

**County of Fairfax, Virginia
Planning Commission Meeting
October 10, 2019
Verbatim Excerpt**

RZ/FDP 2017-PR-010 - TYSONS DEVELOPMENT, LLC – Appls. to rezone from C-7, I-5, PTC, HC and SC to PTC, HC and SC to permit mixed use development with an overall Floor Area Ratio (FAR) of 7.69 and approval of the conceptual and final development plan. Located on the S.E. side of Tyco Rd. and the N.W. quadrant of the intersection of Leesburg Pike with Spring Hill Rd. on approx. 8.35 ac. of land. Comp. Plan Rec: Transit Station Mixed Use. Tax Map 29-3 ((1)) 53, 53A, 57A, 57K and 57M and 29-3 ((32)) 1. (Concurrent with PCA 2010-PR-014D and SE 2018-PR-013). (Providence District)

PCA 2010-PR-014D - TYSONS DEVELOPMENT, LLC – Appl. to amend the proffers for RZ-2010-PR-014D previously approved for mixed-use development to permit deletion of land area from RZ 2010-PR-014D. Located on the N. side of Leesburg Pike, E. side of Tyco Rd., S. side of Boyd Pointe Way and W. of Spring Hill Rd. on approx. 1.52 ac. of land zoned PTC, SC and HC. Comp. Plan Rec: Transit Station Mixed Use. Tax Map 29-3 ((32)) 1. (Concurrent with RZ/FDP 2017-PR-010 and SE 2018-PR-013). (Providence District)

SE 2018-PR-013 - TYSONS DEVELOPMENT, LLC – Appl. under Sects. 6-504, 6-507 and 9-618 of the Zoning Ordinance to permit an increase in Floor Area Ratio (FAR) in the PTC. Located at 8536, 8546 and 8590 Leesburg Pike, Vienna, 22182 and 1568, 1570 and 1572 Spring Hill Rd., McLean, 22102 on approx. 8.35 ac. of land zoned PTC, HC and SC. Tax Map 29-3 ((32)) 1 and 29-3 ((1)) 53, 53A, 57A, 57K and 57M. (Concurrent with RZ/FDP 2017-PR-010 and PCA 2010-PR-014D). (Providence District)

During Commission Matters

(Decision Only) (Public Hearing on this application was held on October 2, 2019)

Commissioner Niedzielski-Eichner: So Mr. Chairman, we have before us tonight, and this is specifically, this one will be on the Tysons Development, LLC, The View...

Vice Chairman Hart: Oh-

Commissioner Sargeant: Mr. Chairman?

Vice Chairman Hart: Excuse me. Mr. Sargeant.

Commissioner Sargeant: Thank you, Mr. Chairman. I am recusing myself from this vote. As you know, I recused myself during the public hearing due to my employment by Dominion Energy and a reference in one of the proffers by Dominion infrastructure. Therefore, I will recuse myself. Thank you.

Vice Chairman Hart: Did we say which one this is?

Commissioner Sargeant: Yes, Tysons.

Vice Chairman Hart: Tysons. Okay. All right.

Commissioner Niedzielski-Eichner: Tysons, The View.

Vice Chairman Hart: Got it. Commissioner Niedzielski-Eichner.

Commissioner Niedzielski-Eichner: Thank you, Mr. Chairman. We have before us tonight another massive project that will further the Tysons Comprehensive Plan's vision for transforming Tysons Corner into a vital urban center within which people will live, work, and play. The development consists of four concurrent applications that together will produce a mixed-use development comprised of six new buildings on an 8.35-acre site bounded by Leesburg Pike, Route 7, Tyco Road Drive, and Spring Hill Road. The proposed development includes two office buildings, two residential buildings, and one combined office and retail building. Two buildings have proposed heights that exceed the Comprehensive Plan recommended height limitation of 400 feet with one building at 455 feet in height and the other at 600 feet in height. As these heights are the subject of concern by the respected Mclean Citizens Association, I will address the matter of them specifically just a bit later. We had a robust – very robust review of this application just last week, including great visuals and informed public testimony. But as the Commission will recall, after staff reviewed the application, its report identified eight outstanding issues where staff believed the applicant needed to do more work. I do want to take a moment to ask Mr. Gardner to provide an update of the applicant's response to those concerns and whether there are any residual concerns that should be brought to the Commission's attention.

Stephen Gardner, Zoning Evaluation Division, Department of Planning and Development: Thank you. Stephen Gardner, Department of Planning and Development. A memo was transmitted to the Commission yesterday, midday, dated October the 10th. It does summarize the changes made to the proffers that were submitted prior to and subsequent to the public hearing, including proffers dated September the 30th and October the 7th. October the 7th is the current date. It also includes a status, if you will, of the outstanding issues. I am happy to answer any specific questions about the outstanding issues, but to speak kind of generally and as kind of a holistic summary, staff does consider all the issues resolved.

Commissioner Niedzielski-Eichner: Thank you, Mr. Gardner. We also, coming out of the hearing, heard from my colleagues Hart, Ulfelder, Cortina, Carter, and Strandlie, I believe, all had various perspectives that I now believe that the proffers address. And I just want to be sure that my colleagues are aware of this. So, for example, Commissioner Hart raised a few questions about – kind of the –the treescape on – along on the sides of the buildings – at the top of buildings. How is the vegetation going to be maintained? And I don't know if this is a staff response or whether the applicant wants to respond, but there are some significant changes to the proffers to address that concern, are there not?

Mr. Gardner: I believe it should be the applicant. I believe they should essentially describe what they're doing. From the staff perspective, I'll just mention that there is a landscape management proffer that's very specific, very detailed, and applies to Buildings C-3, Building C-1, and Building D-1, each one of the buildings that has landscaping on the façade. In terms of detailing the specifics and they manage – or they have - they imagine that kind of implementing, I'll let the applicant respond to that.

Antonio Calabrese, Applicant's Agent, DLA Piper, LLP: Mr. Hart, Tony Calabrese with DLA Piper. Delighted to be here this evening. Very quickly, Mr. Niedzielski-Eichner, I think the proffers, 23D in particular, goes directly to Mr. Hart's good questions and comments. For example, the language recites, given the unique challenges of urban landscaping, all plant selection and installation will be overseen by a certified arborist or landscape architect who has specific expertise in urban greenhouse and façade landscaping, as relevant for these buildings. And there are numerous additional proffers. But I think we tried to address Mr. Hart's comment on that front.

Commissioner Niedzielski-Eichner: Thank you. Mr. Ulfelder – Commissioner Ulfelder talked about the matter of the – the trade-off of the community center for the athletic field. And I wanted to note that there was a change to the – to the proffers that broadened the opportunity for the Board of Supervisors to act on the athletic field public facility contribution. And specifically, the language was changed to specify that the applicant intends for this contribution to be used for the purpose of – one, designing and constructing the proposed Tysons Community Center on the contiguous Fairfax County property. And two, the acquisition of land for new athletic fields within Tysons and/or, three, the construction or improvement of athletic fields within Tysons. The final decision on how the money is to be allocated will rest with the Fairfax County Board of Supervisors. So the first – the proffer originally specified the – the direction of the resources to the Tysons Community Center based on the conversation that the Commission had last week. That aperture has been opened to allow for the Board to consider athletic fields as well. Is there any – did I capture that correctly?

Mr. Calabrese: You did, sir.

Commissioner Niedzielski-Eichner: Thank you.

Vice Chairman Hart: Commissioner Hurley, did you have a question?

Commissioner Niedzielski-Eichner: On that...

Commissioner Hurley: To that point, yes. I still refer to – again referred to the concerns of the Planning Civic Association that they – they – we've been holding the line on fields for Tysons and that's been a big concern of theirs. All these – all the people moving in here are hopefully going want to play, as well as work and live in Tysons. And I understand, as I said at the public hearing, that fields don't belong within an eighth of a mile of Metro. But I'd still like to see the wording fenced or at least emphasized that it should go to fields and not a community center. It can be a field on the outskirts of Tysons. And I'd even like to see some words – as I said, again, at the public hearing, we've had a lot of rectangular fields built and nothing in the diagonal fields. One, they're harder to build because they don't fit in. And, two, as the Nats pointed out last night in the eighth inning, and especially in in the 10th inning, the goal in a diagonal field is to hit it out of the park, so it doesn't belong next to a 600-foot glass building. So again, I'd just like to see more emphasis on the athletic field in Proffer 61 and not making it so much – less emphasis on a possibility of another community center.

Commissioner Niedzielski-Eichner: So this – this proffer allows for the Board to make that decision. And I think – my own position on this is we live it at that.

Commissioner Ulfelder: Mr. Chairman?

Vice Chairman Hart: Commissioner Ulfelder.

Commissioner Ulfelder: Since it came up at this point, I think I should speak to it as well. I appreciate the addition of the language to make it clear that the funds could be used for an athletic field. But follow – following along with the thinking of Commissioner Hurley, I think the point that I was trying to make at the public hearing, based on the Park Authority's memo, was – and – and the way the Comprehensive Plan is set up is that it should not be left to the Board to have to figure out where to spend the money or to find the site or where to spend the money. That the way this is set up is that, as these applications come in and we determine what level of athletic fields they are supposed to provide – if it's greater than one-third of a field, they're supposed to either find it on site or find an off-site place for – for that field or that portion of that field, maybe in combination with somebody else's one-third, so that the actual provision of athletic fields rests with the applicants and it's not the Board's job to try to figure out where they ought to go and what they ought to spend it on, in terms of additional fields. And I think that the Park Authority is raising a little bit of a warning that if they're under the pressure to find and identify places and make sure that these fields are being provided so that if we end up with 19 and one-third fields, they want it known that it was because we left out two-thirds of the field in connection with this application. But I – you know, I – maybe the Board can go forward with it and handle it fine, but I just felt that this – the way we are trying to make this work is to make the applicants responsible for actually finding and helping develop those fields. And, as I said at the public hearing, installing them and then teeing them up for the Park Authority to take over and operate.

Commissioner Niedzielski-Eichner: And, if I could, Mr. Chairman, in response – it has worked well to date and it will work well – excuse me – in the future. However, this represents a unique circumstance that – that the Board is charged with. Their mission is to make the difficult calls. There is a property immediately adjacent to this development that is County-owned property. We have a call for, within the Comprehensive Plan, a community center. A community center was – I'm sorry – a community center was considered in another development and was traded off for a performing arts center – a great trade-off. But we still have a need for a community center. We have, by virtue of other analysis and other policy considerations by the Board, the need for affordable housing. We have an opportunity as a potential alternative for this Board to consider is – is affordable housing in conjunction with a community center? It's a – it's a – it's the prototypical example of what a Board is charged to do. Take two opportunities, weigh those opportunities, and make a decision. This – this proffer amendment – this change to the proffer allows for the Board to do just that. And that's – and I think that's a call that they should be – they should be called upon to make.

Commissioner Ulfelder: Okay.

Vice Chairman Hart: Before we move on, can I just come back? I'm running the meeting. I guess I can do it. Can we come back to Mr. Gardner for just a moment on the – the memo dated today? Because I – if I understood what you said, staff is – staff said all the issues are resolved. But I just didn't understand that at the bottom of page 1, the top of page 2, it sounded like it was not clear. The bird-friendly issue that – it is not clear if the physical area has expanded, nor is it clear what bird-friendly techniques will be used along the portions of the façade that are not located

directly behind the landscaping. Yeah, well I don't know. And I don't know if that's a big deal. But whatever that was in the memo, we're past that as of – as of 9:00 o'clock? Am I missing something?

Mr. Gardner: From the staff perspective, it's resolved. What we were – what I was doing in the memo was trying to capture some of the communication and some of the feedback I was hearing from the Planning Commission at the public hearing, that there were comments that perhaps the application physical area of the bird-friendly – kind of fritting needed to be expanded. And what I am simply saying is the – it is not clear whether that physical area has expanded from what was presented at the public hearing. That was never a staff issue per se.

Vice Chairman Hart: Okay, I'm not trying to create new issues. I just – I didn't understand that – how that memo fit with everything's resolved.

Mr. Gardner: And – and what we were trying to do is point out some areas where it was not clear whether the full expectations of the Planning Commission were being resolved.

Vice Chairman Hart: All right. I understood the other ones. I didn't understand that. Okay. Now we're back...

Commissioner Niedzielski-Eichner: That was – that was next on my list is...

Vice Chairman Hart: Okay. All right.

Commissioner Niedzielski-Eichner: I just ask Mr. Calabrese if he would speak to Ms. Cortina's – Commissioner Cortina's expressed interest in the bird-friendly.

Mr. Calabrese: Yes, sir. I'd be happy to. Hopefully, you all are looking at this screen and it's got just the recitations and highlights. I think some – the two critical proffers associated with this case. Respectfully, I think we've set a whole new level of commitment in Tysons for bird-friendly provisions and commitments. I have done a number of cases in Tysons and elsewhere and, frankly, there's never been this level of detail on the left. Proffer 12b applies to all the buildings on the property. Bird-friendly designs have to be included and there's an entire spectrum. If you can see, they're highlighted in the larger section of what's available to us. Specifically, with regard to the three buildings along Route 7, the two office towers as well as the hotel and condominium building, we embellished, I think, meaningfully on Proffer 23, as reflected, and are much more specific. With regard to the two office buildings, we must incorporate either fritting, silk screening, or ultraviolet coatings, which are becoming very much in vogue and I think are getting closer to perfected. There are depictions of that on the bottom of the left-hand side to break up the reflectivity of the glass. Critically, Ms. Cortina, this applies to all four facades of those buildings – all four – all four façades to be clear and for the record. These techniques, however, do not require that every piece of glass on the entirety of these buildings be blanketed with bird-friendly features. That wouldn't be, I think, appropriate. It would probably be pretty unattractive. And that's in part why the last proffer, bottom right, we are going to continue to cooperate with DPD. When we submit for each and every one of these buildings, we'll have an opportunity for the appropriate folks to work with our terrific architects. And I think, frankly, by the time we get to this point, these standards will even be refined- that the protocols will be even better to ensure that the intent of these proffers are fulfilled. We also

increased the commitment and were more specific with regard to the fritting and other appropriate protections associated with the landscape areas – the façades of all three of these buildings – the hotel, the condominium, the two office buildings. This was pointed out and discussed to the Planning Commission. Obviously, that type of landscaping can attract birds so we've been even more specific, with regard to those commitments.

Mr. Gardner: And just to clarify one other point, the staff issue was expansion of the commitments to other buildings and they did that. That is resolved.

Vice Chairman Hart: Thank you. Commissioner Cortina.

Commissioner Cortina: I reviewed the proffer and I was satisfied with the proffer. Thank you. And it is – it has gone beyond what we've had before. And I've actually asked staff – elsewhere in the County to consider sort of some of some boilerplate language for these so that we – we don't have to come back to it again. And – but I think the applicant has – has taken that charge. So I think they did an adequate – thing.

Commissioner Niedzielski-Eichner: Okay. Thank you.

Vice Chairman Hart: Commissioner Niedzielski-Eichner.

Commissioner Niedzielski-Eichner: Thank you, Mr. Chairman. And Commissioner Carter privately, to me, raised a question about private streets not in the phasing plan. To my understanding, Mr. Calabrese, that has also been addressed, has it not?

Mr. Calabrese: Yes, sir, it has. We, I think, we pointed out to you and Commissioner Carter the precise pages where that private street is going to be implemented in the second phase.

Commissioner Niedzielski-Eichner: Okay. Thank you. And finally, Ms. Strandlie and I have had ongoing conversations about this – the merits of not allowing district boundaries to stand between the ability to have transportation be considered in a broader way. That's the spirit of the follow-on motions that I took with the – when acted on the – oh, this is – I'm sorry, this is a – this is a different – this is the next one. Let me get to that one.

Vice Chairman Hart: She's Inova. This is the View.

Commissioner Niedzielski-Eichner: Yeah, yeah, yeah, yeah, yeah, yeah...

Vice Chairman Hart: I think...

Commissioner Niedzielski-Eichner: It is. So finally, I just wanted to speak to the matter of height. Again, the McLean Citizens Association – I have the highest regard for, they of any organization that I have worked with in public life – have – do their homework and do it thoughtfully and with – with due consideration. In this instance, I simply disagree with their assessment that, you know, the matter of the height, particularly of the – the architectural feature on the 600-foot building is out-of-context with what the expectation should be for coming out of the Comprehensive Plan. We have been very careful in working with the applicant to keep the – the occupied portion of the building at 400 feet. I've often asked well why do we have

constraints on the height of a building? Well, the – there is certainly the question of – if you're adjoining neighborhoods, what's the impact on the adjoining neighborhood? But the – the more technically and important feature is density drives people or – or density drives the demand for public facilities, demand for transportation, the use of the – the streets, and so on. And 400 feet was determined within the comprehensive planning process to be that maximum level that allows for the density – sufficient densities for the public facilities and transportation capabilities to be adequately addressed, as well as, of course, other considerations. In this instance, we have an applicant that has a vision and has – that vision has driven the applicant to want to have a feature that allows for a skyline that differentiates the – its building from other buildings on the – in the Tysons area. By the way, the skyline is considered in the Comprehensive Plan as important. This – this particular architectural feature is very attractive, in my view. It is – it will – it will help Tysons stand out as an urban center. It has a feature that will be publicly accessible in the – in terms of people being able to come up and take into their – their view the surrounding region and hopefully in a quite attractive way. And the – the setting that's been created at that level, by virtue of proffers and by design, is phenomenal. So I – and - and finally, the concern for – that has been expressed that this is – is it will have a detrimental impact on adjoining neighborhoods, I will say this application has been before the community for at least two years with the kind of heights that we've been discussing. And I personally have not heard a single concern from a neighborhood or an individual neighbor about the height of this building. So I'm – I'm content with the way in which the applicant has addressed the staff's concerns, the Planning Commissioner's concerns, the Supervisor's concerns, and I'm – I look forward to the – the visual feature that this will add to the skyline of Tysons. Again, with all the respect in the world for McLean Citizens Association, I just in this instance disagree. I – Mr. Chairman and, to bring this to a motion, I agree with staff's position that this application is consistent with the Comprehensive Plan and advances the Plan's vision for Tysons in specific. The View will be a world class development that will further define the new Tysons and will further – will be a catalyst for further consideration of investment because of the quality of its – its features and the kind of investment that will be put into it. It has a focus on the arts. I love what the – has been worked through for first stage. First stage is a – award-winning theater – operates out of a warehouse right now. Now, we'll have the opportunity to move into a black box in the center of a lot of activity and it will be even – that – it will, therefore, be allowed to even become a more profound and valuable arts contribution to the area. We heard from the Arts Council last week on just that point. So the overall features of what has been put into this application – the sensitivity that the applicant has given to the concerns of a wide array of people satisfies my – my – my interest in this building, and I want to be able to – or set of buildings and I want to recommend it moving forward. So I would ask the applicant to come forward and – agree to the FDP and SE conditions.

Mr. Calabrese: Again, Tony Calabrese with DLA Piper, we reaffirm our commitment to the proffers and development conditions, Mr. Niedzielski-Eichner.

Commissioner Niedzielski-Eichner: Thank you, Mr. Calabrese. With that, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE PCA 2010-PR-014-D, SO MOVED.

Vice Chairman Hart: Is there a second?

Commissioner Migliaccio: Second.

Vice Chairman Hart: Seconded by Commissioner Migliaccio: Any discussion? Mr. Ulfelder.

Commissioner Ulfelder: I've wrestled a bit with this. It clearly is an outstanding project in many ways, in many respects. And the building design, as I – it does fit the iconic terminology, I think, and would make a big difference on the skyline and many of the changes that have been made since the public hearing, I think, are all positive and have made it a better application. But I'm still wrestling a bit with the height issue. I understand the density argument. What the MCA was saying – and I think some others may agree with them – it was also a question from their point of view, literally, the height – the actual height of the buildings and what they expected to see in Tysons and what they – and what they didn't expect to see. And in this case, at least the building C-3 is pretty darn tall and will be quite a feature on the skyline. And I'm – I'm not sure the Comprehensive Plan doesn't talk about occupied versus non-occupied space or other – other aspects of a tall building that would make it an exception to the 400-foot limit. On the other hand, the Comprehensive Plan also has some language in it indicating some flexibility about building height as well. But I think that this is a pretty significant jump. And – and even though the project overall is terrific, it gives me pause, along with my – still have my concerns about the way we go – are going to go about meeting our athletic field commitments in – under the Comprehensive Plan for Tysons Corner. For those reasons, I'm going to abstain in connection with this application.

Vice Chairman Hart: Further discussion on the motion? I'll weigh in on the – the height issue. When I first read some of the news stories about the project some months ago, I had in my mind a much more isolated or prominent structure like the Dubai Tower or something. It was gonna – this was gonna be the tallest building between Charlotte and Philadelphia and that it would really stand out. But I think as the discussion progressed – every case is different, but you look at the renderings and it seemed to me that although this building may be taller from a distance, it's one of many and it fits into a skyline that has many other buildings in it. And it isn't particularly objectionable. And I think the Board has the discretion to do it. The height in this instance, I think, is not necessarily a negative factor. And so I think it's within our purview to recommend approval of something like this. Further discussion on the motion? Seeing none, we'll move to vote. All those in favor, please say aye.

Commissioners: Aye.

Vice Chairman Hart: Those opposed?

Commissioner Ulfelder: Abstain.

Commissioner Clarke: Abstain, I was absent.

Vice Chairman Hart: Commissioner Ulfelder and Commissioner Clarke abstain. That motion carries. Commissioner Niedzielski-Eichner.

Commissioner Niedzielski-Eichner: Yeah, thank you, Mr. Chairman. I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE RZ 2017-PR-010, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE DATED OCTOBER 7TH, 2019, SO MOVED.

Commissioner Migliaccio: Second.

Vice Chairman Hart: Seconded by Commissioner Migliaccio. Any discussion on that motion? Seeing none, we'll move to a vote. All those in favor please say aye.

Commissioners: Aye.

Vice Chairman Hart: Those opposed? Any abstentions?

Commissioners Clarke and Ulfelder: Abstain.

Vice Chairman Hart: Same two abstentions. That motion carries. Commissioner Niedzielski-Eichner.

Commissioner Niedzielski-Eichner: Thank you, Mr. Chairman. I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE THE FOLLOWING WAIVERS AND MODIFICATIONS FOR RZ 2017-PR-010 – and I just would note before the Commissioners that this modification – these modifications are different than what was listed in the staff report. And I – and so I will read them for the public record for that reason.

- Modification of section 2-505 to permit structures and/or plantings on a corner lot at an intersection as shown on the CDP/FDP and as proffered.

And Mr. Chairman, do you want me to go through each of these? One at a time? Or all of them?

Vice Chairman Hart: If we have a – if we had a – did we – because I think we got two other handouts, but we didn't get a handout of these?

Commissioner Strandlie: I – go ahead.

Vice Chairman Hart: Modifications and waivers?

Commissioner Strandlie: Go ahead and read those, please. Thank you.

Vice Chairman Hart: Because we – if we have a document, we can refer to the document. But if we don't have a document, we gotta read them.

Commissioner Niedzielski-Eichner: So my question was, do I do motion by motion?

Vice Chairman Hart: Oh, let's do – without objection, let's do them in a clump and just let him read all of them. And we have to sever something, we will. But just read them all and we'll do one omnibus waiver and modification motion.

Commissioner Niedzielski-Eichner: Okay, thank you. SO THE SECOND MODIFICATION – THE SECOND PART OF THE MOTION IS:

- WAIVER OF SECTION 6-506 OF THE ZONING ORDINANCE TO PERMIT A DISTRICT SIZE OF LESS THAN TEN ACRES;
- THIRD, A MODIFICATION OF SECTIONS 11-203 – THAT’S 11-203 TO PERMIT THE MINIMUM NUMBER OF REQUIRED LOADING SPACES, AS SHOWN ON CDP/FDP, SO MOVED.

Commissioner Migliaccio: Second.

Vice Chairman Hart: Seconded by Commissioner Migliaccio. Any discussion of that motion? Seeing none, we’ll move to a vote. All those in favor, please say aye.

Commissioners: Aye.

Vice Chairman Hart: Those opposed? Same abstentions.

Commissioner Ulfelder: Yes.

Vice Chairman Hart: Commissioners Clarke and Ulfelder abstain. That motion carries. Mr. Niedzielski-Eichner.

Commissioner Niedzielski-Eichner: Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION APPROVE FDP 2017-PR-010, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED OCTOBER 7TH, 2019, AND SUBJECT TO THE BOARD’S APPROVAL OF RZ-2017-PR-010, SO MOVED.

Commissioner Migliaccio: Second.

Vice Chairman Hart: Seconded by Commissioner Migliaccio. Any discussion of that motion? Seeing none, we’ll move to a vote. All those in favor, please say aye.

Commissioners: Aye.

Vice Chairman Hart: Those opposed? Same abstentions?

Commissioner Ulfelder: Yes.

Vice Chairman Hart: That motion carries. Commissioners Clarke and Ulfelder abstain.

Commissioner Niedzielski-Eichner: And finally, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE SE 2018-PR-013, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED SEPTEMBER 23RD, 2019 AND SUBJECT TO THE BOARD’S APPROVAL OF RZ 2017-PR-010.

Commissioner Migliaccio: Second.

Vice Chairman Hart: Seconded by Commissioner Migliaccio. Any discussion of that motion? Seeing none, we'll move to a vote. All in favor, please say aye.

Commissioners: Aye.

Vice Chairman Hart: Those opposed? Same abstentions?

Commissioner Ulfelder: Yes.

