of-way or grading easements to be acquired, including all associated easements and details of the proposed transportation improvements to be located on said right-of-way property (2) an independent appraisal of the value of the right-of-way property to be acquired and of all damages to the residue of the affected property; (3) a sixty (60) year title search certificate of the right-of-way property to be acquired; and (4) a letter of credit in an amount equal to the appraised value of

the property to be acquired and of all damages to the residue which can be drawn upon by the County. It is also understood that in the event the property owner of the land to be acquired is awarded with more than the appraised value of the property because of the damages to the residue in a condemnation suit, the amount of the award in excess of the letter of credit amount shall be paid to the County by the Applicant within Forty-Five (45) days of said award. In addition, the Applicant agrees that all reasonable and documented sums expended by the County in acquiring the right-of-way and necessary easements shall be paid to the County by the Applicant within Sixty (60) days of written demand.

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

45. Road Improvements. The Tysons Corner Center Intersection Improvement References graphic below provides numeric references to the intersections specified in this Proffer 45. All intersection numbers refer to specific locations as reflected on Sheets 11, 24, 32 and 40 of the CDP/FDP.



- A. Overview and Phasing. The Applicant shall construct road improvements in conjunction with the phasing of the development as reflected on the CDP/FDP

and the CDPA/FDPA, and in these Proffers. Except as specifically provided below, each set of phased improvements shall be constructed and open for traffic, or shall be operating, as the case may be, not later than the date of the issuance of that number of RUPs or Non-RUPs set forth below. Upon demonstration by the Applicant that despite diligent efforts to complete the proffered improvement, the improvement(s) has been or should be delayed, the Zoning Administrator may agree to a later date for completion of the improvement(s).

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

Phase 3: 128 residential units; and,

Phase 4: 110,000 square feet of office space or 118 residential units, whichever occurs first.

B. Phase 1. With Phase 1, the Applicant completed the following improvements:

- i. Dedicated and conveyed in fee simple to the Board of Supervisors right-of-way along Route 123 for roadway frontage improvements and future improvements to the I-495 southbound ramp, as reflected on the CDP/FDP;
- ii. Constructed on Route 123 four northbound through lanes of travel transitioning to three through lanes and two ramp lanes accessing I-495;
- iii. Constructed on Route 123 a separate northbound right turn lane into the Property entrance (Intersection #2);
- iv. Dedicated land to allow for provision of three bus bays in the Bus Plaza and provided an onsite bus layover bay on the north side of Tysons One Place, approximately 250 feet southwest of the Bus Plaza;
- v. Replaced the traffic signal at Route 123/Tysons Boulevard/TCC entrance (Intersection #2) to reflect improvements constructed at the TCC entrance;
- vi. Installed a traffic signal at the Fashion Boulevard/Ring Road and Ring Road/Nordstrom intersection, southwest of Parking Terrace "C" (Intersections # 8 and 9, respectively);
- vii. Installed a traffic signal, including pedestrian activated chirping countdown signal heads, at the Ring Road/ Fashion Boulevard intersection located southeast of Parking Terrace "C" (Intersection #8);
- viii. Installed a traffic signal on ShopTysons Boulevard, east of the northeast corner of Lord & Taylor (Intersection #6);
- ix. Added a southbound right-turn overlap phase to the signal at the Route 7/Property driveway intersection (Intersection #12);



- x. Added countdown heads and painted crosswalks on the western leg of the Route 7/Fashion Boulevard intersection and across the Mall entrance (Intersection #12);
- xi. Added crosswalks to three approaches at the intersection of International Drive and the Crate and Barrel entrance (Intersection #4);
- xii. Added crosswalks to three approaches at the intersection of International Drive/Fletcher Street (Intersection #10);
- xiii. Accommodated an additional westbound lane along the Property's Route 7 frontage from the Fashion Boulevard entrance to International Drive;
- xiv. Installed a traffic signal, including pedestrian activated chirping countdown signal heads at one leg of the Fashion Boulevard/Ring Road/Bloomington's intersection (which improvement the Applicant accelerated, as it was originally proffered with Phase 2) (Intersection #13); and,
- xv. Reconstructed the site driveway to provide two left and two right-turn lanes from the TCC Property onto Chain Bridge Road, including signal modifications to the Route 123 property entrance signal; (Intersection #2).

C. Phase 1. The improvements described below are currently in progress with the Route 123/International Drive work, and shall be completed pursuant to a separate agreement by and between the Applicant and the Fairfax County Board of Supervisors entitled "Road Improvements Funding Agreement" and dated as of the 27th of June, 2014:

- i. Widen northbound International Drive to accommodate a right-turn lane from northbound International Drive onto northbound Route 123 (Intersection #1);
- ii. Adjust the Route 123 median to provide a 7' wide pedestrian sanctuary for those crossing Route 123 at International Drive (Intersection #1), narrow the Route 123 left-turn lanes and right-turn lanes to 11' and stripe pedestrian crosswalks;
- iii. Adjust the traffic signal at the Route 123/International Drive intersection (Intersection #1) to accommodate changes in the configuration of the intersection; and,
- iv. Re-stripe the southbound International Drive right-turn lane for shared through/right-turn movements at the Route 123/International Drive intersection (Intersection #1).

D. Phase 2. With Phase 2, the Applicant shall:

- i. Add northbound and southbound overlap phases and adjust signal timing at the Route 7/International Drive intersection (Intersection #11). If VDOT does not permit the installation of signal modifications at this location, the Applicant shall demonstrate to FCDOT that the Applicant diligently pursued such modifications. If the signal modifications are not permitted, the Applicant shall escrow funds with the County for future signal modifications or other improvements in the vicinity of the site. The amount of this escrow shall be determined by FCDOT and shall equal the cost of the signal modification. In such event, the Applicant's obligation to construct the signal modifications described herein are null and void and this Proffer is of no further force or effect;
- ii. Construct improvements to the existing Route 123 entrance to the Property (Intersection #2) and realign the ring road as indicated on the CDP/FDP; and,
- iii. Subject to VDOT approval, at the Route 7 intersection with Fashion Boulevard (Intersection #12), construct an additional southbound lane on Fashion Boulevard to eastbound Route 7 to provide two exclusive left turn lanes, a shared left/through lane and an exclusive right-turn lane on Fashion Boulevard, as shown on the CDP/FDP. The Applicant shall make signal timing adjustments, as necessary.
- iv. If required by the County, the Applicant shall design the Route 123/International Drive (Intersection #1) interchange, including both preliminary and detailed design plans for a proposed grade-separated single point urban interchange in accordance with the timing described in Proffer 45.A.
 - a. The Applicant shall meet with the FCDOT and VDOT to identify design requirements and formatting (so as to be able to turn over designs to FCDOT in a form usable to FCDOT) and shall generate a preliminary design plan for the interchange to include typical sections, plan design concept, preliminary grades, traffic information, preliminary hydraulic design, costs, and a concept for traffic maintenance.
 - b. Following a field inspection by VDOT, the Applicant shall update the preliminary design plans to provide detailed hydraulic, bridge design and traffic control information, as well as to identify initial right-of-way and easement needs for the project. The design of the Route 123/International Drive interchange will not include improvements to other nearby interchanges, including but not limited to the Route 7/Route 123 interchange, but shall include lane transitions as necessary. The Applicant will not be obligated to conduct any VDOT public hearings or related procedures.



Design efforts will not include final bridge plans or utility relocation plans.

- c. Prior to or simultaneously with site plan submission for Phase 2, the Applicant shall request that the County determine whether the County will exercise its option to not require the Applicant to design this interchange. If the County notifies the Applicant prior to site plan approval for Phase 2 that it has elected to not require the Applicant to design this interchange, then the Applicant shall pay \$1,200,000 to the Tysons Transportation Fund, with \$120,000 due prior to site plan approval of Phase 2 and the remaining \$1,080,000 due prior to issuance of the first RUP or Non-RUP in Phase 2, whichever should occur first. This contribution is subject to the escalation provisions in Proffer 78 herein.
- d. The Applicant shall receive credits for overpayments made for construction of the Westpark Bridge against the contributions that would otherwise be due to the Tysons Transportation Fund for the costs incurred or to be incurred (or payments made or to be made) in furtherance of this Proffer 45 .

E. Phase 3. With Phase 3, the Applicant shall:

- i. Widen Fashion Boulevard to provide eastbound and westbound left-turn lanes at the Fashion Boulevard intersection with the internal Ring Road at Nordstrom (Intersection #9). With this improvement, the Applicant shall complete modifications as necessary to the traffic signal constructed at this intersection in Phase 1, including adjustments necessary to address construction of above-grade pedestrian crossing in the immediate vicinity as shown on the CDP/FDP;
- ii. Widen Fashion Boulevard to provide a second eastbound left-turn lane at the intersection with ShopTysons Boulevard (Intersection #8);
- iii. Widen Fashion Boulevard to provide a northbound left-turn lane at the intersection with the Internal Ring Road "G" at Bloomingdale's (Intersection #13);
- iv. Widen the eastbound and westbound outside travel lanes of Fashion Boulevard to 15-feet (including the gutter pan) from Route 7 (Intersection #12) to ShopTysons Boulevard (Intersection #8) to accommodate both bikes and vehicles as shown on the CDPA/FDPA, and include signage and pavement markings, as appropriate; and,
- vii. Provide alternate pavement markings, colors and/or materials to identify and distinguish the pedestrian access, loading and vehicular entrances to the parking structure located underneath Residential Building 3A.



F. Phase 4. With Phase 4, the Applicant shall:

- i. Dedicate and convey in fee simple to the Board of Supervisors right-of-way along International Drive, as indicated on the CDPA/FDPA, prior to the first site plan approval for Phase 4 or upon demand by Fairfax County, whichever occurs first and,
- ii. As indicated on the CDPA/FDPA, widen International Drive north of Fletcher Street to provide for the following: (a) three 11-foot northbound travel lanes, subject to VDOT approval; and, (b) one four-foot wide bicycle lane (excluding gutter pan). If VDOT fails to approve these 11-foot lanes, the Applicant shall work with FCDOT to construct an alternative cross-section as approved by FCDOT and VDOT.

