



**Date of Council Meeting: July 26, 2016**

**TOWN OF LEESBURG  
TOWN COUNCIL WORK SESSION**

**Subject:** Rezoning Application TLZM-2013-0006, Crescent Parke

**Staff Contact:** Michael Watkins, Senior Planner, Department of Planning and Zoning

**Council Action Requested:** Consider the additional information as provided in this memo.

**Staff Recommendation:** Staff recommends changes to the Proffer Statement as provided below in the executive summary.

**Commission Recommendation:** The Planning Commission did not recommend approval of this application.

**Fiscal Impact:** No additional information from the applicant has been provided regarding the project's fiscal impact.

**Work Plan Impact:** The review of applications is part of the core function of the Planning and Zoning Department's work plan.

**Executive Summary:** This memo is intended to summarize substantive changes to the Proffer Statement.

1. **Proffer 1.3.3:** This is a new proffer that requires construction, including occupancy permit approval, for a minimum of 7,500 square feet of non-residential uses prior to the issuance of the 214<sup>th</sup> occupancy permit for a residential dwelling. Staff notes that this equates to 5% of the proposed non-residential uses and 56% of the proposed residential density.

The inclusion of a phasing program now requires non-residential uses before 100% of the residential density can be achieved. However, the proposed requirement of non-residential uses is inadequate to ensure a true mix of uses as the property develops. Zoning Ordinance Section 7.10.1.B.1 states:

*Develop a fully integrated, mixed-us, pedestrian orientated environment with buildings that contain commercial, residential, and office uses.*

This proffer does not satisfy the referenced goal of the Crescent District. This proffer only requires 5% of the proposed non-residential uses and permits 100% of the proposed residential density. This proffer fails to:

- Ensure that Crescent Parke develops as a mixed use development. Based on the proposed phasing program, a true mix of uses will not be provided. At 100% buildout of the residential units, only 5% of the proposed non-residential square footage will be required to be built.
  - Provide a pedestrian orientated environment. 7,500 square feet is inadequate to generate a strong pedestrian destination.
2. Proffer 2.2.3.2: The applicant has added language to state that in the event the Greenway Extension is removed from the Town Plan's Roadway Network Policy Map or the Extension reservation expires, the area reserved will remain as open space. The proffer also ensures that the tree-save identified within the reservation area, as depicted on the Concept Plan, shall remain in place. *Staff has no objection to this proffer revision.*
  3. Proffer 2.2.3.4: This proffer was previously revised to provide \$75,000 toward a traffic study amending the Town Plan to remove the Dulles Greenway Extension from the Roadway Network Policy Map. The proffer has been revised to provide half (\$37,500) of the cash contribution within 60 days of approval of this rezoning application and the other half (\$37,500) upon execution of a contract with a traffic consultant to prepare the necessary analysis to remove the Dulles Greenway Extension from the Town Plan. *Staff has no objection to this proffer.*
  4. Proffer 2.2.3.5: This is a new proffer that mimics Proffer 2.2.3.2, whereby the reservation area for the Dulles Greenway shall be placed in an open space easement in the event the reservation expires or is removed from the Town Plan. *Staff has no objection to this new proffer.*
  5. Proffer 2.2.3.6: This is a new proffer that was recommended by Staff. The applicant's traffic consultant stated that operational issues, notably speeding on Plaza Street, will contribute to decreased levels of service for the Gateway Drive / Plaza Street intersection. The installation of driver feedback signs is a mitigation measure that could reduce speed on Plaza Street providing potential improvement for the operation of the intersection. This proffer provides two driver feedback signs on Plaza Street which are required to be installed prior to the completion of the Gateway Drive extension. *Staff has no objection to this new proffer.*
  6. Proffer 3.3: New language was added to address a situation in which Council decides not to accept ownership of the park. The language includes: no requirement of park dedication in the event the Council adopts a resolution declining dedication of the park; a one-time contribution of \$1,000 per dwelling unit in the event the park is not dedicated; a cash contribution of \$200,000 to the Town of a traffic signal at South King Street and Rt. 15 Bypass to be paid prior to the issuance of occupancy for the

100<sup>th</sup> unit; and an end to the owner's obligation to reimburse the Town for lease payments and taxes.

**Background:** An initial public hearing was held on May 24, 2016 and the hearing was continued at Council meetings on June 14, June 28 and July 12, 2016. The hearing was closed on July 12, 2016.

The application proposes 159,725 square feet of non-residential uses, 96 multifamily units, and 284 two-over-two and traditional townhouses units. The plan consists of the following four development areas:

- Development Area #1: The development area south of Davis Avenue includes a grouping of three mixed-use buildings of approximately 45,100 square feet containing ground-floor retail with office above. The buildings have a two story appearance from the front, with a three story appearance from the rear due to topography of the site.
- Development Area #2: This area is located north of Davis Avenue directly behind Food Lion and includes up to 88,000 square feet of office/retail or hotel. The hotel use would require a special exception in the future. The proposed building incorporates internal parking not visible from a public street.
- Development Area #3: This area is located to the east of the Development Area #2 and south of the TW Perry property. There are four mixed-use buildings that include ground-floor retail with multifamily units above. Development Area #3 includes 26,625 square feet of retail and 96 multifamily units, and a 2,000 square-foot community room. Adjacent to the mixed-use buildings is large amenity area that is programmed as a community gathering area. The amenity area includes a gazebo, play structures, an open lawn, and walking trail.
- Development Area #4: The development area south of Tuscarora Creek consists of 196 town houses and 88 stacked town houses or "two over two" units. Incorporated within this land bay are pocket open spaces, some of which include recreation equipment.

This memo is provided in response to continued public input and unresolved issues with the proposed application.

## PROFFER STATEMENT

### TLZM 2013-0006, CRESCENT PARKE

September 18, 2014  
December 23, 2014  
April 17, 2015  
April 23, 2015  
August 28, 2015  
December 18, 2015  
December 23, 2015  
March 4, 2016  
May 13, 2016  
July 1, 2016  
July 7, 2016  
July 12, 2016  
July 26, 2016

MREC LD Leesburg Crossing, LLC, as the owner of approximately 39.71 acres of land, more particularly described as Loudoun County parcel identification numbers (hereinafter, "PIN") 232-37-7166, 232-37-5627 and 232-38-9290, Edward R. Mooney Jr. and Stephen W. Pournaras, Trustees, the owner of approximately 11.28 acres of land, more particularly described as Loudoun County PIN 232-28-3893, and Failmezger Investments, as the owner of an approximately 2.34 acre portion of a 20.99 acre parcel of land, more particularly described as Loudoun County PIN 232-37-3721 (hereinafter all three owners shall be referred to collectively as the "Owner" and all parcels collectively referred to as the "Property") hereby voluntarily proffer, pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and Section 3.3.16 of the Town of Leesburg Zoning Ordinance, as amended, that the development of the Property shall be in substantial conformance with the proffers as set forth below. All exhibits referred to in this proffer statement are attached and incorporated into this proffer statement.

All proffers made herein are contingent upon the approval of the rezoning concept plan and proffer amendment request in the pending application and upon approval of the zoning modification requests. These proffered conditions are the only conditions offered on this rezoning application. These proffers shall become effective only upon approval by the Town Council of Leesburg, Virginia, of Zoning Amendment application TLZM 2013-0006.

#### 1. **LAND USE**

##### 1.1 Concept Plan

Development of the Property shall be in substantial conformance with Sheets 1 - 34 and 37 of the Zoning Map Amendment Concept Plan, prepared by Bowman Consulting, dated December 23, 2013 (hereinafter referred to as the "CP") and revised through July 7, 2016, which is attached to these proffers as Exhibit A and which shall control the use, layout, and configuration of the Property, with reasonable allowances to be made for engineering and design alteration and to meet Town zoning, subdivision and land development regulations.