Vice Chairman Hart: That motion carries. Commissioners Clarke and Ulfelder abstain. Thank you.

Each motion carried by a vote of 7-0-2. Commissioners Clarke and Ulfelder abstained from the vote. Commissioner Sargeant recused himself from the vote. Commissioners Murphy and Tanner were absent from the meeting.

JLC

**PROFFERS
THE VIEW AT TYSONS
RZ 2017-PR-010**

February 28, 2019
Revised June 14, 2019
Revised August 2, 2019
Revised August 26, 2019
Revised September 18, 2019
Revised September 20, 2019
Revised September 30, 2019
Revised October 7, 2019

Table of Contents

<u>GENERAL</u>	5
1. <u>Conceptual Development Plan/Final Development Plan.</u>	5
2. <u>Minor Modifications.</u>	5
3. <u>Future Applications.</u>	6
<u>PROPOSED DEVELOPMENT</u>	6
4. <u>Existing and Interim Structures and Uses.</u>	6
5. <u>Proposed Development.</u>	7
6. <u>Development Phasing.</u>	8
7. <u>Final Development Plans.</u>	9
8. <u>Owners' Associations.</u>	12
9. <u>Metrorail Tax District Buyout for Certain Residential Uses.</u>	12
10. <u>Fire Marshal Evaluation.</u>	13
11. <u>Festivals, Fairs or Similar Activities.</u>	13
<u>BUILDING ARCHITECTURE AND DESIGN</u>	13
12. <u>Architecture.</u>	13
13. <u>Build-to Lines.</u>	14
14. <u>Parking Structures.</u>	14
15. <u>Building Heights.</u>	14
16. <u>Activated Streetscapes and Ground Floor Elements.</u>	14 15
17. <u>Telecommunications Equipment and Mechanical Units.</u>	17
<u>BUILDING PRACTICES</u>	17
18. <u>Non-Residential Building Certifications.</u>	17

19.	Residential Building Certifications.	19
20.	Sustainability Objectives.	20
21.	Noise Attenuation.	20
22.	Sustainable Energy Practices.	21
BUILDING-SPECIFIC REQUIREMENTS		21
23.	Additional Architectural Requirements.	21
24.	Building C-3 Observation Deck.	26 27
SITE DESIGN AND AMENITIES		27
25.	Conceptual Landscape Plan.	27
26.	Final Landscape Plan.	27 28
27.	Landscape Planting Pre-Installation Meeting.	27 28
28.	Landscaping and Tree Cover.	27 28
29.	Streetscapes.	27 28
30.	Interim Conditions and Standards.	32
31.	Lighting.	33 34
STORMWATER MANAGEMENT		34 35
32.	Stormwater Management.	34 35
TRANSPORTATION		35 36
33.	Grid of Streets.	35 36
34.	Public Streets.	37 38
35.	Private Streets.	41 42
36.	Additional Transportation Improvements.	42 43
37.	Intersection Signalization.	42 43
38.	Joint Maintenance and Reciprocal Easement Agreements.	44 45
39.	Tysons Grid of Streets Fund.	44 45
40.	Tysons-wide Transportation Contributions – Table 7 Improvements.	45 46
41.	Leesburg Pike (Route 7) Improvement.	45 46
42.	Construction Management Plans.	45 46
PEDESTRIAN AND BICYCLE IMPROVEMENTS		46 47
43.	Bicycle Storage Facilities.	46 47
44.	Marked Crosswalks.	46 47
PARKING		46 47
45.	Parking.	46 47

46.	<u>Phasing of Parking.</u>	<u>4647</u>
47.	<u>Below-Grade Parking.</u>	<u>4647</u>
48.	<u>Parking Stipulations.</u>	<u>4748</u>
49.	<u>Future Parking Revisions.</u>	<u>4748</u>
<u>TRANSPORTATION DEMAND MANAGEMENT</u>		<u>4748</u>
50.	<u>Transportation Demand Management Association.</u>	<u>4748</u>
51.	<u>Transportation Demand Management.</u>	<u>4849</u>
52.	<u>Transportation Demand Management for Retail/Hotel Uses.</u>	<u>5556</u>
<u>PUBLIC TRANSPORTATION</u>		<u>5657</u>
53.	<u>Bus Shelters.</u>	<u>5657</u>
54.	<u>Route 7 Enhanced Bus Shelters.</u>	<u>5758</u>
55.	<u>Tyco Road Bus Stop and Shelter.</u>	<u>5758</u>
56.	<u>Metrorail Station Kiss and Ride.</u>	<u>5758</u>
<u>PARKS AND RECREATIONAL FACILITIES</u>		<u>5859</u>
57.	<u>Publicly Accessible Parks and Recreational Facilities.</u>	<u>5859</u>
58.	<u>Private Amenities and Recreational Facilities for Residential Uses.</u>	<u>6364</u>
59.	<u>Georgelas Part D Parks Contribution.</u>	<u>6465</u>
60.	<u>Tree Preservation and Planting Fund Contribution.</u>	<u>6465</u>
61.	<u>Athletic Field/Public Facility Contribution.</u>	<u>6465</u>
<u>DOMINION TRANSMISSION LINE UNDERGROUNDING</u>		<u>6466</u>
62.	<u>Dominion Transmission Lines.</u>	<u>6466</u>
<u>PUBLIC FACILITIES</u>		<u>6566</u>
63.	<u>Public Facilities Contribution.</u>	<u>6566</u>
64.	<u>Arts Facility.</u>	<u>6566</u>
<u>PUBLIC SCHOOLS CONTRIBUTIONS</u>		<u>6667</u>
65.	<u>Public Schools Contribution.</u>	<u>6667</u>
66.	<u>Notification of Construction.</u>	<u>6667</u>
<u>AFFORDABLE AND WORKFORCE DWELLING UNITS</u>		<u>6667</u>
67.	<u>Affordable Dwelling Units.</u>	<u>6667</u>
68.	<u>Workforce Dwelling Units.</u>	<u>6667</u>
69.	<u>Non-residential Affordable Housing Contribution.</u>	<u>6768</u>
<u>MISCELLANEOUS</u>		<u>6768</u>
70.	<u>Advance Density Credit.</u>	<u>6768</u>

<u>71. Escalation.</u>	<u>6768</u>
<u>72. Severability.</u>	<u>6768</u>
<u>73. Successors and Assigns.</u>	<u>6768</u>
<u>74. Counterparts.</u>	<u>6769</u>
<u>75. Zoning Administrator Consideration.</u>	<u>6769</u>
<u>Exhibit A: Lease Terms</u>	<u>7374</u>
<u>Exhibit B: Landlord Scope of Work</u>	<u>7778</u>
<u>Exhibit C: Sustainability Goals</u>	<u>8182</u>
<u>Exhibit D: Legally Established Uses as of September 16, 2019</u>	<u>8485</u>
<u>Exhibit E: SEA-93-P-010-2 Approval Letter</u>	<u>8586</u>
<u>Exhibit F: SE-96-P-030 Approval Letter</u>	<u>8687</u>
<u>Exhibit G: Boyd Pointe Way Phased Turnaround</u>	<u>8788</u>

THE VIEW AT TYSONS

RZ 2017-PR-010

February 28, 2019

Revised June 14, 2019

Revised August 2, 2019

Revised August 26, 2019

Revised September 18, 2019

Revised September 20, 2019

Revised September 30, 2019

Revised October 7, 2019

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 “Zoning Ordinance”), Tysons Development, LLC, both as owner and as agent for and on behalf of owners themselves, and their successors and/or assigns (collectively referred to as the “Applicant”) in this Rezoning application (“RZ”) proffer that the development of the parcels under consideration and shown on the Fairfax County Tax Maps as Tax Map 29-3 ((32)) Parcel 1 and 29-3 ((1)) Parcels 53, 53A, 57A, 57K & 57M (together, the “Property”) will be in accordance with the following conditions (the “Proffers”) if, and only if, Rezoning application RZ 2017-PR-010 (the “Application”) is granted by the Board of Supervisors of Fairfax County, Virginia (the “Board”). If granted, these Proffers will be the only proffers applicable to the Property, and supersede the proffers associated with RZ 2010-PR-014D. In the event that the Application is denied, these Proffers will be immediately null and void and of no further force or effect on the Property.

GENERAL

1. Conceptual Development Plan/Final Development Plan. Subject to the provisions of Section 18-204 of the Zoning Ordinance, the Property will be developed in substantial conformance with the Conceptual Development Plan titled “THE VIEW AT TYSONS”, prepared by VIKA Virginia, LLC, Gensler, LandDesign, and Wells+Associates, Inc., dated April 17, 2017 and revised through September ~~18~~³⁰, 2019 (the “CDP/FDP”), excluding non-proffered supplemental sheets S-1 through S-~~5~~⁶, and except as modified by these Proffers. In addition to the specific Proffers contained herein, the proffered elements of the CDP/FDP will be limited to the grid of streets, general location of access points to buildings, general location of the buildings, mix of uses, minimum and maximum building heights, minimum and maximum gross floor area (“GFA”), the amount and general location of urban park land, and general quality and character of the streetscape (the “Proffered Elements”). Other elements of the CDP/FDP may be adjusted or modified with approval of future Final Development Plans (“FDP”) or Final Development Plan Amendments (“FDPA”) in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance and these Proffers.

2. Minor Modifications. Minor modifications to the Proffered Elements may be permitted pursuant to Par. 4 of Section 16-403 of the Ordinance when necessitated by sound engineering or when necessary as part of final site design, and when such modifications are determined to be in substantial conformance with the Proffered Elements and these Proffers, as determined by the Zoning Administrator.
3. Future Applications. Any portion of the Property may be the subject of a Conceptual Development Plan (“CDP”), Conceptual Development Plan Amendment (“CPDA”), FDP, FDPA, Proffered Condition Amendment (“PCA”), Rezoning, Special Exception, Special Permit, Variance or other zoning action without the joinder and/or consent of the owners of the other land areas, provided that such application complies with Section 18-204 paragraph 5 of the Zoning Ordinance. Previously approved proffered conditions or development conditions applicable to a particular portion of the Property that are not the subject of such an application will remain in full force and effect.

PROPOSED DEVELOPMENT

4. Existing and Interim Structures and Uses.
 - a. Existing Development. The Property is developed with existing structures that include an office building, two vehicle sales, rental, and service establishments and associated office, two major vehicle repair establishments and associated office, a warehouse establishment, a Kiss and Ride, and surface parking lots, as shown on the CDP/FDP (collectively, the “Existing Development”). The Existing Development, including the uses listed in Exhibit D, may remain in use until such time as the portion of the Property on which the existing structure(s) is located is redeveloped in accordance with this Application, or as otherwise stated in these Proffers.
 - b. Uses.
 - i. 8550 Leesburg Pike. A vehicle sales, rental, and service establishment will be permitted as an interim use in the Existing Development as approved under Special Exception SEA 93-P-010-2. The interim use will be maintained in substantial conformance with the conditions approved pursuant to SEA 93-P-010-2, including specifically:
 - (1) The maximum number of employees on the site at any one time will not exceed forty-four (44), including sales and service, unless provision is made for one (1) on-site parking space for each additional employee by reducing the number of display or storage vehicles that are located on site.
 - (2) All loading, unloading, and parking of trucks or vehicles used in the transport of automobiles will occur on the Property and will not result in any disruption of traffic flow on Leesburg Pike (Route 7).
 - ii. 1572 Spring Hill Road. A vehicle rental establishment will be permitted as an interim use in the Existing Development as approved under SE-96-P-030. The interim use

will be maintained in substantial conformance with the conditions approved pursuant to SE-96-P-030.

- iii. Uses Not Permitted in PTC. Those uses within the existing structures that are legally existing at the time of approval of this Rezoning but are not uses permitted in the PTC District include two vehicle major service establishments and a warehouse establishment, as noted in Exhibit D. These uses may remain as permitted interim uses.
- iv. Uses Permitted in PTC. Any other use permitted in the PTC District (including the existing office uses on the Property) will also be permitted as an interim use in the Existing Development, subject to the use limitations of Section 6-505 and any limitations in these Proffers; provided however retail establishments-large, residential uses and hotel uses will not be permitted.
- c. Interim Parking. Any new proposed commercial off-street parking may be provided on an interim basis in existing surface lots with the approval of an FDP. With the submission of the FDP for commercial off-street parking, the Applicant will provide an operational traffic analysis (“Operational Analysis”) of the points of access to the parking lot(s) to the Fairfax County Department of Transportation (“FCDOT”) and the Virginia Department of Transportation (“VDOT”) for review and approval. Such Operational Analysis will be limited to an assessment of those driveways serving the parking lot and any proposed access controls.

5. Proposed Development.

- a. Density. The maximum Gross Floor Area (“GFA”) permitted and proposed on the Property is 2,568,440 square feet (the “Proposed Development”) as set out in the development tabulations and use mix in the CDP/FDP (the “Development Tabulations”). The Proposed Development of the Property includes six (6) buildings, which are identified on the CDP/FDP as Buildings D-1, C-1, C-2A, C-2B and C-3 and The Landing (referred to collectively herein as the “Buildings”, or individually as “Building”). The Proposed Development will replace the Existing Development over time.
- b. Density Proposed by Special Exception. The Applicant has submitted SE 2018-PR-013, which seeks approval to develop an additional 451,032 square feet of office use within Building C-3. Such additional square feet will permit Building C-3 to include up to a total of 821,054 square feet, as set out in the Development Tabulations. The Development Tabulations also confirm that, if approved, the Proposed Development permitted by the Rezoning and Special Exception will be 3,019,472 square feet, representing a 7.69 floor area ratio (“FAR”) across the Property. Any density attributable to SE 2018-PR-013 that is not used in Building C-3 will not be transferrable to other Buildings.
- c. Uses and Features in the PTC District. The Proposed Development may include all uses permitted in the PTC District, subject to limitations in Section 6-505 of the

Zoning Ordinance, the Development Tabulations and these Proffers. The primary uses on the Property will be office, hotel, residential, retail (including restaurants or other non-residential uses noted in Proffer 5.d), arts facility (such as a live theater, music hall, art exhibit, or similar use) and public amenity.

- d. Retail Uses. Retail uses as identified in the Development Tabulations on the CDP/FDP may include any non-residential use permitted in the PTC District, exclusive of office, as limited by the Section 6-505 “use limitations,” or uses accessory to the primary use. The specific type of such uses may be provided at the Applicant’s sole discretion within the proposed Building(s) as shown on the FDP or FDPA submitted for each Building and will include uses that create activated store fronts. Temporarily vacant store fronts will be animated with displays, exhibits or similar visually interesting uses to minimize the appearance of vacancy, so long as said displays and/or exhibits do not interfere with leasing efforts.
- e. Special Exceptions or Special Permits. Uses allowed by Special Exception or Special Permit in the PTC District may be authorized through a separate Special Exception or Special Permit process without the need for a PCA, CDPA or FDPA as determined by the Zoning Administrator.

6. Development Phasing.

- a. General. The Applicant will construct the grid of streets and provide pedestrian improvements, publicly-accessible parks, private amenities, public facilities and all other Proffered Elements and obligations on the Property concurrent with the development of each new Building in accordance with Sheets L9-001(C/F) through L9-005(C) of the CDP/FDP (the “Phasing Plan”) and as further described in these Proffers. In addition, interim improvements as outlined in these Proffers or shown on the CDP/FDP, or as may be determined at time of future FDP or FDPA approval, will be provided concurrent with the construction of each Building. The phases of development will proceed as depicted in the Phasing Plan, and each phase will include the streetscape dimensions and design depicted on the CDP/FDP or future FDPs. The Applicant will update the Phasing Plan with each future FDP in order to provide additional details, including illustrating existing structures and facilities, the anticipated order of future development (specifically for Buildings C-2A and C-2B), the completion of the street grid, establishment of streetscapes and pedestrian elements, construction of parks, and updated interim conditions.
- b. Phasing. The Proposed Development will be constructed in three phases, as shown on the CDP/FDP and described in these Proffers. Subject to the limitations and specifications throughout the Proffers, the proposed phasing is summarized below:
 - **Phase 1 – Construction of Buildings D-1 and C-1.** Buildings D-1 and C-1 and the associated improvements described in these Proffers and shown on the CDP/FDP will be constructed in the first phase of development (“Phase 1”) prior to the commencement of Phase 2 (as defined below).

Phase 1 will include construction of a Permanent Kiss and Ride (as defined and described in Proffer 56), an interim extension of Boyd Pointe Way (as described in Proffer 34), a portion of the below-grade garage (as described in Proffer 47), permanent and interim parks, open space, and landscape improvements (as described in Proffer 57), various traffic improvements (as discussed in Proffer 36), and modification of an existing access-point from Leesburg Pike to create a right-in only to the Private Alley (as described in Proffer 34).

- **Phase 2 – Construction of Building C-3 and The Landing.** Building C-3, The Landing and associated improvements described in these Proffers and shown on the CDP/FDP will be constructed in the second phase of development (“Phase 2”) prior to the commencement of Phase 3 (as defined below).

Phase 2 will include the extension of a full section of Boyd Pointe Way (as described in Proffer 34), completion of the entire below-grade garage (as discussed in Proffer 47), a private service street providing access to Building C-3 and The Landing (as discussed in Proffer 35), a hammerhead turnaround consisting of a half-section of future Merchant Street (if not already constructed by others, and as more particularly described in Proffer 34), the undergrounding of the Dominion Transmission Lines (as defined and described in Proffer 62), the replacement of the Existing Kiss and Ride (as defined in Proffer 56) and permanent and interim parks, open space, and landscaping improvements (as described in Proffer 57).

The Applicant will also construct off-site grid improvements subject to the limitations of these Proffers. With the construction of Building C-3, the Applicant will construct an interim or full section of Boyd Pointe Way from the Property across Tax Map # 29-3 ((1)) 57B (as more particularly described in Proffer 34) and construct an interim section of Broad Street from Spring Hill Road to Boyd Pointe Way (as more particularly described in Proffer 34).

- **Phase 3 – Construction of Buildings C-2A and C-2B.** Buildings C-2A and C-2B and the associated improvements described in these Proffers and shown on the CDP/FDP will be constructed in the third phase of development (“Phase 3”) and will result in the final condition of the Property.

Phase 3 may include an interim condition with either C-2A or C-2B constructed first. The interim condition will include the parks, landscaping, and interim transportation improvements shown on the Phasing Plan. Details of Phase 3 will be provided with the future FDP(s) for Buildings C-2A and C-2B.

- c. **Definition of “Construct”.** For purposes of these Proffers, when used in reference to road improvements or publicly-accessible park improvements, “construct” will mean that: (1) a committed road improvement is substantially complete and is available for use by the public for travel whether or not the improvement has been accepted for maintenance by VDOT; and (2) a committed publicly accessible park space improvement is substantially complete and open to use by the public whether or not

the improvement has been accepted by Fairfax County and/or the Fairfax County Park Authority (“FCPA”).

7. Final Development Plans. FDP and FDPA approvals may be requested from the Planning Commission in accordance with Section 16-402 of the Zoning Ordinance with respect to each respective building site without obtaining the consent and/or joinder of the owners of the other building sites. FDPs for the Property will be in substantial conformance with the CDP/FDP and these Proffers. FDPs approved for individual Buildings on the Property will establish the minimum and maximum GFA and dwelling units for each Building within the limits established by these Proffers and the CDP/FDP. The specific GFA and number of residential units for each Building will be established at final site plan within the range of building heights, GFA, and number of units depicted on the FDP.

The following information will be provided with each FDP not filed concurrently with this rezoning application:

- a. Tabulation. A tabulation indicating the redevelopment status of the entire Property. The tabulation will include a listing of all Buildings, along with the GFA approved on the CDP/FDP and all approved FDPs or FDPAs and approved site plans as may be applicable. The tabulation will identify the reassignment of any GFA within the Buildings (as compared with what was originally shown on the CDP/FDP) and will be updated with each subsequent FDP, FDPA, and site plan approved for the Property.
- b. Tree Canopy Calculations. A tabulation indicating the tree canopy calculations of the entire Property and demonstrating contribution towards the overall cumulative required CDP 10-year canopy credit, which will be updated with each subsequent PCA, FDP, FDPA or site plan approved for the Property.
- c. Transportation Demand Management Supplement. A copy of the previous Transportation Demand Management (“TDM”) Annual Report, if available, to determine progress toward attaining TDM goals and any planned modifications to the TDM program.
- d. Proposed Uses. A list of the proposed uses and demonstration of how such uses meet the applicable “Use Limitations” of Section 6-505 of the Zoning Ordinance.
- e. Streetscape Elements. Graphic depiction and refinement of, and adjustments to, the activated streetscape elements, as well as submission of streetscape furnishing and materials information.
- f. Build-to-Lines. Refinement of the build-to-lines based on proposed uses, location of possible outdoor dining areas, and identification of awnings and canopies that extend beyond the building zone.
- g. Utilities. Approximate location of existing and proposed utilities to serve the area of the FDP including the location of utility vaults, electrical vaults, stormwater management facilities and related access/maintenance points overlaid on the

Landscape Plan (as defined in Proffer 26). Modifications to the location of utility vaults, electrical vaults, stormwater management facilities and related access/maintenance points shown on the FDP may be made with the final site plan approval, provided such modifications are made in consultation with the Department of Planning and Development (DPD) and FCDOT.

- h. Parking. Refinement of parking spaces and associated details, including the number, location, configuration and access of parking spaces. Assuming parking ratios in early phases exceed the maximum ratios allowed, a description and/or tabulation in the statement of justification discussing how the subject FDP and preceding FDPs are achieving the recommendations of the *Tysons Urban Center Special Area Plan* (the “Comprehensive Plan”) for phased parking such that at Property build-out the maximum parking rates are not exceeded.
- i. Interim Conditions. Identification of specific proposed interim conditions, including missing pedestrian links, within the FDP area and outside the FDP area, in accordance with those generally set forth on the CDP/FDP and these Proffers.
- j. Landscape Plan. Detailed tree plans with alternative planting width details, as may be necessary.
- k. Stormwater Management Facilities. Identification of specific stormwater management facilities and access points to underground vaults and a tabulation showing the impact of the FDP implementation on the retention and/or reuse of the first inch of rainfall on the Property.
- l. Functional Drawings/Sight Distances. Functional drawings to include proposed right-of-way lines associated with existing and proposed public streets and sight distance lines at all intersections overlaid on the Landscape Plan based on existing posted and design speeds, as well as future design speeds as recommended by the *Transportation Design Standards for Tysons Corner Urban Center* dated September 13, 2011 (the “Transportation Standards”) as may be amended by the Board of Supervisors.
- m. Architectural Elements. Specific information on architectural elements as provided in these Proffers.
- n. Phasing. Identification of specific proposed phased improvements in accordance with those generally set forth on the phasing-related exhibits contained in the CDP/FDP.
- o. Garage Treatments. Proposed parking garage façade treatments.
- p. Loading/Trash/Service Area Treatment. Proposed loading/trash/service area treatments.
- q. Provisions for Bicycles. Bicycle parking, storage, and bicycle lane dimensions.

- r. Bus Shelters/Layover Bay. Details of any proposed bus shelter and layover bay locations and designs.
 - s. Parks and Recreation. Specific park details, site amenities and any substitute recreation facilities.
 - t. Residential Amenities. Specific facilities and amenities to be provided for each residential building.
 - u. Workforce Dwelling Units. For residential development, the expected location of workforce dwelling units.
8. Owners' Associations.
- a. Umbrella Owners' Association. Prior to the issuance of the first RUP or Non-RUP for the first Building constructed within the Proposed Development, the Applicant will establish an Umbrella Owners' Association (the "UOA"), whose members will consist of a representative of each owner of land and/or Buildings within the Property. The UOA will provide for applicable proffer, maintenance and replacement obligations, including but not limited to implementation of the TDM program outlined in Proffers 50-52, maintenance of private streets, sidewalks, streetscapes, publicly accessible private park areas and facilities, stormwater management facilities not maintained as part of individual Buildings, and any private utility systems.
 - b. Homeowners' and Condominium Owners' Associations. For each residential Building in which units are held for sale, the Applicant will cause either a homeowners' association or a condominium owners' association ("HOA/COA"), as applicable, to be formed for that Building. Each of these associations will also be members of the UOA.
 - c. Disclosures. UOA and HOA/COA documents (including budgets provided in any offering or sale materials) will specify the proffer, maintenance and replacement conditions and obligations set forth in these Proffers. Purchasers will be advised in writing of these proffer conditions and obligations prior to or concurrent with execution of 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 will be advised of their continuing obligation to the TDM Plan described in Proffers 50-52. All UOA and HOA/COA members will be informed of any funding obligations for the TDM program prior to executing a contract of sale and all such obligations will be included in UOA and HOA/COA documents.
 - e. UOA Expansion. Nothing in this Proffer will be construed to prohibit expansion of the UOA to include neighboring properties, at the sole election of the UOA.

9. Metrorail Tax District Buyout for Certain Residential Uses. At least sixty (60) 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 will 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 will 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.
10. Fire Marshal Evaluation. Changes from the CDP/FDP and future FDPs will be permitted in response to the review of site plans by the Fire Marshal, including adjustments to tree locations, the streetscape and perimeter building areas as necessary to allow for required emergency vehicle access, without requiring approval of a PCA, CDPA, and/or FDPA, provided such modifications are made in consultation with DPD, FCDOT, and the Urban Forestry Management Division (“UFMD”) of the Department of Public Works and Environmental Services (“DPWES”) and in substantial conformance with the intent of the CDP/FDP, future FDP(s) and these Proffers.
11. Festivals, Fairs or Similar Activities. The Applicant or its designee will be permitted to operate festivals, fairs or similar activities, including, without limitation, farmers’ markets and food vendors, on the Property, in the publicly-accessible privately-owned open spaces. The Applicant will obtain approval of a Temporary Special Permit for such activities as may be required under the Zoning Ordinance, which may include the establishment of an annual permit for continuing or seasonal events.