46. Signal Timing Plans. Concurrent with the approval of the first site plan for the first of Phases 2 or 4, the Applicant shall make a one-time contribution of \$30,000 to be used for the modification of signal timings in the International Drive, Chain Bridge Road and/or Route 7 corridors abutting the Property. If by the time of submission of the first site plan for the last of Phases 2 or 4 whichever first occurs, signal timing modifications have not been requested by VDOT for the aforementioned corridors, then the County may utilize those funds, in concert with others, for transportation and/or transit improvements in the Tysons Central 123 District as coordinated with the Providence District Supervisor.

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

48. Westpark Bridge. Pedestrian and Vehicular Improvements. The entities that constructed the HOT lanes project completed the Westpark Bridge widening as part of the HOT lanes improvements to the Capital Beltway. The Applicant paid a total of \$10,037,590.30 to the Tysons Transportation Fund, with \$951,200.00 contributed prior to the first site plan approval for Phase 1 and the remaining \$9,086,390.30 contributed prior to issuance of the first Non-RUP for Phase 1. The amount of this contribution was made based on the original incremental contributions of \$820,000.00 and \$7,380,000.00 respectively escalated based on changes in the Construction Cost Index published by the Engineering News Record from a base year of 2007 to the actual date of payment. Therefore, no additional monies are required for the Westpark Bridge with the remaining phases of development.

49. Ramp Connection from TCC Entrance on Route 123 (Intersection #2) onto I-495. The Applicant reserves the right at any time to construct a connection between the outermost egress lane at the TCC Entrance on Route 123 (Intersection #2) onto the I-495 southbound on-ramp subject to VDOT and FHWA approval of an Interchange Modification Report ("IMR") and without the need for approval of a PCA. Those improvements identified in the IMR as needed to



mitigate any impacts associated with such a connection and deemed necessary by VDOT and FHWA shall be constructed by the Applicant except, if in the Applicant's sole discretion, the level of improvements necessary to facilitate the ramp connection are determined to be too costly to construct. In such event, the Applicant shall not be required to construct the ramp connection and this Proffer 49 shall be of no further force or effect.

50. Tysons Transportation Fund. Based on an escalated proffered contribution rate of \$4.27 (up from \$3.62 in 2007) per new non-residential square foot and \$947 (\$804 in 2007) for each new residential unit, as of April 23, 2014, the date upon which the Applicant paid Fairfax County \$10,037,590.30 for construction of the Westpark Bridge in satisfaction of its obligations under Proffer 48 (Westpark Bridge), the Applicant owed Fairfax County \$4,338,447.25 for Phase 1. Based on the same contribution rates, the Applicant owes Fairfax County \$4,850,260.65 for the remaining phases of development, which includes \$2,646,271.30 for Phase 2, \$688,942.75 for Phase 3 and \$1,515,046.60 for Phase 4. As the Applicant's \$10,037,590.30 contribution for the Westpark Bridge was fully creditable against its Tysons Transportation Fund obligation (\$9,188,707.90 in total), there is a credit balance of \$848,882.40. Therefore, excluding the Transportation Contributions described in Proffer 51 herein, no additional payments are required to satisfy the Applicant's Tysons Transportation Fund Contribution for the remaining phases of development. The credit balance of \$848,882.40 shall be carried over and applied to amounts that may be due with Proffer 45 (C)(iv).

51. Transportation Contributions.

- A. Escalating Transportation Contributions. The Applicant shall provide a contribution of \$0.81 (Eighty-One Cents) per new square foot in Phases 2, 3 and 4 to Fairfax County for transportation improvements in the vicinity of the TCC Property, subject to the escalation provisions in Proffer 78 herein, which sum represents the total estimated costs for the County to complete (i) the widening of Route 7 eastbound between International Drive/Gallows Road and Old Gallows Road to include one additional eastbound shared/right through lane (for a total of four through eastbound travel lanes); (ii) the widening of Route 7 westbound, east of the intersection of Fashion Boulevard and Leesburg Pike to include an additional right-turn lane into the Property from westbound Route 7; (iii) a westbound right-turn overlap phase and associated signal modifications at the Route 7 intersection with Fashion Boulevard; and, (iv) future spot improvements in the Route 7 corridor of Tysons or in the vicinity of Route 7 and International Drive (the "Escalating Transportation Contributions).
- B. Non-Escalating Transportation Contributions. The Applicant shall provide a contribution of \$0.59 (Fifty-Nine Cents) per new square foot in Phases 2, 3 and 4 to Fairfax County for transportation improvements in the vicinity of the TCC Property, which sum reflects a total of \$1.25 million previously proffered for a shuttle system in Tysons, and is not subject to escalation (the "Non-Escalating Transportation Contributions") (the Escalating Transportation Contributions and the Non-Escalating Transportation Contributions, collectively the "Transportation Contributions").

- C. Timing. The Transportation Contributions shall be made on a building by building basis at the time of the issuance of the first RUP or Non-RUP for each new building in Phases 2, 3 and 4.

52. Route 7 Right-of-Way.

- A. Dedication of Right-of-Way to Fairfax County. With construction of the buildings in Phase 2, 3 or 4, whichever comes first, the Applicant shall dedicate for public street purposes and convey in fee simple to the Fairfax County Board of Supervisors up to one and one-half (1.5) feet of right-of-way along the TCC Property's Leesburg Pike frontage ("Dedication Area") from the existing right-of-way line, as needed for the widening of Route 7, as follows:
1. The Applicant shall provide, within thirty (30) days of commencement of construction of the first building in Phase 2, 3 or 4, as applicable, a title commitment for the Dedication Area in an amount to be determined in consultation with the Office of the County Attorney and in the same form previously accepted by that office for conveyances related to the TCC Property, together with any exceptions noted therein; and,
 2. Concurrent with dedication of the right-of-way to the County, the Applicant shall provide the County, subject to review and approval by the Office of the County Attorney, with either (1) title insurance in accordance with the title commitment described in Proffer 52(A)(1) above, in the name of the Board of Supervisors, the endorsement to which insures against all covenants, conditions and restrictions that could prevent the County's use of the Dedication Area for its intended purpose as a public street, or (2) a third-party title certification letter in the County's standard format, as determined by the Applicant; and,
 3. Except as provided in Proffer 52(A)(5) below, or as otherwise agreed to, the Applicant shall not further encumber the Dedication Area once the dedication package has been provided to the County.
 4. The Applicant reserves density credit for the Dedication Area conveyed to the County pursuant to this Proffer.
 5. The Applicant shall work diligently with the County (or VDOT, as applicable) to enter into a maintenance and access agreement pursuant to which the Applicant shall agree to maintain the portion of the Dedication Area that is used for a sidewalk, if any, after its dedication to the County.
- B. Condemnation Alternative. As an alternative to Proffer 52(A) above, if the County elects to condemn the necessary right-of-way, then the Applicant shall pay to the County an amount equal to the compensation and damages awarded for the condemnation (together with all other associated County fees and costs, including reasonable attorney's fees and expert witness fees and expenses associated with the condemnation) within sixty (60) days of such award. To the extent applicable, amounts owed by the County to the



applicant for the condemnation and reimbursement owed by the applicant to the County should be offset to calculate the total amount payable by the applicant to the County under this provision. In the event that the County elects, in its sole discretion, not to pursue a condemnation of this right-of-way, the Applicant shall remain obligated to provide the right-of-way in accordance with terms of Proffer 52(A), above.

53. Congestion Management. The Applicant shall prepare and implement a construction congestion management plan during construction of each phase, as appropriate, through its development/construction manager and the Transportation Coordinator (as defined in Proffer 54.A.ii), so as to provide safe and efficient pedestrian and vehicle circulation at all times on the Property and on the public roadways adjoining the Property. The congestion management plan shall identify anticipated construction entrances, construction staging areas, construction vehicle routes and procedures for coordination with FCDOT and/or VDOT concerning construction material deliveries, lane closures, and/or other construction related activities to minimize disturbance on the surrounding road network.

The congestion management plan shall also require the Applicant to coordinate its construction activities throughout construction with VDOT and FCDOT, and to monitor the off-site transit and roadway improvements and adjust the Applicant's congestion management plans accordingly. Such plans shall be prepared by a qualified professional and submitted for review and comment to DPWES upon submission of the initial site plan for each phase. In addition, the Transportation Coordinator shall coordinate any adjustments to the TDM Plan (as defined in Proffer 54) as necessary to address the congestion management plan.

TRANSPORTATION DEMAND MANAGEMENT

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

The purposes of the TDM Plan are to (a) limit the number of vehicle trips generated by certain of the new uses (residential and office) constructed as part of Phases 1-4 as modified from time to time for this purpose (the "Development"), and (b) encourage the use of transit (Metrorail and bus), other high occupant vehicle commuting modes, walking, biking and teleworking by employees, customers and residents who work or live in the buildings located in the Development and the Existing Shopping Center. The TDM Plan will be based on the "Transit-Oriented Development Transportation Demand Management Study and Strategic Plan" prepared by Strategic Transportation Initiatives, Inc., dated November 13, 2006 (the "TDM Strategic Plan"), the terms of which are hereby incorporated by reference. It is the intent of this proffer that the TDM Strategic Plan will adapt over time to respond to the changing transportation



related circumstances of the TCC 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 set forth in this proffer. Accordingly, modifications, revisions and supplements to the TDM Strategic Plan as coordinated with FCDOT can be made without the need for a PCA provided the TDM Program continues to reflect the proffered elements set forth below:

A. Vehicle Trip Objectives.

- i. General. Implementation of the TDM Plan shall limit the number of vehicle trips generated by the Development through the use of mass transit, ride-sharing and other strategies. The Development shall be designed to create significant interactions among the various uses on the Property such that fewer automobile trips will occur within the site and on the external road network through the creation of synergistic relationships among the uses within the Property. In addition, easy access to Metrorail and bus facilities, the capability for teleworking will provide commuting options other than the automobile to residents, employees and visitors to the Property.
- ii. Transportation Coordinator. The Owner/Developer appointed a qualified transportation management professional to be the Transportation Coordinator ("TC") for the project. The TC's duties are to develop, implement and monitor the various components of the TDM Plan and revise the TDM Plan as appropriate. The TC oversees all elements of the TDM Plan and acts as the liaison between the Owner/Developer and subsequently the UOA and FCDOT. The TC will be continuously employed either directly by the Owner/Developer (or UOA) or by a property management company under a management contract with the Owner/Developer (or UOA, as applicable). Any changes in the TC appointment shall be communicated in writing to FCDOT and the Providence District Supervisor within ten days.
- iii. Trip Reduction Objectives. The objective of the TDM Plan shall be to limit the number of vehicle trips generated by the new on-site residential and office uses in the Development during weekday peak hours (as determined using ITE, 9th edition, Trip Generation rates and/or equations (the "ITE Trip Generation Rate")) by meeting the percentage vehicle trip reductions established by the Comprehensive Plan as set forth below. These trip reduction percentages shall be multiplied by the total number of vehicle trips generated by the proposed residential and office uses reflected on the final development plans associated with individual buildings and/or phases and the number of trips determined by the product of such equation shall be referred to as the "Maximum Trips After Reduction." The target trip reductions are as follows:

Percentage Vehicle Trip Reduction at Build-out of Each Phase

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

In the event that the buildings actually constructed by the Applicant in any phase have less than the maximum number of dwelling units and/or less than the maximum square footage of office gross floor area than reflected on the FDPA, then the Maximum Trips After Reduction shall be calculated based on the number of dwelling units and/or square footage of office uses reflected on the FDPA.