## 1.2 Development Program

The Property shall be developed with a mix of uses as follows:

1.2.1 In the Crescent Design District Commercial (CD-C) zoning district, a maximum of 45,100 square feet of office and retail and other nonresidential uses as listed in Zoning Ordinance Table 7.10.9.D.1 under the headings “Commercial Uses, Industrial/Manufacturing and Institutional and Community Service Uses”. Any of these listed uses which require special exception approval shall obtain special exception approval before being established in the CD-C zoning district.

1.2.2 In the Crescent Design District Mixed-Use Optional (CD-MUO) zoning district, in Buildings MUO-1 through 4, a maximum of 96 multi-family dwellings and a maximum of 28,625 square feet of nonresidential uses as listed in Zoning Ordinance Table 7.10.9.E.1 under the headings “Commercial Uses and Institutional and Community Service Uses”, including 2,000 square feet for community uses is permitted.

At the Owner’s option, Buildings MUO-1 through 4 may contain single-family attached dwelling units (including units in the “stacked townhouse” configuration) above the ground-floor nonresidential uses as an alternative to the 96 multi-family dwellings, provided that the amount of residential gross floor area does not exceed 151,630 square feet. In Building C-1, a maximum of 88,000 square feet of nonresidential uses as listed in Zoning Ordinance Table 7.10.9.E.1 under the headings “Commercial Uses, Industrial/Manufacturing and Institutional and Community Service Uses” is permitted. Any of these listed uses for Buildings MUO 1-4 and Building C-1 which require special exception approval shall obtain special exception approval before being established in the CD-MUO zoning district.

1.2.3 In the Crescent Design District Residential High Density (CD-RH) zoning district, a maximum of 196 single family attached dwelling units and 88 single family attached dwelling units in the “stacked townhouse” configuration.

## 1.3 Development Phasing:

1.3.1 Transportation Improvements. The transportation improvements shall be constructed according to the timing as described in Proffer 2.

1.3.2 Land Disturbance. The initial phase of development shall not limit land disturbance on any portion of the Property.

1.3.3 Required Minimum Non-residential Development. Prior to issuance of the 214th residential certificate of occupancy anywhere on the Property, a minimum of 7,500 square feet of non-residential development shall be issued certificates of occupancy.

## 2. **TRANSPORTATION IMPROVEMENTS**

### 2.1 Sidewalks.

Sidewalks shall be constructed as shown on Sheets 2 and 4 of the CP. Planting areas for internal street trees shall be comprised of enhanced/amended planting media suitable for urban settings and which will be maintained by the Property Owners' Association (POA) established in Proffer 6.7.

### 2.2 Public Street Improvements and Phasing of Improvements

2.2.1 Davis Avenue and Gateway Drive Extensions. The Owner shall dedicate the right-of-way for Davis Avenue and Gateway Drive Extensions from the existing terminus of Davis Avenue to the existing terminus of Gateway Drive in substantial conformance with Sheet 2 of the CP, including the construction of the bridge over Tuscarora Creek. The dedication of the right-of-way shall be conveyed in fee simple, free and clear of any and all liens to the Town by a Deed of Dedication. The Owner shall bond for construction of the General Urban Street section in substantial conformance with Sheet 4 of the CP, subject to Town approval. Approval of zoning permits for the construction of any buildings on the Property shall be contingent upon the bonding for the construction of Davis Avenue and Gateway Drive from the existing terminus of Gateway Drive to the existing terminus Davis Avenue. No occupancy permits shall be approved until Davis Avenue and Gateway Drive from the existing terminus of Gateway Drive to the existing terminus of Davis Avenue is constructed and the roadway is open for traffic. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street system or release of the performance bonds for roadway construction.

2.2.2 Other General Urban Streets. The Owner shall dedicate the right-of-way to construct the General Urban Streets listed in Proffers 2.2.2.1, 2.2.2.2 and 2.2.2.3 and in substantial conformance with Sheets 2 and 4 of the CP. The dedication of the right-of-way shall be conveyed in fee simple, free and clear of any and all liens to the Town by a deed of dedication.

2.2.2.1 Davis Court Relocated. The right of way shall be dedicated and bonded for construction concurrent with Davis Avenue pursuant to Proffer 2.2.1. No occupancy permits shall be approved until Davis Court is constructed and the roadway is open for traffic. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street system or release of the performance bonds for roadway construction. Upon acceptance of Davis Court Relocated into the public street system, the Owner will

seek to vacate the right-of-way for the unused segment of existing Davis Court and incorporate the right-of-way, when vacated, into the surrounding lot zoned CD-C.

2.2.2.2 First Street. The right of way from the Property boundary to the roundabout on Davis Avenue Extended shall be dedicated and bonded for construction prior to the issuance of the first zoning permit for building C-1 or buildings MU-1 through MU-4 and shall be constructed prior to the issuance of the first occupancy permit for building C-1 or for buildings MU-1 through MU-4. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street system or release of the performance bonds for roadway construction.

2.2.2.3 General Urban Street A. The right of way from the Property boundary to the intersection with Davis Avenue Extended shall be dedicated and bonded for construction prior to the issuance of the first zoning permit for buildings MU-1 through MU-4 and shall be constructed prior to the issuance of the first occupancy permit for buildings MU-1 through MU-4. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street system or release of the performance bonds for roadway construction.

### 2.2.3 Dulles Greenway Extension

2.2.3.1 Right-of-way Reservation. The Owner shall reserve a 90-foot wide strip of land along the eastern Property boundary in substantial conformance with Sheet 2 of the CP for the construction of the Dulles Greenway Extension as provided in the Town Plan (the “Dulles Greenway Extension”). The right-of-way reservation for the Dulles Greenway Extension shall be shown on the first record plat or site plan, whichever occurs first, which contains any portion of the Property south of Tuscarora Creek. Subject to approval of any required sign permits, the Owner shall install two (2) citizen advisory signs within the Dulles Greenway Extension reservation area facing Gateway Drive and Davis Avenue Extended informing the future residents of Crescent Parke of the eventual planned use of the Dulles Greenway Extension reservation area. These signs shall be installed prior to issuance of the first occupancy permit within the CD-RH zoned portion of the Property. Until such time as the Dulles Greenway Extension reservation area is dedicated for public street purposes pursuant to Proffer 2.2.4.2, the Dulles Greenway Extension reservation area may be used for open space purposes.

2.2.3.2 Right-of-way Dedication. The Owner shall dedicate any land located within the Dulles Greenway Extension reservation area as shown

on Sheet 2 of the CP that is needed for right-of-way for the Dulles Greenway Extension at no cost to the Town or VDOT upon approval of the construction plans for the roadway extended to Harrison Street or Catoctin Circle to be prepared by others, upon full funding or bonding of the improvements to be constructed by others, and upon written request of the Town. The Owner shall sign the required record plat and accompanying documents such as the deed for the right-of-way dedication prepared by others within thirty days of receipt of the Town's written request. The dedication of Dulles Greenway Extension right-of-way shall be conveyed in fee simple, free and clear of any and all liens to the Town by a Deed of Dedication. The Owner's obligation to dedicate this land shall terminate if the construction plans are not approved and bonded or funded by others within twenty-one years of the date of approval of TLZM-2013-0006. In the event the Owner's obligation to dedicate the Dulles Greenway Extension is terminated in accord with Proffer 2.2.3.5, below, Owner agrees that the Dulles Greenway Extension reservation area shall remain as open space and no development shall occur within the Dulles Greenway Extension reservation area, in perpetuity as described in Proffer 2.2.3.5, below. The Owner shall preserve all trees within the Dulles Greenway Extension area specified as "Proposed Tree Save Within Greenway ROW Reservation" on Sheet 7 of the CP.