BUILDING ARCHITECTURE AND DESIGN

12. Architecture.
 - a. Materials and Design. The architectural treatment of all Buildings within the Proposed Development will create a sense of identity and place, with a human scale at the ground plane, through the use of unifying elements such as materials, textures, color, window treatments, decorative details, lighting and landscaping. The Buildings will be designed with high quality architecture and building materials that, at the time of approval, are typically used on the exterior of Class A office, residential, hotel and retail buildings, as illustrated by the precedential imagery in the CDP/FDP. Architectural plans, elevations, illustrations, and materials may be revised subsequent to CDP and FDP approval as a result of final architectural and engineering design, provided the quality of design remains in substantial conformance with that shown on the CDP/FDP and as set forth in these Proffers, as determined by the Department of Land Development Services (“LDS”) in consultation with DPD.
 - b. Bird-Friendly Features. In an effort to reduce bird injury and death due to in-flight collisions with buildings, the Applicant will include one or more bird-friendly design elements, as determined by the Applicant, in the architectural plans of each Building

on the Property. The bird-friendly design elements may include, but not be limited to, the use of color, texture, opacity, fritting, frosting, patterns, louvers, screens, interior window treatments, fully shielded exterior lighting, occupancy sensors on interior and exterior lights, ultraviolet materials that are visible to birds, curbing of excessive or unnecessary night-time illumination in commercial buildings, reduction of bird attracting vegetation, the use of decoys, and breaking up of glass swaths. Upon the issuance of a building permit for each Building, the provisions of this Proffer will be deemed satisfied as to such Building. Additional bird-friendly design and implementation measures for Buildings ~~C-3 and D-1~~, C-1 and C-3 are included in Proffer 23.

13. Build-to Lines. Build-to-Lines (“BTL”) have been established on the CDP/FDP to create an urban, pedestrian-oriented environment where buildings are located close to the street and pedestrian/streetscape areas are located between the buildings and the streets. In general, building façades are intended to be configured in such a way as to provide a continuous street wall along this line, but modifications to either side of the BTL will be permitted, provided such modifications are in substantial conformance with the CDP/FDP and are shown on an approved FDP. Awnings and other architectural canopies attached to the building frontage that project out from the BTLs will not extend beyond the building zone, except as may be shown on an approved FDP. At the time of FDP approval, the Applicant will identify possible locations along the street level for expanded areas for outdoor dining adjacent to cafes and restaurants and will provide appropriate building zones for such uses in keeping with the Comprehensive Plan recommendations.

14. Parking Structures. To further the goals of the Comprehensive Plan, above-grade parking structures will incorporate uses or screening at the ground level so as to provide a pleasant and attractive design/experience along the streetscape. ~~With submission of~~

a. ~~a future FDP, the podium of Building C-2A will be refined in consultation with DPD to coordinate with the existing podium of Building D-2A (approved with RZ 2010 PR 014-D) and to limit the use of metal mesh panels along Boyd Pointe Way. In addition,~~ as Garage Screening. As illustrated on the CDP/FDP, one or more of the following techniques will be employed to screen garage areas above the street level:

i. ~~a-~~ Inclusion of an active layer of occupied space;

ii. ~~b-~~ Continuation of the general façade detailing of the tower above down to the top of the storefront; or

iii. ~~c-~~ Application of a variety of architectural screening materials that may include, but not be limited to, metal framing systems with inserted panels of wire mesh, metal, glass or other materials, and precast concrete or masonry spandrels designed to minimize views into the garage spaces from street levels.

b. Building C-2A Podium. With submission of a future FDP, the podium of Building C-2A will be refined in consultation with DPD to coordinate with the podiums of Buildings D-2A and D-2B (approved with RZ 2010-PR-014-D). In addition, the C-

2A podium design will be refined to limit the use of metal mesh panels along Boyd Pointe Way and Merchant Street in favor of other high quality materials noted in paragraph a above. Where mesh paneling is used, the podium will incorporate undulating design, select areas of planting or landscaping, pedestrian balconies or other, similar design elements to soften the visual impact of metal mesh panels.

15. Building Heights. The minimum and maximum building height for each Building on the Property will be as identified in the Development Tabulations of the CDP/FDP. The final height will be measured in accordance with the provisions of the Zoning Ordinance as set forth in Sect. 2-506 of the Zoning Ordinance, exclusive of those structures that are excluded from the maximum height regulations of Sect. 2-506. Penthouses and other rooftop structures may be constructed as permitted under Sect. 2-506 of the Zoning Ordinance. The height and extent of any rooftop penthouse will be provided on the FDP for each Building, as well as any rooftop parapet, wall or fencing in excess of that permitted by the Zoning Ordinance. The final height of each Building and specific steps in building height may be further refined at the time of FDP, but will not exceed the maximum building heights or be less than the minimum building heights shown on the CDP/FDP.
16. Activated Streetscapes and Ground Floor Elements. Activated streetscapes will be provided by designing and constructing streetscapes and exterior facades of ground floor areas adjacent to streets as generally depicted on the CDP/FDP. The ground floors of all new buildings on the Property (except the parking structures and entrances associated with said buildings), will be designed and constructed with non-residential portions of ground floors having a minimum average floor to floor height of sixteen (16) feet to accommodate potential non-residential uses or residential amenity uses designed to activate the streetscape. Modifications and further refinements may be permitted with the approval of future FDPs or FDPAs. In addition, the Applicant will provide for a hierarchy of activated streetscapes as delineated on the CDP/FDP and described below:
 - a. Primary Pedestrian Corridors. Primary pedestrian corridors areas are designed to accommodate major pedestrian activity (“Primary Pedestrian Corridors”). Primary Pedestrian Corridors will generally incorporate the following elements:
 - i. The ground floors of buildings will incorporate active uses along approximately 75% of the street frontage, with functioning entry doors into such applicable uses provided with a maximum separation of 75 feet, or as illustrated on the CDP/FDP, unless a greater separation is needed to accommodate larger tenant spaces and park spaces, or as may be permitted by the Zoning Administrator.
 - ii. A minimum 50% of the area of the street front ground floor facades of such buildings will be constructed with glazed windows and doors or other transparent materials.
 - iii. Parking structures along the ground floor facades of buildings will be minimized, but where they occur, the general façade detailing of the building above will be continued to the ground plane or display windows will be provided.

- iv. Limited direct access to parking garages and loading/trash/service areas.
- b. Secondary Pedestrian Corridors. Secondary pedestrian corridors are designed to accommodate moderate activity, providing access to a variety of uses on the Property (“Secondary Pedestrian Corridors”). Secondary Pedestrian Corridors will generally incorporate the following elements:
 - i. Where the ground floors of buildings incorporate non-residential uses, functioning entry doors into such applicable uses will be provided with a maximum separation of 75 feet or less, or as illustrated on the CDP/FDP, unless a greater separation is needed to accommodate larger tenant spaces or as may be permitted by the Zoning Administrator. A minimum 40% of the area of the street front ground floor facades of such buildings will be constructed with glazed windows and doors or other transparent materials.
 - ii. In residential buildings that do not incorporate non-residential uses on part or all of the ground floors, the building design of the primary facades will incorporate, to the degree feasible, recreational and amenity spaces on the ground floor with a minimum of 25% of the ground floor façade constructed with glazed windows and/or doors or other transparent materials, and/or incorporate entries into individual dwelling units from the street level. If residential units have direct access to the streetscape from an individual unit, design features will be employed to provide interior privacy (such as having a ground floor elevation that is above the sidewalk grade).
 - iii. Parking structures along the ground floor facades of buildings should be minimized, but where they occur, the general façade detailing of the building above may be continued to the ground plane, or screening composed of architectural systems designed to restrict views into the garage spaces from street level will be applied, as described in these Proffers or illustrated on the CDP/FDP.
 - iv. Loading/trash/service areas along Secondary Pedestrian Corridors will be screened from public view through the use of roll down doors or similar treatment.
- c. Tertiary Pedestrian Corridors. Tertiary pedestrian corridors are designed to accommodate modest pedestrian activity making connections to less intense areas or through alleys (“Tertiary Pedestrian Corridors”). Tertiary Pedestrian Corridors, not located along private alleys or adjacent to parks/open space, will incorporate the following elements:
 - i. Where the ground floors of buildings incorporate non-residential uses, a minimum 10% of the area of the ground floor facades of such buildings will be constructed with glazed windows and doors or other transparent materials.
 - ii. In residential buildings that do not incorporate non-residential uses on part or all of the ground floors, efforts will be made to incorporate recreational and amenity spaces on the ground floor with appropriate transparency and/or incorporate entries into individual dwelling units from the street level. Residential units that have direct access

to the streetscape from an individual unit will utilize design features to provide interior privacy.

- iii. Parking structures along the ground floor facades of buildings should be minimized, but where they occur, the general façade detailing of the building above may be continued to the ground plane, or screening composed of architectural systems designed to restrict views into the garage spaces from street level will be applied, as described in these Proffers or illustrated on the CDP/FDP.
 - iv. Loading/trash/service areas along Tertiary Pedestrian Corridors will be screened from public view through the use of roll down doors or similar treatment.
 - d. Interior Pedestrian Circulation: Interior pedestrian corridors are designed to accommodate pedestrian activities generally through the Civic Plaza and Common Green (as both are defined in Proffer 57) to create a unified and seamless pedestrian experience within the Proposed Development, as more specifically illustrated in the CDP/FDP (“Interior Pedestrian Circulation”). Activation and ground floor elements for the Interior Pedestrian Circulation will be in substantial conformance with the CDP/FDP.
 - e. Service Street/Alley Corridors. Service street/alley corridors are designed to accommodate only modest pedestrian activity (“Service Street/Alley Corridors”). Parking structures and access to parking garages and loading/trash/service areas are encouraged along Service Street/Alley Corridors.
17. Telecommunications Equipment and Mechanical Units. Telecommunications equipment, mechanical units and all appurtenant facilities may be placed on the rooftop of any proposed Building. Any such facilities must comply with the applicable requirements of the Zoning Ordinance and be screened and/or set back sufficiently from the perimeter of the roof and penthouse such that they are generally not visible from the surrounding streets at street level when viewed from the property line of the Property. Other screening measures may be used such as screening with architectural features and/or landscaping compatible with the building façade architecture, including the facilities as part of the architecture of the Buildings, utilizing compatible colors, or employing telecommunication screening material and flush mounted antennas. Telecommunications equipment may also be architecturally integrated onto the facades of the Building where necessary to ensure on-street and/or open space coverage. Rooftop amenities such as amenity terraces, landscaping or recreation courts may also be used to screen rooftop telecommunications equipment and mechanical units. Details of such treatments will conform to the CDP/FDP and future FDP submissions and may be further refined at site plan.

BUILDING PRACTICES

18. Non-Residential Building Certifications.

- a. For each non-residential Building, the Applicant will include, as part of the building plan submission for the non-residential Building to be constructed on the Property, a

list of specific credits within the project's registered version of the U.S. Green Building Council's (the "USGBC") Leadership in Energy and Environmental Design – Core and Shell ("LEED-CS") rating system, or other LEED rating system determined to be applicable by the USGBC, or its equivalent (as determined jointly by the Applicant and Fairfax County), that the Applicant anticipates attaining. References to LEED or LEED rating systems herein will also refer to any substantially equivalent program, certification, or rating system, and all references to USGBC include the applicable equivalent agency, as determined by the Applicant and the County.

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

- b. The Applicant will designate the Chief of the Environment and Development Review Branch (the "EDRB") or its designee 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.
- c. Prior to issuance of a building permit for the Building to be constructed, the Applicant will post a "green building escrow" in the form of cash or letter(s) of credit from a financial institution acceptable to LDS, as defined in the Fairfax County Public Facilities Manual ("PFM"), in the amount of \$2.00/square foot of GFA, as shown on the approved site plan. This green building escrow will be in addition to and separate from other bond requirements and will be released upon documentation required by Paragraph a, above.
- d. At the time LEED certification is demonstrated as noted above, the escrowed funds or letters of credit pursuant to Paragraph c will be released to the Applicant.

If prior to bond extension, reduction, or final bond release for the applicable building site, whichever occurs first, the Applicant provides to EDRB documentation demonstrating that LEED-CS Silver certification for the Building has not been attained but that the Building has been determined by the LEED-AP to fall within three points of attainment of LEED-CS Silver certification, 50% of the green building escrow will be released to the Applicant; the other 50% will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If prior to bond extension, reduction or final bond release for the applicable building site, whichever occurs first, the Applicant fails to provide documentation to EDRB demonstrating attainment of LEED-CS Silver certification or the Applicant provides documentation demonstrating that the Building has fallen short of LEED-CS Silver certification by three points or more, the entirety of the escrow for that building will be

released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

In any case, if the certification is still in progress at the time of application for bond extension or reduction, the timeframe for the provision of documentation noted in this paragraph will be automatically extended to the time of the next bond extension or reduction. However, the documentation must be provided prior to the final bond release for the applicable building site.

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

Prior to issuance of a building permit for the Building to be constructed, the Applicant will provide documentation from the LEED-AP that will demonstrate that the building is anticipated to attain credits sufficient to attain LEED-CS Gold certification. Under this alternative, the Applicant is not required to provide a “green building escrow” pursuant to Paragraph c unless the Applicant fails to provide the above-referenced documentation.

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

19. Residential Building Certifications.

- a. For each residential Building, the Applicant will include, as part of the building plan submission for the residential Building to be constructed on the Property, a list of specific credits within the project’s registered version of the USGBC’s LEED New Construction (“LEED-NC”) rating system, or other LEED rating system determined to be applicable by the USBGC, or its equivalent (as determined jointly by the Applicant and Fairfax County), that the Applicant anticipates attaining. References to LEED or LEED rating systems herein will also refer to any substantially equivalent program, certification, or rating system, and all references to USGBC include the applicable equivalent agency, as determined by the Applicant and the County.

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

- b. The Applicant will designate the Chief of EDRB or its designee 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.
- c. Prior to issuance of a building permit for the Building to be constructed, the Applicant will post a "green building escrow" in the form of cash or letters of credit from a financial institution acceptable to LDS, as defined in the PFM, in the amount of \$2.00/square foot of GFA as shown on the approved site plan. This green building escrow will be in addition to and separate from other bond requirements and will be released upon documentation required by Paragraph a, above.
- d. At the time LEED-NC certification is demonstrated as noted above, the escrowed funds or letters of credit pursuant to Paragraph c will be released to the Applicant.

If prior to bond extension, reduction, or final bond release for the applicable building site, whichever occurs first, the Applicant provides to EDRB documentation demonstrating that LEED-NC certification for the Building has not been attained but that the Building has been determined by the LEED-AP to fall within three points of attainment of LEED-NC certification, 50% of the green building escrow will be released to the Applicant; the other 50% will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

If prior to bond extension, reduction or final bond release for the applicable building site, whichever occurs first, the Applicant fails to provide documentation to EDRB demonstrating attainment of LEED-NC certification or the Applicant provides documentation demonstrating that the building has fallen short of LEED-NC certification by three (3) points or more, the entirety of the escrow for that building will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

In any case, if the certification is still in progress at the time of application for bond extension or reduction, the timeframe for the provision of documentation noted in this paragraph will be automatically extended to the time of the next bond extension or reduction. However, the documentation must be provided prior to the final bond release for the applicable building site.

- e. As an alternative to the actions outlined in Paragraphs a, b and d above, the Applicant may choose in its sole discretion to pursue a certification level higher than LEED-NC. If exercising this option, the LEED-AP will provide certification statements at the time of building plan review confirming that the items on the list of specific credits will meet at least the minimum number of credits necessary to attain LEED-NC Silver certification.

Prior to issuance of a building permit for the Building to be constructed, the Applicant will provide documentation from the LEED-AP that will demonstrate that the Building is

anticipated to attain credits sufficient to attain LEED-NC Silver certification. Under this alternative, the Applicant is not required to provide a “green building escrow” pursuant to Paragraph c unless the Applicant fails to provide the above-referenced documentation.

20. Sustainability Objectives. The Applicant will include with building plan submission for each Building as part of the LEED certification process of Proffers 18 and 19 a sustainability narrative indicating how the Building meets the Comprehensive Plan objectives for sustainability, including the strategies and goals outlined in the sustainability chart attached as Exhibit C.

21. Noise Attenuation.

- a. Indoor Noise Attenuation. The Applicant has submitted to the EDRB a Transportation Noise Impact Analysis of the Property prepared by Polysonics Acoustics & Technology Consulting dated June 10, 2019. The Applicant will provide refined interior noise studies for shell analyses for Buildings D-1, C-1 and C-3 once building plans are available to determine exactly what noise attenuation measures are needed to reduce the interior DNL to no more than 45 dBA for residential buildings and 50 dBA for new office buildings. Such studies will be submitted to EDRB for approval and to LDS for information only. Failure by the EDRB to review and respond to the Applicant within 60 days of receipt of a refined noise study will be deemed approval of such study. Based on the findings of the studies, the Applicant will show noise impacted units on the site plan(s) and will provide noise attenuation measures as recommended by the findings of the refined noise study, and as approved by the EDRB.
- b. Notification of Exterior Noise Levels. The Applicant will notify potential tenants or purchasers of individual residential units with balconies, either in the lease or sales contract, that exterior noise levels may exceed 65 dBA, as may be applicable, which is the policy established by Fairfax County for outdoor recreation in residential areas impacted by high noise levels.

22. Sustainable Energy Practices. To promote efficient, renewable and sustainable energy practices, the Applicant will provide the following:

- a. Electric Vehicle Charging Infrastructure. The Applicant will provide electric vehicle recharging stations sufficient to accommodate two percent of the actual provided parking spaces in the general locations shown on the CDP/FDP, and as further refined at site plan. The site plan for each Building that includes parking spaces will show the final locations of the electrical vehicle recharging stations, and the stations will be installed prior to the first RUP or Non-RUP for the associated Building.
- b. Shared Energy. For any site plan that includes more than one Building, the Applicant will provide to the EDRB an assessment of the potential, within the area subject to the site plan, of shared energy systems, including, but not limited to combined heat and power (CHP) co-generation), micro-CHP, distributed energy resources and

district heating and/or cooling, and if a shared energy strategy will not be pursued, provide a narrative discussion regarding the reasons for this outcome.

- c. Energy and Water Data. To the extent there are master electric, gas and water meters for an entire Building, upon request by the County, the Applicant will provide to the County aggregated non-proprietary energy and water consumption data, as practicable, for the Building.

BUILDING-SPECIFIC REQUIREMENTS

23. Additional Architectural Requirements.

- a. Occupiable Height. If SE 2018-PR-013 is approved, then Building C-3 will be a maximum height of 600 feet, and the height of the last finished ceiling of the office use will be 400 feet, as shown on the CDP/FDP. The maximum occupiable height will be so depicted with the building plan submitted for approval by the Building Official, and will be reviewed by DPD to determine compliance with this Proffer.
- b. No Occupiable Floors Above 400 Feet. No occupiable floors or uses (except for the Observation Deck, as defined in Proffer 24) or bathrooms will be provided between 400 feet and 600 feet of Building C-3. No access will be provided between 400 feet and 600 feet, except as necessary for: maintenance; compliance with Federal, state or local laws or regulations; or the Observation Deck. If SE 2018-PR-013 is approved, the Observation Deck will be provided at approximately 490 feet, and will be used for observation purposes only as discussed in Proffer 24. The building plan for Building C-3 submitted for the Building Official's approval will clearly demonstrate compliance with this Proffer. The building plan will also be reviewed by DPD to determine compliance with this Proffer.
- c. Lighting. The subtle and attractive lighting of Buildings C-3 and C-1 is central to their design. As such, Buildings C-3 and C-1 will be illuminated and restricted as illustrated in the CDP/FDP, and as further defined below.
 - i. Building C-3.

- (1) External Lighting. External lights will be limited to those illustrated on the CDP/FDP, which include lighting on the fins at the base of Building C-3, lighting on the balconies, and lighting to highlight the plantings/trees on the façade. The lighting at the base and on the balconies of Building C-3 will be directed downward to reduce impacts on surrounding properties and the night sky. The façade landscaping lighting will consist of full cut-off or directionally shielded lighting fixtures that are aimed and controlled so that the directed light will be substantially confined to the illuminated tree or planting. Directional control shields will be used where necessary to limit stray light. In addition, such lighting will be shielded to protect motorists and pedestrians from glare. If required by the

Federal Aviation Administration (“FAA”), then the Applicant may install the minimum required safety lighting to comply with Federal laws or regulations.

- (2) Internal Lighting. Above 400’, Building C-3 will only be internally illuminated (unless otherwise required by the FAA to comply with Federal laws or regulations). Between 400’ and the Observation Deck, Building C-3 will be internally illuminated to complement the occupiable portions of the Building. The Observation Deck will be illuminated as described below. Lighting will be limited to avoid a “beacon effect” and will substantially conform to the precedential images and illustratives provided in the CDP/FDP.
- (3) Observation Deck Lighting. The Observation Deck (as defined in Proffer 24) will only be internally illuminated, using lighting features and styles as shown on the CDP/FDP. Lighting will be limited to the walkways, art installations, and a contemporary chandelier-style light fixture consisting of LED strings as illustrated on the CDP/FDP. The chandelier will be programmable and include a dimming function. Colors will be limited to a warm, natural light color spectrum (except for special occasions, such as national or religious holidays). Subtle variations in color (with no greater intensity) will be permitted. The Observation Deck lighting will not exceed 10 footcandles, as measured horizontally three (3) feet above grade level and representing maintained lighting levels.
- (4) Lighting Narrative. The Applicant will include a lighting narrative for review and approval by DPD with building plan submission for Building C-3, as part of the LEED certification process of Proffers 18 and/or 19, detailing how the Applicant will comply with this Proffer.

ii. Building C-1.

- (1) External Lighting. External lights will be limited to avoid impacts to neighboring properties and the night sky. Illumination will include lighting at the base of Building C-1, lighting on the balconies, and lighting to highlight the plantings/trees on the façade. The lighting at the base and on the balconies of Building C-1 will be directed downward to reduce impacts on surrounding properties and the night sky. The façade landscaping lighting will consist of full cut-off or directionally shielded lighting fixtures that are aimed and controlled so that the directed light will be substantially confined to the illuminated tree or planting. Directional control shields will be used where necessary to limit stray light. In addition, such lighting will be shielded to protect motorists and pedestrians from glare. If required by the FAA, then the Applicant may install the minimum required safety lighting to comply with Federal laws or regulations.
- (2) Internal Lighting. Above 400’, Building C-1 will only be internally illuminated (unless otherwise required by the FAA to comply with Federal laws or regulations). Lighting will be limited to avoid a “beacon effect.”

- (3) Lighting Narrative. The Applicant will include a lighting narrative for review and approval by DPD with building plan submission for Building C-1, as part of the LEED certification process of Proffers 18 and/or 19, detailing how the Applicant will comply with this Proffer.
- d. Sustainability. The Applicant is committed to innovative sustainability, and will provide the following:
- i. Building C-3.
- (1) Observation Deck Botanical Garden. The Applicant will install a botanical garden in the Observation Deck (as defined in Proffer 24), featuring educational signage and information about the plants and opportunities for coordinated art installations. ~~All plant~~ Given the unique challenges of landscaping an observation deck enclosed in glass, all plant selection and installation in the C-3 Observation Deck will be overseen by a certified arborist or landscape architect who has specific expertise in urban, greenhouse or façade landscaping. Any dead, diseased or hazard trees, as identified by the Applicant, UOA or UFMD, will be replaced. Access for maintenance of all plants will be provided via the proposed service elevators in Building C-3. At the time of site plan submission for Building C-3, the Applicant will submit an installation and maintenance plan for all proposed plants in the Observation Deck for review and approval by UFMD. Said plan will be submitted simultaneously to DPD for review to determine compliance with these Proffers. The installation and maintenance plan will detail the following:
- (a) Plant selection and a narrative demonstrating the proposed theme and design concepts of the botanical garden, as well as educational opportunities organized around the theme;
 - (b) Soil depth and type based on final plant selection;
 - (c) Irrigation method for all proposed plants, including, to the extent feasible, rainwater harvesting and re-use;
 - (d) Adequacy of light in the Observation Deck for all proposed plant types;
 - (e) Frequency of landscaping inspection and maintenance schedule;
 - (f) Replacement of dead, diseased or hazard plants; and
 - (g) Contact information for the certified arborist or landscape architect who will oversee the Observation Deck planting.
- (2) Façade Landscaping. ~~All façade~~ Given the unique challenges of urban landscaping ~~for,~~ all plant selection and installation on the Building C-3 façade will be overseen by a certified arborist or landscape architect who has specific expertise in urban, greenhouse or façade landscaping. Dead, diseased or hazard plants, as identified by the Applicant, UOA or UFMD, will be replaced. Access for maintenance of all

proposed plants will be provided via the service elevators and directly from adjacent terraces. At the time of site plan submission for Building C-3, the Applicant will submit an installation and maintenance plan for all proposed plants located on the façade of Building C-3 for review and approval by UFMD. Said plan will be submitted simultaneously to DPD for review to determine compliance with these Proffers. The installation and maintenance plan will detail the following:

- (a) Plant selection based on the unique environmental considerations presented by façade landscaping;
- (b) ~~(a)~~ Conformance with the CDP/FDP soil volume and depth illustrations;
- (c) ~~(b)~~ Irrigation method for all proposed plants, including, to the extent feasible, rainwater harvesting and re-use;
- (d) ~~(c)~~ Method of securing trees to the structure, as illustrated in the CDP/FDP;
- (e) ~~(d)~~ Method of determining the final height of the parapet for the proposed planters;
- (f) ~~(e)~~ Frequency of tree inspection and maintenance schedule;
- (g) ~~(f)~~ Replacement of dead, diseased or hazard plants; and
- (h) ~~(g)~~ Contact information for the certified arborist or landscape architect who ~~is overseeing the Observation Deck~~ will oversee the Building C-3 façade landscaping.