If through an amendment to the Comprehensive Plan, the Board should subsequently adopt a goal for the 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.

B. Definitions.

- i. Stabilization. The "Stabilization" of any phase of the Development, or of any building in a phase of the Development, shall be deemed to occur on the date when (a) initial RUPs have been issued for 100% of the units in a residential building in that phase, regardless of the physical occupancy in that phase, and (b) initial Non-RUPs shall have been issued for 100% of the gross leasable area in an office building in that phase, regardless of the physical occupancy.
- ii. Peak Hour. The relevant weekday AM or PM "peak hour" shall be that 60-minute period during which the highest volume of mainline through volumes occurs between 6:00 and 9:00 AM and 4:00 to 7:00 PM, respectively, as determined by mechanical and/or manual traffic counts conducted by a qualified traffic engineering firm at select locations within a cordon generally defined by Route 7, International Drive, Route 123 and I-495, the Kidwell Drive and Westpark Drive bridges and as approved by FCDOT. To determine the peak hour, such counts shall be collected beginning on a Monday at 2400 hours and continuing to the following Thursday at 2400 hours during a week between September 1st and December 31st (but not including a week containing a federal holiday or when area public schools are not in session). The methodology for determining the peak hour may be modified, in agreement between the Owner/Developer (or the UOA after the end of the Owner/Developer Control Period) and FCDOT without requiring a PCA, in order to respond to technological and/or other improvements in trip counting.



- iii. Owner/Developer Control Period. The term "Owner/Developer Control Period" shall be defined as the period which started upon the approval of the CDPA/FDPA and PCA and ends on the date when three consecutive annual Trip Counts conducted after Stabilization of the last phase of the development shows that vehicle trips meet the trip reduction objectives and are equal to or less than the applicable Maximum Trips After Reduction.
- iv. TDM Remedy Fund. The purpose of the "TDM Remedy Fund," as further described below, shall be to supplement the TDM Account in support of additional TDM strategies that may be determined to be necessary following any of the Trip Counts and for which sufficient funding is not immediately available through the then-existing TDM Account.
- v. TDM Penalty Fund; Letter of Credit. The TDM Penalty Fund is an account into which the Owner/Developer will deposit penalty payments as may be required to be paid pursuant to this Proffer (the "TDM Penalty Fund"). The County may withdraw funds from the TDM Penalty Fund for the implementation of additional TDM program elements/incentives and/or transportation improvements in the vicinity of the TCC Property, or for other TDM-related improvements or programs within Tysons Corner. To secure the Owner/Developer's obligations to make payments into the TDM Penalty Fund, the Owner/Developer provided the County with a letter of credit as further described below.

With Phase 1, the Owner/Developer established the TDM Penalty Fund and delivered to the County a clean, irrevocable letter of credit in the stated amount of \$2,000,000 issued by a banking institution approved by the County to secure the Owner/Developer's obligations to make payments into the TDM Penalty Fund as described in Paragraph 54.B.v (the "Letter of Credit"). No later than 90 days after approval of this PCA/CDPA/FDPA, the Applicant shall adjust the current letter of credit to reflect an amount equal to \$0.10 for each square foot of new office GFA and \$0.05 for each new residential GFA (Phases 1 – 4) on the TCC Property as reflected on the approved CDPA/FDPA. The Letter of Credit will name the County as the beneficiary and will permit partial draws or a full draw.

The foregoing stated amount of the Letter of Credit shall be reduced by the sum of any and all previous draws under the Letter of Credit and payments by the Owner/Developer into the TDM Penalty Fund.

If the results of any Trip Counts during the Owner/Developer Control Period show that, notwithstanding adjustments to the TDM Budget and TDM Plan over the time periods specified in Paragraph 54.B.ii, the Maximum Trips After Reduction specified in Proffer 54.A.iii are being exceeded, then the penalty provisions of Paragraph 54.B.v shall apply.



Thereafter, the Owner/Developer will make the payments required under Paragraph 54.B.v into the TDM Penalty Fund, and the County shall be authorized to withdraw the amounts on deposit in the TDM Penalty Fund for those uses above. At such time as the Owner/Developer is required to pay a penalty per Paragraph 54.B.v, and if the Owner/Developer fails to make the required penalty payment to Fairfax County within 30 days after written demand, the County shall have the ability to withdraw the penalty amount directly from the Letter of Credit.

C. Components of the TDM Plan. In order to meet the Maximum Trips After Reduction objectives, the TDM Plan was adopted and implemented by the Owner/Developer, as approved by FCDOT. The minimum components of the TDM Plan are specified in this Proffer and may be subsequently adjusted by mutual agreement between the Owner/Developer (and subsequently the UOA) and FCDOT. All adjustments to the components of the TDM Plan contained in this Proffer shall be approved by FCDOT and will not require a PCA. The TDM Plan shall include provisions pertaining to the Development, the Hotel and the Existing Shopping Center as set forth in Proffers 54, 55 and 56. The minimum TDM Plan components are further described in the TDM Strategic Plan. The TDM Strategic Plan also includes information about possible supplemental TDM Plan components. In addition to the timing, phasing and implementation information in this Proffer, more detail is provided in the TDM Strategic Plan.

i. TDM Components Applicable to the Development, including residential building occupants, office building tenants and employees. The following is a representative list of TDM components applicable to the Development:

- a. TDM Network -- Establishment of a network of designated on-site TDM contacts among the Owner/Developer, the UOA, office building tenants and property managers through which to coordinate the implementation of the TDM Plan.
- b. Meetings with Stakeholders -- The TC shall continue to attend meetings with community groups and organizations in the area that have a mutual interest in furthering the success of TDM programming and the effectiveness of mass transit and other non-SOV commuting (i.e. TYTRAN).
- c. Website -- The TC developed and shall continue to maintain a TDM project website that includes targeted information on a building-by-building basis as well as for the Property as a whole, and that includes multi-modal transportation information, real-time travel and transit data, the possibility of online transit pass sales or value loading and connections to supporting links.

- d. Personal outreach – The TC or its representatives shall continue to reach out to all new commercial tenants to explain the TDM program and transit options.
- e. Dissemination of information – The TC shall continue to disseminate information in appropriate locations on the Property, including in the Existing Shopping Center and the new Hotel. This dissemination of information shall include information relevant to patrons and customers of the Existing Shopping Center and the Retail/Commercial uses, residents and office and hotel employees and guests about transit benefits programs, maps and schedules offered by WMATA, Fairfax Connector and other transit providers, through the electronic information kiosks that are described below, and/or displays at its mall customer/concierge service booths.
- f. Transit benefits – The TC shall continue to encourage employers to offer employee benefit options, including parking cash out, pre-tax/payroll subsidies for transit and vanpool fares, flex-time and alternative work schedule programs and live-near-work incentives.
- g. Telework programs and telework facility -- The Owner/Developer shall continue to provide space for a telework facility/business center for use by residents in the Development. The telework facility shall consist of a minimum of 600 square feet of gross floor area and shall have computers, copier facilities, a fax machine and access to lap-top hook up stations with secure internet access and access to a washroom.
- h. Car sharing – The Owner/Developer shall continue to provide car-sharing, subject to agreement with third-party vendor(s) (such as ZipCar or Enterprise Carshare).
- i. Taxi stand -- A taxi stand was provided and shall be maintained at the hotel in Phase I.
- j. Ridematching, carpools, vanpools and guaranteed ride home -- Vanpool and carpool formation programs, including ride matching services, and coordination have been established and information about guaranteed ride home program(s) will continue to be disseminated.
- k. Commuter Club -- The Owner/Developer shall provide discounts and special incentives to residents, office and hotel workers and employees of retail tenants in the Existing Shopping Center to further non-SOV commuting.

- l. Parking management plan – The TDM plan includes a parking management plan, which provides for the “un-bundling” of parking spaces from residential and office unit sales/leases, dedication of parking spaces for carpools/vanpools in the office parking areas and offering incentives/benefits to residential carpools.
 - m. Informational Kiosks -- The Owner/Developer shall continue to provide space and a power supply within the Existing Shopping Center for electronic information kiosks that provide transit information if such kiosks are available from WMATA, Fairfax County or other entities.
 - n. Vans and shuttles -- The Owner/Developer shall continue to provide van and shuttle drop-off points or areas as shown on the CDP/FDP and CDPA/FDPA and shall continue to allow and encourage employer, hotel and other shuttle services that are operating in the Tysons area to stop at such points or areas to pick-up or drop off employees and patrons.
 - o. Rush hour pricing – The Owner/Developer shall provide incentives to residents, employees and visitors to remain on the Property during the PM peak by offering movie ticket and restaurant discounts during the afternoon/evening rush hour peak or other incentives. These discounts shall be subsidized through the TDM budget and/or TDM Incentive Fund.
- ii. Additional TDM Components Applicable to Residential Buildings. In addition to the TDM program components described in Proffer 54.C.i above, at a minimum, the TDM Plan shall also have the following components as applicable to residents:
- a. Grocery Delivery Services -- the Owner/Developer shall provide information to residents about grocery delivery services/options and, as appropriate, provide incentives for grocery delivery options.
 - b. In-Unit Internet Access -- All residential units shall be pre-wired to provide Internet access (or other technology that may become available) to permit residents to access the Internet from home.
 - c. Sales/leasing marketing program -- A targeted marketing program for residential sales/leases that encourages and attracts TDM-oriented people such as one and no-car individuals and families to live in the Development as well as a targeted marketing program for office tenants to encourage on-site and nearby office workers to live in the on-site residential buildings. The Owner/Developer



shall actively support the TC and Existing Shopping Center management in the efforts to encourage employees of the office tenants both on-site and elsewhere in Tysons to live in the residential units on the Property through discussions between executives and officers of the office tenants and executives and officers of the Owner/Developer.