2.2.3.3 Right-of-way Reservation Disclosure. The Owner shall provide prospective purchasers written disclosure prior to finalizing any purchase contract about the Town Plan policies regarding the Dulles Greenway Extension reservation area for the potential extension of the Dulles Greenway to occur within this reservation area.

2.2.3.4 Funding of Transportation Study for Deletion of Dulles Greenway Extension from Town Plan. In order to fund any necessary transportation study that is required for the Town to approve an amendment to the Town Plan concerning a deletion of the Dulles Greenway Extension from the Town Plan, the Owner shall provide cash funding to the Town in the amount of Seventy Five Thousand Dollars (\$75,000). The Owner shall submit 50% of this amount (\$37,500) within sixty (60) days of rezoning approval and the remaining balance (\$37,500) at such time when the Town executes a contract with its retained transportation consultant. Any excess monies paid under this proffer not used for the transportation study shall be credited against the cash contribution for off-site transportation improvements required under Proffer 2.2.5.

2.2.3.5 Permanent Open Space Easement. In the event the Town determines, following submittal of the transportation study discussed in Proffer 2.2.3.4, above, that the Dulles Greenway Extension should be deleted from the Town Plan, the Owner shall impose a permanent open space easement on the Dulles Greenway Extension by instrument approved

as to form and substance by the Town. In this event, the Owner shall be permitted to remove the two (2) citizen advisory signs referenced in Proffer 2.2.3.1, above.

2.2.3.6 Driver Feedback Speed Warning Signs. The Owner shall install two driver feedback speed warning signs, one in each direction on Sycolin Road near its the intersection with Gateway Drive, SE within the existing right-of-way at locations to be determined by the Town. The driver feedback speed warning signs shall be installed and rendered operational prior to the Davis Avenue Extension connection to existing Gateway Drive being opened for vehicular traffic pursuant to Proffer 2.2.1, above. The costs incurred by the Owner to install and render operational the driver feedback speed warning signs shall be deducted from the cash contribution for off-site road improvements, as evidenced by invoices incurred for the construction and submitted to the Town, required for Proffer 2.2.5, below.

#### 2.2.4 South King Street Turn Lanes

2.2.4.1. The Owner shall construct one northbound right-turn lane at the intersection of South King Street and Davis Avenue. Approval of zoning permits for the construction of any buildings on the Property shall be contingent upon the bonding for the construction of the northbound right-turn lane at the intersection of South King Street and Davis Avenue. No occupancy permits shall be approved until the northbound right-turn lane at the intersection of South King Street and Davis Avenue is constructed and the turn lane is open for traffic. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street system or release of the performance bonds for roadway construction.

2.2.4.2. The Owner shall construct one westbound left-turn lane at the intersection of South King Street and Davis Avenue, creating dual left-turn lanes. The Owner also shall re-stripe the existing through left-turn to a through right-lane. Approval of zoning permits for the construction of any buildings on the Property shall be contingent upon the bonding for the construction of the westbound left-turn lane at the intersection of South King Street and Davis Avenue and the re-striping of the existing through left-turn lane. No occupancy permits shall be approved until the westbound left-turn lane at the intersection of South King Street and Davis Avenue and the re-striping of the existing through lane is constructed and the turn lane is open for traffic. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street system or release of the performance bonds for roadway construction.

2.2.4.3 The Owner shall make any necessary alterations, if required by the Town or VDOT, to the existing traffic signal at the South King Street and Davis Avenue intersection as a result of the alterations to the intersection specified in Proffer 2.2.4. The Owner also shall install a pedestrian signal with countdown timer on this traffic signal and install crosswalks where needed at this intersection if approved by VDOT or the Town. Approval of zoning permits for the construction of any buildings on the Property shall be contingent upon the bonding for the construction of these traffic signal alterations, if required. No occupancy permits shall be approved until these traffic signal alterations are constructed, if required. Approval of any occupancy permits, however, shall not be contingent upon acceptance of these improvements by the Town or VDOT or release of the performance bonds for these alterations.

2.2.4.4 The Owner shall provide a cash equivalent contribution to the Town for the improvements specified under Proffer 2.2.4, in the event these improvements are constructed by others. The cash equivalent contribution shall be provided upon written request of the Town with the invoices of the construction costs provided to the Owner.

#### 2.2.5 Cash Contribution for Off-site Transportation Improvements

The Owner shall provide a cash contribution totaling \$768,060 for off-site transportation improvements. This cash contribution shall be paid at the time of issuance of the occupancy permit for each residential unit in the amount of \$1,797 for each multi-family unit located in the CD-MUO district and \$2,097 for each single-family attached dwelling unit located in the CD-RH district. The funds the Town receives from this cash contribution may be used for transportation improvements in the vicinity of the Crescent Parke property including but not limited to the following: (i.) reconstruction of the bridge on Davis Court to access the Olde Izaak Walton Park property; (ii.) construction of improvements to First Street off-site of the Crescent Parke property; (iii.) revisions to Gateway Drive to restrict left-turn movements onto Harrison Street; (iv.) installation of a traffic signal at Gateway Drive and Sycolin Road; or (v.) installation of turn lanes and traffic signal at the intersection of South King Street and the eastbound on-ramp of the Route 15 Bypass. Use of these funds is at the discretion of the Town of Leesburg.

#### 2.2.6 Acquisition of Off-Site Right-of-Way

The Owner shall exercise its best efforts to acquire any off-site right-of-way necessary to construct the improvements listed in Proffer 2.2, if any is required. The Owner's obligation to construct any improvements requiring off-site right-of-way shall be contingent on the Owner's ability

to secure the necessary off-site right-of-way. If, despite the best efforts of the Owner to acquire the off-site right-of-way necessary for the construction of these improvements, the Owner will request in writing to the Zoning Administrator that the Town obtain such right-of-way by eminent domain, and the Owner shall fund the cost of such condemnation. This proffer shall in no way obligate the Town to use its powers of eminent domain and such exercise shall be undertaken solely at the discretion of the Town. If, within ninety (90) days of receipt of the request to the Town, the Town adopts a resolution to commence condemnation proceedings and the necessary right-of-way is acquired by the Town within fifteen (15) months of the adoption of the resolution, the Owner shall complete the improvements including the off-site right-of-way. If the Town does not adopt a resolution to pursue its powers of eminent domain within ninety (90) days of the receipt of the request or does not acquire the necessary right-of-way within fifteen (15) months from the adoption of the resolution, then the Owner shall provide a cash contribution to the Town equivalent to the bond amounts for the construction of the improvements requiring the off-site right-of-way, which amount shall be submitted to the Town and held specifically for the construction of the improvements in the future by others. This cash contribution shall be paid within 180 days of the town's receipt of the request to pursue eminent domain if the Town does not adopt a resolution to pursue eminent domain. Alternatively, if the Town adopts a resolution to pursue eminent but does not acquire the right-of-way within 15 months from the adoption of the resolution, the Owner shall pay the cash contribution within 18 months of the Town's adoption of the request to pursue eminent domain. However, this cash contribution will be paid only upon approval of construction plans for Davis Avenue Extended which do not require the off-site right-of-way.