- ii. Building C-1 Façade Landscaping. ~~All façade~~ Given the unique challenges of urban landscaping for, all plant selection and installation on the Building C-1 façade will be overseen by a certified arborist or landscape architect who has specific expertise in urban, greenhouse or façade landscaping. Dead, diseased or hazard plants, as identified by the Applicant, UOA or UFMD, will be replaced. Access for maintenance of all proposed plants will be provided via the service elevators and directly from adjacent terraces. At the time of site plan submission for Building C-1, the Applicant will submit an installation and maintenance plan for all proposed plants located on the façade of Building C-1 for review and approval by UFMD. Said plan will be submitted simultaneously to DPD for review to determine compliance with these Proffers. The installation and maintenance plan will detail the following:

- (1) Plant selection based on the unique environmental considerations presented by façade landscaping;
- (2) ~~(1)~~ Conformance with the CDP/FDP soil volume and depth illustrations;

~~(3) (2)~~ Irrigation method for all proposed plants, including, to the extent feasible, rainwater harvesting and re-use;

~~(4) (3)~~ Method of securing trees to the structure, as illustrated in the CDP/FDP;

~~(5) (4)~~ Method of determining the final height of the parapet for the proposed planters;

~~(6) (5)~~ Frequency of tree inspection and maintenance schedule;

~~(7) (6)~~ Replacement of dead, diseased or hazard plants; and

~~(8) (7)~~ Contact information for the certified arborist or landscape architect who ~~is overseeing the Observation Deck~~ will oversee the Building C-1 façade landscaping.

- iii. Building D-1 Façade Landscaping. ~~All façade~~ Given the unique challenges of urban landscaping for, all plant selection and installation on the Building D-1 façade will be overseen by a certified arborist or landscape architect who has specific expertise in urban, greenhouse or façade landscaping. Dead, diseased or hazard plants, as identified by the Applicant, UOA or UFMD, will be replaced. Access for maintenance of all proposed plants will be provided via the service elevators and directly from adjacent terraces. At the time of site plan submission for Building D-1, the Applicant will submit an installation and maintenance plan for all proposed plants located on the façade of Building D-1 for review and approval by UFMD. Said plan will be submitted simultaneously to DPD for review to determine compliance with these Proffers. The installation and maintenance plan will detail the following:

(1) Plant selection based on the unique environmental considerations presented by façade landscaping;

~~(2) (1)~~ Conformance with the CDP/FDP soil volume and depth illustrations;

~~(3) (2)~~ Irrigation method for all proposed plants, including, to the extent feasible, rainwater harvesting and re-use;

~~(4) (3)~~ Method of securing trees to the structure, as illustrated in the CDP/FDP;

~~(5) (4)~~ Method of determining the final height of the parapet for the proposed planters;

~~(6) (5)~~ Frequency of tree inspection and maintenance schedule;

~~(7) (6)~~ Replacement of dead, diseased or hazard plants; and

~~(8) (7)~~ Contact information for the certified arborist or landscape architect who ~~is overseeing the Observation Deck~~ will oversee the Building D-1 façade landscaping.

iv. The Landing Green Roof. To soften the views from adjacent buildings looking down on its roof, The Landing will incorporate a green roof as depicted on the CDP/FDP. The details of said green roof will be refined at the time of final site plan for The Landing.

e. Additional Bird-Friendly Features. In addition to the bird-friendly design elements required for all Buildings in the Proposed Development pursuant to Proffer 12.b, Buildings D-1, C-1 and C-3 will incorporate enhanced bird-friendly features as follows:

i. ~~e. Building C-3 and C-1 Additional Bird-Friendly Features~~ Buildings C-1 and C-3. In an effort to reduce bird injury and death due to in-flight collisions with Buildings C-3~~1~~ and C-1~~3~~, the Applicant will install glass on the facades in select and appropriate areas that incorporates fritting, silk-screening and/or ultraviolet coatings visible to birds to help break up the reflectivity of the glass. Additional bird-friendly strategies, ~~as determined by the Applicant,~~ will be included, such as fully-shielded exterior lighting, occupancy sensors on exterior lights at the terraces, and/or occupancy sensors for interior lights. ~~Specifically,~~

ii. ~~the glass~~ Façade Landscaping. Due to the unique visibility issues associated with façade landscaping, glass that is proposed behind the landscaped areas on the ~~façade~~ facades of Buildings D-1, C-1 and C-3 will ~~be designed with~~ include added frit ~~that will~~ (or other appropriate measures) designed to allow birds to see the ~~façade~~ clearly. The remainder of the façades will incorporate either clear glass, areas of ultraviolet reflective coatings visible to birds, or select areas of fritting to help deter collisions. Said features will be included in the architectural plans of Buildings C-3 and C-1. glass behind the vegetation.

iii. DPD Review. These additional bird-protective features will be included in the architectural plans of Buildings D-1, C-1 and C-3 and will be submitted to DPD for review and comment prior to issuance of building permits.

iv. Completion. Upon the issuance of building permits for ~~Buildings C-3 and C-1,~~ respectively the relevant Building, the provisions of this Proffer will be deemed satisfied as to that Building.

24. Building C-3 Observation Deck. Provided SE 2018-PR-013 is approved, the Applicant will construct a publicly-accessible observation deck at the top of Building C-3, providing interior features similar in quality to those depicted on the CDP/FDP (the “Observation Deck”). The Observation Deck will be constructed with Building C-3 and open to the public at the time of issuance of the first RUP or Non-RUP for Building C-3. The Observation Deck’s hours of

operations and maintenance will be controlled by the Applicant or the UOA, in conformance with these Proffers.

- a. Hours of Operation. The Observation Deck will be open to the public for six hours per day (between 10AM and 10PM), seven days per week.
- b. Features. The Observation Deck will include interior features similar in quality to those shown on the CDP/FDP. The Observation Deck will include a botanical garden, landscaped walkway, a chandelier-style light feature, sculpture or other artistic features, pathway lighting and wayfinding, as necessary.
- c. No events. The Observation Deck will be open for observation only. No events will be scheduled for the public or tenants, and only the minimum necessary accommodations will be provided pursuant to the ADA, the Fire Marshal, the Virginia Building Code, or other relevant Federal, state or local law or ordinance.
- d. Access. As shown on the CDP/FDP, the Applicant will install elevators that access the Observation Deck, as well as all access and accommodations required by the ADA, the Fire Marshal, or other relevant Federal, state or local law or ordinance.
- e. Lighting and Bird Friendly Design. All lighting for the Observation Deck will conform to the requirements of Proffers 23.c and 31. The glass will incorporate bird-friendly design elements in conformance with Proffer 23.e.
- f. Public Bathrooms. Public bathrooms for those using the Observation Deck will be provided within the 400' occupiable area of Building C-3.
- g. Office Special Exception Approval. In the event SE 2018-PR-013 is not approved, the Applicant's obligation to construct the Observation Deck will be null and void.

SITE DESIGN AND AMENITIES

25. Conceptual Landscape Plan. The CDP/FDP includes a conceptual landscape plan for the Property consisting of an overall plan and details regarding streetscapes, plazas, publicly accessible park areas including courtyards and private amenity areas (the "Conceptual Landscape Plan"). As part of each future FDP submission, landscape plans will be provided in substantial conformance with the Conceptual Landscape Plan, with adjustments permitted so long as the quantity and quality of the landscaping provided and the function of the space remains consistent with the Conceptual Landscape Plan, as determined by the Planning Commission during FDP review.
26. Final Landscape Plan. As part of the first and all subsequent site plan submissions for the Proposed Development, the Applicant will submit to the UFMD of DPWES for review and approval of a detailed landscape plan (each a "Final Landscape Plan") that is in substantial conformance with the quantity and quality of plantings and landscaping materials shown on the approved FDP. These submissions will include, among other things, irrigation information, tree canopy calculations, and design details for tree wells and other similar

planting areas on structures and along streets. These details will include the composition of planting materials, methods for providing suspended pavement over tree root zones to prevent soil compaction, and methods for ensuring the viability of plantings on structures and along streets. Adjustments to the type and location of plantings will be permitted to avoid conflicts with existing utilities and other site engineering considerations.

27. Landscape Planting Pre-Installation Meeting. Prior to installation of any plants to meet the requirements of the approved landscape planting plan, the Applicant will coordinate a pre-installation meeting on the site with the landscape contractor and UFMD staff. Any proposed changes to planting locations, tree/shrub planting sizes, and species substitutions shown on the approved plan will be provided to UFMD for review and approval. Planting will not take place prior to approval by UFMD. The installation of plants not approved by UFMD may require submission of a revision to the landscape plan or removal and replacement with approved trees/shrubs prior to bond release, so long as said plants are in substantial conformance with the CDP/FDP.

28. Landscaping and Tree Cover. Landscaping and tree cover requirements will be provided in accordance with Article 13 of the Zoning Ordinance. Landscaping may be modified with future FDPs, FDPAs, and final engineered site plans, but the quantities, level of quality, and general character will remain generally consistent with that shown on the CDP/FDP and as set forth in these Proffers.

29. Streetscapes. Streetscapes will be installed throughout the Property as generally illustrated on the CDP/FDP. Streetscape elements will include a landscaped amenity panel located immediately behind the face of curb; a clear pedestrian sidewalk adjacent to the landscape amenity panel; and a building zone between the pedestrian sidewalk and the face of the building that is designed to allow access to the building, additional landscaping adjacent to residential uses or storefront browsing, outdoor display, outdoor dining, and similar uses adjacent to retail/service uses. Streetscape elements may be adjusted at the time of future FDP approval, provided the quality and dimensions of the streetscapes are in substantial conformance with that shown on the CDP/FDP.

a. Street Trees. Tree planting sites are set forth on the CDP/FDP, subject to revision as may be approved on future FDPs or at site plan review by UFMD. Where minimum planting widths of eight (8) feet cannot be provided, structural cell technology or other measures approved by UFMD at the time of site plan review will be used to satisfy the following specifications for all planting sites, with variations permitted to

accommodate utilities and other site constraints without the need for a PCA, CDPA or FDPA:

- i. A minimum of six (6) feet open surface width and thirty-six (36) square feet open surface area for Category III and Category IV trees, with the tree located in the center of the open area, with reasonable allowances made to avoid conflicts with utilities and other site conditions or requirements;
- ii. A minimum rooting area of eight (8) feet wide (may be achieved with techniques to provide un-compacted soil below hardscape areas within the pedestrian realm), with no barrier to root growth within four feet of the base of the tree;
- iii. A minimum soil depth of four (4) feet as measured to the willow-most point of the tree pit as more specifically depicted in the tree planting details found on the CDP/FDP;
- iv. Soil volume for Category III and Category IV trees (as defined in Table 12.19 of the PFM) will be 700 cubic feet per tree for single trees. However, in the event that the 700 cubic feet of soil volume cannot be met, less volume may be provided per UFMD review and approval;
- v. Soil specifications in planting sites will be provided in the planting notes to be included in all site plan submissions;
- vi. All shade trees will be a minimum of three (3) inches in caliper at the time of planting; all flowering trees will be a minimum of two (2) inch caliper at the time of planting; and all new evergreen trees will be a minimum of eight (8) feet in height at the time of planting;
- vii. Tree zones may be installed with a fully automatic, drip irrigation system;
- viii. It is expected that street trees will have to be planted within existing utility easements, and the Applicant will replace any street trees that are removed to facilitate repairs of utilities in these easements;
- ix. Street trees may be planted along the Private Service Street (as defined in Proffer 33) in consultation with UFMD and DPD. Due to the constrained width of the Private Service Street and potential utility easements, it is anticipated that the Private Service Street tree planter pits layout (including width, length and depth) may not meet typical UFMD tree pit details. However, any tree not meeting these requirements will not be included in tree canopy calculations for the project. The final location and details of Private Service Street trees, if applicable, will be provided at site plan submission; and
- x. Modifications to tree planting sites may be permitted where necessary to accommodate existing utilities on the Property. Alternative tree planting sites, if applicable, will be shown on the site plan for review and approval by UFMD.

- b. Urban Bio-retention Tree Pit Requirements. Urban bio-retention features that will be used for tree planting will meet the following minimum specifications, unless otherwise approved by UFMD at the time of site plan review:
- i. The bio-retention soil media and installation will be compliant with the Virginia Department of Environmental Quality (“DEQ”) Stormwater Management Handbook at the time of site plan for trees and shrub areas. Each component will be defined and specified at time of first and all subsequent site plan submissions. A complete narrative for testing, monitoring, reporting and installation of the soil mixture will also be included on the site plan.
 - ii. Minimum soil volumes for Category III and IV trees as specified in Proffer 29.~~a~~.~~iv~~ [a.iv](#) will be required. A minimum depth for urban bio-retention tree pits will be four (4) feet and maintained at a minimum distance of four (4) feet in all directions centered on the rootball of the tree.
 - iii. A permanent automatic irrigation system located within designated bio-retention tree pits may be installed if allowed by the DEQ at the time of site plan submission. Final tree and shrub species selection for permanently non-irrigated areas will consider the growing conditions for each bio-retention tree pit. Temporary irrigation will be proposed during the establishment period for the specified trees.
 - iv. A detailed maintenance narrative covering the establishment period for the specified trees, as outlined in DCR Specification No. 9, section 8 will be provided on the site plan.
- c. Non-Invasive Plant Materials. Invasive species, as defined by the Fairfax County PFM, will not be used on the Property.
- d. Utility Locations. Utilities, including but not limited to water, sanitary sewer and storm sewer utility lines, will be installed within the street network to the maximum extent feasible as determined by DPWES or will be placed in locations that do not conflict with the landscaped open space areas and streetscape elements shown on the CDP/FDP and/or subsequent FDPs as determined by DPWES. If there is no other option, utilities may be placed within open space or streetscape areas provided that the long-term health of trees and other plantings is ensured by the provision of sufficient soil volume as shown on the CDP/FDP, as determined by the UFMD. A conceptual utility plan will be overlaid on the landscape plan submitted in the FDP. Adjustments to the type and location of plantings and the use of raised planters will be permitted to avoid conflicts with utilities and other site engineering considerations. If at the time of site plan approval, street trees shown on the FDP are in conflict with new proposed utilities and alternative locations for the street trees satisfactory to UFMD cannot be accommodated, the Applicant will modify the location of utilities to ensure that the trees shown on the FDP can be provided.

Maintenance access points to stormwater management facilities and electric vaults beneath the streetscape will be located outside of the clear pedestrian walkway zone of

the streetscape to the extent feasible. If the access points must be located in the walkway zone, they will be designed as a lift out panel with the same paving materials as the walkway, be flush with the walkway and meet the Americans with Disabilities Act (“ADA”) accessibility requirements. These maintenance points will be shown on each FDP.

- e. Sight Distance Considerations. If determined at the time of site plan review that street tree locations conflict with sight distance requirements, the Applicant will investigate whether limited pruning or minor adjustments to the locations of street trees will alleviate sight distance concerns. In the event VDOT does not approve the tree locations even after the adjustments anticipated above, the Applicant will be permitted to relocate or delete the affected street tree without the need for confirmation from DPD, subject to approval by UFMD. If a deleted street tree results in a tree canopy below 10% on the Property, the street tree will be accommodated in another location on the Property, as may be approved by DPD in consultation with UFMD.
- f. Streetscape Furnishings and Materials. Unified and high quality streetscape materials will be provided within the public realm and may include, but will not be limited to, unit pavers, seat walls, tree space edging, lighting, traffic signal poles, benches, trash receptacles and other hardscape elements. All future FDPs will include general product information and approximate locations of furnishings and materials to be located in the streetscape between the building face and the curb and in other public realm open spaces. Materials, furnishings, and lighting will be compatible with the Tysons Urban Design Guidelines and will be coordinated with any streetscape design efforts put forth by the Tysons Partnership, but will not be subject to approval by the Tysons Partnership.
- g. Signage and Wayfinding. The Applicant will provide signage as permitted by Article 12 of the Zoning Ordinance, or as approved through a Comprehensive Sign Plan (“CSP”), at which time signage will be governed by such approval. The existing approved signage on the Property may remain in place until and unless it is supplanted by a new CSP. The placement of all signage on existing/planned public streets will be coordinated with VDOT for review and approval. Wayfinding signage and elements may be provided as part of a larger CSP for the Tysons area. Such wayfinding signage will be coordinated with the Tysons Partnership to facilitate a consistent wayfinding and signage system throughout the district, but will not be subject to approval by Tysons Partnership. Wayfinding will provide direction to locations of prominent attractions, parks (including the above-grade parks on the Property, and in coordination with FCPA), cultural arts destinations, and other public amenities.
- h. Maintenance. The Applicant, or the UOA once established, will maintain in good repair and replace in kind, as needed, all pedestrian realm elements within the Proposed Development, to include any maintenance required to maintain ADA compliance. Elements to be maintained within the pedestrian realm include all areas that are between the curb and the back of the building zone whether located within the public right-of-way or on private land with public access easements (the

“Pedestrian Realm”). For any publicly-owned portions of the Pedestrian Realm, the Applicant will enter into the appropriate agreement, in a form approved by the Office of the County Attorney, with the County (or other applicable public entity) to permit the Applicant to perform such maintenance. Neither the Applicant nor the UOA will 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 the direct authority of the Applicant or the UOA. An alternative maintenance agreement, such as a Business Improvement District, may be entered into upon written agreement of both the County and the Applicant or the UOA without the requirement for a PCA. Maintenance commitments within the Pedestrian Realm will include but are not limited to:

- i. All plantings, including trees, shrubs, perennials, and annuals;
- ii. All associated irrigation elements;
- iii. All hard surfaces, including but not limited to paving and retaining walls;
- iv. All streetscape furnishings including trash and recycling receptacles, benches and bike racks and non-standard structures;
- v. All lighting fixtures, brackets and poles;
- vi. All special drainage features, such as Low Impact Development facilities;
- vii. Snow removal;
- viii. Trash, recycling and litter removal;
- ix. Leaf removal;
- x. Any sign posts, traffic signal poles, pedestrian signal poles, mast arms, signal heads and control boxes that are not VDOT standard devices;
- xi. All urban park amenities in the development including horticultural care, maintenance of all water features, irrigation, lighting, furnishings, paving and art; and
- xii. As determined at the time of FDP approval, where the final streetscape design cannot be fully implemented during certain phases of development, the Applicant will provide interim streetscape improvements as described in Proffer 30.

30. Interim Conditions and Standards. Due to the size of the Proposed Development and the time anticipated for completion, phasing may result in various interim conditions on the Property as shown on the CDP/FDP. The anticipated interim conditions are identified on the Phasing Sheets and supplemented by these Proffers. At the time of each future FDP approval, the Applicant will identify the specific proposed interim conditions, if any, both within and outside the FDP area and will ensure such conditions provide reasonable pedestrian connections, vehicular circulation, temporary landscaping and streetscapes, public park

treatments, and screening/treatment of exposed or partially complete above-grade parking structures.

- a. If an interim condition or phase includes partial demolition of an existing structure, the FDP for that phase will include all or a portion of the existing structure, as applicable, to ensure revisions to parking and on-site circulation for the existing structure are adequate.
- b. If interim improvements not located within the FDP area are contemplated with any future FDP, such FDP will specify how and when such improvements will be constructed.
- c. Interim conditions will comply with the following general standards, provided that the improvements are acceptable to Fairfax County, VDOT and utility companies as may be applicable:
 - i. Construction of interim sidewalks a minimum of five (5) feet in width and installation of interim street lights along the interim sidewalks, as needed to ensure a safe, convenient pedestrian path to the Spring Hill Metro Pavilion;
 - ii. Installation of street trees, with a minimum size of two (2) inch caliper, approximately every fifty (50) feet, to the extent feasible as determined by UFMD based on existing conditions and utility easements. Interim street tree planting will not be required to meet the minimum planting width/area standard for permanent street trees;
 - iii. Provision of interim designs for publicly accessible open spaces will include interim landscaping, pedestrian pathways, seating, signage and recreational facilities as determined at FDP. Interim public open space areas will be clearly signed as an interim or temporary facility;
 - iv. Provision of peripheral and interior parking lot landscaping in accordance with Article 13-203 of the Zoning Ordinance for interim surface parking lots, unless waived or modified at the time of FDP or site plan approval;
 - v. Application of a screening system (which may be removable) where above-grade garage structures that will be interior when later phases are complete are exposed at phase lines. This screening system will be applied to all levels above grade and will be composed of an architecturally designed system that may reflect basic architectural lines of the permanent facades, and that will partially obscure the garage view from outside the garage until the next phase is constructed. The specific screening system to be utilized for each building will be determined at the time of FDP approval and graphically depicted on the FDP. Alternate temporary garage screening and the use of banners and/or temporary art works as a part of the screening system may be approved in conjunction with FDP approval;

- vi. Grading and seeding of areas on the Property where existing improvements are removed to accommodate a portion of the Proposed Development, and are not scheduled to commence construction within twelve (12) months; and
- vii. Where appropriate, provision of attractive temporary construction fencing, which may include public art, signage or wayfinding elements. Signage will be in keeping with Article 12 of the Zoning Ordinance or alternatively in accordance with an approved CSP.

31. Lighting. All streetscape lighting will be energy efficient. All on-site, outdoor and parking garage lighting will not exceed that permitted under the Outdoor Lighting Standards of Section 14-900 of the Zoning Ordinance, as may be amended. The same or similar street lights will be used consistently throughout the Property and be selected from those listed in the Tysons Urban Design Guidelines, or other lights as may be approved by DPWES and DPD.

- a. Architectural Feature Lighting. All architectural features above 400 feet on the top of the Buildings will be internally illuminated and limited to avoid a “beacon effect”, as illustrated on the CDP/FDP. In addition, architectural features above 400 feet will incorporate bird-friendly design elements noted in Proffer 12.b to mitigate the effects of lighting on the visibility of the glass. The Applicant will not install neon, flood, spot, strobe or other, similar exterior lighting other than permitted signage as part of an approved CSP. All architectural feature lighting will conform to Proffer 31, and additional lighting requirements for ~~Building~~Buildings C-1 and C-3 are included in Proffer 23.
- b. Construction Lighting. During construction, the Applicant’s general contractor will implement night and construction light mitigation measures such as providing appropriate light bulb shielding along the sides of the Buildings to mitigate the impact of such lighting on adjacent residences. The Applicant will also explore utilization of timers and/or motion sensors during construction of these Buildings so that its temporary construction lighting might be turned off or reduced in intensity during nonworking periods. In implementing this Proffer, the Applicant and its contractors will reduce glare from superstructure lighting required by the Occupational Safety and Health Administration (“OSHA”), the Virginia Occupational Safety and Health Administration (“VOSHA”), the Virginia Uniform Statewide Building Code (“VUSBC”) and local ordinance to the extent possible without violating aforementioned laws, regulations or policies.
- c. Parking Structure Lighting. The Applicant will utilize full cut-off, low intensity, or recessed lighting directionally shielded to mitigate the impact on adjacent residences for any lighting along the perimeter of an above-ground garage not constructed of solid walls. Such lighting will comply with the requirements of Article 14 of the Zoning Ordinance.

STORMWATER MANAGEMENT

32. Stormwater Management.

- a. General. Stormwater Management (“SWM”) measures for the Property will be designed to protect receiving waters downstream of Tysons by reducing runoff from impervious surfaces using a progressive approach. This progressive approach will retain on-site and/or reuse the first inch of rainfall. Proposed SWM and Best Management Practice (“BMP”) facilities will follow a tiered approach as identified by the County that may include, but are not limited to, detention vaults, re-use cisterns, runoff reducing and other innovative BMPs, such as various forms of bioretention and vegetated roofs. Plans submitted subsequent to this rezoning will identify the use of these Low Impact Development (“LID”) techniques that will aid in runoff volume reduction throughout the site.

Additionally, the SWM facilities will be designed not only to match the pre-developed (existing) peak release rates, but also strive to reduce the pre-developed (existing) runoff volumes and reduce pollutant loads in stormwater runoff as contemplated within the stormwater management-related credits of the project’s registered version of the U.S. Green Building Council’s applicable LEED rating system (e.g., for LEED V4.1, the Rainwater Management credit); understanding the Applicant may, at its own discretion, opt into using the most current LEED standards. The above-noted SWM facilities will be designed, to the maximum extent practicable, to meet the requirements of the stormwater management-related credits of the project’s registered version (or the most current version of the U.S. Green Building Council’s applicable LEED rating system as allowed above).