- d. TDM incentives – One time distribution of fare media or other incentives to all initial residents of driving age as well as on select occasions as an incentive.
- e. Transportation advising -- “Personalized transportation advising” integrated into new unit walk-throughs, including appropriate training of sales/leasing agents.

iii. Additional TDM Components Applicable to Office Buildings. In addition to the TDM program components described in Proffer 54.C.i above, at a minimum, the TDM Plan shall also have the following components as applicable to the office building tenants and employees:

- a. Matching On-Site Office Employees to On-Site Residential Units – Residential units shall be marketed to the on-site and off-site Tysons Corner Urban Center office employers and workers, including providing information in prospective tenant packages and possible discounts or financial incentives to those employees who live and work on the Property. The Owner/Developer shall actively support the TC and Existing Shopping Center management in the efforts to encourage office tenants and their employees to live in the residential units on the Property through discussions between executives and officers of the office tenants and executives and officers of the Owner/Developer.
- b. Relocation program -- Coordination of a relocation program to bring new businesses to the Property, with the goal of the office tenants utilizing alternative commuting options.
- c. Leasing Packages -- Integration of transportation information and education materials into office leasing packages.

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



E. TDM Plan and Budget.

The TC established an initial TDM Plan, including an initial budget (“TDM Budget”) that included a contingency equal to ten percent (10%) of the amount of the annual TDM Budget. The TC shall re-establish the TDM Budget, for each subsequent calendar year, which shall cover the costs of implementation of the TDM Plan for such year. The TC shall furnish a copy of the TDM Budget and TDM Plan for each year to the FCDOT for review and comment no later than March 31st of each Calendar year. A line item for the TDM Account (defined below) shall be included in the UOA budget upon the establishment of the UOA. The association documents that establish and control the UOA shall provide that the TDM Account shall not be eliminated as a line item in the UOA budget and that funds in the TDM Account shall not be utilized for purposes other than to fund TDM strategies. The TDM Account shall be funded solely by the Owner/Developer until such time as assessments of residents and commercial owners are implemented as provided in the UOA documents.

F. TDM Account.

- i. Initial Funding. Within thirty (30) days after the establishment of the initial TDM Budget, the Owner/Developer established and funded an account (the “TDM Account”) in the initial amount of the annual budget for the TDM program for the then current year. The purpose of the TDM Account was and is to fund the TDM Budget. The TDM Account was established as an interest bearing account with a banking or other financial institution qualified to do business in Virginia. All interest earned on the account principal remains in the TDM Account and is and shall be used for TDM Plan purposes. The Owner/Developer provided written documentation demonstrating the establishment of the TDM Account to FCDOT. Funds in the TDM Account shall be utilized by the TC each year to implement the TDM Plan in accordance with the TDM Budget.
- ii. Annual Funding. The TDM Account shall be replenished annually following the establishment of each year’s TDM Budget. The TDM Account shall maintain a starting balance at the beginning of each calendar year of not less than \$200,000, or in such greater amount as may be required under the TDM Budget for such year.
- iii. Transfer to UOA. The TDM Account shall be managed by the Owner/Developer (and not the UOA) until the Owner/Developer Control Period has expired. Thereafter, management of the TDM Account will become the responsibility of the UOA.

G. TDM Remedy Fund. The Owner/Developer established a separate interest bearing account referred to as the “TDM Remedy Fund.” Funding for the TDM Remedy Fund was established with Phase 1 and provided \$452,934.76 in contributions to date (\$400,000 as escalated from a base year of 2007). The monies due the TDM Remedy Fund based on the CDP/FDP and CDPA/FDPA



programs for Phases 1-4 are estimated at \$1,026,672.00. Therefore, a total of \$573,737.24 remains to be paid in order to equal the rate of approximately \$0.40 per gross square foot of new office uses and approximately \$0.30 per gross square foot of new residential uses on the TCC Property. Funding for Phases 2, 3 and 4 shall be paid with the issuance of each initial RUP or Non-RUP for each of the six new buildings within the combined Phases at a rate of \$0.29 per gross square foot for the new residential and office uses. Funds from the TDM Remedy Fund shall be drawn on only for purposes of immediate need of TDM funding, and may be drawn upon prior to any TDM Budget adjustments that may be required under Paragraph L.

- H. TDM Incentive Fund. The TDM Incentive Fund is an account into which the building owners, through the TC, deposit contributions to fund a multi-modal incentive program for initial purchasers/lessees within the TCC Property (Phases 1-4). For Phase 1, the Applicant expended a total of approximately \$20,000 for incentives. Contributions for Phases 2, 3 and 4 shall be made one time on a building by building basis at the rate of \$0.02 per gross square foot of new office and/or residential uses to be constructed on the TCC Property and provided prior to issuance of the first RUP or Non-RUP for each individual building. Such program shall be prepared by the Owner/Developer through the TC and in coordination with FCDOT and shall include consideration for fare media distribution and value loading, financing incentives, and alternative incentives (such as grocery delivery) tailored to residents and mall customers. The TDM Incentive Fund shall be established as an interest bearing account with a banking or other financial institution qualified to do business in Virginia. All interest earned on the account principal shall remain in the TDM Incentive Fund and shall be used for TDM incentive purposes.
- I. Triennial Surveys and Annual Reports. The Owner/Developer, or the UOA after the end of the Owner/Developer Control Period, caused and shall continue to cause the TC to prepare and submit to the County the triennial surveys and reports on the TDM Plan described below.
- i. Triennial Survey. A triennial survey (the "Survey") shall be completed every three years between September 1st and December 31st beginning in 2015. The Survey shall be conducted during a week without any Federal holidays when school is in session. The Survey shall gather information on the effectiveness of the TDM Plan and shall be used by the TC to determine whether changes to the TDM Plan are needed to ensure that the vehicle trips are within the Maximum Trips After Reduction targeted goal. If the Survey reveals that changes to the TDM Plan are needed, the Owner/Developer (and the UOA, as applicable) through the TC shall coordinate such changes with FCDOT and implement and adjust the TDM Budget accordingly. The TC shall coordinate the preparation of Survey materials and the methodology for validating survey results with FCDOT prior to doing each Survey, and shall collect and analyze the results. Such analysis shall include at a minimum:



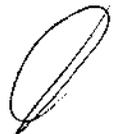
- a. A description of the TDM measures in effect for the survey period and a description of how such measures have been implemented;
 - b. The number of people surveyed and the number of people who responded in each building;
 - c. The results of any surveys taken during the survey period;
 - d. The number of residents, employees and/or others participating in the TDM programs displayed by category of participants and by mode of use;
 - e. An evaluation of the effectiveness of the TDM Plan and its program elements, including its effectiveness in achieving vehicle trip reduction objectives for each of the residential and office buildings, and, if necessary, proposed modifications to the plan and program elements; and
 - f. A description of the uses constructed and occupied on the Property at the time the survey was conducted and levels of occupancy.
- ii. Annual Report. The TC shall submit a written annual report on the TDM Plan to the FCDOT no later than March 31st (the "Annual Report"). The Annual Report shall include (a) a description of the TDM strategic efforts for the year, including, as applicable, sample marketing materials, (b) a financial statement that includes the TDM Budget for the year and a detailed summary of actual TDM Plan income and expense for such year, (c) a summary of the levels of occupancy in the buildings that have been completed in the Development by Phase, (d) an analysis of the results of any Survey (e) a compilation and analysis of the results of any Trip Counts that may have been conducted during the year, (f) discussion of any changes proposed to the TDM Plan and (g) the amount of money then on deposit in the TDM Penalty, Incentive and Remedy Funds.



- iii. Adjustments to Calendar and Due Dates. At the mutual agreement of the FCDOT and the Owner/Developer (and subsequently the UOA), the due dates for the delivery of the Annual Report may be altered by up to 60 days if changes have occurred, or appear to have occurred, in trip characteristics resulting from events such as an additional phase or phases reaching Stabilization.
- iv. Meetings with FCDOT. The Owner/Developer or UOA (as applicable) shall meet with FCDOT annually to discuss the results of the Trip Counts, the Triennial Survey as applicable, the Annual Report and the TDM Plan.

J. Trip Counts.

- i. Trip Counts. For purposes of this Proffer, Trip Counts shall be measured on three consecutive days over a maximum two week period (but not including a week containing a federal holiday or when area public schools are not in session); these dates are referred to as "Trip Count Measurement Dates." Trip Counts shall be conducted annually between September 1st and December 31st after Stabilization (as previously defined in Proffer 54.B.i) has occurred for the applicable phase of development and shall continue annually thereafter except as provided in Proffer 54(J)(v). Prior to conducting the Trip Counts, the Owner/Developer shall meet with FCDOT to review and reach agreement on the dates that will be the Trip Count Measurement Dates, the methodology for the Trip Counts, and the analyses to be done after the Trip Counts are complete.
- ii. Trip Counts. Starting when the Stabilization of the first phase of the Development has occurred, the Owner/Developer shall measure separately the actual vehicle trips that are generated from the office, and residential uses for all phases that have reached Stabilization in the Development (the "Trip Counts") on the Trip Count Measurement Dates to evaluate whether the vehicle trips are equal to or less than the applicable Maximum Trips After Reduction. Trip Counts provided to FCDOT shall include information about the occupancy levels for all office and residential uses completed at the time of the Trip Count Measurement Dates.
- iii. Methods. Trip Counts shall include counts of vehicles entering and exiting the areas of the parking garages designated for residential and office parking, as well as those additional manual and mechanical counts as may be needed and determined in consultation with FCDOT. Trip Counts shall be conducted in such a way so that the only trips generated by the separate office and residential uses are compared to the Maximum Trips After Reduction specified for each such use (that is, cut-through trips, Metro trips, retail trips, hotel trips, etc. are excluded).
- iv. Calculations. For each residential and office use, the total number of peak hour vehicle trips shall be computed by summing the number of trips



entering and exiting the parking garages for the individual uses (residential and office) on each of the three days that Trip Counts are taken during the AM and PM peak hours and dividing those sums by three. Values will be provided for each garage included in the Development, and a sum of the vehicle trips generated by the residential, and office uses will be calculated separately.