### **3. OPEN SPACE AND RECREATION**

#### **3.1 Internal Open Space and Recreation**

##### **3.1.1 Open Space Amenity Areas**

The Owner shall provide internal open space areas as shown on Sheet 24 of the CP and the amenities within these open space areas as shown on Sheets 25 through 29 of the CP. These areas include the following amenities:

3.1.1.a. The Plaza areas surrounding buildings C-2, C-3 and C-4 (labeled #10 on Sheet 29 of the CP) and the Plaza adjacent to building C-1 (labeled #9 on Sheet 29 of the CP), as detailed on Sheet 29 of the CP and which shall be constructed concurrently with buildings C-2, C-3 and C-4 for Plaza #10 and with building C-1 for Plaza #9;

3.1.1.b. The Plaza areas located adjacent to building MU-1 and between buildings MU-2 and MU-3 (labeled #8 on Sheet 28 of the CP), and the Pocket Park behind building MU-3 (labeled #7 on Sheet 28 of the CP), as detailed on Sheet 28 of the CP and which shall be constructed concurrently with buildings MU-1, MU-2 and MU-3, respectively (i.e., the area of #8 adjacent to MU-1 shall be constructed concurrently with building MU-1, the balance of #8 shall be constructed concurrently with building MU-2, and #7 shall be constructed concurrently with building MU-3) ;

3.1.1.c. The Neighborhood Park (developer's option) open space amenity with details as shown on Sheet 27 of the CP (labeled #6) and which shall be constructed prior to the approval of 127th residential occupancy permit for the Property;

3.1.1.d. The Creekside Park (linear park labeled #5 on Sheet 24 of the CP) with the amenities as shown on Sheet 26 of the CP and which shall be constructed prior to the issuance of the 100th occupancy permit for the CD-RH zoned portion of the Property;

3.1.1.e. The Neighborhood Common (pocket park) labeled as #1 and the Pocket Parks labeled ##2, 3 and 4 on Sheet 24 of the CP as detailed on Sheet 25 of the CP: with the Neighborhood Common #1 constructed prior to the issuance of the 1<sup>st</sup> occupancy permit for buildings BB, CC, DD, EE or FF; with Pocket Park #2 constructed prior to the issuance of the 1<sup>st</sup> occupancy permit for buildings CC or X; with Pocket Park #3 constructed prior to the issuance of the 1<sup>st</sup> occupancy permit for buildings L, M, N or O; and with Pocket Park #4 constructed prior to the issuance of the 1<sup>st</sup> occupancy permit for buildings H or S;

3.1.1.f. The Owner shall construct a ten-foot wide asphalt shared use trail through the Property as shown on Sheet 2 of the CP. The shared use trail shall be constructed in three segments as follows: (i) One segment runs from Davis Court Relocated to the bridge over Tuscarora Creek and shall be constructed prior to the issuance of the first occupancy permit for buildings C-1, C-2 and C-3; (ii) the second segment is part of the bridge across Tuscarora Creek and shall be constructed concurrently with the improvements specified in Proffer 2.2.1; and (iii) the third segment runs from the bridge across Tuscarora Creek to Gateway Drive and shall be constructed prior to the issuance of the 1<sup>st</sup> occupancy permit for buildings EE or FF.

### 3.1.2 Bicycle Facilities

The Owner shall install a minimum of 16 bicycle parking spaces in bicycle racks in the CD-C zoned portion of the Property and 32 bicycle parking

spaces in bicycle racks in the CD-MUO zoned portion of the Property as shown in the site tabulations on Sheet 4 of the CP.

### 3.1.3 Community Room

The Owner shall provide a minimum of 2,000 square feet of the ground floor commercial space in Building MU-4 for a community room which can be used as meeting space, party room, facility for classes or other uses by the POA or residents of Crescent Parke deemed suitable by the Property Owners' Association established pursuant to Proffer 6 and which shall own the 2,000 square foot condominium space. The use of this space by the POA may cease only upon the POA gaining control of the association and upon a vote of the majority of the residential property owners to terminate the use of the community meeting room after which the condominium space may be sold and/or used as retail space.

### 3.3 Olde Izaak Walton Park Property Dedication

The Owner shall dedicate approximately 18.65 acres of the parcel identified as 2016 Loudoun County PIN 232-37-3721, owned by Failmezger Investments (the "Park Property"), which is currently leased by the Town for use as Olde Izaak Walton Park, to the Town of Leesburg for public park purposes. Dedication of the Park Property shall occur no later than two years after the date of approval of this rezoning application, TLZM-2013-0006, Crescent Parke. The Owner shall prepare the Deed of Conveyance and/or Boundary Line Adjustment and associated plat(s), and pay all recording fees, taxes and costs, to effectuate the dedication of the Park Property to the Town. The Town acknowledges that a 2.34 acre portion of the Park Property will not be conveyed to the Town, will be released from the Town's lease with Failmezger Investments for the Park Property, and will become a portion of the development. The Owner further agrees that it will (i) reimburse the Town for any and all lease payments beyond the June 2017 monthly payment, including all payments for real property taxes, or (ii) in lieu of reimbursement, the Owner may forego these lease payments and all real property tax payments and shall notify the Town, in writing, of either (i) or (ii).

In the event the Town Council adopts a resolution declining dedication of the Park Property within two (2) years from the date of approval of this rezoning application, then the Owner shall not dedicate the Park Property and (i) the Owner shall provide, upon issuance of each residential certificate of occupancy permit, a one-time cash contribution in the amount of \$1,000 per dwelling unit, which shall be used for capital improvements for recreation facilities within the Town of Leesburg, (ii) the Owner shall pay a cash contribution of \$200,000 to the Town for traffic signal improvements in the vicinity of the S. King Street/Rt. 15 Bypass interchange, which shall be paid prior to the issuance of the 100<sup>th</sup> residential certificate of occupancy, and (iii) the Owner's obligation to reimburse the Town for lease payments and real property taxes shall end upon adoption of that resolution. During the period of time

between the approval of the rezoning and the time of dedication of the Park Property or the Town Council's adoption of a resolution declining dedication of the Park Property, as the case may be, the Owner agrees that the Park Property shall at all times remain restricted for park purposes only.

#### 4. **SITE DESIGN**

##### 4.2 Energy Saving Design

All dwellings on the Property shall be designed and constructed as ENERGY STAR Version 3 ® or Home Energy Rating System (HERS) qualified homes with a maximum rating of 90. With the submission of a zoning permit for each building, the Applicant shall provide certification that the construction documents have been reviewed by a qualified Home Energy Rater, and that the building meets ENERGY STAR Version 3 ® or HERS standards with a maximum rating of 90. Prior to the issuance of an occupancy permit, a "wet" ENERGY STAR Version 3 ® or HERS label must be verified at each dwelling unit's electrical panel and a copy of the Home Energy Rating report shall be provided by the Home Energy Rater. The Home Energy Rating report shall include the unit address, builder's name, Rater's name and date of verification.

##### 4.3 Dumpster Pad

The dumpsters use for the mixed-use buildings MU-1, MU-2, MU-3 and MU-4 shall be designed to compact the refuse and minimize odors emanating from the dumpster. The dumpster enclosures shall include a sign limiting the hours trash and recycling pick-up may occur.

##### 4.4 Filtrerra Devices

If Filterra devices are used to satisfy BMP requirements and conflict with proposed street tree locations, alternate spacing of street trees to accommodate the Filterra device shall be provided prior to any determination that the required street trees cannot be provided. Understory trees, subject to the approval of the Zoning Administrator, shall be installed as the vegetative material with Filterra devices.

##### 4.5 Stormwater Management (SWM) and Best Management Practices (BMP) Strategy

4.5.1 Water Quality Requirements: Any site plan submitted for development of the property shall include Best Management Practices ("BMPs") in accordance with the Town's Design and Construction Standards Manual ("DCSM") as well as Virginia's stormwater regulations, whichever is more restrictive. BMP strategies listed in the Virginia State Clearinghouse that may be utilized with this project may include but shall not be limited to, stream restoration, grassed swales, vegetative filter strips, mechanical devices and bioretention facilities.

