

## CORRESPONDENCE SUMMARY

**DATE:** October 31, 2012  
**CORRESPONDENCE NUMBER:** ZCOR-2012-0144  
**SUBJECT:** **Kincora Transportation Proffers**

**1993 Ordinance Reference Numbers:**

**1972 Ordinance Reference Numbers:**

**Other Applicable Reference Numbers:** ZMAP-2008-0021\*

**Applicable Tax Map/PIN Numbers:** 041-29-8238  
042-49-0209  
042-29-6582

**Correspondence Summary:**

Response to four items related to proffered road improvements.

**PROPERTY OWNER:**

NA DULLES REAL ESTATE INVESTOR LLC,  
% TRITEC CAPITAL LTD  
45 RESEARCH WAY STE 100  
EAST SETAUKET NY 11753

Author: Susan Glass

\*Indicates where to file

Is this a determination? Check one: Yes  No



Loudoun County, Virginia  
www.loudoun.gov

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Department of Building and Development  
Zoning Administration / MSC# 60A  
1 Harrison Street, S.E., P.O. Box 7000, Leesburg, VA 20177-7000  
Main: 703-777-0220 • Fax: 703-771-5215

October 31, 2012

John C. McGranahan, Jr.  
Hunton & Williams LLP  
1751 Pinnacle Drive  
Suite 1700  
McLean, Virginia 22102

**Re: Kincora Village Center Proffer Determination**

Dear Mr. McGranahan:

I am writing in response to your letter dated August 21, 2012, addressed to Nicole Dozier, in which you requested a determination pertaining to the construction of proffered road improvements at Kincora Village Center, which will be funded by a conduit loan from the Virginia Transportation Infrastructure Bank ("VTIB") through the Industrial Development Authority of Loudoun County to NA Dulles Real Estate Investor LLC ("NA Dulles"). You requested a determination with respect to four matters; I have responded to each item below.

**Background Information:**

On July 12, 2010, the Board of Supervisors approved the Zoning Map Amendment application for Kincora Village Center ("Kincora"), ZMAP 2008-0021, subject to the Proffer Statement dated July 7, 2010. The applicant of that application, NA Dulles, is also the current owner of the parcels that are subject to the application (PIN #s 041-29-8238, 042-49-0209, 042-29-6582).

Kincora Proffer III (attached) provides for various transportation improvements, including Proffer III.C, Construction of Public Roads with a CDA and Proffer III.D, Construction of Public Roads without a CDA. The proffered public road obligations include (i) the dedication and construction to extend Pacific Boulevard as a four lane divided road from the southern property boundary to connect with the eastern terminus of Russell Branch Parkway and (ii) the dedication of a 120-foot width to accommodate an ultimate six lane median divided section of, and the construction of a four lane median divided section of, Gloucester Parkway from Pacific Boulevard to Loudoun County Parkway. As stipulated in the proffer statement, these transportation improvements are to be performed in phases.

The second paragraph of Kincora Proffer III.C.2 requires NA Dulles to petition the Board of Supervisors to create a Community Development Authority (CDA) within one year of the final approval of Kincora. NA Dulles fulfilled this obligation by submitting their petition on July 8, 2011. As of the date of this letter the Board of Supervisors has not created a CDA to fund the road and transportation improvements described in Proffer III.C.

On June 20, 2012, the Commonwealth Transportation Board approved an \$80,000,000 loan (the VTIB Loan”) from the Virginia Transportation Infrastructure Bank (“VTIB”) to the Industrial Development Authority of Loudoun County (“IDA”) for the Gloucester Parkway and Pacific Boulevard Extension Project (resolution attached). According to the Nonbinding Term Sheet (attached), the VTIB Loan to the IDA is a conduit loan to NA Dulles. To my knowledge, the VTIB Loan has not yet been closed.

In your letter, you defined the “Project” as all improvements constructed with the proceeds of the VTIB Loan. You request this office to determine the following.

1. **REQUEST:** Payments made to the VTIB to repay the VTIB Loan will satisfy the obligations of **Proffer III.M** of the Proffers and no further payments will be due under **Proffer III.M**.

**RESPONSE:** As stated in the proffer text below, Kincora Proffer III.M requires the Owner to make per-zoning permit cash contributions for certain residential units in the event that the Board of Supervisors has not created a CDA to fund the road and transportation improvements described in Proffer III.C. within 18 months after the approval of ZMAP 2008-0021, such contributions to be held in a “Gloucester Parkway Fund” to be used for the construction of the extension of Gloucester Parkway. Proffer III.M does not offer an alternative or an exception to the requirements to make the cash contributions in the event that the CDA is not created. Therefore, since the Community Development Authority was not created within 18 months following the July 12, 2010 approval of the Kincora Village Center zoning map amendment application, the per unit contributions to the County for the Gloucester Parkway Fund are clearly required by the plain language of Proffer III.M.

At the present time, no zoning permits have been issued for any residential dwelling units on the Property; therefore, no contributions have been made for Proffer III.M. In accordance with Proffer III.M, if the Owner elects to proceed and commences construction of Gloucester Parkway in accordance with the Proffer III.C or Proffer III.D, then all funds accumulated in the Gloucester Parkway Fund shall be used to fund the construction of such extension of Gloucester Parkway; in other words, the Gloucester Parkway contributions will be refunded to the Owner if there is satisfactory documentation of expenditures toward such construction.

To literally comply with the terms of Kincora Proffer III.M, a cash contribution must be paid to the County in the amount of \$24,538.00, subject to annual CPI adjustments, at the time of issuance of zoning permit for each residential dwelling unit, exclusive of the ADU Equivalent Units and the nine percent (9%) of Unmet Housing Needs Units to be affordable for purchase or rental by households whose income does not exceed thirty percent (30%) of AMI. These funds are to be held by the County in an interest bearing “Gloucester Parkway Fund” to be used solely for construction of such extension of Gloucester Parkway; and at such time as Owner elects to proceed with construction of Gloucester Parkway pursuant to Proffer III.D., which may be demonstrated by the posting of a bond for the construction of this roadway improvement, all of the funds accumulated in the Gloucester Parkway Fund, with any accrued interest, shall be released to Owner to fund the construction of such extension of Gloucester Parkway. However,

the final sentence of Proffer III.M provides that “Any funds remaining or subsequently paid and deposited into the Gloucester Parkway Fund after all expenses of designing and constructing the extension of Gloucester Parkway have been paid, shall be used by the County for regional road and/or transportation and/or capital facilities improvements in the vicinity of the Project.”

*M. Fund to Accelerate Construction of Gloucester Parkway without a CDA.*

*If within eighteen (18) months of the approval of this rezoning application ZMAP 2008-0021, the Board has not created a CDA for the Property to fund the road and transportation improvements described in Proffer III.C., then the Owner shall make a cash contribution to the County in the amount of \$24,538.00 for each residential dwelling unit, exclusive of the ADU Equivalent Units and the nine percent (9%) of Unmet Housing Needs Units to be affordable for purchase or rental by households whose income does not exceed thirty percent (30%) of AMI.*

*Such contributions shall be paid at the time of issuance of the zoning permit for each such residential dwelling unit constructed on the Property. If, at the end of said eighteen- (18) month period, any zoning permits for residential dwelling units have previously been issued, the cash contribution amounts payable for such units pursuant to the preceding paragraph shall at that time be due and payable. The County shall collect and hold such contributions in a separate interest-bearing account (the "Gloucester Parkway Fund") to be used solely for construction of the extension of Gloucester Parkway described in Proffers III.C. and III.D. At such time as (i) the County elects to accelerate the construction of Gloucester Parkway by supplementing the funds accumulated in the Gloucester Parkway Fund with other available sources of funding that together will cover the entire cost of such extension of Gloucester Parkway, or (ii) the Owner elects to proceed with the construction of Gloucester Parkway in accordance with Proffer III.C. (should a CDA be created in the future) or in accordance with Proffer III.D., then all of the funds accumulated in the Gloucester Parkway Fund, with any accrued interest, shall be used to fund the construction of such extension of Gloucester Parkway. The amount of the cash contributions proffered in this paragraph shall be adjusted annually in accordance with changes to the CPI from a base year of 2010 (see Proffer VIII.C.). Any funds remaining or subsequently paid and deposited into the Gloucester Parkway Fund after all expenses of designing and constructing the extension of Gloucester Parkway have been paid, shall be used by the County for regional road and/or transportation and/or capital facilities improvements in the vicinity of the Project.*