- b. Future FDPs. With all future FDPs, the Applicant will provide calculations showing the proposed stormwater runoff volume reductions and will work cooperatively with LDS and DPD to ensure that the SWM measures that would be sufficient to meet the requirements of the aforementioned LEED credits will be provided and that the first inch of rainfall will be retained or reused to the maximum extent practicable. Supporting information will be included that is of sufficient detail, subject to LDS’s determination in coordination with EDRB, to demonstrate the viability of the proposed SWM. This information will include the following:
 - i. For any BMP involving infiltration of water into the ground, soil testing information documenting that the soil will be able to support the proposed infiltration measure(s); and
 - ii. For any measure involving storage and reuse of stormwater runoff, documentation supporting assumed levels of water usage.
- c. Detention and Release. Extended detention facilities and extended release techniques may be used to augment the proposed peak rate reductions. Any future FDP will include the location and preliminary design of the SWM facilities including the access

points to underground vaults. Access points will be located outside of the landscape amenity panel and sidewalk zone of the streetscape, wherever possible.

- d. Refined Calculations. With each subsequent site plan, the Applicant will provide refined calculations illustrating general conformance with the proposed volume reductions shown on the CDP/FDP. The specific SWM facilities will be determined at the time of site plan, and as may be approved by the LDS. Moreover, at the time of final site plan, in consultation with LDS, the Applicant will study additional BMPs to treat the hardscape surfaces within the Civic Plaza and Common Green (as those terms are defined in Proffer ~~6057~~), and will treat those surfaces with a BMP if practicable, and as approved by LDS. While it is anticipated that retaining and/or reusing the first inch of rainfall and meeting the requirements of the aforementioned LEED credits will be confirmed at site plan by utilizing the proposed retention credits identified by the County as part of its stormwater spreadsheet, the Applicant reserves the right to utilize any combination of LID measures (existing and future) subject to the review and approval of LDS. Similarly, if all other County suggested stormwater alternatives have been considered, but have not achieved the stated goals, the Applicant reserves the right to over-detain the runoff from a one-inch rainfall for the pre-dedication property to a release rate that mimics that of a “good” forested condition. The retained runoff volume computed by the County’s spreadsheet for determining conformance with the retention goal will be used with TR-55 methodology to determine the post-development release rate.

TRANSPORTATION

33. Grid of Streets. Subject to VDOT approval as necessary, the Applicant will construct the road improvements as generally shown on the CDP/FDP and described in this Proffer. All improvements proposed to be constructed will be designed to be in general conformance with the standards included in Attachment D (the Transportation Design Standards for Tysons Corner Urban Center) of the Memorandum of Agreement approved by the Board of Supervisors on September 13, 2011, as may be amended (the “Design Standards”), subject to modifications/waivers as may be granted. The functional classification of the streets within and abutting the Property is provided below:

Street	Classification
Leesburg Pike (Route 7)	Low Speed Boulevard (Public)
Spring Hill Road	Avenue (Public)
Tyco Road	Collector (Public)
Boyd Pointe Way	Local Street (Public)
Merchant Street	Local Street (Public)
Private Service Street	Service Street (Private)
Private Alley	Service Street (Private)

- a. Right-of-Way. The Applicant will dedicate right-of-way along the Property’s frontage for Leesburg Pike, Spring Hill Road, Tyco Road and Boyd Pointe Way (the “Public Streets”) to a point inclusive of the landscape amenity panel and the sidewalk or to such standard as may be approved on the FDP, except as modified by Proffer ~~37-a.1.a~~1.aiii in the case of Boyd Pointe Way.
- b. VDOT Approval. The Applicant will work diligently with VDOT and Fairfax County during the FDP and site plan approval processes to ensure that the Public Streets and the area of the landscape amenity panel/sidewalk can be accepted by VDOT as public streets.
- c. Dedication. For all public roads constructed on the Property, the Applicant will dedicate and convey in fee simple right-of-way including the area of the landscape amenity panel/sidewalk to the Board of Supervisors at the time of site plan approval, with the following exceptions:
 - i. If at the time of site plan approval it is determined that stormwater management facilities or other similar facilities proposed to be located beneath the landscape amenity panel/sidewalk will prevent VDOT and/or Fairfax County from accepting the landscape amenity panel/sidewalk within the right-of-way, the Applicant will provide dedication and/or vacation of existing fee simple right-of-way measuring eighteen (18) inches from the proposed face of curb line and will reserve for potential future dedication the landscape amenity panel and sidewalk areas. A temporary public access easement will be recorded over the reserved landscape amenity panel/sidewalk areas until such time as they are dedicated. This reservation area will include easements for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicant will provide easements within the amenity panel/sidewalk area for bus shelters as determined at the time of FDP or site plan. Conveyance of the amenity panel/sidewalk areas to the Board of Supervisors will occur following construction of the street and streetscape improvements and final street acceptance inspection by Fairfax County and/or VDOT subject to the stipulations in these Proffers.

Should it be determined following final street acceptance inspection that the landscape amenity panel and sidewalk areas continue to be unacceptable to VDOT and/or Fairfax County for inclusion in the right-of-way, the reservation of potential future dedication of the landscape amenity panel and sidewalk areas will be released and the

Applicant will grant a public sidewalk and utility easement, in a form acceptable to the Office of the County Attorney. This easement will allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicant will provide easements for bus shelters as determined at the time of site plan.

- ii. If at the time of site plan approval it is unclear whether stormwater management facilities or other similar facilities proposed to be located beneath the landscape amenity panel/sidewalk will be acceptable to VDOT, Dominion Energy and/or Fairfax County, the Applicant will provide dedication measuring eighteen (18) inches from the proposed face of curb line at the time of site plan approval and will reserve for potential future dedication the landscape amenity panel and sidewalk areas. A temporary public access easement in a form acceptable to the County Attorney will be recorded over the reserved landscape amenity panel/sidewalk areas until such time as such areas are dedicated. The reservation area will include easements that allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicant will provide easements for bus shelters as determined at the time of site plan. Conveyance of the amenity panel/sidewalk areas to the Board of Supervisors will occur following construction of the street and streetscape improvements and final street acceptance inspection by Fairfax County and/or VDOT subject to the stipulations in these Proffers.
- iii. Should it be determined following final street acceptance inspection that the landscape amenity panel and sidewalk areas are not acceptable to VDOT and/or the County to be included in the right-of-way, the reservation of potential future dedication of the landscape amenity panel and sidewalk areas will be released and a public sidewalk and utility easement, in a form acceptable to the County Attorney, will be granted in its place. This easement will allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicant will provide easements within any privately-owned amenity panel/sidewalk area for bus shelters identified on the CDP/FDP or any subsequent FDP, as determined at the time of site plan.

34. Public Streets.

- a. On-Site Boyd Pointe Way. The Applicant will design and construct Boyd Pointe Way across the Property as generally depicted on the CDP/FDP. It will be constructed in general accordance with the typical section depicted on the CDP/FDP as a Public Local Street 44 feet in width consisting of four (4) travel lanes (two in each direction) to accommodate either travel or parking depending on the traffic needs, as more particularly described in this Proffer.
 - i. Interim Condition. An interim condition of Boyd Pointe Way, as shown on the CDP/FDP, will be constructed in Phase 1. The interim section will be designed as a Public Local Street 44 feet in width consisting of four (4) travel lanes (two in each direction) (the “Interim Condition”), and will be shown on the first site plan for

Buildings D-1 or C-1. In order to facilitate phased acceptance of the Interim Condition of Boyd Pointe Way by VDOT pursuant to paragraph v below, subject to approval by VDOT, the Applicant will depict a turnaround in a configuration as illustrated on Exhibit G (or as otherwise approved by VDOT) on the site plan for Building C-1 or D-1, whichever is first. The Interim Condition of Boyd Pointe Way and the VDOT-required turnaround will be constructed prior to issuance of the first RUP or Non-RUP for Buildings D-1 or C-1, whichever is first.

- ii. Final Condition. The final condition of Boyd Pointe Way on the Property, as shown on the CDP/FDP, will be constructed as a Public Local Street 44 feet in width consisting of four (4) travel lanes (two in each direction) in Phase 2 (the “Final Condition”). The Final Condition will be shown on the first site plan for Building C-3 or The Landing, and will be constructed prior to issuance of the first Non-RUP for Building C-3 or The Landing, whichever is first.
- iii. Right-of-Way for Boyd Pointe Way. The Applicant will dedicate right-of-way 6.5 feet from the face of curb over the landscape panel, as depicted on the CDP/FDP. The Applicant will convey a public access easement to the County, in a form acceptable to the Office of the County Attorney, over the sidewalk on either side of Boyd Pointe Way. Said easements will become effective upon dedication of Boyd Pointe Way.
- iv. Timing of Dedication. The Interim Condition of Boyd Pointe Way will be dedicated for public street purposes at the time of first site plan approval for Building D-1 or C-1, whichever is first. The Final Condition of Boyd Pointe Way will be dedicated for public street purposes at the time of first site plan approval for Building C-3 or The Landing, whichever is first. Any portion of the turnaround required by paragraph i above that lies outside of the dedicated right-of-way for Boyd Pointe Way will be subject to public access easements ([temporary in nature, which will be vacated with the Final Condition of Boyd pointe Way](#)) and conveyed to the County in a form approved by the County Attorney’s Office prior to approval of the first site plan for Building D-1 or C-1, whichever is first.
- v. Timing of VDOT Acceptance. The Interim Condition of Boyd Pointe Way will be accepted into a public maintenance system prior to bond release for Building C-1 or D-1, whichever is first. The Final Condition of Boyd Pointe Way will be accepted into a public maintenance system prior to bond release for Building C-3 or The Landing, whichever is first. The Applicant will maintain all required documentation for VDOT street acceptance of all phased and stubbed streets and will coordinate with all responsible parties involved in the ultimate construction and facilitation of Boyd Pointe Way segments (existing/future) for final acceptance of Boyd Pointe Way into VDOT’s Secondary Street Acceptance System. Nothing in this Proffer will prevent the Applicant from constructing, dedicated or applying for public acceptance of any portion of Boyd Pointe Way in advance of the required time shown on the CDP/FDP, provided Boyd Pointe Way is shown on an approved FDP and subject to acceptance by VDOT or an equivalent government agency approved by the Zoning Administrator.

- vi. Adaire Boyd Pointe Way. The Applicant will work with neighboring owners, FCDOT and VDOT to encourage the timely dedication and VDOT acceptance of the portion of Boyd Pointe Way from Tyco Road to the western boundary of Tax Map 29-3 ((1)) 53 prior to bond release for Building D-1 or C-1, whichever is first.
- vii. Parking Lanes on Boyd Pointe Way. The Applicant will accommodate on-street parking on Boyd Pointe Way as generally shown on the CDP/FDP and as may be adjusted with site plan approval. The County and VDOT may restrict parking during peak commuting periods (generally 7:00 to 9:00 AM and 4:00 to 7:00 PM during the weekdays), in order to provide for turning movements to/from the public and/or private street network or to provide additional travel lanes. If requested by the County and/or VDOT, the Applicant will install signs restricting parking.
 - (1) Reservation of Right. The Applicant reserves the right to restrict the use of on-street parking spaces along Boyd Pointe Way prior to dedication for use as temporary or short term parking, car-sharing parking and/or similar uses, through appropriate signage or such other means as the Applicant determines appropriate. If requested by the County or VDOT, the Applicant will remove on-street parking to address street capacity needs. Prior to acceptance, the Applicant will remove any signs the County or VDOT deems necessary to remove.
 - (2) Interim Enforcement. After Boyd Pointe Way is open to the public, but before VDOT has accepted it into a public maintenance system, the Applicant or UOA will be responsible for enforcing parking restrictions during peak commuting periods (generally 7:00 to 9:00 AM and 4:00 to 7:00 PM during the weekdays). During this period, the Applicant or UOA will contract with a towing company to enforce parking restrictions. The Applicant or UOA will be responsible for installing appropriate signage to restrict parking and provide adequate notice to drivers of said restrictions.
- b. Off-Site Boyd Pointe Way. If not previously constructed by others, and subject to the stipulations below, the Applicant will design and construct Boyd Pointe Way across the contiguous Fairfax County property, Tax Map 29-3 ((1)) 57B, as generally depicted on the CDP/FDP. It will be constructed as a Public Local Street forty-four (44) feet in width consisting of four (4) travel lanes (two in each direction). It will be shown in conjunction with the site plan for Building C-3, and constructed prior to the issuance of the first Non-RUP for Building C-3.
 - i. Right-of-Way Request. Upon site plan submission for Building C-3, the Applicant will request Fairfax County to provide, at no cost to the Applicant, all necessary right-of-way and easements on the contiguous Fairfax County property, Tax Map 29-3 ((1)) 57B, sufficient to construct Boyd Pointe Way pursuant to this Proffer.
 - ii. Interim Section. In the event that the existing fire station building and associated parking remains on Tax Map 29-3 ((1)) 57B at the time of site plan submission for Building C-3, then the Applicant will construct an interim section of Boyd Pointe Way measuring 34 feet in width consisting of three (3) travel lanes (two in the west

direction, one in the east direction) as illustrated on the CDP/FDP. Said interim section will be shown in conjunction with the site plan for Building C-3, and constructed prior to issuance of the first Non-RUP for Building C-3. The Applicant's obligation to construct or otherwise pay for the final condition of Boyd Pointe Way, as described above, will be null and void.

- iii. Inability to Obtain Right-of-Way. If Fairfax County chooses not to provide the necessary right-of-way and easements to construct the off-site Boyd Pointe Way, at no cost to the Applicant, then the Applicant's obligations to construct or otherwise pay for the off-site section of Boyd Pointe Way discussed in this Proffer and the off-site section of Broad Street discussed in Proffer 34.d will be null and void. In this event, the Applicant will not be precluded by Proffers 34.~~1.b~~b and d from obtaining site plan approval or a Non-RUP for Building C-3.

c. Merchant Street.

- i. Right-of-Way Dedication. Merchant Street has been proffered to be constructed by others. Upon written request by the County, the Applicant will dedicate to the County, at no cost and within twelve (12) months of receipt of the written request, the portion of right-of-way located on the Property necessary for the full section of Merchant Street, as depicted on the CDP/FDP.
- ii. Hammerhead Turnaround. If Merchant Street has not been constructed by the time of site plan submission for The Landing, and the County has not requested the right-of-way noted above, the Applicant will construct a hammerhead turnaround consisting of a half-section of Merchant Street, as shown on the CDP/FDP, as an interim condition. Said hammerhead turnaround will be constructed prior to issuance of the first Non-RUP for The Landing.
- iii. Turnaround Extension. If the full section of Merchant Street has not been constructed by others by the time of site plan approval for Building C-2A or C-2B, whichever is first, and the County has not requested the right-of-way as noted above, then the Applicant will extend the hammerhead turnaround to provide additional interim access to Buildings C-2A and C-2B in the configuration shown on the CDP/FDP.
- iv. Temporary C-2A Access. In the event Merchant Street is constructed by others at the time of site plan submission for Building C-2A, and adjacent Building D-2B (as defined per RZ 2010-PR-014D) has not been constructed, then the Applicant may show on said site plan a temporary access drive (measuring approximately 22 feet in width, consisting of two lanes (one lane in each direction), with dimensions to be further refined at final engineering) from Merchant Street to Building C-2A, as generally depicted on the CDP/FDP.

If providing the temporary access drive, the Applicant will coordinate with the adjacent property owner(s) to obtain necessary easements or right-of-way. The temporary access drive will be constructed prior to first RUP or Non-RUP for Building C-2A. Said temporary access drive will be removed at the time of

construction of Building D-2B, when alternative access to Building C-2A will be provided.

Nothing in this Proffer will prevent the Applicant from identifying alternative means of access to Building C-2A, so long as said alternative access is shown on the site plan for Building C-2A, subject to review by FCDOT and/or VDOT, as necessary.

d. Broad Street.

i. Spring Hill to Boyd Pointe Way. If not previously constructed by others, then in conjunction with the submission of the site plan for Building C-3, the Applicant will design an interim section of Broad Street from Spring Hill Road to Boyd Pointe Way, as illustrated on the CDP/FDP. This interim section will consist of two travel lanes (one lane in either direction) measuring 22 feet in width. The Applicant will construct Broad Street prior to issuance of the first Non-RUP for Building C-3.

ii. Boyd Pointe Way to Tyco Road. The Applicant will also design the interim section of Broad Street from Boyd Pointe Way to Tyco Road, consisting of two travel lanes (one lane in either direction) measuring 22 feet in width. The final engineering plans will be delivered to FCDOT prior to issuance of the first Non-RUP for Building C-3.

e. Leesburg Pike (Route 7). Prior to issuance of the first Non-RUP for Building C-1, the Applicant will close the existing entrance to Leesburg Pike, and replace the existing entrance with a right-in only to provide access to the Private Alley and the Permanent Kiss and Ride (as defined in Proffer 56), as shown on the CDP/FDP.

35. Private Streets. The private alleys and associated streetscapes (the “Private Streets”), as shown on the CDP/FDP, will remain privately-owned and maintained, and will be designed and constructed to be generally consistent with the CDP/FDP. The Applicant will maintain in good repair and replace, as needed, the paving and other elements associated with the Private Streets, and provide for snow removal. The Private Streets will be constructed and maintained to the standards contained in the PFM and will be designed to be as consistent as possible with VDOT standards, subject to future FDP approval and PFM requirements. All improvements proposed to be constructed will be designed to be in general conformance with the standards included in Attachment D (the Transportation Design Standards for Tysons Corner Urban Center) of the Memorandum of Agreement approved by the Board of Supervisors on September 13, 2011, as may be amended (the “Design Standards”), subject to modifications/waivers as may be granted. Deeds of public access easements in a form acceptable to the Office of the County Attorney will be granted over the private streets.

36. Additional Transportation Improvements. The Applicant will commit to the following safety improvements as may be necessary, as more fully described below:

a. Route 7/Tyco Intersection Improvements. Widening of the southbound right turn lane at the Route 7/Tyco Intersection has been proffered to be completed by others. In the

event the improvement has not been completed by others at the time of first site plan submission for Building D-1 or C-1, then the Applicant will provide the following:

- i. Pro-Rata Contribution. At the time of issuance of the first RUP or Non-RUP for each Building, the Applicant will contribute to DPWES its pro rata share of \$0.18 per square foot of new GFA for which the RUP or Non-RUP is requested. Said funds will be used by others to design, secure right-of-way and widen the right-turn lane on the southbound approach of Tyco Road at the Route 7/Tyco Road intersection.
- ii. Interim Connection. In order to mitigate the Proposed Development's traffic impacts on the existing Route 7/Tyco Road south-bound right turn lane, the Applicant will provide an interim connection during Phase 1, as shown on the Phasing Plan. Said interim connection will consist of two lanes (one lane in either direction) measuring a total of twenty-four (24) feet in width. The interim section of Boyd Pointe Way will connect to the existing Kiss and Ride access road, providing a route through the Property from Boyd Pointe Way to Spring Hill Road. Said interim connection will be shown on the first site plan for Building D-1 or C-1, and constructed prior to issuance of the first RUP or Non-RUP for Building D-1 or C-1. The Applicant will convey a deed of public access easement over the interim travel way to FCDOT, in a form approved by the County Attorney. Said public access easement will be conveyed at the time of first site plan approval for Building D-1 or C-1, whichever is first.

b. Intersection Improvements.

- i. Traffic Signal Optimization. If not already completed by others, the Applicant will coordinate with VDOT to analyze the signal operations of the Route 7/Tyco Road and Route 7/Spring Hill Road intersections and provide recommendations or optimizing signal timing to VDOT. If acceptable to VDOT, the Applicant will implement these optimizations. If required by VDOT, such analyses will be provided prior to site plan approval for Building D-1 in the case of the Route 7/Tyco Road intersection, and Building C-3 in the case of the Route 7/Spring Hill Road intersection.
- ii. Lane Restriping. If not already completed by others, the Applicant will restripe the southbound through lane of the Route 7/Spring Hill Road intersection to be a shared through-right lane, subject to VDOT approval. Such restriping will be shown on the site plan for Building C-3 and provided prior to bond release for Building C-3.

37. Intersection Signalization.

- a. Signal Justification Reports. If not already constructed by others, the Applicant will submit to VDOT signal justification reports ("SJRs") for three potential new signals at the intersections listed below. Such SJRs will include a review of both vehicular and pedestrian volume warrants in general accordance with VDOT SJR policy:
 - i. Tyco Road/Boyd Pointe Way. A SJR will be completed for the Tyco Road/Boyd Pointe Way intersection twelve (12) months after the issuance of the first RUP or

- Non-RUP for Buildings D-1, C-1 or C-3, whichever is first. If VDOT does not approve a signal with the first SJR, the Applicant will provide a new SJR prior to the issuance of the first RUP or Non-RUP for the subsequent Buildings D-1, C-1 or C-3.
- ii. Tyco Road/Merchant Street. If the off-site road segment of Merchant Street has been constructed from Tyco Road to the Property, a SJR will be completed for the Tyco Road/Merchant Street intersection twelve (12) months after the issuance of the first RUP or Non-RUP for Buildings C-2A or C-2B, whichever is first. If VDOT does not approve a signal with the first SJR, the Applicant will provide a new SJR prior to the issuance of the first RUP or Non-RUP for the second of Buildings C-2A or C-2B.
 - iii. Spring Hill Road/Broad Street. If the off-site road segments of Boyd Pointe Way to Broad Street and Broad Street to Spring Hill Road have been constructed and provide access to the Property, a SJR will be completed for the Spring Hill Road/Broad Street intersection twelve (12) months after the issuance of the first RUP or Non-RUP for Building C-3.
- b. Signal Warranted. If VDOT approves installation of a signal at any of the above-referenced intersections, then such traffic signal, including pedestrian enhancements as may be required by VDOT, and any signal preemption appurtenances as may be required by FCDOT, will be designed, equipped and installed by the Applicant no later than twelve (12) months after approval of the SJR, unless delayed by others, utilizing any contributions for the signal(s) received by the County and any future escrowed contributions received by the County.
 - c. VDOT Review and Approval. For any signal approved by VDOT, the Applicant will provide VDOT with the requisite traffic signal plans for review and approval. All right-of-way associated with signal equipment (poles, equipment boxes, etc.) on the Property not already dedicated will be reserved for dedication in fee simple to the Board of Supervisors or put into an easement, as appropriate.
 - d. Zoning Administrator. If the County, upon request of the Applicant or on its own initiative, determines that such signal installations as proffered will be detrimental to traffic operations, the Zoning Administrator may: (1) agree to a later date for completion of the traffic signal installation(s); or (2) release the Applicant from further obligations related to the signal installations.
 - e. Pro Rata Share. If a signal at any of the identified intersections is not warranted within twelve (12) months after issuance of the initial RUP or Non-RUP for the last new Building to be constructed on the applicable portions of the Property, or if such signal has been installed by others, then the Applicant's obligation to design and construct such signal is deemed null and void and the Applicant will instead contribute funds to the County towards the cost of future signalization of any applicable intersection by others on a pro-rata basis in accordance with the following:
 - i. Tyco Road/Boyd Pointe Way: \$94,361

ii. Tyco Road/Merchant Street: \$46,877

iii. Spring Hill Road/Broad Street: \$70,662

f. Additional Intersections. Prior to build-out of the Property, the Applicant may, on its own initiative, identify intersections beyond those listed in Paragraph a where signalization may be necessary, either to address completion of grid links beyond those identified in these proffers and/or facilitate pedestrian movements. Such signalization as may be proposed by the Applicant and coordinated with FCDOT will be subject to VDOT SJR review and, if approved for installation by VDOT, will be subject to VDOT design approval as outlined in Paragraph c. The Applicant may then install such traffic signals without the need for a PCA.

g. Acquisition of Off-Site Right-of-Way. If off-site right-of-way or easements associated with signal equipment (poles, equipment boxes, etc.) is required for the installation of warranted signals, the Applicant will seek such off-site right-of-way or easements through a cooperative agreement with the respective owners. In the event the Applicant is unable to acquire the right-of-way and/or easements necessary to install the signal through a cooperative agreement with the owner(s), then the Applicant will contribute to Fairfax County the Applicant's applicable pro rata share listed in paragraph e above towards the future installation of said signal by others. In such event, the Applicant's obligation to construct or further pay for such signal will be deemed null and void; the proffered commitment with regard to said signal will be of no further effect.

38. Joint Maintenance and Reciprocal Easement Agreements. Prior to or concurrent with the establishment of the UOA, the Applicant will prepare and record reciprocal easements, joint maintenance agreements, or other covenants to provide for the ongoing maintenance of the private portions of the internal grid of streets.

39. Tysons Grid of Streets Fund. The Applicant will make a contribution to the County's Tysons Grid of Streets Transportation Fund for each market-rate residential unit and each square foot of new non-residential space constructed on the Property in keeping with the rates and applicable rate adjustments set forth in the *Guidelines for the Tysons Grid of Streets Transportation Fund* endorsed by the Board of Supervisors on January 8, 2013 (the "Grid Guidelines"). The Applicant may receive and deduct credits against the contributions as approved by the County in conformance with the Grid Guidelines. This contribution is not subject to further adjustment outlined in Proffer 71 and will not apply to the Arts Facility described in Proffer 64. The contribution will be paid on or before the issuance of the initial RUP or Non-RUP for each Building based on the actual GFA of non-residential space and/or the actual number of market-rate residential units in the respective Building.

40. Tysons-wide Transportation Contributions – Table 7 Improvements. The Applicant will make a contribution to the County's Tysons-wide Transportation Fund for each market-rate residential unit and each square foot of new non-residential space constructed on the Property in keeping with the rates and applicable rate adjustments set forth in the *Guidelines for the Tysons-wide Transportation Fund* endorsed by the Board of Supervisors on January

8, 2013 (the “Tysons-wide Guidelines”). The Applicant may receive and deduct credits against the contributions as approved by the County in conformance with the Tysons-wide Guidelines. This contribution is not subject to further adjustment outlined in Proffer 71 and will not apply to the Arts Facility described in Proffer 64. The contribution will be paid on or before the issuance of the initial RUP or Non-RUP for each Building based on the actual GFA of non-residential space and/or the actual number of market-rate residential units in the respective Building.