- 4.5.1.1 Exceptions: The purchase of off-site nutrient credit for BMPs is expressly prohibited by Zoning Ordinance Section 14.2.2. as all water quality devices must be constructed *on-site* when a modification of the Creek Valley Buffer is requested.
- 4.5.2 Stormwater Detention Requirements for the 100 year storm: In addition to all other Town required stormwater management requirements as defined by the DCSM, the Town's 1990 Overall Stormwater Management Master Plan, and all other local, State and Federal regulations, the Owner shall in addition, provide storm water detention on the Property for the 100-year storm.
- 4.5.3 Alternate Compliance for providing detention for the 100 year Storm Event: In lieu of the requirements stated in Proffer 4.5.2 above, the Owner may elect to prepare a 100-year stormwater detention study (herein referred to as the "Study"). If the Alternate Compliance Option is chosen, the Owner shall adhere to the following process.
- 4.5.3.1 The Owner shall prepare an updated 100 year stormwater Study for the entire Tuscarora Drainage Shed (Upper and Lower) including all contributing tributaries, following generally accepted best engineering, hydraulic and hydrologic practices. This study shall be submitted prior to or concurrent with the first submission of any site plan or construction drawing associated with the Property. The Study shall be reviewed and approved by a third party expert (see Proffer 4.5.3.3), the Town and any other applicable review agencies prior to the approval of any site plan or construction drawing associated with the Property. At a minimum, the Study shall include but not be limited to the following criteria:
- (a) Provide an analysis based upon current buildout of the drainage shed.
  - (b) Provide an analysis based upon the maximum potential development of the drainage shed based upon the maximum possible runoff.
  - (c) Provide an analysis that encompasses all ponds within the drainage shed and associated routings.
  - (d) Provide a detailed analysis of the timing of individual peak flows. Specifically, the timing of the peak flows from Town Branch and the peak flows of Tuscarora Creek.

(e) Provide justification for any differences found between the results of the Town of Leesburg Stormwater Management Master plan and the results determined by the applicant.

4.5.3.2 The purpose of said Study is to compare the new updated Study to the Town's 1990 Overall Stormwater Management Master Plan and determine whether detention of the 100 year storm event for the Property would increase or decrease the peak 100 year flood water surface elevations along Tuscarora Creek on downstream adjacent properties near the confluence of Town Branch. The analysis to be done with this Study, is to determine the net benefit or detriment of detaining the 100-year storm event and its impact on the Property and adjacent downstream properties.

4.5.3.3 This Study shall be prepared by the Owner's engineer and reviewed by both the Town as well as a third party expert to be mutually agreed upon by both the Town and the Owner.

4.5.3.4 The Owner shall contract with the mutually agreed upon third party expert directly. The Owner shall also be responsible for all contractual services and payments for services rendered to the mutually agreed upon third party expert.

4.5.3.5 Alternate compliance in lieu of stormwater detention on the Property for the 100-year storm event shall only be permitted with the expert's finding and the Town's concurrence that such detention of the 100-year storm would result in increased peak 100-year stormwater elevations within Tuscarora Creek which would have a negative impact on the stream itself and or a negative impact on the downstream adjacent properties.

4.6 Building Elevations. The final design of the buildings for which a rezoning to increase the building height is requested shall be in substantial conformance with the conceptual building elevations, which are attached to these proffers as Exhibit B, as follows:

4.6.1 Building C-1: The elevations prepared by DBI Architects including the east elevation dated January 22, 2015, the south elevation dated January 23, 2015, the west elevation dated January 27, 2015, and the north elevation dated February 9, 2016.

4.6.2 Buildings MU 1-4: The elevations prepared by DBI Architects dated January 22, 2015.

4.6.3 Townhouses: The elevations prepared by DBI Architects dated April 21, 2015.

4.6.4 Two-Over-Two Units: The elevations prepared by DBI Architects dated May 22, 2015.

## 5. **FIRE AND RESCUE SERVICES**

### 5.1 Residential Uses

Upon issuance of the Zoning Permit for each residential unit on the Property, the Owner shall provide the Town with a one-time cash contribution of \$100.00 per residential unit for distribution to the fire and rescue companies providing primary service to the Property. This contribution shall be divided equally between those fire and rescue companies that primarily serve the Property.

### 5.2 Non-residential Uses

Upon issuance of each Zoning Permit for each non-residential use, the Owner shall provide the Town with a one-time cash contribution of Ten Cents (\$.10) per gross square foot of commercial use on the Property for distribution to the fire and rescue companies providing primary service to the Property. This contribution shall be divided equally between the primary servicing fire and rescue companies.

### 5.3 Emergency Vehicle Access during Construction

The Owner shall provide, no later than the framing stage of construction, all-weather, gravel-compacted access for emergency vehicles, acceptable to the Fire Marshal, to all portions of the Property under construction.

## 6. **PROPERTY OWNERS ASSOCIATION**

### 6.1 Town Review

Documents to establish a Property Owners' Association (POA) for the Property, in which all property owners (both residential and non-residential) will be required to be a member, will be submitted to the Town for review and approval as to form and consistency with these proffers. The POA documents shall state

that no provisions shall be amended by the POA which address any matters that are proffered or are otherwise required by this rezoning approval without prior approval by the Town.

6.2 Timing

The POA will be established prior to approval of the first Site Plan for the Property.

6.3 Duties

The POA shall have, among its duties, snow removal, trash removal and the maintenance of all commonly owned facilities on the Property including the underground stormwater management facility, private roads and private access easements, private parking areas, private storm drainage, private common areas, including the POA-owned open space, trails, greens, recreational facilities, bicycle parking facilities and play areas, the community room condominium space provided for in Proffer 3.1.3. The POA also shall be responsible for enforcing the covenants on the property, including the covenant that garage space is not permitted to be converted to habitable space.

6.4 Garage Conversions

The POA documents shall include a provision that will prohibit any garage space from being converted to any type of habitable and/or living space.

6.5 Private Parking Courts

The POA documents shall include a disclosure that the private parking courts cannot be accepted as public roads by the Town of Leesburg and will be the responsibility of the POA.

6.6 Private Yard Maintenance

The POA documents shall include a provision making the POA responsible for maintaining the yards and landscaping of all of the lots within the Property, including the individually owned lots for the single family attached dwelling units. The POA shall monitor the building-mounted light fixtures on the rear of the dwelling units, which provide safety lighting for residential common parking court travel ways (alley ways), to ensure these light fixtures remain lit during nighttime hours and to ensure light bulbs are replaced in a timely fashion.

6.7 Street Tree Maintenance

The POA documents shall include a provision making the POA responsible for maintaining the street trees within the public street right-of-way, including the replacement of any diseased or dead trees.

**7. NOISE ATTENUATION**

The Owner shall install windows and doors with a minimum 32 Sound Transmission Class (“STC”) rating on the south, east and west sides of the following buildings as shown on Sheet 2 of the CP: the four units of building A closest to the Route 15 Bypass, the three units of building C closest to the Route 15 Bypass, and all of the units in buildings D, K, P, Q, R, U, V, Y, Z and AA. A Commonwealth of Virginia licensed acoustical engineer shall submit a report with the engineer’s seal prior to issuance of the occupancy permit for any of the units in the buildings as listed in this proffer certifying the following information: the STC rating of the installed windows and the interior noise level. Furthermore, the Owner shall include a disclosure statement to the buyers of the units in the buildings as listed in this proffer, which indicates that the home is located with the Noise Abatement Corridor Overlay District (NAC). The Owner also shall provide copies of the report provided to the Town of Leesburg pursuant to this proffer.