Therefore, it appears there are multiple possibilities, depending on the relative timing of the issuance of residential zoning permits, the Gloucester Parkway construction and the cost of such construction. For example, suppose all 1300 “market-rate” residential zoning permits were issued prior to road construction, the Owner deposited cash contributions into the Fund, and then closed the VTIB Loan and used the proceeds to construct Gloucester Parkway at a cost exceeding the amount in the Gloucester Parkway Fund. The Owner would be entitled to have the Fund balance released to it, and its payments on the VTIB Loan would, in effect, take the place of the cash contributions. On the other hand, suppose the Owner, prior to issuance of any residential zoning permits, closed the VTIB Loan and used the proceeds to construct Gloucester Parkway to completion. At that point, since Proffer III.M does not provide an alternative or an exception to

the requirement to make the cash contributions in the event that the CDA is not created, the cash contributions would still be payable into the Gloucester Parkway Fund. Further, pursuant to the last sentence of Proffer III.M, if all expenses for designing and constructing the extension of Gloucester Parkway have been paid, the remaining funds in the Gloucester Parkway Fund could then be used for other regional road and/or transportation and/or capital facilities improvements in the vicinity of the Project. Assuming the relative timing of road construction and zoning permits actually falls somewhere between the foregoing extremes, any determination as to the extent that cash contributions may, in effect, fund the VTIB Loan repayments would have to await the actual occurrence of these actions. While the net effect of the Owner closing the VTIB Loan and using the loan proceeds to construct the Gloucester Parkway Extension could be to obtain a refund of cash contributions actually paid, I cannot find at this time that Owner's repayment of the VTIB Loan *per se* would satisfy the cash contributions requirement of Proffer III.M.

The fact that events have occurred which were not anticipated by the Owner or the Board of Supervisors at the time the proffers were accepted does not entitle the Zoning Administrator to simply rewrite the unambiguous language of the proffer based on what the Zoning Administrator believes the Board might have approved if such events had been anticipated. The Zoning Administrator can only interpret the plain meaning of the actual language of the proffer. Consequently I find that payments made to the VTIB to repay the VTIB Loan will not satisfy the obligations of Proffer III.M of the Proffers, and the cash contribution payments will be due under Proffer III.M since the Board of Supervisors did not create a CDA to fund the road and transportation improvements described in Proffer III.C. within 18 months after the approval of ZMAP 2008-0021.

2. **REQUEST:** To the extent the Project includes improvements proffered as part of the transportation phasing in Proffer III.D., such as the Gloucester Extension and Pacific Extension, construction of the Project with the proceeds from the VTIB Loan will satisfy the obligations in Proffer III.D. to construct those improvements and the only remaining phasing requirements of Proffer III.D. for future development of the subject property will be to construct and install any proffered improvement that is not constructed or installed with the Project, such as the various traffic signals identified in Proffer III.D.

**RESPONSE:** Simply stated, the VTIB Loan is a means for NA Dulles to finance some of the Kincora proffered road improvements. Therefore, whatever proffered improvements are constructed using the proceeds from the VTIB Loan will be acknowledged as such, and the remaining proffered road and transportation improvements will remain as outstanding proffer obligations.

3. **REQUEST:** Construction of the Project with the proceeds of the VTIB Loan will constitute construction by NA Dulles of all improvements constructed with the Project, such that no cash equivalent payment pursuant to Proffer III.G shall be required of NA Dulles for any of the improvements constructed with the Project.

**RESPONSE:** Whatever proffered road and transportation improvements NA Dulles constructs or bonds for construction will be acknowledged as being performed by the Owner. NA Dulles will not be required to pay the cash equivalent contributions that are provided in Proffer III.G for improvements it constructs that are paid for with proceeds of the VTIB Loan.

4. **REQUEST:** Since there is no longer a need to establish a community development authority to fund the Gloucester Extension and the Pacific Extension, Proffer III.C, has no further application, NA Dulles may withdraw the pending CDA Petition, and NA Dulles has no further obligations under Proffer III.C.

**RESPONSE:** As provided in the first paragraph of Kincora Proffer III.D, if Owner elects to proceed with the development of the Property prior to or without CDA financing, then the Owner shall construct or bond for construction the road and transportation improvements provided in Proffer III.D. Therefore, if NA Dulles is exercising its option to proceed with development of Kincora without CDA financing, then it may withdraw its pending CDA petition.

PLEASE NOTE: This opinion is valid only as of this date, and this opinion does not and shall not relieve the owner or any occupant of the property in question from the obligation to comply with all applicable Zoning Ordinance and other County Ordinance requirements. This opinion is based upon the proffers as they exist today, October 31, 2012, and such proffers may be amended by a subsequent Zoning Concept Plan Amendment.

This determination applies solely to the referenced property and is not binding upon the County, the Zoning Administrator or any other official with respect to any other property. No person may rely upon this determination with respect to any property other than the referenced property.

Please be advised that any zoning applicant or any other person aggrieved by an order, requirement, decision or determination made by the Zoning Administrator in the administration or enforcement of the conditions attached to a rezoning or amendment to a zoning map may appeal said decision within thirty days to the Board of Supervisors in strict accordance with Section 15.2-2301 of the *Code of Virginia*. This decision is final and unappealable if not appealed within 30 days. An application package for an appeal to the Board of Supervisors may be obtained by visiting the Loudoun County Government Center, 1 Harrison St. S.E., Second Floor, Customer Service, Leesburg, VA. Two copies of the completed application must be submitted to the Department of Building and Development Customer Service counter with the fee payment of \$350.00 within 30 days from the date of this letter.

If you have any questions concerning this correspondence, please contact me via email ([susan.glass@loudoun.gov](mailto:susan.glass@loudoun.gov)) or you may call me at 703-777-0251.

Sincerely,



Susan Glass  
Proffer Manager

Attachments: Kincora Proffer III  
CTB Resolution  
Nonbinding Term Sheet

Cc via email: Nicole Dozier, Zoning Administrator  
Shawn Williams, Broad Run District Supervisor  
Scott K. York, Chairman-At-Large  
Ben Mays, Acting Director, Management & Financial Services  
Charles Yudd, Assistant County Administrator  
Ron Brown, Deputy County Attorney  
Terrance Wharton, Director, Building & Development  
Nancy Berfield, Permits Proffer Manager

Cc via US Mail: NA Dulles Real Estate Investor LLC, Property Owner

**KINCORA VILLAGE CENTER  
(ZMAP 2008-0021)  
PROFFER STATEMENT**

**July 7, 2010**

**Page 19**

- c. the locating of a bus or shuttle stop within one-quarter (1/4) mile of each employment and commercial building, to be provided by the two (2) bus shelters identified in Proffer III.I. and such additional stops as may be required to meet this standard.

While this Proffer shall not be construed as a commitment to obtain a certain level of LEED certification, the design and construction of all employment and residential buildings a minimum of four (4) stories or fifty (50) feet in height will incorporate sustainable building elements for LEED version 3 for New Construction or for Core and Shell, or the current version of LEED effective at the time of site plan submission, and will be designed to achieve LEED goals, including reduction in potable water use, energy use reductions, construction waste diversion from landfills or incinerators, and enhanced indoor environmental conditions, to the extent the Owner determines that such LEED elements and goals can be incorporated without impairing the competitiveness of the Owner's buildings in the marketplace.

The Owner shall employ a LEED accredited professional in the design of each employment and residential building a minimum of four (4) stories or fifty (50) feet in height.

All residential buildings and individual dwelling units shall be outfitted with energy efficient appliances including, but not limited to, ENERGY STAR or a qualified energy efficient rating equivalent, dishwashers, refrigerators and clothes washers. In addition, each residential building shall include conveniently located facilities to enable residents to recycle mixed waste products.

Notwithstanding the provisions as stated above, any residential building containing ADU-Equivalent Units and/or Unmet Housing Needs Units in accordance with Proffers I.D. and I. E. shall be constructed according to the EarthCraft program or an equivalent energy efficient building certification program for residential buildings. Certification according to the EarthCraft program, or an equivalent energy efficient building certification program for residential buildings, for each building containing ADU-Equivalent Units and/or Unmet Housing Needs Units shall be provided to the Loudoun County Department of Building and Development prior to the issuance of the first occupancy permit for such building.

### **III. TRANSPORTATION**

#### **A. Road Network.**

Unless otherwise specified in the Proffers, all roads required for access to and within the Property shall be constructed in accordance with the County's Land Subdivision and Development Ordinance ("LSDO") and the Facilities Standards Manual ("FSM") to provide access to the various portions of the Property as they are developed. All public roads required for access to and within the Property shall be designed and constructed in accordance with applicable VDOT and County standards. Except as provided in Proffer III.C., on-site public

**KINCORA VILLAGE CENTER**  
**(ZMAP 2008-0021)**  
**PROFFER STATEMENT**

**July 7, 2010**

**Page 20**

roadways shall be constructed as development of each section of the Property that includes such roadways occurs consistent with the timing specified in Proffer III.D.