41. Leesburg Pike (Route 7) Improvement. The Applicant will provide a contribution toward the construction of access improvements to Leesburg Pike, equal to \$0.12 for each square foot of building constructed on the Property. Said contribution to Fairfax County will be made prior to the issuance of the first RUP or Non-RUP for each new Building to be constructed on the Property and will be based on the site plan-approved GFA for each Building.
42. Construction Management Plans. The Applicant will prepare and implement a construction management plan during construction of each phase, as appropriate, through its development/construction manager, 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 (each a “Construction Management Plan”).

Each Construction Management Plan will:

- a. Specify how pedestrian and vehicular access will be provided throughout the Property and, specifically, to the Spring Hill Metro pavilion and the Spring Hill Metro Kiss and Ride, both existing and permanent, during each phase of development;
- b. 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;
- c. Require the Applicant to coordinate its construction activities throughout construction with (as applicable) VDOT, FCDOT and WMATA; and
- d. Be prepared by a qualified professional and submitted for review and comment to FCDOT and LDS upon submission of the initial site plan for each phase. In addition, the Transportation Coordinator will coordinate any adjustments to the TDM Implementation Plan (as defined in Proffers 50-52) as necessary to address each Construction Management Plan.

PEDESTRIAN AND BICYCLE IMPROVEMENTS

43. Bicycle Storage Facilities. The Applicant will provide and maintain bicycle racks, bicycle lockers, and bicycle storage areas as generally shown on the CDP/FDP. The Applicant may provide any necessary refinements to the number and/or location of the facilities as approved by FCDOT and without the need for an amendment to any CDP, FDP or proffer. The total

number of storage spaces provided will be consistent with the Fairfax County Guidelines for Bicycle Parking.

44. Marked Crosswalks. The Applicant will install marked pedestrian crosswalks at signalized intersections adjoining the Property and at other select locations shown on the CDP/FDP or on an approved site plan, subject to VDOT approval.

PARKING

45. Parking. Parking on the Property will be provided in accordance with the parking requirements for the PTC District set forth in Section 6-509 and Article 11 of the Zoning Ordinance. The exact number and location of spaces provided in each phase will be refined with the approval of each future FDP or FDPA and will be determined at the time of site plan approval based on the specific uses in each phase. If changes in the bedroom mix result in parking greater than that anticipated on the CDP/FDP, the additional parking spaces will be accommodated within the proposed parking structures, without increasing the height or mass of the parking structures.
46. Phasing of Parking. Parking will be provided in phases concurrent with the development of the Property, as shown on the CDP/FDP. Parking spaces in excess of the maximum parking rates set forth in the Zoning Ordinance may be provided in the early phases of the development of the Property, provided that at the build-out of the Property the maximum parking rates are not exceeded. A parking tabulation for the entire Property will be provided with each future FDP and site plan for the Property. Required off-street parking spaces and loading spaces for an individual building need not be provided on the parcel on which the building is located, but will be provided within the Property.
47. Below-Grade Parking. The below-grade parking garage will be developed in the first two phases of the Proposed Development, as depicted on the “below-grade parking extents” sheet of the CDP/FDP. As shown on the CDP/FDP, the below-grade parking garage is divided into three sections labeled C-1/D-1 (the “C-1/D-1 Parking Garage”), C-2 (the “C-2 Parking Garage”) and C-3 (the “C-3 Parking Garage”). At full build-out, the entire below-grade parking garage will serve the Proposed Development. No portion of the below-grade parking will be located under a public street, except for the tunnel connection between the C-2 Parking Garage and C-3 Parking Garage.
 - a. Phase 1. The first phase below-grade parking, consisting of the C-1/D-1 Parking Garage, will be shown on the first site plan for either Building D-1 or C-1, and constructed at the time of issuance of the first RUP or Non-RUP for either Building D-1 or C-1.
 - b. Phase 2. The second phase will include the final limits of the entire below-grade parking garage, as shown on the CDP/FDP, including the C-2 Parking Garage and the C-3 Parking Garage. The C-2 Parking Garage will be shown on the first site plan for The Landing, and will be constructed at the time of issuance of the first Non-RUP for The Landing. The C-3 Parking Garage will be shown on the first site plan for Building C-3, and will be constructed at the time of issuance of the first Non-RUP for

Building C-3. The below-grade connection (measuring 30 feet in width consisting of pedestrian walkways and two vehicular drive aisles, to be further refined at the time of final engineering), between the C-2 Parking Garage and the C-3 Parking Garage may be shown on the site plan for either The Landing or Building C-3. In any event, the connection will be constructed and open for use at the time of issuance of the first Non-RUP for either The Landing or Building C-3, whichever is later.

48. Parking Stipulations.

- a. Parking Controls. The Applicant will be permitted to install and maintain parking controls and/or fencing on its existing surface parking lots, without the requirement for a FDP, in order to control Metro-related parking by the general public. Pedestrian and vehicular traffic circulation on the Property will not be unduly impeded by such fencing.
- b. Unbundled Leasing. The lease rates of parking spaces will be “unbundled” from the lease rate of the individual rental dwelling units. In other words, a unit’s lease rate will be exclusive of parking costs.

49. Future Parking Revisions.

- a. Ordinance Revisions. The Applicant reserves the right to provide parking at the revised rates as may be permitted by a future amendment to the Zoning Ordinance. Optional use of revised rates will not require a CDPA or PCA, provided there is no increase in the size or height of above-grade parking structures.
- b. Increases. The Applicant reserves the right to seek a special exception for an increase in parking for the Property; such special exception application will not require a CDPA or PCA, provided there is no increase in the size or height of above-grade parking structures.

TRANSPORTATION DEMAND MANAGEMENT

50. Transportation Demand Management Association. The Applicant will contribute to Fairfax County funds for the operation of a transportation management association for the Tysons Urban Center (the “TMA”) as outlined below:

- a. Tysons TMA Fund. The Applicant will make a one-time contribution to the establishment of this TMA based on a participation rate of \$0.10 per gross square foot of new office uses and \$0.05 per gross square foot of new residential uses to be constructed on the Property.
- b. Timing of TMA Fund Contribution. Twenty five percent (25%) of the total contribution to the TMA will be paid upon RUP or Non-RUP approval for the first new office or residential building to be constructed on the Property. The remaining 75% will be contributed in three (3) equal installments of 25% each and paid at the time of issuance of the first RUP or Non-RUP for the second, third, and fourth new

buildings to be constructed on the Property, but in any event no later than ten (10) years from the date of this rezoning approval.

- c. Joining the TMA. The Applicant may, in its sole discretion, join or otherwise become associated with the TMA for the purpose of administering TDM programs in the Tysons Urban Center and transfer some functions of this TDM Program to the TMA. Further, if determined by FCDOT that a proactive, private TDM program is no longer necessary, the TDM structure may be rendered null and void in whole or in part, without the need for a PCA.

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

- a. Implementation Plan. The proffered elements of the TDM Program as set forth below are more fully described in the TDM Plan as may be amended. It is the intent of this Proffer that the TDM Plan adapt over time to respond to the changing transportation related circumstances of the Property, the surrounding community and the region, as well as to technological and/or other improvements, all with the objective of meeting the trip reduction goals as set forth herein. Accordingly, modifications, revisions, and supplements to the TDM Plan as may be approved by the FCDOT can be made without the need for a PCA provided that the TDM Plan continues to reflect the proffered elements of the TDM Program as set forth below.
- b. Responsible Party. The Applicant, or any successor other than the UOA or its equivalent, will remain obligated under this Proffer until such time as three consecutive post Stabilization, as defined below, trip counts reveal that the applicable vehicle trip reduction goals are being met (the “Applicant Control Period”). At the end of the Applicant Control Period, the UOA or equivalent will become obligated under this Proffer and Applicant, or any successor other than the UOA or equivalent, will have no further obligation with respect to this Proffer.
- c. Definitions. For purposes of this Proffer, “Stabilization” will be deemed to occur one-year following issuance of the last initial RUP or Non-RUP for the final new residential or office building to be constructed on the Property. “Pre-stabilization” will be deemed to occur any time prior to Stabilization.
- d. Trip Reduction Objective. The objective of this TDM Program will be to reduce the vehicle trips generated by new residents and new office tenants of the Property, during weekday peak hours, by meeting the percentage vehicle trip reductions set forth below. These trip reduction percentages will be multiplied by the total number of vehicle trips that would be expected to be generated by the uses developed on the Property as determined by the application of the Institute of Traffic Engineers, 9th Edition, *Trip Generation* rates and/or equations (the “ITE Trip Generation”), and the number of trips determined by the product of such equation subtracted from the total

trips will be referred to herein as the “Maximum Trips After Reduction”. For purposes of this calculation, the maximum number of dwelling units or gross floor area proposed to be constructed in each new residential or new office building on the Property as determined at the time of FDP approval for each building will be applied to the calculation described in the preceding sentence. The target reductions will be as follows:

Target Reduction	
Tysons-wide development level	Proposed Development (buildings within ¼ mile of station)
Up to 65 million SF of GFA	35%
65 million SF of GFA	40%
84 million SF of GFA	45%
90 million SF of GFA	48%
96 million SF of GFA	50%
105 million SF of GFA	53%
113 million SF of GFA	55%

The trip reduction goals outlined above are predicated on the achievement of specific development levels within the Tysons Urban Center as anticipated in the Comprehensive Plan. Prior to undertaking trip measurements, the TDM Program Manager (“TPM”), as defined below, will, in consultation with the County, provide a summary of the then existing development levels in Tysons (based on RUPs and Non-RUPS issued) in order to determine the appropriate vehicle trip reduction goal.

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

- e. Process of Implementation. The TDM Program will be implemented as follows, provided that modifications, revisions, and supplements to the implementation process as set forth herein as coordinated with FCDOT can be made without requiring a PCA.
 - i. TDM Program Manager. The Applicant or UOA will appoint and continuously employ, or cause to be employed, a TPM for the Property. The TPM will be appointed by the Applicant no later than sixty (60) days after the issuance of the first building permit for the first new building to be constructed on the Property. The TPM duties may be part of other duties associated with the appointee. The Applicant will notify FCDOT and the District Supervisor in writing within ten (10) days of the initial appointment of the TPM. Thereafter the Applicant or UOA will do the same within ten (10) days of any change in such appointment. Following the termination of the Applicant Control Period, the UOA will be responsible for the employment of the TPM.

ii. Annual Report and Budget. The TPM will prepare and submit to FCDOT an initial TDM Work Plan (“TDMWP”) and Budget no later than 180 days after issuance of the first building permit for the first new residential or office building on the Property. Every calendar year thereafter, but no later than February 1st, the TPM will submit an annual report and budget in order to incorporate any new construction on the Property, modify or enhance program elements and establish a budget to cover the costs of implementation of the program for such year (“the Annual Report”). The Annual Report will include, at a minimum:

- (1) Details as to the components of the TDM program that will be put into action that year;
- (2) Any revisions to the budget needed to implement the program for the coming calendar year;
- (3) A summary of existing development levels in the Tysons Urban Center, as well as those specific to Property;
- (4) A determination of the applicable Maximum Trips After Reduction for the Property;
- (5) Provision of the specific details associated with the monitoring and reporting requirements of the TDM program in accordance with the TDM plan; and
- (6) Submission of the results of any Person Surveys and Vehicular Traffic Counts conducted on the Property in conjunction with each year’s Annual Report.

The Annual Report will be reviewed by FCDOT. If FCDOT has not responded with any comments within sixty (60) days after submission, then the Annual Report will be deemed approved and the program elements will be implemented. If FCDOT responds with comments on the Annual Report, then the TPM will meet with FCDOT staff within fifteen (15) days of receipt of the County’s comments. Thereafter, but in any event, no later than thirty (30) days after the meeting, the TPM will submit such revisions to the program and/or budget as discussed and agreed to with FCDOT and begin implementation of the approved program and fund the TDM Budget. The expected annual amounts of the TDM Budget are further described in the TDM Plan.

f. TDM Account. The Applicant, through the TPM, will establish an interest bearing account with a bank or other financial institution qualified to do business in Virginia (the “TDM Account”) within 30 days after approval of the initial TDMWP and TDM Budget. All interest earned on the principal will remain in the TDM Account and will be used by the TPM for TDM purposes. The TDM Account will be funded by the Applicant through the TPM. The documents that establish the UOA will provide that the TDM Account will not be eliminated as a line item in the governing budget and that funds in the TDM Account will not be utilized for purposes other than to fund

TDM strategies/programs and/or specific infrastructure needs as may be approved in consultation with FCDOT.

Funding of the TDM Account will be in accordance with the budget for the TDM program elements to be implemented in the following year. In no event will the TDM Budget for the Property and property associated with RZ 2017-PR-010 exceed a baseline of \$125,000 (with adjustments in accordance with Proffer 71). The TPM will provide written documentation to FCDOT demonstrating the establishment of the TDM Account within ten (10) days of its establishment. The TDM Account will be replenished annually thereafter following the establishment of each year's TDM Budget. The TDM Account will be managed by the TPM.

- g. TDM Remedy Fund. At the same time the TPM creates and the Applicant funds the TDM Account, the TPM will establish a separate interest bearing account (referred to as the "TDM Remedy Fund) with a bank or other financial institution qualified to do business in Virginia. Funding of the TDM Remedy Fund will be made one time on a building by building basis at the rate of \$0.40 per gross square foot of new office uses and \$0.30 per gross square foot of new residential uses on the Property. Funding will be provided by the building owners prior to the issuance of the first RUP or Non-RUP for each applicable new building. This amount will be adjusted in accordance with Proffer 71. Funds from the TDM Remedy Fund will be drawn upon only for purposes of immediate need for TDM funding and may be drawn on prior to any TDM Budget adjustments as may be required.
- h. TDM Incentive Fund. The "TDM Incentive Fund" is an account into which the building owners, through the TPM, will deposit contributions to fund a multimodal incentive program for initial purchasers/lessees within the Property. In addition, to providing transit incentives, such contributions may also be used for enhancing/providing multimodal facilities within and proximate to the Property. Such contributions will be made one time on a building by building basis at the rate of \$0.02 per gross square foot of new office or residential uses to be constructed on the Property and provided prior to the issuance of the first RUP or Non-RUP for each individual building.
- i. TDM Penalty Payments. Penalty payments as may be required pursuant to this Proffer for non-attainment of trip reduction goals will be secured with a letter of credit or a cash escrow. Prior to the issuance of the first RUP or Non-RUP for each new building on the Property, the TPM will deliver to the County a clean, irrevocable letter of credit issued by a banking institution approved by the County or escrow cash in an interest-bearing account with an escrow agent acceptable to LDS to secure the building owner's possible penalty obligations (the "Letter(s) of Credit or Cash Escrow(s)"). The Letter(s) of Credit or Cash Escrow(s) will be issued in an amount equal to \$0.10 for each square foot of new office GFA or \$0.05 for each square foot of new residential GFA shown on the approved site plan for each new building on the Property. Until the Letter(s) of Credit or Cash Escrow(s) has been posted, the figures in the preceding sentence will be adjusted in accordance with Proffer 71. Once the Letter(s) of Credit or Cash Escrow(s) has been posted, there will be no

further adjustments or increases in the amount thereof. The Letter(s) of Credit or Cash Escrow(s) will name the County as the beneficiary and will permit partial draws or a full draw. The forgoing stated amount of the Letter(s) of Credit or Cash Escrow(s) will be reduced by the sum of any and all previous draws under the Letter(s) of Credit or Cash Escrow(s) and payments by the Applicant (or TPM) into the TDM Penalty Fund.

j. Monitoring. The TPM will verify that the proffered trip reduction goals are being met through the completion of Person Surveys, Vehicular Traffic Counts of residential and/or office uses and/or other such methods as may be reviewed and approved by FCDOT. The results of such Person Surveys and Vehicular Traffic Counts will be provided to FCDOT as part of the Annual Report. Person Surveys and Vehicular Traffic Counts will be conducted for the Property beginning one year following issuance of the final initial RUP or Non-RUP for the first new building to be constructed on the Property. Person Surveys will be conducted every three (3) years and Vehicular Traffic Counts will be collected annually thereafter until the results of three consecutive annual traffic counts conducted upon Stabilization show that the applicable trip reduction goals for the Property have been met. At such time and notwithstanding the provisions below, Person Surveys and Vehicular Traffic Counts will thereafter be provided every five (5) years. Notwithstanding the aforementioned, at any time prior to or after Stabilization, FCDOT may suspend such Vehicle Traffic Counts or Person Surveys if conditions warrant.

k. Remedies and Penalties.

i. Pre-Stabilization. If the Maximum Trips After Reduction for the Property is exceeded as evidenced by the Vehicular Traffic Counts outlined above, then the TPM will meet and coordinate with FCDOT to address, develop and implement such remedial measures as may be identified in the TDM Plan and Annual Report.

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

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

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

Up to 65,000,000 Square Feet of GFA in Tysons		65-84,000,000 Square Feet of GFA in Tysons		84-90,000,000 Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned	Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned	Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned
0% - 4.9%	30%	0.0% - 4.9%	50%	0.0% - 4.9%	65%
5% - 10%	50%	5% - 10%	65%	5% - 8%	80%
10.1% - 15%	65%	10.1% - 13%	80%	8.1% - 10%	90%
15.1% - 18%	80%	13.1% - 15%	90%	>10%	100%
18.1 - 20%	90%	>15%	100%		
>20%	100%				
90-96,000,000 Square Feet of GFA in Tysons		96-113,000,000 Square Feet of GFA in Tysons		113,000,000+ Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned	Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned	Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned
0.0% - 4.9%	80%	0.0% - 4.9%	90%	> 0.0%	100%
5% - 8%	90%	5%	100%		
>8%	100%				

- (2) There is no requirement to replenish the TDM Remedy Fund at any time. Any cash left in the Remedy Fund will be released to the TPM for final distribution to the owners once three consecutive annual Vehicular Traffic Counts conducted after Stabilization show that the trip reduction goals have been met.
- ii. **Stabilization.** If the TDM Program monitoring, as evidenced by the Vehicular Traffic Counts outlined above, reveals that the Maximum Trips After Reduction for the Property is exceeded, then the TPM will meet and coordinate with FCDOT to address, develop and implement such remedial measures as may be identified in the TDM Plan and Annual Report and funded by the Remedy Fund (if available) as may be necessary, commensurate with the extent of deviation from the Maximum Trips After Reduction goal as set forth in accordance with the expenditure schedule outlined above.
- (1) If the results of the traffic counts conducted upon and subsequent to Stabilization show that the trip reduction goals have been met site-wide for three (3) consecutive years in accordance with the goals outlined on the table above, then any remaining Remedy Funds will be released back to the building owner(s) through the TPM.
- (2) If despite the implementation of remedial efforts, the applicable Maximum Trips After Reduction (based on the existing development levels in the Tysons Corner Urban Center) are still exceeded after three (3) consecutive years, then, in addition to addressing further remedial measures as set forth in this Proffer, the TPM will be assessed a penalty according to the following:

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

- (3) The County will be authorized to withdraw the penalty amount directly from the Letter(s) of Credit or Cash Escrow(s) and use such penalty amounts for the implementation of additional TDM Program elements/incentives and/or congestion management associated with the Property, or for other TDM-related improvements or programs within Tysons Corner.
- (4) The maximum amount of penalties associated with the Property, and the maximum amount the building owners will ever be required to pay pursuant to the penalty

provisions of this Proffer, including prior to and after Stabilization, will not in the aggregate exceed the amount of the Letter(s) of Credit or Cash Escrow(s) determined and computed pursuant to the provisions of this Proffer. There is no requirement to replenish the Letter(s) of Credit and/or Cash Escrow(s). Any remaining amounts in the Letter(s) of Credit and/or Cash Escrow(s) will be released to the applicable building owners once three (3) consecutive counts conducted upon Stabilization show that the Maximum Trips After Reduction have not been exceeded.

- l. Additional Trip Counts. If an Annual Report indicates that a change has occurred that is significant enough to reasonably call into question whether the applicable vehicle trip reduction goals are continuing to be met, then FCDOT may require the TPM to conduct additional Vehicular Traffic Counts (pursuant to the methodology set forth in the TDM Plan) within 90 days to determine whether in fact such objectives are being met. If any such Vehicular Traffic Counts demonstrate that the applicable vehicle trip reduction goals are not being met, then the TPM will meet with FCDOT to review the TDM strategies in place and to develop modifications to the TDM Plan to address the surplus of trips.
- m. Review of Trip Reduction Goals. At any time and concurrent with remedial actions and/or the payment of penalties as outlined above, the TPM may request that FCDOT review the vehicle trip reduction goals established for the Property and set a revised lower goal for the Property consistent with the results of such surveys and vehicular traffic counts provided for by this Proffer. In the event a revised lower goal is established for the Property, the Maximum Trips After Reduction will be revised accordingly for the subsequent review period without the need for a PCA.
- n. Continuing Implementation. The UOA through the TPM will bear sole responsibility for continuing implementation of the TDM Program and compliance with this Proffer in accordance with the timeline established in this Proffer. The UOA through the TPM will continue to administer the TDM Program in the ordinary course in accordance with this Proffer including submission of Annual Reports.
- o. Notice to Owners. All owners of the Property will be advised of the TDM Program set forth in this Proffer. The then current owner will advise all successor owners and/or developers of their funding obligations pursuant to the requirements of this Proffer prior to purchase and the requirements of the TDM Program, including the annual contribution to the TDM Program (as provided herein), will be included in all initial and subsequent purchase documents.
- p. Enforcement. If the TPM fails to timely submit a report to FCDOT as required by this Proffer, the TPM will have sixty (60) days within which to cure such violation. If after such sixty (60) day period the TPM has not submitted the delinquent report, then the Applicant or UOA, as applicable will be assessed a penalty of \$100.00 per day not to exceed \$36,500.00 for any one incident. Such penalty will be payable to Fairfax County to be used for multimodal, transit, transportation, or congestion

management improvements within the vicinity of the Property, or in consultation with the TPM, for other TDM-related improvements or programs within Tysons.

52. Transportation Demand Management for Retail/Hotel Uses. Certain components of the TDM Plan described in these Proffers are applicable to, and will benefit, the proposed retail and hotel uses on the Property. Therefore, the Applicant will provide an additional TDM program that is tailored to specifically serve the retail and hotel uses (the “Retail/Hotel TDM Program”). In no event will monitoring or penalties be assessed against the retail uses, which may be established on the Property.

- a. Goals of the Retail/Hotel TDM Program. Because tenants of the retail stores and hotels and their employees work hours that are atypical of the standard work day, these tenants and their employees do not necessarily travel to and from the Property during Peak Hours. Given this, the Retail/Hotel TDM Program will encourage retail tenants, hotel guests and the retail/hotel employees to utilize transit, carpools, walking, biking and other non-Single Occupancy Vehicle (“non-SOV”) modes of transportation to travel to and from the Subject Property rather than focusing on the specific trip reductions during the weekday AM or PM Peak Hours.
- b. Components of the Retail/Hotel TDM Program. The Retail/Hotel TDM Program will include, at a minimum, the components applicable to the 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 Retail/Hotel TDM Program contained in this Proffer will be approved by FCDOT and will not require a PCA. The Retail/Hotel TDM Program components are further described in the TDM Plan.
- c. Employee/Tenant Meetings. The TPM will hold, at a minimum, an annual TDM meeting with the retail store tenants and hotel managers, and their respective employees, to review the available transit options, changes in transit service and other relevant transit-related topics. Based on these meetings, the TPM will 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 Subject Property tenants and their employees.
- d. Regional TDM Programs. The TPM will make information available to retail store tenants, hotel guests and the retail/hotel employees about regional TDM programs that promote alternative commuting options. This will include information on vanpools, carpools, guaranteed ride home and other programs offered by organizations in the Washington, D.C. Metropolitan Area.
- e. Retail/Hotel TDM Program Participation Outreach. The TPM will endeavor in good faith to encourage participation by retail store tenants and hotel management in the Retail/Hotel 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 TPM and Property management in

furtherance of this objective may include dissemination of information to, and solicitation of participation from, the tenant's in-store management and executives or officers at their headquarters offices, at appropriate intervals. The TPM will 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 will include detailed accounts of the outreach efforts and the feedback and response from the tenants.