- v. Frequency of Trip Counts. Following the Stabilization of the first phase of the Development, the Owner/Developer shall conduct Trip Counts annually until such time as consecutive annual Trip Counts indicate that the trips generated in the AM and PM Peak Hours by all phases that have reached Stabilization are equal to or less than the applicable Maximum Trips After Reduction. After that time, the Owner/Developer shall conduct Trip Counts every three (3) years, provided that at such time as the next phase reaches Stabilization, the Owner/Developer shall again conduct Trip Counts annually until such time as the provisions of this paragraph permit Trip Counts every three (3) years. If the Owner/Developer is conducting Trip Counts every three (3) years as permitted above, and if three (3) consecutive biennial Trip Counts indicate that the trips generated in the AM and PM Peak Hours by all phases that have reached Stabilization are equal to or less than the applicable Maximum Trips After Reduction, then the Owner/Developer shall conduct additional Trip Counts at not greater than five (5) year intervals to determine whether the Maximum Trips After Reduction are continuing to be met, until such time as annual Trip Counts would otherwise be required due to the Stabilization of a subsequent phase. Notwithstanding the provisions of this Paragraph, FCDOT may request counts be undertaken at any time to validate traffic data, but not more frequently than two times per calendar year. If such requests are made by FCDOT, the Owner/Developer shall conduct the requested counts. Notwithstanding the provisions of this Paragraph, the Applicant may request and the County may suspend Trip Counts at any time if conditions associated with the Property and/or the surrounding area or the results of any survey indicate that conditions are such that the validity of the counts would be questionable.
- vi. Evaluation of Trip Counts. The results of the Trip Counts shall be compared to the Maximum Trips After Reduction specified for each use to determine whether actual trips are equal to, less than or greater than the specified Maximum Trips After Reduction. In the event the trips generated by each of the uses in the phases that have reached Stabilization are equal to or less than the Maximum Trips After Reduction specified for each use, then the Owner/Developer and subsequently the UOA (as applicable) shall continue to administer the TDM Plan in the ordinary course, in accordance with the provisions of these Proffers. If the trips generated by each of the uses in the phases that have reached Stabilization are greater than the Maximum Trips After Reduction, the

Owner/Developer and subsequently the UOA (as applicable) shall follow the provisions of Paragraphs K, L and N.

K. Adjustments to TDM Plan and Budget. In the event that any of the Trip Counts are greater than the applicable Maximum Trips After Reduction, then the TC shall convene a meeting with FCDOT to review the results of that report and the TDM strategies then in place for the Development. Thereafter, the TC shall develop modifications to the TDM Plan and the TDM Budget to address the surplus of trips, including any surplus caused by or related to a particular use or uses. The Owner/Developer shall submit any revisions to the TDM Plan and TDM Budget to FCDOT within thirty (30) days following this meeting. If FCDOT has not provided comments to the Owner/Developer within sixty (60) days after receipt of the revised TDM Plan and revised TDM Budget, the Owner/Developer's revisions to the TDM Plan and TDM Budget shall be deemed approved. If FCDOT provides comments, the Applicant shall work with FCDOT to incorporate mutually agreed upon revisions. Following approval of the revised TDM Plan and TDM Budget, the Owner/Developer shall (1) draw down on the TDM Remedy Fund, if it is determined to be necessary to do so and in accordance with the table below, (2) increase the TDM Account with TDM Remedy Fund monies if necessary in order to cover any additional costs to implement the revised TDM Plan and TDM Budget, (3) implement the provisions of the revised TDM Plan as developed in consultation with FCDOT, and (4) continue to conduct Trip Counts annually.

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

i. If the results of the Trip Counts conducted during the Stabilization of any Phase shows that the trip reduction goals have been met for three consecutive years in accordance with the goals listed above (as evidenced by the Maximum Trips After Reduction), then a portion of the Remedy Fund as outlined below shall be released back to the TC for distribution to the building owner(s). The amount released will be relative to the amount contributed by those buildings constructed and occupied at the time the Trip Counts have been conducted. Any funds remaining in the Remedy Fund after such release will be carried over to the next consecutive three 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%				

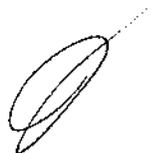
ii. There is no requirement to replenish the TDM Remedy Fund at any time. Any cash left in the Remedy Fund will be released to the TC for final distribution to the owners once three consecutive annual Vehicular Traffic Counts conducted after Stabilization of all Phases (1 through 4) show that the trip reduction goals have been met.

L. TDM Penalty Fund. If the results of any Trip Counts during the Owner/Developer Control Period show that the actual vehicle trips continue to exceed the Maximum Trips After Reduction upon Stabilization of all four phases and after three annual traffic counts, then the Owner/Developer shall pay to the TDM Penalty Fund the amounts specified below, and FCDOT may thereafter withdraw such funds from the TDM Penalty Fund. If the Owner/Developer fails to pay what is due to the TDM Penalty Fund, FCDOT may draw against the Letter of Credit in the amount that was due to be paid as reflected on the table below. FCDOT may apply funds withdrawn from the TDM Penalty Fund, or drawn

under the Letter of Credit for transportation improvements and or additional TDM enhancements/incentives in the vicinity of the Property.

Exceeded Trip Goals	Penalty
Less than 1%	No Penalty Due
1.1% to 3%	5% of Penalty Fund
3.1% to 6%	10% of Penalty Fund
6.1% to 10%	15% of Penalty Fund
Over 10%	20% of Penalty Fund

- M. The maximum aggregate amount of all penalties to be paid under this Proffer shall not exceed the amount of the Letter of Credit or Cash Escrow determined and computed pursuant to the above provisions of Proffer 54(L). There is no requirement to replenish the TDM Penalty Fund at any time. The Letter of Credit and/or any cash left in the Cash Escrow shall be released to the TC for distribution to the building owner(s) once three consecutive trip counts conducted upon Stabilization of all four phases show that the Maximum Trips After Reduction have not been exceeded.
- N. Enforcement. If the TC fails to submit any TDM Plan and Budget, Annual Report or Trip Count Evaluation report to FCDOT within the timeframes required by this Proffer, Fairfax County may thereafter issue the TC a written notice providing the TC has sixty (60) days within which to cure such violation. If after such sixty (60) day period the TC still has not submitted the Annual Report or Trip Count evaluation report, then the Owner/Developer and/or UOA as applicable shall be subject to a penalty of \$200 per day payable to Fairfax County to be used for transit or transportation related improvements in the vicinity of the Property until such time as the report is submitted to FCDOT.
- O. Subsequent Reporting After the Owner/Developer Control Period.
- i. Owner/Developer Control Period. The Owner/Developer shall remain obligated under this Proffer until the end of the Owner/Developer Control Period. At the end of the Owner/Developer Control Period, the Owner/Developer shall be released from any further obligation under this Proffer, and the UOA shall bear the sole responsibility for continuing compliance with these Proffers. At the end of the Owner/Developer Control Period, the Letter of Credit as described in Proffers 54.B.v and 54.L shall be returned to the Owner/Developer for cancellation.



- a. Continuation of TDM Plan. In the event the trips generated are equal to or less than the applicable Maximum Trips After Reduction, then the UOA shall continue to administer the TDM Plan in the ordinary course in accordance with the provisions of this Proffer 54, including the fact that through the TC, the UOA shall continue to submit the Annual Reports, including the results of the Annual Survey and any Trip Counts, to FCDOT, as prescribed in Paragraph 54.I.ii.

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

55. Transportation Demand Management for Retail/Hotel Uses. As provided in the above Proffer, certain components of the TDM Plan are applicable to and will benefit any proposed hotel use on the TCC Property. Therefore, the Applicant will provide an additional TDM program tailored to specifically serve the Hotel Use (the "Hotel TDM Program"). In no event will remedies, incentives, and penalties be assessed against any Hotel Use, which may be established on the TCC Property, nor will such uses contribute to the annual budget associated with the TDM Program for the Application Property.

- A. Goals of the Hotel TDM Program. Because guests of the Hotel and their employees work hours that are atypical of the standard work day, these guests and hotel employees do not necessarily travel to and from the TCC Property during Peak Hours. Given this, the Hotel TDM Program shall encourage Hotel Guests and the Hotel employees to utilize transit, carpools, walking, biking and other non-Single Occupancy Vehicle ("non-SOV") modes of transportation to travel to and from the TCC Property rather than focusing on the specific trip reductions during the weekday AM or PM Peak Hours.
- B. Components of the Hotel TDM Program. The Hotel TDM Program shall include, at a minimum, the components applicable to the TCC Property that are described in this Proffer and the additional components provided below. These additional components may be subsequently amended by mutual agreement between the Applicant and FCDOT. All amendments to the components of the Hotel TDM Program contained in this Proffer shall be approved by FCDOT and will not



require a PCA. The Hotel TDM Program components will be further described in the TDM Plan.

- C. Employee/Tenant Meetings. The TC shall hold an annual TDM meeting with the Hotel Manager to review the available transit options, changes in transit service and other relevant transit-related topics. Based on these meetings, the TC shall work with Fairfax County to consider changes to the relevant services, such as changes to bus schedules, if such changes would provide better service to the TCC Property guests and their employees.
- D. Regional TDM Programs. The TC shall make information available to Hotel Guests and the Hotel employees about regional TDM programs that promote alternative commuting options. This shall include information on vanpools, carpools, guaranteed ride home and other programs offered by organizations in the Washington, D.C. Metropolitan Area.
- E. Hotel TDM Program Participation Outreach. The TC shall endeavor in good faith to encourage participation by Hotel Management in the Hotel TDM Program, including the encouragement of financial participation by their direct offering of transit benefit programs and transit incentives to their employees. Actions taken by the TC and property management in furtherance of this objective may include dissemination of information to, and solicitation of participation from Hotel Management at appropriate intervals. The TC shall include a report to the County with respect to the activities described in the TDM Proffer as part of the Annual Report to be filed with the County. This report shall include detailed accounts of the outreach efforts and the feedback and response from the Hotel Management, employees and guests.