Dedication of land for public roads and parallel trails shall be accompanied by a grant of all related easements outside the dedicated right-of-way, such as slope maintenance, storm drainage, temporary construction, and utility relocation easements, necessary to construct the public roads and parallel trails shown on the Concept Plan within the Property and along the Property's existing public street frontage. Dedication of right-of-way and easements to the County for the public roads and parallel trails shown on the Concept Plan shall occur concurrently with development of each section of the Property unless already dedicated. However, if requested by the County to dedicate the right-of-way and related easements in advance of development on the Property, the Owner shall make such dedication: (1) if others have prepared and obtained final approval of construction plans and profiles consistent with the Concept Plan, which require dedication to commence construction; and (2) provided that the Owner shall not be obligated to incur costs or post bonds with the County in connection with such dedication.

**B. Pacific Boulevard Alignment.**

The final alignment of Pacific Boulevard as it crosses the northeast corner of the site and Broad Run and connects to Russell Branch Parkway shall be established within an area within the Pacific Boulevard construction envelope (the "Pacific Boulevard Envelope") shown on Sheets 11 and 13 of the Concept Plan, which envelope has been located so as to avoid any impact to the Broad Run Toll House; provided, however, that such final alignment shall not be so located that any right-of-way dedication or related easement would be required within the current building footprint of the existing house on Loudoun County Tax Map Parcel PIN # 040-39-5426 as shown on the Concept Plan, unless the owner of such house consents in writing to such alignment. The final alignment shall be determined at the time right-of-way plans and/or Owner-initiated construction plans and profiles are approved by the appropriate County and/or Commonwealth authority. Any alignment located within the Pacific Boulevard Envelope may be approved without requiring a zoning concept plan amendment or proffer amendment. If the Board approves the creation of a CDA to finance construction of Pacific Boulevard, and the appropriate approving agencies have not approved the final alignment of the off-site portion of Pacific Boulevard in connection with the review and approval of the requisite Pacific Boulevard right-of-way or construction plans, the CDA shall, at the time required by the terms of these Proffers, deposit with the County the necessary funds for the construction of any unconstructed segment of Pacific Boulevard within the Pacific Boulevard Envelope, with such funds to be held by the County and used only for the Owner's future construction of that unconstructed segment of Pacific Boulevard once the final alignment is determined. Any interest that accrues on such funds shall likewise be held and used only for the construction of that unconstructed segment of Pacific Boulevard. Any portion of such funds or accrued interest that is not used for the construction of Pacific Boulevard, if any, shall be returned to the CDA.

**KINCORA VILLAGE CENTER**  
**(ZMAP 2008-0021)**  
**PROFFER STATEMENT**

**July 7, 2010**

**Page 21**

**C. Construction of Public Roads with a CDA.**

In the event the Board creates for the Property, excluding the five (5) acre public use site described in Proffer VI.A., a CDA pursuant to § 15.2-5152 et seq., Code of Virginia (1950), as amended, and subject to Proffer III.B. above, the Owner shall dedicate right-of-way to the County and/or to VDOT, if and as necessary for the ultimate configuration of the following road and transportation improvements and, with the funding to be provided by such CDA, shall construct, bond for construction or cause to be constructed the following road and transportation improvements, within three (3) years of the date the CDA is created by the Board.

1. Gloucester Parkway. The extension of Gloucester Parkway as shown on the Concept Plan from the existing western terminus of the Route 28/Gloucester Parkway interchange, across the Property and Broad Run, and, subject to the provision of off-site right-of-way by others as provided for in Proffer III.E., to Loudoun County Parkway. Such extension of Gloucester Parkway shall be a full section of a four (4) lane median divided highway and shall include the bridge and appurtenances required to cross Broad Run with such four (4) lane section and a ten (10) foot wide multi-purpose trail inside the right-of-way on the north side of such extension of Gloucester Parkway. The Owner shall dedicate right-of-way on the Property for Gloucester Parkway 120 feet in width to accommodate an ultimate six (6) lane median divided section. The Owner shall construct the four (4) lanes required by this Proffer as the outer lanes of the ultimate planned six (6) lane median divided road section for Gloucester Parkway.

2. Pacific Boulevard. The extension of Pacific Boulevard as shown on the Concept Plan from the southern Property boundary across the Property and Broad Run, and subject to the provision of off-site right-of-way by others as provided for in Proffer III.E., to the current terminus of Russell Branch Parkway within the Pacific Boulevard Envelope. Such extension of Pacific Boulevard to Russell Branch Parkway shall transition from a four (4) lane undivided section at the southern Property boundary to a full section of a four (4) lane divided highway through the Property to a transition back to a four (4) lane undivided section prior to crossing Broad Run as shown on the Concept Plan, and shall include the bridge and appurtenances required to cross Broad Run with a four (4) lane undivided section and a ten (10) foot wide multi-purpose trail on the west side of such extension of Pacific Boulevard; provided the Owner/CDA shall not be responsible for any portions of the four (4) lane section which have been or are committed to be constructed by others. In addition, the Owner shall, subject to VDOT approval, re-stripe Pacific Boulevard, within existing right-of-way, between the southern Property boundary and Severn Way as a four (4) lane undivided road.

On or before the date that is one (1) year from the date of final approval of this rezoning application (ZMAP 2008-0021), the Owner shall petition the Board to create a CDA for the purpose of financing construction of at least the road and transportation improvements identified in this Proffer III.C. The Owner shall include all of the Property, except the five (5) acre public use site described in Proffer VI.A., together with any or all of the property to be included from the PD-IP Portion, in the petition to create such CDA. The Owner shall be permitted to

**KINCORA VILLAGE CENTER  
(ZMAP 2008-0021)  
PROFFER STATEMENT**

**July 7, 2010**

**Page 22**

coordinate the timing and implementation of construction of the road and transportation improvements identified in this Proffer III.C. with other construction projects by others, provided such road and transportation improvements identified in this Proffer III.C. are constructed or bonded for construction within three (3) years of the date the CDA is created by the Board. Other than the failure to meet the one- (1) year and three- (3) year deadlines set forth above, nothing provided in this Proffer III.C. shall prevent the Owner from obtaining any land use approvals (including, without limitation, site plan, subdivision, construction plans and profiles and grading permit) for the Property, nor from commencing construction on the Property, during the design and construction of the road and transportation improvements identified in this Proffer III.C., provided that all other prerequisites for obtaining such approvals and/or commencing such construction provided in these Proffers have been met. In the event the CDA is created to finance construction of the roads identified in this Proffer III.C., the Owner shall be allowed to develop any uses permitted on the Property without regard to the provisions of Proffer III.D. below, as long as (i) such uses are consistent with the linkage limitations outlined in Proffer I.F., and (ii) the Owner provides the necessary intersection improvements to connect the private streets to Pacific Boulevard as shown on the Concept Plan. In the event the necessary right-of-way for the off-site portions of Gloucester Parkway and/or Pacific Boulevard have not been dedicated to VDOT and/or the County and have not otherwise been acquired by VDOT and/or the County, within twelve (12) months of the date the CDA is created, the Owner's and/or the CDA's obligations with respect to construction of the off-site portions of the respective road for which the right-of-way is needed shall be deferred until such time as the right-of-way is acquired, and the Owner shall be permitted to pursue development of the Property notwithstanding that such portion of the road is not constructed. The Owner and/or the CDA shall be responsible for maintenance of the segments of road constructed with CDA funding until such time as such segments of road are accepted into the VDOT system for maintenance.

**D. Construction of Public Roads without a CDA.**

If the Board does not create a CDA for the Property to fund the road and transportation improvements described in Proffer III.C. and/or if the Owner desires to proceed with development of the Property prior to or without CDA financing, the Owner shall construct or bond for construction road and transportation improvements in accordance with the transportation construction schedule described in Exhibit I to these Proffers, as more specifically described below, which includes within the non-residential use benchmarks all non-residential uses constructed both on the Property and on the PD-IP Portion:

1. Uses In Land Bay Q. Unless already constructed by the Owner or others, prior to the first site plan approval for construction of any use in Land Bay Q, the Owner shall dedicate the necessary right-of-way for and construct or bond for construction the following road and transportation improvements:

a. Pacific Boulevard: Dedicate right-of-way for the ultimate configuration of this roadway on the Property as a four (4) lane divided

**KINCORA VILLAGE CENTER**  
**(ZMAP 2008-0021)**  
**PROFFER STATEMENT**

**July 7, 2010**

**Page 23**

road, and construct the two (2) additional lanes of Pacific Boulevard from the southern Property boundary to Gloucester Parkway as shown on the Concept Plan and in accordance with VDOT standards, together with deceleration, acceleration and turn lanes and appropriate transitions to the undivided section of Pacific Boulevard to the south of the Property as required by VDOT. In addition, the Owner shall, subject to VDOT approval, re-stripe Pacific Boulevard, within the existing right-of-way, between the southern Property boundary and Severn Way as a four (4) lane undivided road.

b. Multi-Purpose Trail – Pacific Boulevard: To the extent not located within the public right-of-way, dedicate a 14-foot wide on-site public access easement in the setback area along the west side of Pacific Boulevard, and construct a 10-foot wide multi-purpose trail on the Property within the public right-of-way and/or within such public access easement along the portion of Pacific Boulevard constructed pursuant to the preceding paragraph. Maintenance of any portion of said multi-purpose trail located outside of the public right-of-way shall be provided by the Owner and/or Owners Association established pursuant to Proffer VII. This trail shall be located generally as shown on Sheets 15 and 16 of the Concept Plan.