PUBLIC TRANSPORTATION

53. Bus Shelters. Bus shelter locations will be evaluated for feasibility at the time of future FDP and site plan approval in consultation with FCDOT and VDOT. The Applicant will provide bus shelters in FCDOT- and VDOT-approved locations. Identified bus shelter locations will be within the landscape amenity panel of the streetscape along Leesburg Pike (Route 7) to the extent feasible and will not impede convenient access to building entries. Bus shelter locations may necessitate adjustments to street tree locations and other street furnishings from that shown on the CDP/FDP which will be accommodated without the requirement for a CDPA or FDPA.
54. Route 7 Enhanced Bus Shelters. In consultation with and subject to the approval of FCDOT, the Applicant will enhance the design of the bus shelters on Route 7 as generally shown for illustrative purposes on the CDP/FDP. Said enhancements will be approved by FCDOT prior to site plan approval for Building C-3 and will be applied prior to approval of the first Non-RUP for Building C-3.
55. Tyco Road Bus Stop and Shelter. The Applicant will relocate the existing Tyco Road bus stop from the south side of Boyd Pointe Way to the north side, as generally shown on the CDP/FDP. The bus stop will be relocated entirely within the Tyco Road right-of-way (subject to FCDOT and VDOT approval) and a bus shelter will be provided in consultation with FCDOT. The bus stop will be relocated prior to issuance of building permits for Building D-1.
56. Metrorail Station Kiss and Ride. The Applicant will permanently relocate the Kiss and Ride facilities as generally shown on the CDP/FDP during Phase 1, as depicted on the Phasing Plan (the "Permanent Kiss and Ride"). The Applicant will continue to refine the Permanent Kiss and Ride design generally shown on Sheet A1-311(F) of the CDP/FDP, subject to FCDOT approval prior to building permit issuance for either Building D-1 or C-1, whichever is first. The Permanent Kiss and Ride will be constructed prior to issuance of the first RUP or Non-RUP for Building D-1 or C-1, whichever occurs first.
 - a. Permanent Kiss and Ride Access and Maintenance. In consultation with FCDOT, the Applicant will grant necessary easements to FCDOT prior to site plan approval for Building C-1, in a form approved by the County Attorney, to provide public access and maintenance for the Permanent Kiss and Ride. The Applicant will stipulate in the deed of public access easement over and across the Private Alley that the Permanent Kiss and Ride will remain permanently, publicly accessible.

- b. Uninterrupted Access. There will be no interruption in use or operation of the existing Kiss and Ride facilities (the “Existing Kiss and Ride”) and/or access road, as applicable, until such time as the Permanent Kiss and Ride facilities and/or access road are operating as set forth in this Proffer.
- c. Key Features. In addition to applicable ADA and Fire Marshal requirements, the Applicant will provide, at a minimum, the following, as depicted on the CDP/FDP:
 - i. A minimum of two (2) regular parking spaces and two (2) handicap parking spaces;
 - ii. A minimum of six (6) pull-through spaces that:
 - (1) are delineated with markings to prevent cars from parking in the middle of the spaces;
 - (2) incorporate signage or pavement markings to encourage pull-through parking; and
 - (3) where possible, are long enough to accommodate two cars, as generally depicted on the CDP/FDP;
 - iii. a shuttle lay-by area;
 - iv. a drop-off/taxi or car-sharing waiting area;
 - v. pavement markings or signage encouraging one-way vehicle circulation, as depicted on the CDP/FDP; and
 - vi. a variable width (minimum 6’) sidewalk along the Private Alley providing a connection from the Leesburg Pike sidewalk to Boyd Pointe Way, as shown on the CDP/FDP.
- d. Kiss and Ride Wayfinding and Signage.
 - i. Permanent Kiss and Ride Signage. The Applicant will provide wayfinding and signage to direct the public from the Spring Hill Metro, the bus bays on Route 7 and elsewhere in the Proposed Development to the Permanent Kiss and Ride in locations to be determined with a future CSP and in consultation with FCDOT. In the event the Permanent Kiss and Ride is constructed prior to approval of a CSP, then the Applicant will provide temporary signage as permitted by the Zoning Ordinance, as approved by FCDOT.
 - ii. Concurrent Kiss and Ride Signage. In the event the Permanent Kiss and Ride and the Existing Kiss and Ride are operating simultaneously (for example, after the Permanent Kiss and Ride is constructed, but before Phase 2 has commenced), then the Applicant will provide signage that directs the public to, and distinguishes between, the Existing Kiss and Ride and Permanent Kiss and Ride, either as part of a future CSP or by-right, as approved by FCDOT.

PARKS AND RECREATIONAL FACILITIES

57. Publicly Accessible Parks and Recreational Facilities. The Applicant will provide park spaces and recreational facilities throughout the Property that will be open and accessible to the public as depicted on the CDP/FDP and described in the following:

- a. Public Access and Use. The Applicant will retain in fee simple and perpetually and privately maintain any areas that are designated for public park purposes on the CDP/FDP, and will record public access easement(s) over them so as to permit public use and access during periods of time consistent with urban parks, subject to usual and customary rules and regulations for Fairfax County public parks. The Applicant reserves the right to reasonably restrict access for limited times and special events, repairs, or safety purposes, as agreed upon with FCPA pursuant to Proffer 57.b.
- b. Agreement with FCPA. The Applicant will also enter into an agreement with FCPA, prior to site plan approval for each portion of the Property that includes publicly-accessible parks, and contains details on the processes for planning and coordinating activities and special events within the publicly-accessible park areas.
- c. Parks Wayfinding and Signage. Wayfinding and signage will be developed in coordination with FCPA at the time of site plan approval or CSP approval and will be installed by the Applicant as part of an approved CSP to ensure the public can easily identify and access all publicly-accessible parks. Temporary or interim signage will be provided prior to CSP approval, as necessary, and as permitted by the Zoning Ordinance, in consultation with FCPA.
- d. Parks and Facilities. Publicly-accessible parks and facilities will be provided as shown on the CDP/FDP and described in these Proffers. Additional or substitute recreational facilities to those listed below may be approved with subsequent FDPs and site plans, provided such facilities result in an equivalent or enhanced quality of recreational opportunities. Said publicly-accessible parks and facilities will include:
 - i. Park 1 (Art Walk). This at-grade linear park of approximately 7,620 square feet is a key component and “gateway” on Leesburg Pike (the “Art Walk”) to the overall project art walk loop throughout the Proposed Development (the “Art Walk Loop”). As shown on the CDP/FDP, the Art Walk Loop will provide artist enhanced bus shelters (in coordination with FCDOT), enhanced and artful pavement, sculptures, outdoor seating, access to multi-modal transportation, wayfinding and signs.

The Art Walk Loop as shown on the CDP/FDP is planned throughout the Proposed Development to connect the park system and elements of public art in a meaningful way. Along with public art components, it will include elements such as wayfinding and distance markers specific to the public art and features. The Applicant will coordinate the design of the Art Walk Loop as the Property develops.

- ii. Park 2 (Entrance Gateway). This at-grade civic plaza of approximately 6,050 square feet is located in the northern quadrant of the Spring Hill Road – Leesburg Pike

intersection (the “Entrance Gateway”). As shown on the CDP/FDP, this civic plaza will provide a sculptural landmark feature, special paving, landscaping, sculptures, outdoor seating, access to multi-modal transportation, a continuation of the Art Walk Loop, wayfinding and signs.

The Entrance Gateway will be provided in Phase 2. It will be shown on the site plan for Building C-3 and constructed prior to the issuance of the first Non-RUP for Building C-3.

- iii. Park 3 (Cycle Park Plaza). This at-grade civic plaza of approximately 7,045 square feet (with an additional 3,520 square feet subject to VDOT approval) is located in the northwestern quadrant of the intersection of Spring Hill Road and the Private Service Street (the “Cycle Park Plaza”). As shown on the CDP/FDP, the Cycle Park Plaza will provide bicycle racks, covered shelters, landscaping, a collection point for dockless bicycles and scooters, outdoor seating, space for outdoor gatherings, a continuation of the Art Walk Loop, access to multi-modal transportation, wayfinding and signs.

The Cycle Park Plaza will be provided in Phase 2. It will be shown on the site plan for Building C-3 and constructed prior to issuance of the first Non-RUP for Building C-3.

- iv. Park 4 (Sculpture Garden). This at-grade civic plaza of approximately 11,510 square feet is located between Building C-1 and the Spring Hill Metro Pavilion (the “Sculpture Garden”). As shown on the CDP/FDP, the Sculpture Garden will provide space for outdoor dining, outdoor seating, trees and landscaping, special paving, sculptural features, a continuation of the Art Walk Loop, wayfinding and signs.

The Sculpture Garden will be provided in Phase 1. It will be shown on the site plan for Building C-1 and constructed prior to issuance of the first Non-RUP for building C-1.

- v. Park 5 (Civic Plaza). This at-grade civic plaza of approximately 20,370 square feet is located at the foot of the Spring Hill Metro Pavilion between Buildings C-1 and C-3 (the “Civic Plaza”). The Civic Plaza will provide special paving, landscaping, access points to adjacent parks, a water feature, a seasonal ice loop, outdoor seating and dining, stairs to the Elevated Promenade, a continuation of the Art Walk Loop, wayfinding and signs.

(1) Phasing.

- (a) Phase 1. Given its location, a portion of the final condition of the Civic Plaza will be constructed as an interim park during Phase 1, as shown on the Phasing Sheets. The interim park will be shown on the site plan for Building C-1 and constructed prior to issuance of the first Non-RUP for Building C-1.

(b) Phase 2. The final condition of the Civic Plaza will be constructed with Phase 2. The Civic Plaza will be shown on the site plan for Building C-3 and constructed prior to issuance of the first Non-RUP for Building C-3.

(2) Active Recreation. The Applicant or UOA will provide seasonal active recreation including, but not limited to, a seasonal ice loop, as depicted on the CDP/FDP (the “Active Recreation”). The Applicant or UOA will provide equipment and outdoor storage, if required, while the Active Recreation is in operation. The Active Recreation will be provided in Phase 2 with the final condition of the Civic Plaza. Operational details about the active recreation components (for example, outdoor games or exercise classes) will be refined further in accordance with Proffer 57.b.

vi. Park 6 (Boyd Pointe Linear Park). This at-grade linear park of approximately 12,545 square feet (with an additional 3,445 square feet subject to VDOT approval) is located on the northeast side of Boyd Pointe Way, south of The Landing (the “Boyd Pointe Linear Park”). The Boyd Pointe Linear Park will provide special paving, landscaping, access points to adjacent parks, outdoor seating, outdoor work spaces for office users, a continuation of the Art Walk Loop, sculptural features, wayfinding and signs.

The Boyd Pointe Linear Park will be constructed in Phase 2. It will be shown on the site plan for The Landing and constructed prior to issuance of the first Non-RUP for The Landing.

vii. Park 7 (Common Green: Theater on the Green). This at-grade common green of 16,200 square feet is located on the northwest side of Boyd Pointe Way, between The Landing and Building C-2A (the “Theater on the Green”). The Theater on the Green will provide space for outdoor dining, an open lawn, wayfinding, special paving and banding to visually guide pedestrian flow, a stage for events and performances, outdoor seating, outdoor games, artful lighting, access to multi-modal paths and a continuation of the Art Walk Loop.

(1) Events and Outdoor Games. Events will be held on the Theater on the Green including but not limited to farmers markets, concerts, theatrical performances, movies or pop-up events. The Applicant will purchase, manage and store equipment for outdoor games, which may include but not be limited to chess, checkers, hopscotch or corn hole. Said events and programming will be coordinated by the Applicant or the UOA, and managed in accordance with Proffers 57.a and b.

(2) Phasing. The Theater on the Green will be constructed with Phase 2. It will be shown on the site plan for The Landing and constructed prior to issuance of the first Non-RUP for The Landing.

viii. Park 8 (Common Green: Playscape). This at-grade common green includes 6,155 square feet (with an additional 2,860 square feet subject to VDOT approval) located between Buildings C-2A and C-2B (the “Playscape”) and two pocket parks located

at the C-2A and C-2B entrances totaling 4,495 square feet. The Playscape will provide space for play, wayfinding and signage, special paving, outdoor seating, artful play features, access to a multi-modal path, a continuation of the Art Walk Loop, and outdoor seating and furnishings.

The Playscape will be constructed with Phase 2. It will be shown on the site plan for The Landing and constructed prior to issuance of the first Non-RUP for The Landing.

- ix. Park 9 (Hotel Plaza). This at-grade pocket park of 4,235 square feet is located in the north eastern quadrant of the intersection of Tyco Road and Boyd Pointe Way (the “Hotel Plaza”). The Hotel Plaza will provide a sculptural landmark feature, special paving, landscaping, sculptures, outdoor seating, access to a multi-modal path, a continuation of the Art Walk Loop, and wayfinding elements.

The Hotel Plaza will be constructed with Phase 1. It will be shown on the site plan for Building D-1 and constructed prior to issuance of the first RUP or Non-RUP for Building D-1.

- x. Park 10 (Elevated Promenade). This elevated civic plaza of 12,410 square feet is located above-grade, central to the Proposed Development (the “Elevated Promenade”). The Elevated Promenade will provide access to second level retail, outdoor seating, amphitheater seating, overlook opportunities, art, adjacency to outdoor dining, access to multi-modal transportation and programmed events and performances.

(1) Phasing. The Elevated Promenade will be phased as shown on the CDP/FDP and in accordance with these Proffers:

- (a) Phase 1. A stairway and elevated walkway providing access to the second floor retail of Building C-1 will be constructed with Phase 1. It will be shown on the site plan for Building C-1, and constructed prior to issuance of the first Non-RUP for Building C-1.
- (b) Phase 2. A stairway and elevated walkway providing access to the second floor retail and third-floor amphitheater of The Landing will be constructed with Phase 2. It will be shown on the site plan for The Landing and constructed prior to issuance of the first Non-RUP for The Landing.
- (c) Phase 3. The final condition of the Elevated Promenade will be shown on the site plan for Building C-2A or C-2B, whichever is later. It will be constructed prior to issuance of the first RUP or Non-RUP for Building C-2A or C-2B, whichever is later.

(2) Access. The Applicant will install publicly-accessible elevators and stairs in the general locations shown on the CDP/FDP, and in accordance with ADA requirements, to provide access to the Elevated Promenade.

- xi. Park 11 (The Landing Public Sky Park). This civic plaza of 16,950 square feet is located above-grade on the third floor of The Landing (“The Landing Public Sky Park”). The Landing Public Sky Park will provide amphitheater seating, art, outdoor seating, an outdoor amphitheater stage, performance components (audio/visual) and permanent exercise stations, as depicted on the CDP/FDP.
 - (1) Programming, Events and Outdoor Games. The Applicant or the UOA will coordinate the programming and events of The Landing Public Sky Park. The Applicant will purchase, manage and store equipment for outdoor games, which may include but not be limited to chess, checkers, hopscotch or corn hole. Said events and programming will be coordinated by the Applicant or the UOA, and in accordance with Proffers 57.a and b.
 - (2) Phasing. The Landing Public Sky Park will be constructed with Phase 2. It will be shown on the site plan for The Landing and will be constructed prior to issuance of the first Non-RUP for The Landing.
- xii. Park 12 (Podium Park). This rooftop park of 9,200 square is located on the podium garage of Building C-3 (the “Podium Park”). The rooftop park will provide overhead structures, special paving, a media wall, outdoor seating, outdoor tables and landscape planters. Space will be provided for outdoor events, wellness classes, movie and game day showings, and electronic and visual art.
 - (1) Active Recreation. Active recreation, which may include but not be limited to outdoor yoga and other fitness classes, will be coordinated by the Applicant or the UOA in accordance with Proffer 57.b.
 - (2) Media Wall. The media wall will show wellness videos, movie and game day showings, electronic and visual art and other programming as determined by the Applicant or the UOA, and as further described in accordance with Proffer 57.b. The media wall will not be used for commercial advertisements, but may be used to provide information about upcoming events and programming in the Proposed Development or in Tysons.
 - (3) Phasing. The Podium Park will be constructed with Phase 2. It will be shown on the site plan for Building C-3 and constructed prior to issuance of the first Non-RUP for Building C-3.
 - (4) Access. The Applicant will install publicly-accessible elevators in the general locations shown on the CDP/FDP, and in accordance with ADA requirements, to provide access to the Podium Park.
- e. Interim Conditions. Park A (Interim Condition), an interim condition park of approximately 53,430 square feet is located in the north and northwest of the Property (“Park A”). Park A will provide space for gatherings, outdoor dining, temporary food carts and yoga. It will provide pop-up parks and place-making

features such as pop-up retail, temporary art and murals, and outdoor seating and tables.

- i. Events and Programming. All events and programming for Park A will be coordinated by the Applicant or the UOA, in accordance with Proffers 57.a and b.
- ii. Phasing. Park A will be constructed in Phase 2 in the areas to be occupied by Buildings C-2A and C-2B. It will be shown on the site plan for The Landing and constructed prior to issuance of the first Non-RUP for The Landing.

58. Private Amenities and Recreational Facilities for Residential Uses. The Applicant will provide on-site recreational facilities for the future residents of the Property. Pursuant to Par. 2 of Section 6-110 of the Zoning Ordinance, the Applicant will expend a minimum of \$1,900 per market-rate unit and WDU (as defined in Proffer 68 herein) on such recreational facilities. Prior to final bond release for the final phase of the Proposed Development, the balance of any funds not expended on-site, as determined by LDS, will be contributed to the FCPA for the provision of recreational facilities serving Tysons.

Amenities to be provided may include, but will not be limited to:

- a. Private exterior recreational areas or courtyards on the top of parking podiums with seating areas, specialty landscaping, lawn and/or shaded areas and hardscape areas, bocce courts, boules courts, board table games, or similar recreational facilities as may be approved with each FDP;
- b. Private exterior recreational areas on the roof or podium level with a swimming pool, lounge deck, and shade structure;
- c. Interior fitness center furnished with exercise equipment such as stationary bicycles, treadmills, weight machines, free weights, and other equipment, but not necessarily staffed; and/or
- d. A club room and/or entertainment room for resident gatherings.

59. Georgelas Part D Parks Contribution. To address the park contribution originally proffered by the Georgelas Part D application (RZ 2010-PR-014D) for land now included in this application, the Applicant will provide a contribution of \$791,500 to FCPA to support the provision of active recreation facilities either through land acquisition or facility development in Tysons. The contribution will be payable at the time of issuance of the first RUP or Non-RUP for Building D-1. The Applicant intends for this contribution to be used for the purpose of acquiring land and constructing athletic facilities in the Tysons area.

60. Tree Preservation and Planting Fund Contribution. To promote enhancement of the Fairfax County Tree Canopy through growth of trees on private and public land, the Applicant will contribute at the time of the first site plan approval \$0.002 (two tenths of a cent) per square foot of the maximum proposed GFA for the Proposed Development to the

Fairfax County Tree Preservation and Planting Fund (“TPPF”). This donation to the TPPF will supply tree saplings, volunteer support, and information to landowners with which they can enhance tree canopy on their property. Additionally, this donation will enable educational activities in Fairfax County Public Schools, should they choose to participate.

61. Athletic Field/Public Facility Contribution. To address the Comprehensive Plan’s recommendations regarding the provision of athletic fields in Tysons, the Applicant will contribute two dollars and forty-eight cents (\$2.48) for each square foot of net New Floor Space built on the Property to the County. The total contribution will be based on the CDP/FDP-approved GFA for all Buildings (excluding the GFA associated with the Arts Facility described in Proffer 64). Such contribution will be made in three installments of one-third of the total contribution prior to the issuance of the first RUP or Non-RUP for Buildings D-1, C-1 and C-3. The Applicant intends for this contribution to be used for the purpose of: (1) designing and constructing the proposed Tysons Community Center on the contiguous Fairfax County property, Tax Map 29-3 ((1)) 57B, but the; (2) the acquisition of land for new athletic fields within Tysons; and/or (3) the construction or improvement of athletic fields within Tysons. The final decision on how the money is to be allocated will rest with the Fairfax County Board of Supervisors.

DOMINION TRANSMISSION LINE UNDERGROUNDING

62. Dominion Transmission Lines. The Applicant will work diligently with Fairfax County, Dominion Virginia Energy and all other interested parties to underground the overhead transmission lines that run through the Property (the “Dominion Transmission Lines”). Prior to issuance of building permits for Building C-3 or The Landing, the Dominion Transmission Lines will be placed underground, as illustrated in the CDP/FDP but subject to final engineering and Dominion Energy approval.

PUBLIC FACILITIES

63. Public Facilities Contribution. The Applicant will contribute eighty-eight and one-half cents (\$0.885) for each square foot of GFA approved on the Property to the County (the “Public Facilities Contribution”). The Public Facilities Contribution will be made in three installments of one-third of the total contribution prior to the issuance of the first RUP or Non-RUP for Buildings D-1, C-1, and C-3. The Public Facilities Contribution will be based on the CDP/FDP-approved GFA for all Buildings (excluding the GFA of the Arts Facility described in Proffer 64). The Applicant intends for this contribution to be used ~~by the County~~ for the purpose of designing and constructing the proposed Tysons Community Center on the contiguous Fairfax County property, Tax Map 29-3 ((1)) 57B, but the final decision on how the money is to be allocated will rest with the Fairfax County Board of Supervisors.
64. Arts Facility. To increase public access to the arts through provision of a venue offering reasonably priced arts performances, the Applicant will provide an approximately 20,000 square foot theater in the below-grade parking garage under Building C-1, as shown on the CDP/FDP (the “Arts Facility”) to a theatrical, arts, dance, educational, entertainment or similar user (the “Arts Tenant”), subject to the following terms and conditions:

- a. Delivery of the Arts Facility. The Applicant will construct a warm lit shell of the Arts Facility with the finished interior work, connections to major utilities (HVAC, electric, gas, water, and sewer), elevator, electrical outlets, restrooms, and a concrete floor, as detailed in Exhibit B, prior to issuance of the first Non-RUP for Building C-1. The Applicant will design the Arts Facility to accommodate emergency exits and other infrastructure consistent with Fire Marshal, Virginia Building Code, and ADA requirements. In designing, constructing, and delivering the warm lit shell of the Arts Facility, the Applicant will substantially conform to the provisions of Exhibit B.
- b. Lease. Before issuance of the first Non-RUP for Building C-1, the Applicant and the Arts Tenant will enter into a lease containing the terms in Exhibit A (the "Lease"). The Lease will commence for a full term of 35 years (consisting of an initial 25 years followed by two automatic five-year renewals) subject to the provisions contained in Exhibit A. The Lease may be revised without the need for a CDPA, FDPA, or PCA so long as the Zoning Administrator determines that any lease revisions are in substantial conformance with the spirit and intent of this Proffer and Exhibit A. However, any lease revisions may not: (i) materially reduce the initial lease term; (ii) add any additional costs to be paid by the Arts Tenant; or (iii) eliminate the Arts Tenant's right to make the Arts Facility available to other area arts, culture, educational or community groups. The Applicant and the Arts Tenant may execute the Lease at any time prior to the issuance of the first Non-RUP for Building C-1, and may delay commencement of the lease term until a mutually agreed upon time (agreed upon in writing) consistent with the terms of this Proffer and Exhibit A.

PUBLIC SCHOOLS CONTRIBUTIONS

65. Public Schools Contribution. Per the Residential Development Criteria Implementation Motion adopted by the Board of Supervisors on September 9, 2002, as revised, the Applicant will contribute \$12,262 per expected student (based on a ratio of 0.112 students per residential unit) to the Fairfax County School Board to be utilized for capital improvements that serve the Tysons area. The contributions will be made on or before the issuance of the building permit for each residential building on the Property, and will be based on the actual number of residential units in each Building. If, prior to site plan approval for a respective residential building, Fairfax County should modify, on a County-wide basis, the expected ratio of students per subject multi-family unit or the amount of the contribution per student, the amount of the contribution will be modified for that Building to reflect the then-current ratio and/or contribution. If the County should decrease the ratio or contribution amount, the amount of the contribution will be decreased to reflect the current ratio and/or contribution.
66. Notification of Construction. At the time of site plan submission for each residential Building or Buildings, the Applicant will notify the facilities planning division of the Fairfax County Public Schools ("FCPS") of the approximate timing for construction of the residential units and the number of residential units anticipated in each building.

AFFORDABLE AND WORKFORCE DWELLING UNITS

67. Affordable Dwelling Units. If required by the provisions of Part 8 of Article 2 of the Ordinance, Affordable Dwelling Units (“ADUs”) will be provided pursuant to said regulations, unless modified by the ADU Advisory Board.
68. Workforce Dwelling Units. In addition to any ADUs that may be required pursuant to these Proffers, the Applicant will also provide for-sale and/or rental housing units in accordance with the Board of Supervisors’ Tysons Corner Urban Center Workforce Dwelling Unit Administrative Policy Guidelines dated June 22, 2010 (the “WDU Policy Guidelines”) and the guidance provided in the Tysons Urban Center Comprehensive Plan with regard to Workforce Dwelling Units (“WDUs”), as may be amended, including the specific provisions related to high-rise condominiums. ~~If ADUs are provided in the development, both the ADUs and the ADU bonus units will be deducted from~~WDUs will be provided such that the total number of dwelling units on which the WDU calculation is based. ADUs, if any, plus the total number of WDUs results in no less than twenty percent (20%) of the total residential rental units and no less than fourteen percent (14%) of the total for-sale residential units constructed as part of the Proposed Development.
- a. WDU Specifications. The WDUs generated by each residential Building will be provided within such Building. The Applicant reserves the right to consolidate the WDUs into one or more Buildings with the buildout of the Property and thereby increase the number of WDU rental units in one or more Buildings beyond twenty percent (20%), or beyond fourteen percent (14%) in the case of for-sale units, with a decrease in the number of WDU units in the other buildings. The WDUs will have a bedroom mix similar to that provided in the market rate units. Additionally, in the event that parking spaces are assigned to individual market rate dwelling units, at least one (1) parking space will be designated for use by each ADU and/or WDU in the development.
- b. Future Agreements. Notwithstanding the foregoing, should the Board’s policies related to WDUs in Tysons Corner be amended, the Applicant reserves the right to opt in to the new policies, in whole or in part, without the need for a PCA. Furthermore, the Applicant reserves the right to enter into a separate binding written agreement with the appropriate Fairfax County agency as to the terms and conditions of the administration of WDUs following approval of this Application. Neither the Board nor any other County agency will be obligated to execute such an agreement. If such an agreement is executed by all applicable parties, then the WDUs will be administered solely in accordance with such an agreement and the provisions of this Proffer as it applies to WDUs will become null and void. Such an agreement and any modifications will be recorded in the Fairfax County land records.
69. Non-residential Affordable Housing Contribution. The Applicant will contribute \$3.00 for each square foot of non-residential space (excluding ground floor retail/service uses) built on the Property to the Fairfax County Board of Supervisors for the provision of affordable and/or workforce housing to serve Tysons. Such contribution will be made prior to the

issuance of the first Non-RUP for each non-residential Building, and will be based on the actual GFA of non-residential space constructed in each Building.