56. Transportation Demand Management Program Specific to the Existing Shopping Center. As provided in Proffer 54, certain components of the TDM Plan are applicable to and will benefit the Existing Shopping Center. Also, the Owner/Developer shall provide an additional TDM program that is tailored to specifically serve the Existing Shopping Center (the "Mall TDM Program"). The Mall TDM Program shall also be administered by the TC for the Owner/Developer, which shall retain financial and legal responsibility of this program even though the UOA will assume responsibility for the TDM Plan at the end of the Owner/Developer Control Period as described in Proffer 54.B.iii.

- A. Goals of the Mall TDM Program. Because tenants of the Existing Shopping Center and their employees work hours that are atypical of the standard work day, these tenants and their employees do not necessarily travel to and from the Property during the Peak Hours. Given this, the Mall TDM Program shall continue to encourage Existing Shopping Center tenants and their employees to utilize transit, carpools, walking, biking and other non-Single Occupancy Vehicle ("non-SOV") modes of transportation to travel to and from the Property rather than focusing on the specific trip reductions during the AM or PM Peak Hours. The goal of the Mall TDM Program is for 25% of the Existing Shopping Center

store tenants and their employees to use non-SOV modes of transportation to commute to and from the Existing Shopping Center on a regular basis.

- B. Components of the Mall TDM Program. The Mall TDM Program shall continue to include, at a minimum, the components applicable to the Existing Shopping Center that are described in Proffer 54.C.i and the additional components provided below. These additional components may be subsequently amended by mutual agreement between the Owner/Developer and FCDOT. All amendments to the components of the Mall TDM Program contained in this Proffer shall be approved by FCDOT and will not require a PCA. The Mall TDM Program components are further described in the TDM Strategic Plan.
- i. Employee/Tenant Meetings -- The TC shall continue to hold, at a minimum, annual TDM meetings with the Existing Shopping Center store tenants and their employees to review the available transit options, adequacy of bus schedules (including hours of service), changes in transit service and other relevant transit-related topics. The TC shall continue to invite Fairfax County and/or WMATA representatives to these meetings from time to time to speak to the group(s) about these and related subjects. Based on these meetings, the TC shall work with Fairfax County and/or WMATA to consider changes to the relevant services, such as changes to bus schedules, if such changes would provide better service to Existing Shopping Center tenants and their employees.
 - ii. Transit Incentives -- Utilizing the Mall TDM Incentive Fund (described in Paragraph 56.C below), the TC shall continue to provide financial incentives to Existing Shopping Center store tenants and their employees to utilize transit. These incentives shall include contests with fare card rewards, mall gift certificates and the like (for example—an award could be offered to the transit riding employee of the month/year or the tenant with the highest percentage of employees utilizing non-SOV transport to commute to and from the Existing Shopping Center).
 - iii. Regional TDM Incentive Programs -- The TC shall continue to make information available to Existing Shopping Center store tenants and their employees about programs that promote alternative commuting options. This shall include information on vanpools, carpools, guaranteed ride home and other programs offered by organizations in the Washington, D.C. Metropolitan Area.
 - iv. Ridesharing -- The TC shall continue to assist Existing Shopping Center store tenants and their employees in forming carpools or vanpools and in providing convenient parking spaces to carpools or vanpools.
- C. Mall TDM Incentive Fund. The Owner/Developer established and shall continue to fund a Mall TDM Incentive Fund for use exclusively by the Owner/Developer with Existing Shopping Center store tenants and their employees. The



Owner/Developer shall expend up to \$25,000 per year as necessary to this fund for the provision of transit incentives, such as gift certificate awards, fare card contests and/or giveaways, transit fairs specific to the Existing Shopping Center store tenants and their employees and for similar inducements or incentive activities. At such time as a tenant elects to financially contribute to the Mall TDM Program, such contributions shall be utilized in addition to the Owner/Developer's annual contributions (that is, the Owner/Developer's annual contributions shall not be reduced or offset in any way).

D. Triennial Surveys and Analysis. The TC shall continue to monitor the success of the Mall TDM Program in reaching the goal set forth in Proffer 56.A above through tenant and employee triennial surveys completed between September 1st and December 31st ("Mall Surveys") beginning in 2015. The TC shall continue to review and analyze the Mall Surveys, and submit an analysis of survey results ("Mall Survey Analysis") to FCDOT as a supplement to the applicable Annual Report required by Proffer 54(K)(ii). The Mall Survey Analysis shall include the following information:

- i. A description of the Mall TDM Program measures in effect for the survey period and a description of how such measures have been implemented;
- ii. The number of tenants and/or employees surveyed and the number who responded;
- iii. The results of the Mall Surveys taken during the survey period;
- iv. The number of people participating in the Mall TDM Program, displayed by category of participants and by mode of use; and
- v. An evaluation of the effectiveness of the Mall TDM Program in achieving the goal set forth in Proffer 56.A, including the effectiveness of the components in place and, if necessary, proposed modifications.

E. Adjustment to the Mall TDM Program Goal. At such time as the Metrorail has been in operation at the Tysons Corner Metro Station for a period of five years (July 26, 2019), the TC and Existing Shopping Center management shall review the non-SOV transportation goal stated above to determine if the goal should be adjusted to more accurately reflect the use of non-SOV modes of transportation for the employees in the Existing Shopping Center. The TC shall address this issue in the Mall Survey Analysis submitted with the next Annual Report. The Mall TDM Program goal shall be reviewed with FCDOT at the next annual TDM meeting. At the time of review, the Owner/Developer and FCDOT (in coordination with the Providence District Supervisor) shall determine by mutual agreement if the percentage of people utilizing non-SOV modes of transportation should be adjusted.

F. Mall TDM Program Participation Outreach. The TC and Existing Shopping Center management shall continue to encourage participation by Existing

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

G. Increasing Existing Shopping Center Store Tenant Commitments. In conjunction with the TC, the Owner/Developer and the management company for the Existing Shopping Center developed a long-range plan and schedule for endeavoring to incorporate covenants in leases that would require Existing Shopping Center store tenants to participate in the Mall TDM Program. This plan and schedule included the following information. The TC may revise this plan with mutual agreement by FCDOT and the Owner/Developer.

- a. A schedule for the dissemination of information and outreach efforts to be made or provided to tenants and their respective corporate ownership about the quality of life, financial and employee retention benefits from participation in and encouragement of the Mall TDM Program. The target of this information exchange and outreach shall be the national level executives or officers of the Existing Shopping Center store tenants.
- b. The Owner/Developer shall actively support the TC and Existing Shopping Center management in the efforts to encourage tenants and executives to support the Mall TDM Program. Such support shall include executives and officers of the Owner/Developer communicating with executives and officers with national tenants as necessary.

The TC shall provide a detailed report to the County with respect to the activities described in this Proffer 56.G as a supplement to the Annual Report that is to be filed with the county in accordance with Proffer 54.I.ii. This report shall include detailed accounts of the outreach efforts and the feedback and response from the tenants. The report shall also include information on how the TC and the Owner/Developer will address any lack of interest in, opposition to, or other issues posed by Existing Shopping Center store tenants with the Mall TDM Program.

57. Intelligent Transportation Systems. To optimize safe and efficient travel in Tysons, the Applicant shall continue to maintain a system on the TCC Property that provides pertinent traffic and transit information that allows users to make informed travel decisions. The delivery of this information shall be made convenient for visitors, such as via computer, cell phone, monitors, or



similar technology. Such system shall continue to 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.

The Applicant shall continue to work with FCDOT to identify sources and facilitate electronic transmittal of data. Notwithstanding the foregoing, should technological advances make the systems described above obsolete, the Applicant may discontinue such services with the concurrence of FCDOT and without the need for a PCA.

PEDESTRIAN/BICYCLE IMPROVEMENTS

58. On-Site Trails. The Applicant shall complete the trails described below and as indicated on the CDP/FDP and CDPA/FDPA on a phase-by-phase basis, and in each phase, so the trails will be available for use on or before final bond release for that phase.

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

- A. Due to the urban nature of the site, the Applicant may request modifications to the Public Facilities Manual design criteria, the Tysons Street Standards and the Tysons Urban Design Guidelines, as applicable and necessary, for trails, such as shoulders or lane markings; such modifications shall be coordinated with FCDOT and subject to approval by DPWES. The Applicant shall provide appropriate pedestrian/bicycle signage and lane markings.

i. Phase 1. The Applicant provided:

- a. A 10-foot wide trail along the eastern side of ShopTysons Boulevard, and crosswalks at Fashion Boulevard/ShopTysons Boulevard and at ShopTysons Boulevard/Ring Road;
- b. A six-foot wide multipurpose trail adjacent to the Mall Ring road between Terrace A and International Drive to connect to existing sidewalks at Fletcher Street and the Crate & Barrel/Mall entrance (Intersection #4). This sidewalk will subsequently be replaced with a 12-foot shared pedestrian/bicycle path to be provided as further described below; and,
- c. A 10-foot wide trail along International Drive north of the Crate & Barrel/Mall entrance, along the Property's frontage, which trail will subsequently be replaced with a 12-foot shared pedestrian/bicycle path as further described below.



ii. Phase 2. As indicated on the CDP/FDP, the Applicant shall provide a 15-foot wide trail from International Drive to the South Entrance Pavilion (as shown on the CDP/FDP).

iii. Phase 3.

a. As indicated on the CDPA/FDPA, the Applicant shall provide a six-foot wide sidewalk on the south side of Fashion Boulevard adjacent to Towers Crescent (if the Towers Crescent Owners provide necessary grading, construction and pedestrian access easements at reasonable cost to the Applicant). Prior to site plan approval for Phase 3, the Applicant shall diligently pursue the necessary easements and provide DPWES with documentation of the efforts to coordinate with the Towers Crescent Owners. If the Towers Crescent Owners should grant the necessary easements, the Applicant shall provide this sidewalk improvement prior to issuance of the first RUP or Non-RUPs, whichever occurs first, for Phase 3.