Such improvements shall be completed and available for public use, although not necessarily accepted by VDOT, prior to issuance of the first occupancy permit for any use constructed in Land Bay Q.

2. Transportation Improvements for Transportation Phase 1A, defined as development of the initial uses of the Property and the PD-IP Portion, excluding Land Bay Q, up to and including 300,000 square feet of non-residential uses (which may include up to 150,000 square feet of hotel use) and 300 residential dwelling units. Prior to the first record plat or site plan approval, whichever is first in time, for construction of any use on the Property, excluding Land Bay Q, unless already constructed or installed by others, the Owner shall dedicate the necessary right-of-way for and construct or bond for construction the following road and transportation improvements:

a. Pacific Boulevard: Dedicate right-of-way for the ultimate configuration of this roadway as a four (4) lane divided road, and construct Pacific Boulevard, except any portion already constructed or proffered to be constructed by others, from its intersection with Gloucester Parkway as shown on the Concept Plan northward to a point sufficient to provide access to the portion of the Property proposed for such uses. Such portion of Pacific Boulevard on the Property shall consist of a half-section of the ultimate four (4) lane divided road, as such

**KINCORA VILLAGE CENTER**  
**(ZMAP 2008-0021)**  
**PROFFER STATEMENT**

**July 7, 2010**

**Page 24**

four (4) lane divided road is depicted on the Concept Plan and in accordance with VDOT standards, together with deceleration, acceleration and turn lanes at the intersections with the roads that provide access to the land bays along Pacific Boulevard, as required by VDOT. In addition, traffic signals shall be provided at all of the intersections with roads that provide access to land bays along Pacific Boulevard, if warranted by VDOT. Warrant studies shall be submitted to VDOT and the County with the submission of the construction plans and profiles for such roads that provide access to the land bays along Pacific Boulevard. If any of the traffic signals proffered in this Proffer III.D.2.a. are not yet warranted at the commencement of construction of Transportation Phase 1A, then the obligation to provide such signals shall be deferred to the commencement of construction of Transportation Phase 1B if warranted by VDOT at that time.

b. Multi-Purpose Trail – Pacific Boulevard: To the extent not located within the public right-of-way, dedicate a 14-foot wide on-site public access easement in the setback area along the west side of Pacific Boulevard, and construct a 10-foot wide multi-purpose trail on the Property within the public right-of-way and/or within such public access easement along the portion of Pacific Boulevard constructed pursuant to the preceding Proffer III.D.2.a. to serve the portion of the Property proposed for such use. Maintenance of any portion of said multi-purpose trail located outside of the public right-of-way shall be provided by the Owner and/or Owners Association established pursuant to Proffer VII. This trail shall be located generally as shown on Sheets 15 and 16 of the Concept Plan.

Such improvements shall be completed and available for public use, although not necessarily accepted by VDOT, prior to issuance of the first occupancy permit for any use constructed in Transportation Phase 1A.

3. Transportation Improvements for Transportation Phase 1B, defined as development up to and including 1,145,000 square feet of non-residential uses (which may include up to 150,000 square feet of hotel use) and 796 residential dwelling units on the Property and the PD-IP Portion, excluding Land Bay Q. Prior to issuance of the zoning permit for the 300,001st square foot of non-residential uses (inclusive of any hotel uses constructed in Transportation Phase 1A) or the 301st residential dwelling unit, whichever is first in time, and unless already constructed or installed by others, the Owner shall dedicate the necessary right-of-way for and construct or bond for construction the following road and transportation improvements:

**KINCORA VILLAGE CENTER**  
**(ZMAP 2008-0021)**  
**PROFFER STATEMENT**

**July 7, 2010**

**Page 25**

a. Pacific Boulevard: Dedicate right-of-way for the ultimate configuration of this roadway as a four (4) lane divided road and construct Pacific Boulevard, except any portion already constructed or proffered to be constructed by others, from its current terminus at the southern Property boundary across the Property, as a four (4) lane divided road northward, to the proposed intersection of Pacific Boulevard and Road 1 between Land Bays F and B, as illustrated on Sheet 11 of the Concept Plan and in accordance with VDOT standards, together with deceleration, acceleration and turn lanes at the intersections with the roads that provide access to the land bays along Pacific Boulevard, as required by VDOT. In addition, traffic signals shall be provided at all of the intersections with roads that provide access to land bays along Pacific Boulevard, if warranted by VDOT. Warrant studies shall be submitted to VDOT and the County with the submission of the construction plans and profiles for such roads that provide access to the land bays along Pacific Boulevard. If any of the traffic signals proffered in the foregoing Proffers and deferred to the commencement of construction of this Transportation Phase 1B or proffered in this Proffer III.D.3.a. are not yet warranted at the commencement of construction of Transportation Phase 1B, then the obligation to provide such signals shall be deferred to the commencement of construction of Transportation Phase 2 if warranted by VDOT at that time.

b. Multi-Purpose Trail – Pacific Boulevard: To the extent not located within the public right-of-way, dedicate a 14-foot wide on-site public access easement in the setback area along the west side of Pacific Boulevard, and construct a 10-foot wide multi-purpose trail on the Property within the public right-of-way and/or within such public access easement along the portion of Pacific Boulevard constructed pursuant to the preceding paragraph. Maintenance of any portion of said multi-purpose trail located outside of the public right-of-way shall be provided by the Owner and/or Owners Association established pursuant to Proffer VII. This trail shall be located generally as shown on Sheets 15 and 16 of the Concept Plan.

c. Gloucester/Pacific Intersection: In the event such signalization has not been provided by others or in prior phases of this development, the Owner shall install a traffic signal at the Gloucester/Pacific intersection, subject to review and approval of a traffic signal warrant study submitted to VDOT. The traffic signal and intersection layout will be designed to VDOT standards and to accommodate the ultimate four-way intersection at such time as Gloucester Parkway is extended to the

**KINCORA VILLAGE CENTER**  
**(ZMAP 2008-0021)**  
**PROFFER STATEMENT**

**July 7, 2010**

**Page 26**

west. If the traffic signal is not warranted at the commencement of construction of this Transportation Phase 1B, then the obligation to provide such signal shall be deferred to the commencement of construction of Transportation Phase 2 if warranted by VDOT at that time.

Such improvements shall be completed and available for public use, although not necessarily accepted by VDOT, prior to issuance of the first occupancy permit for any use constructed in Transportation Phase 1B.