**8. CAPITAL FACILITIES CONTRIBUTION**

The Owner shall provide, upon issuance of each occupancy permit for a dwelling unit, a one-time cash contribution in the amount of \$5,100 per each multi-family dwelling unit, \$6,652 per each two-over-two dwelling unit, and \$11,974 for each single-family-attached dwelling unit, which shall be used for capital projects for public schools serving the Town of Leesburg or other capital improvement projects in the Town of Leesburg.

**9. CONSTRUCTION TRAFFIC**

The Owner shall prohibit construction traffic from using Davis Court to access the Property. Instead, construction traffic shall use Davis Avenue Extension for access or a temporary construction access drive in the Davis Avenue Extension right-of-way until the permanent roadway is constructed.

**10. WAIVERS AND MODIFICATIONS**

Approval of this application #TLZM-2013-0006 does not express or imply any waiver or modification of the requirements set forth in the Subdivision and Land Development Regulations, the Zoning Ordinance, or the Design and Construction Standards Manual, except as expressly approved in application #TLZM-2013-00036 and all final plats, development plans, and construction plans shall remain subject to these applicable Town regulations.

**11. ESCALATION CLAUSE**

All monetary contribution proffers shall escalate on a yearly basis beginning one year from the date of approval of the first site plan containing residential buildings and/or mixed use buildings or the first record plat containing such buildings, whichever occurs first in time, and which shall change effective each January 1 thereafter, based on the Consumer Price Index (CPI) for the Washington SMSA.

**12. BINDING EFFECT**

The undersigned owners of record of the Property do hereby voluntarily proffer the conditions stated above, which conditions shall be binding on the Owner, its successors and assigns shall have the effect specified in Section 15.2-2303, et seq. of the Code of Virginia (1950), as amended.

[SIGNATURES ON FOLLOWING PAGES]

Witness the following signatures and seals this day of \_\_\_\_\_, 2016.

Loudoun County PIN ##: 232-37-7166,  
232-37-5627 and 232-38-9290

MREC LD Leesburg Crossing, LLC  
A Virginia Limited Liability Company

By: Lansdowne at Leesburg Crossing LLC  
A Virginia Limited Liability Company, its  
Manager

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

Name: Leonard S. Mitchel  
Its: Managing Partner

State of \_\_\_\_\_  
City/County of \_\_\_\_\_

to-wit:

I, Notary Public in and for the state and city/county aforesaid, do hereby certify that  
\_\_\_\_\_ whose name is signed to the foregoing instrument,  
personally appeared before me and has this day acknowledged that he executed  
the foregoing proffers with the full power and authority to do so.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
Date

Loudoun County PIN #: 232-28-3893

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

Name: Stephen W. Pournaras

Its: Trustee

State of \_\_\_\_\_

City/County of \_\_\_\_\_

to-wit:

I, Notary Public in and for the state and city/county aforesaid, do hereby certify that \_\_\_\_\_, whose name is signed to the foregoing instrument, personally appeared before me and has this day acknowledged that he executed the foregoing proffers with the full power and authority to do so.

Given under my hand this \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
Date

Loudoun County PIN #: 232-37-3721

Failmezger Investments, LLC  
A Virginia Limited Liability Corporation

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

Name: Carl Failmezger  
Its: Managing Member

State of \_\_\_\_\_  
City/County of \_\_\_\_\_

to-wit:

I, Notary Public in and for the state and city/county aforesaid, do hereby certify that \_\_\_\_\_, whose name is signed to the foregoing instrument, personally appeared before me and has this day acknowledged that he executed the foregoing proffers with the full power and authority to do so.

Given under my hand this \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
Date

## EXHIBIT A

Crescent Parke Concept Plan

Prepared by Bowman Consulting

Dated December 23, 2013 and Revised through July 7, 2016

TLZM 2013-0006, Crescent Parke  
Proffer Statement  
July 12, 2016

## **EXHIBIT B**

**Crescent Parke Conceptual Building Elevations**

**Prepared by DBI Architects**

## PROFFER STATEMENT

### TLZM 2013-0006, CRESCENT PARKE

September 18, 2014

December 23, 2014

April 17, 2015

~~Updated~~ April 23, 2015

August 28, 2015

December 18, 2015

~~Revised~~ December 23, 2015

March 4, 2016

May 13, 2016

July 1, 2016

July 7, 2016

July 12, 2016

July 26, 2016

MREC LD Leesburg Crossing, LLC, as the owner of approximately 39.71 acres of land, more particularly described as Loudoun County parcel identification numbers (hereinafter, "PIN") 232-37-7166, 232-37-5627 and 232-38-9290, Edward R. Mooney Jr. and Stephen W. Pournaras, Trustees, the owner of approximately 11.28 acres of land, more particularly described as Loudoun County PIN 232-28-3893, and Failmezger Investments, as the owner of an approximately 2.34 acre portion of a 20.99 acre parcel of land, more particularly described as Loudoun County PIN 232-37-3721 (hereinafter all three owners shall be referred to collectively as the "Owner" and all parcels collectively referred to as the "Property") hereby voluntarily proffer, pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and Section 3.3.16 of the Town of Leesburg Zoning Ordinance, as amended, that the development of the Property shall be in substantial conformance with the proffers as set forth below. All exhibits referred to in this proffer statement are attached and incorporated into this proffer statement.

All proffers made herein are contingent upon the approval of the rezoning concept plan and proffer amendment request in the pending application and upon approval of the zoning modification requests. These proffered conditions are the only conditions offered on this rezoning application. These proffers shall become effective only upon approval by the Town Council of Leesburg, Leesburg, Virginia, of Zoning Amendment application TLZM 2013-0006.

#### 1. LAND USE

##### 1.1 Concept Plan

Development of the Property shall be in substantial conformance with Sheets 1 - 34 and 37 of the Zoning Map Amendment Concept Plan, prepared by Bowman Consulting, dated December 23, 2013 (hereinafter referred to as the "CP") and revised through July 7, 2016, which is attached to these proffers as Exhibit A and which shall control the use, layout, and configuration of the Property, with reasonable allowances to be made for engineering and design alteration and to meet Town zoning, subdivision and land development regulations.

## 1.2 Development Program

The Property shall be developed with a mix of uses as follows:

1.2.1 In the Crescent Design District Commercial (CD-C) zoning district, a maximum of 45,100 square feet of office and retail and other nonresidential uses as listed in Zoning Ordinance Table 7.10.9.D.1 under the headings “Commercial Uses, Industrial/Manufacturing and Institutional and Community Service Uses”. Any of these listed uses which require special exception approval shall obtain special exception approval before being established in the CD-C zoning district.

1.2.2 In the Crescent Design District Mixed-Use Optional (CD-MUO) zoning district, in Buildings MUO-1 through 4, a maximum of 96 multi-family dwellings and a maximum of 28,625 square feet of nonresidential uses as listed in Zoning Ordinance Table 7.10.9.E.1 under the headings “Commercial Uses and Institutional and Community Service Uses”, including 2,000 square feet for community uses is permitted.

At the Owner’s option, Buildings MUO-1 through 4 may contain single-family attached dwelling units (including units in the “stacked townhouse” configuration) above the ground-floor nonresidential uses as an alternative to the 96 multi-family dwellings, provided that the amount of residential gross floor area does not exceed 151,630 square feet. In Building C-1, a maximum of 88,000 square feet of nonresidential uses as listed in Zoning Ordinance Table 7.10.9.E.1 under the headings “Commercial Uses, Industrial/Manufacturing and Institutional and Community Service Uses” is permitted. Any of these listed uses for Buildings MUO 1-4 and Building C-1 which require special exception approval shall obtain special exception approval before being established in the CD-MUO zoning district.

1.2.3 In the Crescent Design District Residential High Density (CD-RH) zoning district, a maximum of 196 single family attached dwelling units and 88 single family attached dwelling units in the “stacked townhouse” configuration.