Should the Applicant not receive the requisite approvals and easements from the Towers Crescent Owners at the time a site plan for Phase 3 is otherwise ready for approval by DPWES, the Applicant shall request the County utilize the condemnation provisions as outlined in Proffer 44 to obtain the easements necessary to permit completion of this improvement. In such case, the timing identified for completion of this improvement in this Proffer 58(A)(iii) shall be adjusted to a date mutually agreed to by the Applicant and the Zoning Administrator. The Applicant shall provide DPWES with documentation of diligent efforts to demonstrate the Applicant's failed attempts to obtain the necessary easements. If the County elects not to pursue condemnation, rather than constructing the above described trail widening, the Applicant shall escrow funds per the County of Fairfax Unit Price Schedule to permit the replacement of the four-foot sidewalk sections with 6-foot sidewalk sections as determined by Fairfax County.

b. As indicated on the CDPA/FDPA, the Applicant shall provide a 15-foot wide shared vehicle/bicycle lane on Fashion Boulevard. The Applicant shall incorporate bicycle pavement markings and/or signage for the bicycle/vehicular lanes, as appropriate;

c. With submission of the site plan for Residential Building 3-A, the Applicant shall submit to OCR the plans for the sidewalk along Fashion Boulevard. If requested by OCR, as an alternative to the ten-foot sidewalk along Fashion Boulevard indicated on Sheet 19 of the CDPA/FDPA, the Applicant shall install an eight foot



sidewalk with a two-foot landscaped or hardscaped strip adjacent to the travel lane; and,

- d. The Applicant shall incorporate bicycle pavement markings and/or signage for the vehicular lanes along Fletcher Street from International Drive to Inner Ring Road "G," as appropriate; and,
- e. As indicated on the CDPA/FPDA, the Applicant shall provide a ten-foot wide pedestrian/bicycle path along the Property's Leesburg Pike frontage between Fashion Boulevard and the TCC Property line to the west.

vi. Phase 4.

- a. The Applicant shall provide a Pedestrian Realm along the Property's International Drive frontage, as shown on the CDPA/FDPA.

59. Loop Trail. The Applicant shall provide a Loop Trail around the Property, as indicated on the CDP/FDP (the "Loop Trail"). The Loop Trail shall be constructed in phases, as shown on the CDP/FDP and CDPA/FDPA. The Applicant shall provide appropriate signage, pavement markings and mileage markers to demarcate the Loop Trail around the Property.

60. Route 123 Sidewalk/Trail. In lieu of an eight-foot paved trail along the Route 123 frontage east of the Route 123 entrance to the Property, the Applicant contributed \$13,215 to the Providence District Trails Fund for use by the County or others in constructing this portion of the trail and sidewalk at such time as a safe passage across I-495 is constructed through the interchange or in another location as determined by the County.

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

- A. The Applicant provided bicycle racks or lockers accommodating a minimum of 20 bicycles near the Phase 1 Plaza as indicated on the CDP/FDP. In addition, the Applicant provided bicycle racks or lockers in locations accessible to those traveling to the Existing Shopping Center from Route 123, Route 7 and International Drive, including a bicycle rack in a convenient location in Parking Terrace E.
- B. The Applicant shall provide the following bicycle racks, lockers or storage space prior to the issuance of the first RUP or Non-RUP in each phase listed, as shown on the CDPA/FDPA.



- i. 20 spaces to serve each building in Phase 2;
- ii. 128 covered, secure spaces to serve the residents of Residential Building 3A;
- iii. 16 spaces to serve the retail uses in Residential Building 3A;
- iv. 16 spaces for Bloomingdale's customers and 6 covered, secure spaces for Bloomingdale's employees;
- v. 96 covered and four short-term spaces to serve the residents of Residential Building 4A;
- vi. 12 short-term and two long-term spaces to serve the retail uses in Residential Building 4A;
- vii. 22 covered and three visitor spaces to serve the residents of Residential Building 4B;
- viii. Four short-term and two employees spaces to serve the retail uses in Residential Building 4-B;
- ix. 30 long-term and 11 short-term spaces to serve the office tenants of Office Building 4C; and,
- x. Three visitor and two employee spaces to serve the retail uses in Office Building 4C.

62. On-Site Shower and Locker Facilities. The Applicant shall provide conveniently-located shower and locker facilities to facilitate employees on the Property. At a minimum, a shower and locker facility for each gender shall be provided in each of the following buildings: (1) either Office Building 1-B or 2-B; and (2) Office Building 4-C.

PUBLIC TRANSPORTATION

63. Bus Shelters. With Phase 1, the Applicant installed a bus shelter on the Property's International Drive frontage, and contributed \$43,644.00 to FCDOT for two additional shelters in the vicinity of the TCC Property.

64. Bus Shelter Contributions. In addition to Proffer 63 above, the Applicant shall make additional contributions to Fairfax County for bus shelters as further described below. The contribution amount shall escalate on a yearly basis in accordance with Proffer 78 herein.

- A. The Applicant shall contribute \$20,000 prior to issuance of the first RUP for Residential Building 3-A to be used for the installation by others of a bus shelter on the south side of Route 7 or in the vicinity of the Property.



- B. The Applicant shall contribute \$20,000 prior to issuance of the first RUP or Non-RUP for Phase 4 to be used for the installation by others of a bus shelter on the west side of International Drive or in the vicinity of the Property.

65. Metrorail Station-Related Facilities. With Phase 1, the Applicant entered into an agreement with the Dulles Rail Project Entities and the Washington Metropolitan Area Transit Authority ("WMATA") for the installation and operation of an elevated pedestrian bridge from the Tysons Metrorail Station to the Property, the construction and operation of the South Entrance Pavilion, the construction and operation of a Bus Plaza on the Property, the granting of easements and maintenance of facilities; and, pursuant to the same, such improvements were constructed and are operational. The Applicant shall continue to coordinate and cooperate with the Dulles Rail Project Entities and/or with WMATA so as to facilitate the continued operation of such improvements.

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

RECREATIONAL FACILITIES

66. On-Site Recreational Facilities Contributions.

- A. Pursuant to Paragraph 2 of Section 6-209 and Paragraph 2 of Section 16-404 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall expend a minimum of \$1,800 per market residential unit on on-site recreation facilities. In order to satisfy this obligation, the Applicant shall provide the on-site recreational facilities shown on the CDP/FDP and CDPA/FDPA. If the Applicant does not expend the prescribed amount in any phase of the development, and any such shortfall is not expended for these purposes in a subsequent phase, then any remaining balance shall be contributed after inspection and prior to issuance of the first RUP or Non-RUP issued for the final phase of development to the County Park Authority for the provision of recreation facilities located within the service area of the Property.
- B. Prior to issuance of the first RUP for each phase, if the County increases the standard contribution of \$1,800 per market-rate unit, the Applicant shall increase the contribution to the County for that phase of development as indicated in Paragraph A.

67. Public Amenities and Facilities. These facilities are proposed to serve or be used by members of the general public, subject to usual and customary rules and regulations governing their use. The Applicant shall complete the facilities as described in paragraphs A-E below, and

as indicated on the CDP/FDP and CDPA/FDPA, on a phase-by-phase basis, on or before final bond release for that phase.

- A. Changes to the Layout and Mix. The layout or mix of facilities indicated below may be altered, provided the proposed alterations substantially conform with and provide substantially equivalent recreation opportunities as that shown on the CDP/FDP and CDPA/FDPA, as determined by the Zoning Administrator. The Applicant reserves the right to add public art to the site in areas not currently identified with public art on the CDP/FDP or CDPA/FDPA.
- B. Children's Play Area. The Applicant shall continue to provide one or more indoor children's play areas totaling not less than 1,700 square feet within the Existing Shopping Center.
- C. Phase 1. The Applicant shall continue to provide the following facilities (or equivalent alternatives) (these facilities may be adjusted seasonally, and not all facilities are specifically indicated on the CDP/FDP):
 - i. Seasonal ice skating rink/interactive water feature
 - ii. Performance space
 - iii. Seating area adjacent to the ice rink and Retail/Commercial uses
 - iv. Public art in locations as generally depicted on the CDP/FDP, with flexibility in the locations permitted subject to administrative approval from the Zoning Administrator
 - v. Children's activity area
 - vi. Children's passive area (to include a reading area or space for children's entertainment)
 - vii. Shade structure(s) and/or shaded area(s)
- D. Phase 2. The Applicant shall provide the following facilities as part of Phase 2:
 - i. Entry water feature
 - ii. Seating adjacent to the proposed Retail/Commercial
 - iii. Dog exercise area/park, as identified on the CDP/FDP as "Dog Exercise Area," including trash can, waste station and seating
 - iv. Shade structure(s) and/or shaded area(s)
- E. Phase 3. The Applicant shall provide a Common Green, including the following facilities, as part of Phase 3:



- i. Focal art feature
 - ii. Walking paths with seating
 - iii. Open events lawn/play area for special events
 - iv. Shade structure(s) and/or shaded area(s)
- F. Phase 4. With construction of Residential Building 4-A or Office Building 4-C in Phase 4, whichever is last, the Applicant shall provide an Amenity Terrace that includes passive and active facilities which may include, but are not limited to, the following:
- i. Walking paths with seating
 - ii. Gardens
 - iii. Children's active play area
 - iv. Performance lawn with seasonal stage
 - v. Shade structure/pavilion
 - vi. Small active/passive recreational area (e.g. bocce court, putting green or sculpture lawn)
- G. Accelerated Amenity. The Applicant shall provide the dog exercise area/park identified on the CDP/FDP as "Dog Exercise Area" with construction of Residential Building 4-A or Residential Building 2-A, whichever is first.

68. Semi-Private Amenities and Recreation Facilities. Except where otherwise indicated, these facilities are proposed to serve or be used by residents and office workers living and/or working in the residential and office buildings, subject to usual and customary rules and regulations governing their use. The Applicant shall complete the facilities as described in paragraphs A-E below, and as indicated on the CDP/FDP and CDPA/FDPA on a phase-by-phase basis. Except as otherwise noted, these facilities shall be completed on or before final bond release for the phase in which the facilities are included.