4. Transportation Improvements for Transportation Phase 2, defined as development up to and including 2,400,000 square feet of non-residential uses (which may include up to 475,000 square feet of hotel uses) and 1,400 residential dwelling units on the Property and the PD-IP Portion. Prior to issuance of the zoning permit for the 1,145,001st square foot of non-residential uses, or the 797th residential dwelling unit, whichever is first in time, and unless already constructed or installed by others, the Owner shall dedicate the necessary right-of-way for and construct or bond for construction the following road and transportation improvements:

a. Pacific Boulevard: Dedicate right-of-way for the ultimate configuration of this roadway as a four (4) lane divided road and construct Pacific Boulevard, except any portion already constructed or proffered to be constructed by others, from its then current northerly terminus across the Property within the Pacific Boulevard Envelope as shown on Sheets 11 and 13 of the Concept Plan, including the construction of a bridge across Broad Run, and, subject to right-of-way being provided by others as provided for in Proffer III.E., connecting to the eastern terminus of Russell Branch Parkway. Such road construction shall be a four (4) lane divided roadway transitioning to a four (4) lane undivided section prior to crossing Broad Run as shown on the Concept Plan, and shall be constructed within the Pacific Boulevard Envelope as shown on the Concept Plan and in accordance with VDOT standards, together with deceleration, acceleration and turn lanes at the intersections with the roads that provide access to the land bays along Pacific Boulevard, as required by VDOT. In addition, traffic signals shall be provided at all of the intersections with roads that provide access to land bays along Pacific Boulevard, if warranted by VDOT. Warrant studies shall be submitted to VDOT and the County with the submission of the construction plans and profiles for such roads that provide access to the land bays along Pacific Boulevard. If any of the traffic signals proffered in the foregoing Proffers and deferred to the commencement of construction of this Transportation Phase 2 or proffered in this Proffer III.D.4.a. are not yet warranted at the commencement of

**KINCORA VILLAGE CENTER  
(ZMAP 2008-0021)  
PROFFER STATEMENT**

**July 7, 2010**

**Page 27**

construction of this Transportation Phase 2, then the obligation to provide such signals shall be deferred to the commencement of construction of Transportation Phase 3, if warranted by VDOT at that time.

b. Multi-Purpose Trail – Pacific Boulevard: To the extent not located within the public right-of-way, dedicate a 14-foot wide on-site public access easement in the setback area along the west side of Pacific Boulevard, and construct a 10-foot wide multi-purpose trail on the Property within the public right-of-way and/or within such public access easement along the portion of Pacific Boulevard constructed pursuant to the preceding paragraph. Maintenance of any portion of said multi-purpose trail located outside of the public right-of-way shall be provided by the Owner and/or Owners Association established pursuant to Proffer VII. This trail shall be located generally as shown on Sheets 15 and 16 of the Concept Plan.

c. Gloucester/Pacific Intersection: In the event such signalization has not been provided by others or in prior phases of this development, the Owner shall install a traffic signal at the Gloucester/Pacific intersection, subject to review and approval of a traffic signal warrant study submitted to VDOT. The traffic signal and intersection layout shall be designed to VDOT standards and to accommodate the ultimate four-way intersection at such time as Gloucester Parkway is extended to the west. If the traffic signal is not warranted at the commencement of construction of this Transportation Phase 2, then the obligation to provide such signal shall be deferred to the commencement of construction of Transportation Phase 3 if warranted by VDOT at that time.

Such improvements shall be completed and available for public use, although not necessarily accepted by VDOT, prior to issuance of the first occupancy permit for any use constructed in Transportation Phase 2. In addition, prior to issuance of the zoning permit for the 1,145,001st square foot of non-residential uses, or the 797th residential dwelling unit, whichever is first in time, the Owner shall prepare and submit final engineered plans for the extension of Gloucester Parkway described in Proffers III.C. and III.D., and shall diligently pursue during Transportation Phase 2 approval of such final engineered plans such that the County and its agents and VDOT may issue appropriate permits and approvals allowing for such extension of Gloucester Parkway to be constructed. The costs and expenses incurred to design such extension of Gloucester Parkway and to prepare, submit and obtain final approval of such final engineered plans shall be paid from the Gloucester Parkway Fund described in Proffer III.M.

5. Transportation Improvements for Transportation Phase 3, defined as development to full build-out. Prior to issuance of the zoning permit for the 2,400,001st square foot of non-residential uses on the Property and the PD-IP Portion, and unless already constructed or

**KINCORA VILLAGE CENTER**  
**(ZMAP 2008-0021)**  
**PROFFER STATEMENT**

**July 7, 2010**

**Page 28**

installed by others, the Owner shall dedicate the necessary right-of-way for and construct or bond for construction the following road and transportation improvements:

a. Gloucester Parkway: Dedicate right-of-way, if and as necessary, for the ultimate configuration of this roadway as a six (6) lane median divided road and construct an extension of Gloucester Parkway, except any portion already constructed or proffered to be constructed by others, from Pacific Boulevard across the Property, including the construction of a bridge across Broad Run, as shown on Sheets 8, 9 and 13 of the Concept Plan, and, subject to right-of-way being provided by others as provided for in Proffer III.E., connecting to Loudoun County Parkway. Such road extension shall be a four (4) lane median divided roadway and shall be constructed, as illustrated on the Concept Plan and in accordance with VDOT standards, together with deceleration, acceleration and turn lanes as required by VDOT.

b. Multi-Purpose Trail – Gloucester Parkway: To the extent not located within the public right-of-way, dedicate a 14-foot wide on-site public access easement in the setback area along the north side of Gloucester Parkway, and construct a 10-foot wide multi-purpose trail within the public right-of-way and/or within such public access easement and along the portion of Gloucester Parkway constructed pursuant to the preceding paragraph, which shall connect to the multi-purpose trail located on the west side of Pacific Boulevard. Maintenance of any portion of said multi-purpose trail located outside of the public right-of-way shall be provided by the Owner and/or Owners Association established pursuant to Proffer VII.

c. Gloucester/Pacific Intersection: In the event signalization has not been provided by others or in prior phases of this development, the Owner shall install a traffic signal at the Gloucester/Pacific intersection, subject to review and approval of a traffic signal warrant study submitted to VDOT. The traffic signal shall be designed to VDOT standards and to accommodate the four-way intersection designed and constructed in accordance with Proffer III.D.5.a. above. The warrant study shall be submitted to VDOT and the County with the first site plan submitted to the County for development in Transportation Phase 3.

Such improvements shall be completed and available for public use, although not necessarily accepted by VDOT, prior to issuance of the first occupancy permit for any use constructed in Transportation Phase 3.

**KINCORA VILLAGE CENTER**  
**(ZMAP 2008-0021)**  
**PROFFER STATEMENT**

**July 7, 2010**

**Page 29**

**E. Acquisition of Off-Site Right-of-Way/Easements.**

1. In addition to dedicating right-of-way and easements on the Property as provided in the foregoing Proffers III.C and D., the Owner shall make a good faith effort to acquire off-site rights-of-way and/or easements necessary for the construction of the off-site portions of Pacific Boulevard and Gloucester Parkway as proffered herein. Where, despite such good faith efforts, right-of-way and/or easements necessary for construction of any such off-site portions of Pacific Boulevard and/or Gloucester Parkway cannot be obtained either (i) voluntarily through donation or proffer to the County, or (ii) through purchase by the Owner at a fair market value price, the Owner shall request VDOT and/or the County to acquire such right-of-way and/or easements by appropriate eminent domain proceedings by VDOT and/or the County, with all costs associated with any such eminent domain proceedings to be borne by the Owner, including but not limited to, land acquisition costs and appraisal fees. The initiation of such eminent domain proceedings is solely within the discretion of VDOT and/or the County. It is understood that the County, in its sole discretion, will seek to obtain the off-site right-of-way for both the extension of Pacific Boulevard and the extension of Gloucester Parkway, in conjunction with County approvals of land use applications for the properties across which such extensions are herein proffered to be constructed. The Owner shall not be required to pay any amounts for such right-of-way acquisition to the extent the County obtains such right-of-way as a condition of County approvals of land use applications.

2. If the necessary right-of-way and/or easements cannot be acquired either (i) voluntarily through donation or proffer to the County, or (ii) through purchase by the Owner at a fair market value price, and the County and VDOT both choose not to exercise the right of eminent domain within six (6) months of a written request by the Owner, the Owner shall be released from the obligation to acquire such right-of-way. If the County and/or VDOT elect to defer its exercise of eminent domain, then the Owner's Proffer requiring such acquisition or construction shall likewise be deferred.

3. Notwithstanding the commitments in Proffer III.D. above, the Owner shall not be prevented from obtaining any land use approvals (including, without limitation, site plan, subdivision, construction plans and profiles, grading permit, zoning permit, building permit, and occupancy permit) for the Property, nor from commencing construction on the Property, during the pendency of any eminent domain proceedings initiated pursuant to this Proffer III.E., nor any deferral of the County's and/or VDOT's exercise of eminent domain pursuant to Proffer III.E.2. above, provided that all other prerequisites for obtaining such approvals and commencing such construction provided in these Proffers have been met.