## 1.3 Development Phasing:

1.3.1 Transportation Improvements. The transportation improvements shall be constructed according to the timing as described in Proffer 2.

1.3.2 Land Disturbance. The initial phase of development shall not limit land disturbance on any portion of the Property.

1.3.3 Required Minimum Non-residential Development. Prior to issuance of the 214th residential certificate of occupancy anywhere on the Property, a minimum of 7,500 square feet of non-residential development shall be issued certificates of occupancy.

## 2. TRANSPORTATION IMPROVEMENTS

### 2.1 Sidewalks.

Sidewalks shall be constructed as shown on Sheets 2 and 4 of the CP. Planting areas for internal street trees shall be comprised of enhanced/amended planting media suitable for urban settings and which will be maintained by the Property Owners' Association (POA) established in ~~proffer~~ Proffer 6.7.

### 2.2 Public Street Improvements and Phasing of Improvements

2.2.1 Davis Avenue and Gateway Drive Extensions. The Owner shall dedicate the right-of-way for Davis Avenue and Gateway Drive Extensions from the existing terminus of Davis Avenue to the existing terminus of Gateway Drive in substantial conformance with Sheet 2 of the CP, including the construction of the bridge over Tuscarora Creek. The dedication of the right-of-way shall be conveyed in fee simple, free and clear of any and all liens to the Town by a Deed of Dedication. The Owner shall bond for construction of the General Urban Street section in substantial conformance with Sheet 4 of the CP, subject to Town approval. Approval of zoning permits for the construction of any buildings on the Property shall be contingent upon the bonding for the construction of Davis Avenue and Gateway Drive from the existing terminus of Gateway Drive to the existing terminus Davis Avenue. No occupancy permits shall be approved until Davis Avenue and Gateway Drive from the existing terminus of Gateway Drive to the existing terminus of Davis Avenue is constructed and the roadway is open for traffic. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street system or release of the performance bonds for roadway construction.

2.2.2 Other General Urban Streets. The Owner shall dedicate the right-of-way to construct the General Urban Streets listed in ~~proffers~~ Proffers 2.2.2.1, 2.2.2.2 and 2.2.2.3 and in substantial conformance with Sheets 2 and 4 of the CP. The dedication of the right-of-way shall be conveyed in fee simple, free and clear of any and all liens to the Town by a deed of dedication.

2.2.2.1 Davis Court Relocated. The right of way shall be dedicated and bonded for construction concurrent with Davis Avenue pursuant to ~~proffer~~ Proffer 2.2.1. No occupancy permits shall be approved until Davis Court is constructed and the roadway is open for traffic. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street system or release of the performance bonds for roadway construction. Upon

acceptance of Davis Court Relocated into the public street system, the Owner will seek to vacate the right-of-way for the unused segment of existing Davis Court and incorporate the right-of-way, when vacated, into the surrounding lot zoned CD-C.

2.2.2.2 First Street. The right of way from the Property boundary to the roundabout on Davis Avenue Extended shall be dedicated and bonded for construction prior to the issuance of the first zoning permit for building C-1 or buildings MU-1 through MU-4 and shall be constructed prior to the issuance of the first occupancy permit for building C-1 or for buildings MU-1 through MU-4. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street system or release of the performance bonds for roadway construction.

2.2.2.3 General Urban Street A. The right of way from the Property boundary to the intersection with Davis Avenue Extended shall be dedicated and bonded for construction prior to the issuance of the first zoning permit for buildings MU-1 through MU-4 and shall be constructed prior to the issuance of the first occupancy permit for buildings MU-1 through MU4. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street system or release of the performance bonds for roadway construction.

### 2.2.3 Dulles Greenway Extension

2.2.3.1 Right-of-way Reservation. The Owner shall reserve a 90-foot wide strip of land along the eastern Property boundary in substantial conformance with Sheet 2 of the CP for the construction of the Dulles Greenway Extension as provided in the Town Plan (the "Dulles Greenway Extension"). The right-of-way reservation for the Dulles Greenway Extension shall be shown on the first record plat or site plan, whichever occurs first, which contains any portion of the Property south of Tuscarora Creek. Subject to approval of any required sign permits, the Owner shall install two (2) citizen advisory signs within the ~~right-of-way~~ Dulles Greenway Extension reservation area facing Gateway Drive and Davis Avenue Extended informing the future residents of Crescent Parke of the eventual planned use of the Dulles Greenway Extension reservation area. These signs shall be installed prior to issuance of the first occupancy permit within the CD-RH zoned portion of the Property. Until such time as the Dulles Greenway Extension reservation area is dedicated for public street purposes pursuant to ~~proffer-Proffer~~ 2.2.4.2, the Dulles Greenway Extension reservation area may be used for open space purposes.

2.2.3.2 Right-of-way Dedication. The Owner shall dedicate any land

located within the ~~90-foot wide~~ Dulles Greenway Extension reservation area as shown on Sheet 2 of the CP that is needed for right-of-way for the Dulles Greenway Extension at no cost to the Town or VDOT upon approval of the construction plans for the roadway extended to Harrison Street or Catoctin Circle to be prepared by others, upon full funding or bonding of the improvements to be constructed by others, and upon written request of the Town. The Owner shall sign the required record plat and accompanying documents such as the deed for the right-of-way dedication prepared by others within thirty days of receipt of the Town's written request. The dedication of ~~the~~ Dulles Greenway Extension right-of-way shall be conveyed in fee simple, free and clear of any and all liens to the Town by a Deed of Dedication. The Owner's obligation to dedicate this land shall terminate if the construction plans are not approved and bonded or funded by others within twenty-one years of the date of approval of TLZM-2013-0006. In the event the Owner's obligation to dedicate the Dulles Greenway Extension is terminated in accord with Proffer 2.2.3.5, below, Owner agrees that the Dulles Greenway Extension reservation area shall remain as open space and no development shall occur within the Dulles Greenway Extension reservation area, in perpetuity as described in Proffer 2.2.3.5, below. The Owner shall preserve all trees within the Dulles Greenway Extension area specified as "Proposed Tree Save Within Greenway ROW Reservation" on Sheet 7 of the CP.

2.2.3.3 Right-of-way Reservation Disclosure. The Owner shall provide prospective purchasers written disclosure prior to finalizing any purchase contract about the Town Plan policies regarding the ~~90-foot right-of-way~~ Dulles Greenway Extension reservation area for the potential extension of the Dulles Greenway to occur within ~~the~~ this reservation area.

2.2.3.4 Funding of Transportation Study for Deletion of Dulles Greenway Extension from Town Plan. In order to fund any necessary transportation study that is required for the Town to approve an amendment to the Town Plan concerning a deletion of the Dulles Greenway Extension from the Town Plan, the Owner shall provide cash funding ~~in the form of individual progress payments~~ to the Town ~~up a maximum in the amount~~ of Seventy Five Thousand Dollars (\$75,000). The Owner shall submit ~~these payments to the Town within thirty (30) days of receipt of progress invoices from the Town's~~ 50% of this amount (\$37,500) within sixty (60) days of rezoning approval and the remaining balance (\$37,500) at such time when the Town executes a contract with its retained transportation consultant. Any excess monies paid under this proffer not used for the transportation study shall be credited against the cash contribution for off-site transportation improvements required under Proffer 2.2.5.

2.2.3.5 Permanent Open Space Easement. In the event the Town determines, following submittal of the transportation study discussed in

Proffer 2.2.3.4, above, that the Dulles Greenway Extension should be deleted from the Town Plan, the Owner shall impose a permanent open space easement on the Dulles Greenway Extension by instrument approved as to form and substance by the Town. In this event, the Owner shall be permitted to remove the two (2) citizen advisory signs referenced in Proffer 2.2.3.1, above.