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



- B. Health Club or Fitness Center. Each residential building (except for 4-B) and office building in each phase shall have a limited service health or fitness center (providing equipment and facilities but not necessarily staffing) for use by the residents and employees, respectively living or working in those buildings, and having an appropriate size but in all cases not less than 1,000 square feet per building. Each health club/fitness center shall be open for use prior to final bond release for the building that includes the health club/fitness center.
- C. Phase 1. The Applicant shall continue to provide the following semi-private facilities as part of Phase 1:
- i. Swimming pool for Residential Building 1-A
 - ii. Swimming pool for Hotel Building 1-C
 - iii. Seating that consists of either a seating element built into the development or actual chairs/benches, with a minimum number of seats that is not less than 5% of the number of residential units
 - iv. Shade structure(s) and/or shaded area(s)
- D. Phase 2. As indicated on the CDP/FDP, a structural barrier shall provide a visual separation between the below indicated semi-private amenities/facilities and the public amenities/facilities described above.
- i. Semi-private terrace located between Residential Building 2-A and Office Building 2-B.
 - ii. 1,700 square-foot Multipurpose Sport Court, together with any fencing required by or consistent with typical play, on the plaza between Residential Building 2-A and Office Building 2-B for use by on-site residents and office workers. This court may be used as a half-court basketball court or for other court activities.
 - iii. Swimming pool for Residential Building 2-A.
 - iv. Seating that consists of either a seating element built into the development or actual chairs/benches with a minimum number of seats that is not less than 5% of the number of residential units within Phase 2 and an additional minimum of 12 seats to serve the office tenants.
 - v. Shade structure(s) and/or shaded area(s).
- E. Phase 3.
- i. Semi-private terrace and small active/passive recreational area (e.g. bocce court, putting green or sculpture lawn) located at Residential Building 3-A.



- ii. Swimming pool for Residential Building 3-A.
- iii. Seating that consists of either a seating element built into the development or actual chairs/benches with a minimum number of seats that is not less than 5% of the number of residential units.
- iv. Shade structure(s) and/or shaded area(s).

F. Phase 4.

- i. Swimming pool for the residents of Residential Buildings 4-A.
- ii. Seating that consists of either a seating element built into the development or actual chairs/benches with a minimum number of seats that is not less than 5% of the number of residential units.
- iii. Shade structure(s) and/or shaded area(s).
- iv. A minimum of two sport courts, together with any fencing required by or consistent with typical play, which may be used by the residents of Residential Building 4-A and Residential Building 4B.

69. Off-Site Recreational Facilities Contributions.

- A. Contribution for Off-Site Recreation Facilities. In addition to the recreation facilities and/or contributions required by these Proffers, the Applicant shall provide a contribution of \$493 per residential unit (for a maximum possible contribution of \$ 395,879 with Phases 1 and 2) to the Fairfax County Board of Supervisors. The Applicant provided \$240,833.32 with Phase 1. The Applicant shall make a contribution of \$155,045.68 (which represents the delta between the amount paid for Phase 1 and that due and owing for Phase 2) prior to issuance of the first RUP for the next phase of development, whichever comes first. These funds are to be used for recreational facilities in the vicinity of the Property.
- B. Potential Escalated Contribution. The contribution amount shall escalate on a yearly basis in accordance with Proffer 78 herein.

70. One-Time Contributions. With Phase 1, the Applicant made the following one-time contributions:

- A. \$800,000 to the Fairfax County Board of Supervisors for athletic field improvements;
- B. \$100,000 to the Fairfax County Board of Supervisors for use in developing the Oakton Community Park on Hunter Mill Road;
- C. \$15,000 to the Fairfax County Board of Supervisors for use in developing the South Railroad Street Park;

- D. \$10,000 to the Fairfax County Board of Supervisors for use with the Nottoway Nights Concert Series;
 - E. \$10,000 to the Fairfax County Tree Fund for use in the Providence District;
 - F. \$10,000 to the Fairfax County Board of Supervisors for use at the Oakton Library.
 - G. \$25,000 to the Fairfax County Board of Supervisors for distribution to and use with area volunteer fire departments; and,
 - H. \$50,000 to the Fairfax County Board of Supervisors for use with stormwater and/or watershed projects in the vicinity of the Property.
71. Proffer Notification. The Applicant shall notify Fairfax County Public Schools ("FCPS") at such time as each site plan is filed so as to provide FCPS with adequate time to plan for student growth and classroom availability.

GREEN BUILDING PRACTICES

72. Green Buildings.

A. Residential Building Certifications.

- i. The Applicant shall include, as part of the building plan submission(s) for each residential building, 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, recognizing that more than one version of each LEED rating system may be considered most current (e.g. the period during which both LEED 2009 and LEED v4 are accepting project registrations) and it is the Applicant's option which of the currently available versions will be selected provided that both versions are accepting project registrations, 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.
- ii. 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. Prior to final bond release of each building



site, the Applicant shall submit documentation to EDRB, demonstrating the status of attainment of LEED certification.

- iii. As an alternative to the actions outlined in the paragraphs 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. 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 the status of attainment of the selected certification from a rater recognized through the selected process prior to final bond release of each building site, whichever occurs first.

B. Non-Residential Building Certifications.

- i. The Applicant shall include, as part of the building plan submission for each non-residential building, 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, recognizing that more than one version of each LEED rating system may be considered most current (e.g. the period during which both LEED 2009 and LEED v4 are accepting project registrations) and it is the Applicant's option which of the currently available versions will be selected provided that both versions are accepting project registrations. 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.
- ii. 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 final bond release of each building site, the Applicant shall submit documentation to EDRB, demonstrating the status of attainment of LEED certification for each non-residential building.



PUBLIC SCHOOLS CONTRIBUTION

73. Public Schools Contribution.

- A. Contribution. After completion of final inspection and prior to issuance of the first RUP for each residential building, the Applicant shall contribute \$11,749 per student generated by that building (based on an assumed rate of .076 students per multifamily high-rise unit in that phase) to DPWES for transfer to the Fairfax County School Board to be utilized for capital improvements to Fairfax County public schools to address impacts on the school division resulting from the Project.
- B. Escalation in Contribution. Prior to issuance of the first Non-RUP or RUP for each phase, if Fairfax County should increase the accepted ratio of students per high-rise multifamily unit or the amount of the contribution per student, the Applicant shall increase the amount of the contribution for that phase of development to reflect the current ratio and/or contribution. If the County should decrease the ratio or contribution amount, the Applicant shall provide the greater of the two amounts.

AFFORDABLE HOUSING

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

- A. Nine percent (9%) of the dwelling units actually constructed shall be APRUs. The APRUs shall be subject to the rental and other covenants and restrictions of these proffered conditions, and except as specifically set forth in this Proffer, shall not be subject to the rental and other restrictions applicable to Affordable Dwelling Units ("ADUs") as defined by Article 2 of the Zoning Ordinance. The Applicant shall provide all of these units as either two (2) bedroom, one (1) bedroom, efficiency and/or studio units with one bathroom and a minimum size of 400 square feet per unit, a maximum size of 900 square feet and an average size of 550 square feet. The Applicant shall phase the provision of APRUs with each phase of development to provide a minimum of 9% APRUs within each phase of development.
- B. The Applicant shall provide these APRUs as rental units within the Applicant's proposed residential buildings. The Applicant specifically reserves the right to provide APRUs as rental units within a rental building or within a condominium building (that is, the Applicant may either retain ownership of the building and



rent all of the dwelling units, or the Applicant may create a condominium in order to sell market-rate units and nevertheless rent APRUs).

- i. Notwithstanding the foregoing, the Applicant may provide up to 30% of the APRUs in each phase off-site in the Tysons Corner Urban Center Planning District, in one or more locations approved by the Zoning Administrator, provided that the Zoning Administrator determines that such substitute units are substantially equivalent to on-site units. In making such a determination, the Zoning Administrator may determine that the minimum size of the units located outside the immediate vicinity of a metro station shall be larger than the minimum size proffered above.
- ii. Not less than ten percent (10%) of the APRUs provided in any phase (rounded to the nearest whole number) shall be designed and constructed as fully handicapped accessible units. In the event that APRUs are authorized off-site, no more than five of the handicapped accessible units may be provided off-site.
- iii. All of the semi-private facilities and amenities that are available to market rate units shall also be available to APRUs on an equal access basis.
- iv. Within any residential building, APRUs shall be dispersed among the market rate units.
- v. In accordance with Section 2-812.6 of the Zoning Ordinance, prior to issuance of the first RUP for the APRUs in any building, the Applicant shall record a covenant running with the land in favor of the Fairfax County Redevelopment and Housing Authority that provides that for Thirty (30) years from the date of issuance of the first RUP for the APRUs in that building, no such unit may be rented for an amount that exceeds the rental rates for ADUs as set by the County.
- vi. In accordance with the transit-oriented development approach to this project, which encourages people to live, work, shop and play without using an automobile, the Applicant shall market the APRUs to prospective APRU residents that are working on the Property or within the Tysons Corner Urban Center (as defined by the Comprehensive Plan). The Applicant shall work with the Fairfax County Department of Housing and Community Development to establish specific criteria to select renters of the APRUs, with the renter's employment location as an important component of such criteria. Such preference will not discriminate against any protected class.
- vii. The Applicant maintains the ability to address the applications, resident selection and management of the APRU units or may assign or subcontract this responsibility to another entity, which may include a non-



profit organization, the County or a management agency, as long as the County reviews the process and criteria for resident selection.

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

MISCELLANEOUS PROFFERS

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

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

77. 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.

78. Escalation. All monetary contributions specified in these Proffers shall be adjusted on a yearly basis from the base month of January 2015 and change effective each January 1 thereafter, as permitted by Section 15.2-2303.3 of the Code of Virginia, as amended.

Signatures on following pages



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

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

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

By: _____
Name: **Thomas J. Leanse**
Title: **Senior Executive Vice President**
CLO and Secretary



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

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

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

By: 
Name: Thomas J. Leanse
Title: Senior Executive Vice President
CLO and Secretary



TYSONS CORNER RESIDENTIAL I LLC,
a Delaware limited liability company
Owner of Tax Map # 29-4 ((1)) 35D

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

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

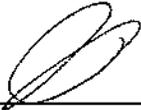
By: 
Name: Thomas J. Leanse
Title: Senior Executive Vice President
CLO and Secretary



TYSONS CORNER OFFICE I LLC,
a Delaware limited liability company
Owner of Tax Map # 29-4 ((1)) 35E

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

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

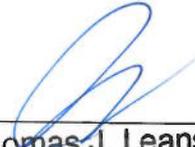
By: 
Name: Thomas J. Leanse
Title: Senior Executive Vice President
CLO and Secretary



TYSONS CORNER HOTEL PLAZA LLC,
a Delaware limited liability company
Owner of Tax Map # 29-4 ((1)) 35F

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

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

By: 
Name: Thomas J. Leanse
Title: Senior Executive Vice President
CLO and Secretary