**F. Traffic Signalization.**

When required by the phasing provisions set forth in Proffer III.D. above, the Owner shall prepare a signal warrant analysis for the installation of the traffic signals identified in each respective Transportation Phase for the five (5) Pacific Boulevard intersections on the Property

**KINCORA VILLAGE CENTER**  
**(ZMAP 2008-0021)**  
**PROFFER STATEMENT**

**July 7, 2010**

**Page 30**

(i.e., Pacific Boulevard with Gloucester Parkway, and the four (4) private road intersections serving the Property and the PD-IP Portion as shown on the Concept Plan). Pursuant to each said signal warrant analysis, and if warranted by VDOT, the Owner shall design and install traffic signalization at the respective intersections when required by the said Transportation Phasing schedule above. In the event a signal has not been warranted by VDOT when the Owner desires to proceed with the respective Transportation Phase of development on the Property, the obligation to design and install such signal shall be deferred to the commencement of construction of the next Transportation Phase of development on the Property. In the event any signal proffered above has not been warranted at the commencement of construction of Transportation Phase 3 of development on the Property, the Owner shall make a cash contribution to the County for the cost of the design and installation of each such traffic signal. Such cash contribution shall be made prior to issuance of the first zoning permit for a use in Transportation Phase 3 of the development. The amount of the cash contribution shall be approved by the County based upon an estimate provided to the County by a licensed professional engineer; however, in no case shall the contribution be required to exceed Three Hundred Thousand and 00/100 Dollars (\$300,000.00) for each traffic signal. This maximum limit on said contributions shall escalate in accordance with the CPI from a base year of 2010 (see Proffer VIII.C.).

**G. Cash Equivalent Contribution.**

Unless otherwise provided in these Proffers or unless such improvements are provided in cooperation with others by private agreement or pursuant to the commitments of other zoning applications, the Owner agrees that, in the event any of the transportation improvements described above in Proffer III.D., except (i) the Broad Run bridge crossing and off-site extension of Gloucester Parkway, and (ii) the portions of Pacific Boulevard constructed by the Owner in association with SPEX 2008-0054, are constructed or bonded for construction by others prior to bonding for construction by the Owner, the Owner shall contribute to the County or its designee, for each such improvement provided by others, an amount equal to the cost of constructing such transportation improvements described above in Proffer III.D. in lieu of actual construction of each such improvement provided by others. For the purposes of determining the in-lieu-of contribution for the improvements constructed or bonded for construction by others, (i) the actual cost of constructing and completing such improvements will be used if available; if not, the amount of the approved bond estimate (defined for this purpose as the estimated construction cost of all items shown upon the bonded, approved plans for such improvement, increased by an inflation factor equal to the annual percentage change in the Construction Index Code, as published weekly in the Engineering News Record) for such improvement will be used, and (ii) construction costs shall be deemed to include all engineering, surveying, bonding, permit fees, utility relocation, and other hard costs of construction based on paid invoices. Such contribution in lieu of actual construction shall be paid at the time the Owner would otherwise have been required by these Proffers to bond or construct such improvements. As determined by the County, such contributions shall either be used to reimburse the party or parties who

**KINCORA VILLAGE CENTER**  
**(ZMAP 2008-0021)**  
**PROFFER STATEMENT**

**July 7, 2010**

**Page 31**

constructed such improvements, or for regional roadway or transportation improvements in the vicinity of the Property.

**H. Highway Noise Mitigation.**

Concurrently with the filing of the first site plan or construction plans and profiles for the Property, whichever is first in time, the Owner shall submit an acoustical analysis for the Property to determine which areas of the Property may be adversely impacted by highway noise generated along (i) the Route 28/Pacific Boulevard frontage, and (ii) the Gloucester Parkway frontage. Any such acoustical analysis shall be based upon the most recent traffic volumes and ultimate design speeds of Route 28, Pacific Boulevard and Gloucester Parkway, as made available by the Loudoun County Office of Transportation Services ("OTS"). With each subsequent site plan for development on the Property, the Owner shall demonstrate compliance with the aforementioned acoustical analysis with the goal of mitigating noise levels that approach within two (2) decibels or exceed the Noise Abatement Criteria identified in the Countywide Transportation Plan for noise sensitive uses on the Property. Compliance with the acoustical analysis shall demonstrate the methods that shall be incorporated into the site and building design in order to achieve noise reductions that result in noise levels at least two (2) decibels less than the Noise Abatement Criteria identified in the Countywide Transportation Plan, with preference given to passive measures, such as landscaping and berming, to the extent practicable.

**I. Bus Shelters.**

Within six (6) months of the date of commencement of public bus service to the Property, the Owner shall construct two (2) bus shelters on the Property along Pacific Boulevard. Said bus shelters shall be in addition to those required in accordance with SPEX 2008-0054. The Owner shall coordinate the design and location of these bus shelters with OTS or other appropriate County agency. The commitment in this Proffer to construct bus shelters shall terminate twenty (20) years after issuance of the first zoning permit for an office or residential use on the Property, if no public bus service to the Property has been established during such twenty (20) years; provided, however, that upon such termination, the Owner shall contribute to the County a cash contribution in the amount of the estimated cost of two (2) bus shelters to be used by the County to construct such bus shelters in the future. The bus shelters shall be maintained by the Owners Association established pursuant to Proffer VII. The Owner shall coordinate the design and location of such bus shelters with OTS at the time of site plan review.

**J. Transportation Demand Management Program.**

Prior to issuance of the first zoning permit for an office or residential use on the Property, the Owner shall implement a Transportation Demand Management ("TDM") program whose objective is to reduce peak hour vehicle trips to and from the site. The means to achieve this objective over the build-out period for this site may vary from time to time as knowledge is

**KINCORA VILLAGE CENTER**  
**(ZMAP 2008-0021)**  
**PROFFER STATEMENT**

**July 7, 2010**

**Page 32**

gained about specific factors and as the area and region develop. Elements of this program shall include, but shall not necessarily be limited to, the following:

1. Identify an Employer Transportation Coordinator ("ETC") for each employment or residential building to serve as the TDM contact with OTS. ETCs shall promote and encourage commuting alternatives in cooperation with other private and public TDM efforts or Transportation Management Associations. ETCs shall meet with OTS Staff to clarify commuting options to the site and develop promotions and programs in support of established TDM goals.
2. Conduct initial and biennial employee commute surveys of employees of employment buildings and residents of residential buildings to benchmark and measure progress toward the reduction of vehicle trips and vehicle emissions.
3. Provide a minimum of five percent (5%) of total parking spaces for each employment or residential building as preferred parking spaces for (a) carpool/vanpool vehicles, (b) fuel efficient vehicles, or (c) car sharing vehicles.
4. Promote flexible, compressed, or telework schedules for on-site employees and residents.
5. Support transit service by encouraging all employers to provide qualified transportation fringe benefits, as provided under Section 132(a) and (f) of the Internal Revenue Code.
6. Construct and maintain permanent public information displays in all employment or residential buildings for distribution of alternate commute information, including transit schedules, park-and-ride lot maps, rideshare programs and telework.
7. Install secure weather-protected bicycle storage facilities or bicycle racks to accommodate a minimum of twenty (20) bicycles for each employment or residential building. Such bicycle storage facilities and/or bicycle racks shall be located in a convenient location for use by employees and/or residents and shall be installed prior to issuance of the occupancy permit for each respective building.
8. Provide accessible shower facilities in all employment buildings that are a minimum of four (4) stories or fifty (50) feet in height and containing greater than 100,000 square feet of non-residential uses.
9. Provide information on office employers' and residential buildings' intranet or internet sites detailing alternative modes of transportation and other travel reduction opportunities.

**KINCORA VILLAGE CENTER**  
**(ZMAP 2008-0021)**  
**PROFFER STATEMENT**

**July 7, 2010**

**Page 33**

10. Submit to OTS biennial travel reduction plans outlining strategies for reducing vehicles trips to and from the Property during peak hours.

**K. Transit Service Contribution.**

At the time of issuance of each residential zoning permit for the Property, the Owner shall make a one-time cash contribution to the County in the amount of Five Hundred Seventy-Five and 00/100 Dollars (\$575.00) for each of the dwelling units developed on the Property. Such contributions shall be used, in the discretion of the Board, to fund capital equipment for transit services that serve the Property. Said contributions shall be escalated in accordance with the changes in the CPI from a base year of 2010 (see Proffer VIII.C.).

**L. Kincora Shuttle.**

Upon issuance of zoning permits for cumulatively greater than 1,500,000 square feet of non-residential, non-hotel uses (which threshold shall include the non-residential uses constructed on the PD-IP Portion) and if there is adequate demand as determined by OTS, the Owner shall provide a private shuttle service during regular business hours utilizing vehicles with a minimum capacity of twenty (20) persons, and additional capacity if there is adequate demand as determined by OTS, for the transport of employees and residents between the uses on the Property with the intent of (i) connecting those non-residential uses located in Land Bays N and Q with the remaining uses on the Property, and (ii) connecting the uses on the Property with the Dulles Town Center. In addition, until such time as public bus service is available to connect the Property to the nearest park-and-ride facility or regional transit facility, and to the Route 28 or Route 606 Metrorail station once opened, upon the issuance of zoning permits for such non-residential, non-hotel floor area cumulatively greater than 1,500,000 square feet and if there is adequate demand as determined by OTS, the Owner shall provide private shuttle service to such nearest park-and-ride facility or regional transit facility and to the Route 606 Metrorail station once opened, unless OTS determines the Route 28 Metrorail station is preferred. Shuttle service shall be subject to route and schedule provisions as determined by the Owner in consultation with OTS.