MISCELLANEOUS

70. 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.
71. Escalation. All monetary contributions, except as may be further specified in these Proffers, will escalate on an annual basis from the base month of January 2020 and change effective each January 1 thereafter, based on changes in the Consumer Price Index for all Urban Consumers [1982-84=100] (not seasonally adjusted) (“CPI-U”), both as permitted by Va. Code Ann. Section 15.2-2303.3.
72. Severability. Any of the phases and/or Buildings may be the subject of a PCA, Special Exception, Special Permit, CDP, CDPA, FDP or FDPA without joinder and/or consent of the owners of the other phases or buildings, provided that such application complies with Section 18-204 paragraph 5 of the Zoning Ordinance. Previously approved zoning applications applicable to a particular land bay that is not the subject of such a PCA, Special Exception, Special Permit, CDP, CDPA, FDP or FDPA will otherwise remain in full force and effect.
73. Successors and Assigns. These Proffers will bind and inure to the benefit of the Applicant and its successors and assigns. Each reference to “Applicant” in this proffer statement will include within its meaning and will be binding upon Applicant’s successor(s) in interest and/or developer(s) of the site or any portion of the site.
74. Counterparts. These Proffers may be executed in one or more counterparts, each of which when so executed and delivered will be deemed an original, and all of which taken together will constitute one instrument.
75. Zoning Administrator Consideration. Notwithstanding the foregoing, upon demonstration by the Applicant that, despite diligent efforts or due to factors beyond the Applicant’s control, the required transportation, publicly accessible park areas, athletic field improvements, or other proffered improvements have been delayed (due to, but not limited to an inability to secure necessary permission for utility relocations and/or VDOT approval for traffic signals, necessary easements, WMATA approval(s), site plan approval, etc.) beyond the time frames specified, the Zoning Administrator may agree to a later date for completion of these improvement(s) or Proffer(s).

[SIGNATURES BEGIN ON NEXT PAGE]

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**APPLICANT/CONTRACT
PURCHASER/OWNER**

TYSONS DEVELOPMENT LLC

Applicant

Title Owner of Parcel 29-3 ((32)) 1

*Contract Purchaser of Parcels 29-3 ((1)) 53, 53A,
57A, 57K & 57M*

By: Tysons Realty Investments, LLC

Its: Managing Member

By: _____

Name: Joseph J. Vale

Its: Authorized Representative

[SIGNATURES CONTINUE ON NEXT PAGE]

OWNER

CHERNER FAMILY, LLC

Title Owner of Parcels 29-3 ((1)) 53 & 53A

By: _____

Name: _____

Its: _____

[SIGNATURES CONTINUE ON NEXT PAGE]

OWNER

1568 SPRINGHILL ROAD, LLC

Title Owner of Parcel 29-3 ((1)) 57A

By: _____

Name: _____

Its: _____

[SIGNATURES CONTINUE ON NEXT PAGE]

OWNER

FORCE 10, LLC

Title Owner of Parcels 29-3 ((1)) 57K & 57M

By: _____

Name: _____

Its: _____

[END OF SIGNATURES]

Exhibit A: Lease Terms

- **Rent.** The rent will be set at \$5.00 per square foot per annum for the first five years. An annual escalator of no more than 1.5% will apply on the fifth year and every second year thereafter.
- **Term.** The Lease will commence for a full term of thirty-five (35) years (consisting of an initial twenty-five (25) years followed by two automatic five-year renewals) (the “Term”). Said renewals will be subject to the provisions and rental rate contained in the Proffer and in the Lease. The parties may in good faith negotiate additional extensions of the Term, each for a period of up to five additional years, upon such terms and conditions as may be mutually agreeable.
- **Construction of the Arts Facility.** The Applicant will construct a warm, lit shell of the Arts Facility with connections to major utilities (HVAC, electric, gas, water, and sewer) and elevator in accordance with the shell standards outlined on the attached Exhibit B. The Applicant will design the building to accommodate emergency exits and other infrastructure consistent with Fire Marshal, Building Code, and ADA requirements based on a mutually agreed upon space plan.
- **Delivery of the Arts Facility.** Delivery of the Arts Facility will mean the Arts Tenant is granted access by the Applicant to the Arts Facility for the purpose of buildout and use.
- **Utilities, Taxes, and Dues.** The Arts Tenant will be responsible for payment of utility hook-up fees and monthly usage. Common area maintenance charges, a pro rata share of applicable property taxes for the Arts Facility, and applicable owners association dues (collectively, the “Other Charges”) will be limited, collectively, to \$1.50 per square foot for the first five years. An annual escalator of no more than 1.5% will apply on the fifth year and every second year thereafter. Applicant will be responsible for maintaining the physical structure surrounding the Arts Facility and connections to the Arts Facility, as well as maintenance of any portion of the building that provides access or parking to the Arts Tenant space. The Arts Tenant’s responsibility for any such charges will be included in the common area maintenance charges, the costs of which are strictly limited above.
- **Proffer Tenant Obligation Limitation:** In order to enable the Arts Tenant to continuously offer the lowest ticket prices to the public and thereby provide a significant public benefit, Applicant agrees to limit the total Arts Tenant obligation to the fixed rent and Other Charges contained herein. Applicant agrees this Proffer Limitation is a substantial benefit to the Arts Tenant and the community and agrees it or its successors will not be permitted to add any additional costs to be paid by the Arts Tenant. This limitation must be in place for the entire term, including option periods, and be stated in the Lease.
- **Notification.** The Applicant will notify the Arts Tenant in writing a minimum of twelve (12) months prior to delivery of the Arts Facility.

- Signage. Subject to compliance with all applicable laws and regulations, Applicant will provide signage with visibility to the Spring Hill Metro Pavilion and additional signage along Route 7, to be determined with a future CSP approved by the County.
- Parking. Applicant will provide the Arts Tenant with twelve (12) free parking passes for the first ten (10) years of the Term.
- Build-Out. The Arts Tenant will commence construction of the interior of the Arts Facility within six months of delivery. The Arts Tenant will complete construction and commence scheduled arts/theatrical activities within eighteen months of delivery, time being of the essence.
- Assistance. The Applicant will provide the Arts Tenant with all building plans of the Arts Facility twelve months prior to delivery. The Applicant will assist the Arts Tenant’s planning and architecture team with securing building and tenant fit-out permits, provided said assistance does not exceed a cost of \$25,000 to the Applicant. Said assistance will include advice, information, and facilitating meetings and discussions with Fairfax County officials and employees.
- Fundraising Milestones. The Arts Tenant will document and provide evidence to the Applicant that it has achieved the following milestones in anticipation of funding the cost of the build-out (expected to be between \$5-7 million) and continuing maintenance of the Arts Facility:
 - By site plan approval for Building C-1: \$1,000,000 (time being of the essence).
 - Nine (9) months following the commencement of construction of Building C-1: \$2,500,000 (time being of the essence).
 - Upon completion of Building C-1 construction: \$4,000,000 for buildout and \$1,000,000 for a “sinking fund” for the purpose of continuing maintenance of the Arts Facility (time being of the essence)

This milestone schedule is based on a 4-year timeframe from zoning approval to the opening of the Arts Facility. The Arts Tenant and the Applicant may mutually agree in writing upon alternative fundraising milestones (such as a percentage of total build-out cost) prior to execution of the Lease. The milestone timeline may also be revised in the event of (1) a delay in the execution of the Lease, (2) delay in finding an Arts Tenant that desires and is capable of funding the build-out of the Arts Facility, (3) default by the Arts Tenant, or (4) termination by the Arts Tenant as provided below.

- Contingencies. The Arts Tenant will have the right to terminate a letter of intent or the Lease upon fifteen (15) days’ notice if the following have not occurred by the dates indicated:
 - Lease to be completed and executed by September 1, 2020;

- Building permit for Building C-1 approved by March 1, 2022;
- Arts Facility to be constructed by December 1, 2023.
- Continuous Operation. The Arts Tenant will continuously operate its business in the entire area of the approximately 20,000 square foot Arts Facility for the entire term of the Lease, except during any period of Permitted Closure, as defined below. If the Arts Tenant violates the requirement of the preceding sentence for a period of thirty (30) consecutive days, then the Applicant may, by notify the Arts Tenant in writing at any time after the occurrence of such violation that it has thirty days to cure the violation by resuming continuous operation. If the Arts Tenant fails to comply after such written notice and a thirty-day opportunity to cure, the Applicant may recapture the Arts Facility and terminate the Lease with the Arts Tenant; however, it must enter into a lease with a subsequent Arts Tenant for the remainder of the initial lease term, as further provided below.

Arts Tenant shall be deemed to have satisfied its obligation to “continuously operate” if and only if Arts Tenant holds the majority of its performances in the Arts Facility during the Fiscal Year (the “Performance Minimum”), conducts its rehearsals, and maintains its physical box office and administrative offices in the Arts Facility. Arts Tenant will be permitted to use online or non-physical means for its box office functions. Arts Tenant must have box office hours customary in the entertainment business.

- Permitted Closure. Permitted Closure will mean any period in which the Arts Facility is not open and operating due to events of casualty, condemnation, periodic remodeling, refurbishment or equipment replacement, acts of the Applicant, its agents, employees or contractors, and events of Force Majeure.
- Sound. The Applicant will provide sound attenuation in the Arts Facility as part of the shell construction. Such sound attenuation methods will be mutually agreed upon as part of the construction drawing review and approval by the parties.
- Tenant Assignment and Subletting. The Arts Tenant will not assign, transfer, mortgage or otherwise encumber the Lease or any interest in the Lease or sublet or rent (or permit a third party to occupy or use) the Arts Facility, or any part thereof, nor will any assignment or transfer of the Lease or the right of occupancy under the Lease be effected by operation of law or otherwise (any such event being referred to herein as a “Transfer”), without Applicant’s prior written consent, which consent may be withheld in Applicant’s sole and absolute discretion. Any change in the holders owning or controlling the majority interest in the Arts Tenant, whether in one (1) transaction or a series of transactions, will be deemed a Transfer of the Lease for which Applicant’s consent will be required in accordance with the foregoing.
- Access by other Arts Groups. To promote public access to and affordability of the arts, on a temporary basis not to exceed three (3) days per month, the Arts Tenant will be

permitted to allow other area arts, culture, educational or community groups to use the Arts Facility when it is not in use by the Arts Tenant. This usage by others will be coordinated by the Arts Tenant's programmer, and the Arts Tenant may charge such other users for use of the Arts Facility. This will not constitute a sublet or rent of the Arts Facility space and does not require the Applicant's prior consent, unless the period of time proposed exceeds three (3) days per month. This provision must be in place for the entire term, including option periods, and be stated in the Lease.

- Default. If the Arts Tenant breaches any provision contained herein, the Applicant retains the right to recapture and lease the Arts Facility to a new Arts Tenant for the remainder of the Term only after sending written notice and providing the Arts Tenant a 30-day period to cure. In the event the Arts Tenant defaults under the terms of the Proffer and/or the Lease, and the Applicant recaptures the Arts Facility, the Applicant must enter into a lease with a subsequent Arts Tenant within a reasonable period of time. Any subsequent Arts Tenant will be required to meet the same financial and operational standards at least equivalent to those financial and operational standards as required in the Proffer and/or the Lease; and further, any subsequent Arts Tenant will demonstrate to Applicant's reasonable satisfaction the financial means to meet or exceed the financial commitments, as adjusted for inflation, as required in the Proffer and/or the Lease.

Exhibit B: Landlord Scope of Work

General Notes

- Unless otherwise defined, all capitalized terms used herein will have the same meaning as used in the Proffers, as applicable.
- Applicant will provide a “warm lit shell” meaning that the space will provide basic construction elements such as the base structures, common areas including lobbies, stairwells and elevators, power, heating, cooling and ventilation systems.
- The warm lit shell does not include “tenant improvements,” including completed interior space required to meet the Arts Tenant’s program of requirements.
- Applicant will hold a one-year material and installation warranty on all products, materials, and equipment installed by Applicant.
- All improvements outlined herein will comply with all Federal, state and local regulations, as applicable. The Applicant and Arts Tenant (together, the “Parties”) will be responsible for obtaining all necessary permits or licenses for its portion of the scope. The Parties will reasonably cooperate to obtain said permits or licenses.

Design and Engineering

- Each Party will be responsible for the design and engineering of its portion of the scope. Landlord’s engaged architects and/or engineers will share all relevant engineering, electrical, mechanical and construction plans with, and provide assistance to, Arts Tenant and its engaged architects and/or engineers. Said assistance will not exceed a total cost to the Applicant of \$25,000.

Exterior

- The building exterior, including all space adjacent to the Arts Facility will be complete, including all finished surfaces, striping (for parking areas) and landscaping.

Handicapped Accessibility

- Complete handicapped accessibility is required to and throughout the Arts Facility.
- Path of travel distances shall meet all applicable Federal, state and local laws or regulations.

Doors and Windows:

- Installation of electric strikes at suite entry doors (the Arts Tenant will carry card reader and connection to security panel).
- Security hardware for non-manual locks by the Applicant for exterior doors, i.e. magnetic locks and cypher lock.
- Main Suite Entry Doors – Provide 3’0” x 8’0” minimum full light doors.

Wall and Floor Finishes:

- Floor to be trowel-finished concrete within industry standard level tolerances.
- Permanent perimeter and demising walls shall be finished with drywall and ready for paint.
- Columns in common and tenant areas shall be finished with drywall and ready for paint.
- Common walls with other tenants and the garage shall provide CMU, sound attenuation and vibration mitigation methods. The noise attenuation STC rating shall be 50 or higher.

Appliances/Equipment:

- Rough-in for the following appliances and equipment: (1) Refrigerator with icemaker, (2) microwave, (2) kitchen sinks, (2) dishwashers and (3) coffee maker cold water supply by the Applicant.
- Hot water heater – the Applicant to provide all connections and main supply lines to the kitchen and bathroom(s).

Ceiling: Finished ceiling in the lobby and office space.

Mechanical/Electrical:

- Sufficient A/C cooling, heating, and ventilation for a theater use in the Arts Facility, as determined at the time of final building design and as required by relevant Federal, state or local law or regulation shall be installed and operational.
- Fresh air intakes or exhausts including dampers, as applicable.
- Conference rooms, shop and storage, shall be on their own independent zones

- Complete electrical service to accommodate one 199-seat theater and associated office, multi-purpose rehearsal and back-of-house space installed and energized. Total electrical service to be determined at the time of building plan drafting.
- Sufficient chiller and condenser capacity to serve the space, as determined at the time of final building design.
- Energy Management System by the Applicant sufficient to enable automated shutdown of high consuming electrical components
- Connections to telephone and data to be provided by the Applicant.

Plumbing:

- Hot and cold domestic water service, domestic waste lines and vent risers shall be installed and ready for connection in locations and in dimensions as determined at the time of final building design.
- Provide ADA compliant restrooms as required by Federal, state and local law or regulation.
- Water heater with sufficient capacity to serve the Arts Facility, as determined at the time of final building design.
- No plastic tubing for any water lines. Backflow preventer as required by relevant Federal, state, or local law or regulation.
- Fully sprinkled with recessed heads. Sprinkler system to comply with National Fire Protection Association Standard 13. Fire pump, if required, will be included. Arts Tenant to provide any required riser to the space.

Life Safety:

- Fire alarm devices as required by Federal, state, or local law or regulation shall be installed, distributed and operational, and accepted by Fairfax County.
- Exit lights as required by Federal, state, or local law or regulation shall be installed and operational.
- Any other life safety systems required by Federal, state or local law or regulation shall be installed, distributed, operational, and accepted by Fairfax County.

Interior Buildout (by Arts Tenant):

- Arts Tenant is responsible for constructing and permitting all items not included in this Exhibit A that are necessary for Arts Tenant's program of requirements, including, but not necessarily limited to, fit-out of the 199-seat theater, multi-purpose room, offices, lobbies, bathrooms and other spaces, installation of interior partitions and installation of specialty ceilings.
- Tenant is responsible for furnishing all space in the Arts Facility and providing and installing all appliances, lighting and sound equipment as needed for the Arts Tenant's program of requirements.

Exhibit C: Sustainability Goals

Comprehensive Plan Goals	The Iconic Strategy	Block Design	BD+C	Goals
<ul style="list-style-type: none"> • Compact development to improve energy efficiency 	<ul style="list-style-type: none"> • 821,054 square foot building • Office & retail components 	<ul style="list-style-type: none"> • 2,159,254 square feet • Office, retail, hotel and residential components 	<p style="text-align: center;">N/A</p>	<ul style="list-style-type: none"> • Access to and integration with Metro, buses, an upgraded Kiss and Ride, the Cycle Plaza • Adherence to an aggressive TDM, parking reduced below the permitted maximums • Extensive pedestrian network
<ul style="list-style-type: none"> • A combination of effective land use and transportation policies creates the basic foundation for the sustainable Tysons and redevelopment efforts within Tysons to build upon this foundation. • Transit-oriented development 	<ul style="list-style-type: none"> • Rainwater harvesting and on-site reuse • Tree canopy coverage • Bottom Tier Patio area landscape 	<ul style="list-style-type: none"> • Rainwater harvesting and on-site reuse (building C-1 only) • Public park access 	<ul style="list-style-type: none"> • Restore project site elements • Integrate site with local and regional ecosystems <p>Use low-impact development methods and minimize construction pollution, reduce heat island effects and light pollution, and mimic natural water flow patterns to manage rainwater runoff.</p>	<ul style="list-style-type: none"> • Avoid contributing to sprawl and its consequences • Select locations close to existing town and city centers, sites with good transit access, infill sites, previously developed sites, and sites adjacent to existing development
<ul style="list-style-type: none"> • Water-efficient landscaping • Retain on-site and/or reuse the first inch of rainfall to ensure that runoff characteristics associated with the site will mimic those of a good forest condition for a significant majority of rainfall events <p><u>LID Strategies:</u></p> <ul style="list-style-type: none"> • Vegetated Swales • Porous pavement • Vegetated roofs 	<ul style="list-style-type: none"> • Provide runoff calculations • Intensive and extensive plantings 	<ul style="list-style-type: none"> • Preliminary runoff calculations indicate 45% reduction in runoff volume • Include green roof vegetated areas 	<ul style="list-style-type: none"> • Landscape strategies must protect and enhance natural existing conditions • A variety of native plantings must be included in landscape elements 	<ul style="list-style-type: none"> • Preserve the existing tree canopy and native vegetation to the extent possible • Accommodate compact development • Enhance features such as sidewalks and trails, street trees, inviting building facades, small setbacks, minimal parking lot area • Slow automobiles by increasing/encouraging pedestrian activity.

Comprehensive Plan Goals	The Iconic Strategy	Block Design	BD+C	Goals
<ul style="list-style-type: none"> • Tree box filters • Water reuse • Green Network • Park Network • Streets will be “complete streets,” with walking and jogging trails and bicycle paths 				
<ul style="list-style-type: none"> • Use water-conserving plumbing fixtures • Optimize reduction of stormwater runoff and control of peak flows for the remaining stormwater that cannot be completely captured on-site 	<ul style="list-style-type: none"> • Plumbing schedule to be available for review • Landscape strategy may include a sprinkler system 	<ul style="list-style-type: none"> • Plumbing schedule to be available for review • Landscape strategy includes significant amount of green infrastructure 	<ul style="list-style-type: none"> • Targets include fixtures and fittings associated with indoor water, irrigation water and water metering • Meet WaterSense requirements • Meet ENERGYSTAR appliance requirements 	<ul style="list-style-type: none"> • Improve design to conserve water • Ease demands on water supply. Indoors, potable water consumption will meet WaterSense requirements • Reuse wastewater for landscape maintenance
<ul style="list-style-type: none"> • Recreational facilities • Height flexibility will be provided to facilitate the provision of affordable/workforce housing, as well as public and quasi-public uses such as a conference center or 	<ul style="list-style-type: none"> • Integrate with and provide access to the Spring Hill Metro • Provision of unique and desirable publicly accessible observation deck with arts opportunities 	<ul style="list-style-type: none"> • Bus shelter redesign • 10-foot wide sidewalk to encourage pedestrian movement • approx. 20,000 square foot theater • Elevated amphitheater 	<ul style="list-style-type: none"> • Bike network to connect to publicly accessible and diverse uses • Bicycle Storage and Shower/Changing Facilities (provide access to bicycle path within 0.25 miles walking distance) 	<ul style="list-style-type: none"> • Parks and plazas encourage social interaction and active recreation • On-site parks help control rainwater runoff and reduce urban heat island effects

Comprehensive Plan Goals	The Iconic Strategy	Block Design	BD+C	Goals
arts center (PAC)		<ul style="list-style-type: none"> • Solar Sharing • Continuation of the Arts Walk 		

Exhibit D: Legally Established Uses as of September 16, 2019

Address	Permit Number	Name	Use	Sq. Ft.	Phasing

8550 Leesburg Pike	130640101	Aston Martin Washington DC	Vehicle Sale, Rental, Ancillary Service Establishment	26,719	Demolished prior to Phase 1
1568 Spring Hill Road #300 & 301	180540086	Spatial Front, Inc.	Office	7,200	Demolished prior to Phase 2
1568 Spring Hill Road #101	131920015	Front Point Security	Office	1,657	Demolished prior to Phase 2
1568 Spring Hill Road #401	132400033	Front Point Security	Office	1,657	Demolished prior to Phase 2
1568 Spring Hill Road #400	122840180	Front Point Security	Office	2,361	Demolished prior to Phase 2
1568 Spring Hill Road #102	90750216	A Z Diabetic Supply Inc.	Office	1,200	Demolished prior to Phase 2
1568 Spring Hill Road #200	163150097	Rillhurst Capital	Office	2,129	Demolished prior to Phase 2
1570 Spring Hill Road	151970090	Caliber Collision Centers	Warehousing Establishment	10,000	Demolished prior to Phase 2
1570 Spring Hill Road	A-2006-1264	Dent Masters	Vehicle Major Service Establishment	6,075	Demolished prior to Phase 2
1572 Spring Hill Road	151970085	Caliber Collision	Vehicle Major Service Establishment	12,000	Demolished prior to Phase 2
1572 Spring Hill Road	151680173	Caliber Collision	Office	3,289	Demolished prior to Phase 2
1572 Spring Hill Road	A-1997-2274	Enterprise Rent-A-Car	Vehicle Sales, Rental, Service Establishment	3,000	Demolished prior to Phase 2
1572 Spring Hill Road	A-1996-1588	Enterprise Leasing	Office	2,000	Demolished prior to Phase 2

Exhibit E: SEA-93-P-010-2 Approval Letter

Exhibit F: SE-96-P-030 Approval Letter

Exhibit G: Boyd Pointe Way Phased Turnaround

FINAL DEVELOPMENT PLAN CONDITIONS

FDP 2017-PR-010

~~September 23, 2019~~ October 7, 2019

If it is the intent of the Planning Commission to approve Final Development Plan FDP 2017-PR-010 on property located at Tax Map Tax Map 29-3 ((32)) 1 and 29-3 ((1)) 53, 53A, 57A, 57K, and 57M, staff recommends that the Planning Commission condition the approval by requiring conformance with the following development conditions.

- 1) Any plan submitted pursuant to this final development plan shall be in substantial conformance with the FDP entitled, "The View at Tysons," prepared by VIKA Virginia LLC, Gensler, and LandDesign, dated April 17, 2017, as revised through September ~~18~~ 30, 2019, and these conditions. Minor modifications may be permitted pursuant to Section 16-402 of the Zoning Ordinance.

SPECIAL EXCEPTION CONDITIONS

SE 2018-PR-013

September 23, 2019

If it is the intent of the Board of Supervisors to approve Special Exception SE 2018-PR-013, to permit additional Floor Area Ratio (FAR) pursuant to Sections 6-504 2.C. (2) and 6-507 2.A.(1) of the Zoning Ordinance, on property located at Tax Map 29-3 ((32)) 1 and 29-3 ((1)) 53, 53A, 57A, 57K, and 57M, staff recommends that the Board condition the approval by requiring conformance with the following development conditions.

1. This Special Exception (SE) is granted for and runs with the land indicated in this application and is not transferrable to other land.
2. This Special Exception is granted exclusively to permit additional FAR within the structure identified as The View at Tysons, Building C-3, which is also the subject of Final Development Plan FDP 2017-PR-010, accompanying this application. The building utilizing the additional FAR shall be constructed in substantial conformance with the Final Development Plan, as qualified by these development conditions.
3. This Special Exception permits an additional 451,032 square feet of office floor area within the structure identified on the Final Development Plan as Building C-3. Inclusive of this additional floor area, the total office floor area for The View shall not exceed 1,433,139 square feet as further articulated on Sheet C-03(C) of the Conceptual/Final Development Plan.

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

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The Applicant shall be himself responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Exception shall not be valid until this has been accomplished.

Pursuant to Section 9-629 of the Zoning Ordinance, this special exception shall automatically expire, without notice, ten (10) years after the date of approval unless, at a minimum, the core and shell final inspection(s) for the building(s) have been approved. The Board of Supervisors may grant additional time subject to the conditions as noted within Paragraph 6 of Section 9-629.