**M. Fund to Accelerate Construction of Gloucester Parkway without a CDA.**

If within eighteen (18) months of the approval of this rezoning application ZMAP 2008-0021, the Board has not created a CDA for the Property to fund the road and transportation improvements described in Proffer III.C., then the Owner shall make a cash contribution to the County in the amount of \$24,538.00 for each residential dwelling unit, exclusive of the ADU-Equivalent Units and the nine percent (9%) of Unmet Housing Needs Units to be affordable for purchase or rental by households whose income does not exceed thirty percent (30%) of AMI.

Such contributions shall be paid at the time of issuance of the zoning permit for each such residential dwelling unit constructed on the Property. If, at the end of said eighteen- (18) month

**KINCORA VILLAGE CENTER  
(ZMAP 2008-0021)  
PROFFER STATEMENT**

**July 7, 2010**

**Page 34**

period, any zoning permits for residential dwelling units have previously been issued, the cash contribution amounts payable for such units pursuant to the preceding paragraph shall at that time be due and payable. The County shall collect and hold such contributions in a separate interest-bearing account (the "Gloucester Parkway Fund") to be used solely for construction of the extension of Gloucester Parkway described in Proffers III.C. and III.D. At such time as (i) the County elects to accelerate the construction of Gloucester Parkway by supplementing the funds accumulated in the Gloucester Parkway Fund with other available sources of funding that together will cover the entire cost of such extension of Gloucester Parkway, or (ii) the Owner elects to proceed with the construction of Gloucester Parkway in accordance with Proffer III.C. (should a CDA be created in the future) or in accordance with Proffer III.D., then all of the funds accumulated in the Gloucester Parkway Fund, with any accrued interest, shall be used to fund the construction of such extension of Gloucester Parkway. The amount of the cash contributions proffered in this paragraph shall be adjusted annually in accordance with changes to the CPI from a base year of 2010 (see Proffer VIII.C.). Any funds remaining or subsequently paid and deposited into the Gloucester Parkway Fund after all expenses of designing and constructing the extension of Gloucester Parkway have been paid, shall be used by the County for regional road and/or transportation and/or capital facilities improvements in the vicinity of the Property.

**IV. RECREATION AND HISTORIC**

**A. Recreation.**

1. The Owner shall construct a bicycle and pedestrian circulation system consisting of sidewalks and trails on the Property in substantially the same location as illustrated on Sheets 15 and 16 of the Concept Plan. Sidewalks need not be constructed in locations where asphalt trails are constructed to provide the pedestrian circulation linkage depicted on Sheets 15 and 16 of the Concept Plan. Sidewalks shall be constructed on both sides of Roads 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 as depicted on Sheet 16 of the Concept Plan and shall include conveyance of appropriate public access easements. Sidewalks and trails shall be constructed in phases concurrently with the development of land in areas adjacent to such sidewalks and trails.

Unless constructed in the public right-of-way, sidewalks shall be subject to a public access easement of a minimum of 10 feet in width, asphalt trails shall be subject to a public access easement of a minimum of 14 feet in width, and all other trails shall be subject to a public access easement of a minimum of 12 feet in width.

Trails constructed within the River and Stream Corridor Resources area shall be constructed of pervious surfaces in an amount not to exceed 15,180 linear feet, and with raised boardwalk crossings in an amount not to exceed 1,124 linear feet where such trails cross jurisdictional waters and/or wetlands as depicted in the section exhibits provided on Sheets 15 and 16 of the Concept Plan. The location and design of trails located within the River and Stream Corridor Resources area shall be coordinated with and approved by PRCS Staff in accordance with PRCS standards prior to approval of the initial site plan and/or construction plan



COMMONWEALTH of VIRGINIA

*Commonwealth Transportation Board*

Sean T. Connaughton  
Chairman

1401 East Broad Street  
Richmond, Virginia 23219

(804) 786-2701  
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*Agenda item # 12*

RESOLUTION  
OF THE  
COMMONWEALTH TRANSPORTATION BOARD

June 20, 2012

MOTION

Made By: Mr. Garczynski

Seconded By: Mr. Koelemay

Action: Motion Carried, Unanimously

**Title: Approval of an \$80,000,000 Loan from the Virginia Transportation Infrastructure Bank to the Industrial Development Authority of Loudoun County for the Gloucester Parkway and Pacific Boulevard Extension Project**

**WHEREAS**, the Industrial Development Authority of Loudoun County (the "IDA") and Kincora/NA Dulles Real Estate Investors LLC are proposing to extend Gloucester Parkway and Pacific Boulevard at the southeast quadrant of the intersection of Route 7 and Route 28 in the County of Loudoun; and

**WHEREAS**, Chapters 830 and 868 of the 2011 Acts of Assembly (the "Act") created the Virginia Transportation Infrastructure Bank ("VTIB") for the purpose of making loans and other financial assistance to localities, private entities and other eligible borrowers and grants to localities to finance transportation projects; and

**WHEREAS**, the IDA, in collaboration with Kincora/NA Dulles Real Estate Investor LLC, submitted an application dated December 23, 2011, subsequently revised in February 2012, ultimately requesting a \$80,000,000 loan from the VTIB to finance extensions to Gloucester Parkway and Pacific Boulevard (the "Project"); and

**WHEREAS**, the IDA is an Eligible Borrower under the Act meeting the respective definitions of a Governmental Entity, a political subdivision of the Commonwealth of Virginia and the application meets the mandatory criteria established by the Act for the VTIB; and

**WHEREAS**, the application has been screened and scored according to the Screening and Scoring Criteria established for the VTIB, and the creditworthiness of the IDA and Kincora/NA Dulles Real Estate Investor LLC and the financial feasibility of the Project have been assessed and evaluated; and

**WHEREAS**, the Virginia Department of Transportation (VDOT) and the Virginia Resources Authority (VRA) serving as the "Manager" of the VTIB have determined the Project to meet the goals and objectives of the VTIB and the Act, and the IDA has demonstrated the ability to repay the VTIB loan through a First Lien Deed of Trust on the entire Kincora property; and

**WHEREAS**, the VTIB Advisory Panel met on June 7, 2012 to discuss the merits of the application and unanimously voted to recommend the application to the CTB for approval based on the standard interest rate as set forth in the VTIB Guidelines; and

**WHEREAS**, according to the VTIB Program Overview, Guidelines and Selection Criteria dated October 2011, as approved by the CTB, the CTB shall act to approve or deny applications for assistance from the VTIB when presented by the VTIB Advisory Panel; and

**WHEREAS**, after action by the CTB, the scores of the applications will be posted on VDOT's website, with the successful applications so noted; and

**WHEREAS**, following action by the CTB to approve the financial assistance from the VTIB, the Manager will provide a written commitment (the "Commitment") to the potential recipient. The Commitment will outline the type of assistance to be provided and in the case of a loan, the required security provisions, the loan term and payment provisions, the amount of assistance to be provided and any conditions that must be met by the applicant prior to loan closing. The Commitment must be accepted by the potential recipient and returned signed to VRA within 60 days of the Commitment date to preserve the funding.

**NOW, THEREFORE, BE IT RESOLVED**, that based on recommendations from the VTIB Advisory Panel, the CTB hereby approves the IDA's VTIB loan application to provide financial assistance in the form of a loan to the IDA for the Project up to \$80,000,000, based on the application submitted by the IDA;

**BE IT FURTHER RESOLVED**, that in accordance with the Credit Summary prepared by the VRA, the CTB authorizes VDOT and VRA to negotiate with the IDA, acceptable terms and conditions and to structure and/or restructure terms to utilize the VTIB assistance in the most viable and efficient manner. The standard interest rate will be applied to the loan based on the interest rate methodology defined in the VTIB Program Overview, Guidelines, and Selection Criteria. The interest rate shall be at 2.83% based on the June 11, 2012 AAA GO MMD scale, about one week prior to the CTB meeting.

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**Industrial Development Authority of Loudoun County, Virginia  
Virginia Transportation Infrastructure Bank – Nonbinding Term Sheet**

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*Below are terms and conditions for the application approved by the Virginia Commonwealth Transportation Board ("CTB"). Any funding is subject to a complete due diligence review and approval by the Virginia Department of Transportation ("VDOT") and Virginia Resources Authority ("VRA") of construction contracts, engineering studies, environmental reports, and financing documents and the other terms and conditions set forth below. This term sheet is merely a summary of the terms and conditions approved by CTB and is not intended to constitute a legally binding commitment by CTB, VTIB, VDOT or the IDA to make the loan described herein.*

- Lender:** Virginia Transportation Infrastructure Bank ("VTIB").
- Borrower:** Industrial Development Authority of Loudoun County, Virginia ("IDA"). IDA will make a conduit loan of the VTIB proceeds to NA Dulles Real Estate Investor, LLC ("NA Dulles").
- VTIB Loan Amount:** An amount equal to the least of (i) \$80,000,000, (ii) 50% of fair market value of the Property defined below and (iii) the total cost of constructing the Road Improvements described below, as such costs are approved by VTIB.
- Purpose:** To finance the expansion of Pacific Boulevard to the south of the Gloucester Parkway intersection from two to four lanes, the four lane extension of Pacific Boulevard to connect with the Russell Branch Parkway and the divided four lane extension of the Gloucester Parkway from the intersections of Nokes and Pacific Boulevards to provide two alternative east-west routes of travel within the Route 28 Corridor of Loudoun County, Virginia (collectively, the "Road Improvements").
- Security:** Conduit loan note from NA Dulles to be secured by a First Lien Deed of Trust on the entire Kincora property in Loudoun County owned by NA Dulles, identified as Tax Parcels 041-29-8238 and 042-29-6582 (the "Property"). The IDA will assign both the conduit loan note and the Deed of Trust to VTIB. The Deed of Trust will encumber the Property. All contracts and agreements related to the Property or construction of the Road Improvements will also be assigned as security.

**Industrial Development Authority of Loudoun County, Virginia**  
**Virginia Transportation Infrastructure Bank – Nonbinding Term Sheet**

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**Lien Release Payments:**

Requested portions of the Property will be released upon payment of loan principal in amounts approved by VTIB ("Parcel Release Fee"), subject to certain conditions determined by VTIB. Among other things, no portion of the Property will be released unless (i) the loan balance after such release, including any unadvanced principal, will not exceed 50% of the fair market value of the remainder of the Property, (ii) no default then exists and (iii) the portion of the Property to be released and the remaining portion of the Property subject to the deed of trust have been subdivided in accordance with applicable subdivision laws and are otherwise suitable for development in accordance with the plan of development as approved by VTIB.

No Parcel Release Fee shall be paid in connection with the release of parcels designated for Civic Use. "Civic Use" shall include those civic uses detailed in the Kincora Village Center Proffer Statement, dated July 7, 2010, and SPEX 2008-0054, dated July 21, 2009 and such parcels may include, the right-of-way dedication for the Road Improvements, open space, plaza areas, recreational facilities and a community center.

**Interest Rate:**

The VTIB Loan shall bear interest at a fixed rate of 2.83% set about one week prior to CTB meeting as approved by the CTB. Interest will be computed on the disbursed principal balance from the date of each disbursement on the basis of a 360-day year and compounded semi-annually.

**Payment Default:**

If the IDA/NA Dulles fails to pay the minimum principal and interest due on the VTIB Loan or the VTIB Loan balance exceeds the Allowable Outstanding Loan Balance at year ten of the loan.

**Loan-to-Value:**

The initial Loan-to-Value ratio shall be equal or less than 50% at the time of loan closing and maintained throughout the life of the loan.

**Disbursement of Funds:**

Funds shall be disbursed upon written request of the NA Dulles and approval of VDOT according to agreed upon procedures. The loan will not be a revolving loan.

**Industrial Development Authority of Loudoun County, Virginia**  
**Virginia Transportation Infrastructure Bank – Nonbinding Term Sheet**

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- Term:** The final payment of all principal and interest due shall not be made later than 20 years after loan closing.
- Payments:** Interest can be capitalized semi-annually for a period of up to three years. Interest only payments must be made semi-annually beginning in year four. Beginning in year five, minimum principal of \$100,000 and accrued interest payments on all disbursed proceeds will be made semi-annually.
- Allowable Outstanding Loan Balance:** The allowable outstanding loan balance may not exceed \$53,600,000 within ten years after loan closing.
- Prepayment:** The VTIB Loan may be prepaid in whole or in part at any time with no penalty after the Road Improvements are completed. Without the consent of VTIB, no prepayment is permitted before the Road Improvements are completed except in connection with releases of portions of the Property in accordance with the agreed conditions.
- Final Appraisal:** An as-is and as-built independent appraisal ordered by VTIB for the property prior to VTIB Loan closing must be received and satisfactory to VTIB in all respects.
- Environmental Review:** A satisfactory Phase I Environmental Review must be completed prior to VTIB Loan closing.
- Evidence of Financing:** Prior to closing, NA Dulles will provide evidence satisfactory to VTIB of financing for the first 550 rental apartment project sufficient for the land acquisition purchase price and Parcel Release Fee.
- Closing Conditions:** In addition to the other requirements of this term sheet, the obligation of VTIB to close the loan and make the first disbursement of loan proceeds will be subject to the customary conditions for financings of this type or as required by VTIB, including (without limitation) payment of all costs incurred by VTIB including attorneys' fees and receipt of the following documents satisfactory in form and substance to VTIB: loan documents; lender's title insurance policy with such endorsements as VTIB may require; ALTA

**Industrial Development Authority of Loudoun County, Virginia**  
**Virginia Transportation Infrastructure Bank – Nonbinding Term Sheet**

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plat of survey of the Property; organizational documents of NA Dulles and its constituent entities; project budget; engineering and construction contracts and plans and specifications for the Road Improvements; plan of development for the Property; zoning proffers and other land use entitlements, permits and approvals for the development of the Property; permits and approvals for construction of the Road Improvements; evidence of availability of utilities for the development of the Property; and commercial general liability and other insurance as required by VTIB, naming VTIB as additional insured or loss payee, as applicable.

**Loan Monitoring:**

An appraisal may be requested by VTIB at any time during the term of the VTIB Loan. All costs related to an appraisal request shall be payable by NA Dulles.

VTIB reserves the right to request any and all documents covered under Section 8.2 of the Amended and Restated Limited Liability Company Agreement of NA Dulles dated August 25, 2010.

**Representations,  
Covenants and Events of  
Default:**

The loan documents will contain representations and warranties, affirmative and negative covenants and events of default customary for this type of financing or as required by VTIB, including (without limitation) a requirement for NA Dulles to construct and complete the Road Improvements diligently and in accordance with the approved plans and specifications and VDOT requirements; a requirement for NA Dulles to pay any costs of constructing the Road Improvements to the extent the loan proceeds are insufficient for that purpose; a prohibition against sale or encumbrance of the Property, except in connection with a permitted release of a portion of the Property; a prohibition against a change of control or active management of NA Dulles without the consent of VTIB; a prohibition against other indebtedness; a requirement for periodic financial reporting; maintenance of insurance; payment of real estate taxes; and compliance with applicable laws.

**Financial Condition:**

Current financial statement for NA Dulles satisfactory to VTIB and a statement of no material adverse change in condition for NA Dulles prior to VTIB Loan closing.

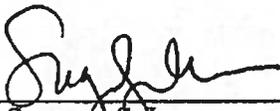


**Industrial Development Authority of Loudoun County, Virginia  
Virginia Transportation Infrastructure Bank – Nonbinding Term Sheet**

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**Expiration:** This term sheet expires September 24, 2012 if not accepted by that date and if loan closing shall not have occurred by December 31, 2012. Upon acceptance, NA Dulles agrees to pay all costs relative to the transactions described above, including VTIB's attorneys' fees.

**The Virginia Resource Authority, as Manager of the VTIB, has provided this nonbinding term sheet on this 24th day of July, 2012.**

By:   
Suzanne S. Long  
Executive Director

**VDOT Contact:** John W. Lawson, Chief Financial Officer  
Virginia Department of Transportation  
(804) 786-2707  
John.Lawson@VDOT.Virginia.gov

**VRA Contact:** Shawn B. Crumlish, Director of Debt Management  
Virginia Resources Authority  
804.644.3100, ext. 117  
scrumlish@virginiaresources.org

**Receipt of the foregoing nonbinding term sheet is hereby acknowledged by the Industrial Development Authority of Loudoun County, Virginia as of the \_\_\_ day of July, 2012.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Receipt of the foregoing nonbinding term sheet is hereby acknowledged by NA Dulles Real Estate Investor, LLC as of the \_\_\_ day of July, 2012. By its execution hereof, NA Dulles Real Estate Investor, LLC authorizes VRA to commence its due diligence, including ordering a current appraisal of the Property, and to prepare loan documentation, and the undersigned will pay all costs thereof, including VRA's attorneys' fees, regardless of whether the closing of the foregoing transaction takes place.**

By: \_\_\_\_\_

Its: \_\_\_\_\_