2.2.3.6 Driver Feedback Speed Warning Signs. The Owner shall install two driver feedback speed warning signs, one in each direction on Sycolin Road near its the intersection with Gateway Drive, SE within the existing right-of-way at locations to be determined by the Town. The driver feedback speed warning signs shall be installed and rendered operational prior to the Davis Avenue Extension connection to existing Gateway Drive being opened for vehicular traffic pursuant to Proffer 2.2.1, above. The costs incurred by the Owner to install and render operational the driver feedback speed warning signs shall be deducted from the cash contribution for off-site road improvements, as evidenced by invoices incurred for the construction and submitted to the Town, required for Proffer 2.2.5, below.

#### 2.2.4 South King Street Turn Lanes

2.2.4.1. The Owner shall construct one northbound right-turn lane at the intersection of South King Street and Davis Avenue. Approval of zoning permits for the construction of any buildings on the Property shall be contingent upon the bonding for the construction of the northbound right-turn lane at the intersection of South King Street and Davis Avenue. No occupancy permits shall be approved until the northbound right-turn lane at the intersection of South King Street and Davis Avenue is constructed and the turn lane is open for traffic. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street system or release of the performance bonds for roadway construction.

2.2.4.2. The Owner shall construct one westbound left-turn lane at the intersection of South King Street and Davis Avenue, creating dual left-turn lanes. The Owner also shall re-stripe the existing through left-turn to a through right-lane. Approval of zoning permits for the construction of any buildings on the Property shall be contingent upon the bonding for the construction of the westbound left-turn lane at the intersection of South King Street and Davis Avenue and the re-striping of the existing through left-turn lane. No occupancy permits shall be approved until the westbound left-turn lane at the intersection of South King Street and Davis Avenue and the re-striping of the existing through lane is constructed and the turn lane is open for traffic. Approval of any occupancy permits, however, shall not be contingent upon acceptance of this roadway into the public street system or release of the performance

bonds for roadway construction.

2.2.4.3 The Owner shall make any necessary alterations, if required by the Town or VDOT, to the existing traffic signal at the South King Street and Davis Avenue intersection as a result of the alterations to the intersection specified in ~~proffer~~ Proffer 2.2.4. The Owner also shall install a pedestrian signal with countdown timer on this traffic signal and install crosswalks where needed at this intersection if approved by VDOT or the Town. Approval of zoning permits for the construction of any buildings on the Property shall be contingent upon the bonding for the construction of these traffic signal alterations, if required. No occupancy permits shall be approved until these traffic signal alterations are constructed, if required. Approval of any occupancy permits, however, shall not be contingent upon acceptance of these improvements by the Town or VDOT or release of the performance bonds for these alterations.

~~2.2.4.4~~ 2.2.4.4 The The Owner shall provide a cash equivalent contribution to the Town for the improvements specified under ~~proffer~~ Proffer 2.2.4, in the event these improvements are constructed by others. The cash equivalent contribution shall be provided upon written request of the Town with the invoices of the construction costs provided to the Owner.

#### 2.2.5 Cash Contribution for Off-site Transportation Improvements

The Owner shall provide a cash contribution totaling \$768,060 for off-site transportation improvements. This cash contribution shall be paid at the time of issuance of the occupancy permit for each residential unit in the amount of \$1,797 for each multi-family unit located in the CD-MUO district and \$2,097 for each single-family attached dwelling unit located in the CD-RH district. The funds the Town receives from this cash contribution may be used for transportation improvements in the vicinity of the Crescent Parke property including but not limited to the following: (i.) reconstruction of the bridge on Davis Court to access the Olde Izaak Walton Park property; (ii.) construction of improvements to First Street off-site of the Crescent Parke property; (iii.) revisions to Gateway Drive to restrict left-turn movements onto Harrison Street; (iv.) installation of a traffic signal at Gateway Drive and Sycolin Road; or (v.) installation of turn lanes and traffic signal at the intersection of South King Street and the eastbound on-ramp of the Route 15 Bypass. Use of these funds is at the discretion of the Town of Leesburg.

#### 2.2.6 Acquisition of Off-Site Right-of-Way

The Owner shall exercise its best efforts to acquire any off-site right-of-way necessary to construct the improvements listed in ~~proffer~~ Proffer 2.2, if any is required. The Owner's obligation to construct any improvements requiring off-site right-of-way shall be contingent on the Owner's ability to secure the necessary off-site right-of-way. If, despite the best efforts of the Owner to acquire the off-site right-of-way necessary for the construction of these improvements, the Owner will request in writing to the Zoning Administrator that the Town obtain such right-of-way by eminent domain, and the Owner shall fund the cost of such condemnation. This proffer shall in no way obligate the Town to use its powers of eminent domain and such exercise shall be undertaken solely at the discretion of the Town. If, within ninety (90) days of receipt of the request to the Town, the Town adopts a resolution to commence condemnation proceedings and the necessary right-of-way is acquired by the Town within fifteen (15) months of the adoption of the resolution, the Owner shall complete the improvements including the off-site right-of-way. If the Town does not adopt a resolution to pursue its powers of eminent domain within ninety (90) days of the receipt of the request or does not acquire the necessary right-of-way within fifteen (15) months from the adoption of the resolution, then the Owner shall provide a cash contribution to the Town equivalent to the bond amounts for the construction of the improvements requiring the off-site right-of-way, which amount shall be submitted to the Town and held specifically for the construction of the improvements in the future by others. This cash contribution shall be paid within 180 days of the town's receipt of the request to pursue eminent domain if the Town does not adopt a resolution to pursue eminent domain. Alternatively, if the Town adopts a resolution to pursue eminent but does not acquire the right-of-way within 15 months from the adoption of the resolution, the Owner shall pay the cash contribution within 18 months of the Town's adoption of the request to pursue eminent domain. However, this cash contribution will be paid only upon approval of construction plans for Davis Avenue Extended which do not require the off-site right-of-way.

### **3. OPEN SPACE AND RECREATION**

#### **3.1 Internal Open Space and Recreation**

##### **3.1.1 Open Space Amenity Areas**

The Owner shall provide internal open space areas as shown on Sheet 24 of the CP and the amenities within these open space areas as shown on Sheets 25 through 29 of the CP. These areas include the following amenities:

3.1.1.a. The Plaza areas surrounding buildings C-2, C-3 and C-4 (labeled

#10 on Sheet 29 of the CP) and the Plaza adjacent to building C-1 (labeled #9 on Sheet 29 of the CP), as detailed on Sheet 29 of the CP and which shall be constructed concurrently with buildings C-2, C-3 and C-4 for Plaza #10 and with building C-1 for Plaza #9;

3.1.1.b. The Plaza areas located adjacent to building MU-1 and between buildings MU-2 and MU-3 (labeled #8 on Sheet 28 of the CP), and the Pocket Park behind building MU-3 (labeled #7 on Sheet 28 of the CP), as detailed on Sheet 28 of the CP and which shall be constructed concurrently with buildings MU-1, MU-2 and MU-3, respectively (i.e., the area of #8 adjacent to MU-1 shall be constructed concurrently with building MU-1, the balance of #8 shall be constructed concurrently with building MU-2, and #7 shall be constructed concurrently with building MU-3) ;

3.1.1.c. The Neighborhood Park (developer's option) open space amenity with details as shown on Sheet 27 of the CP (labeled #6) and which shall be constructed prior to the approval of 127th residential occupancy permit for the Property;

3.1.1.d. The Creekside Park (linear park labeled #5 on Sheet 24 of the CP) with the amenities as shown on Sheet 26 of the CP and which shall be constructed prior to the issuance of the 100th occupancy permit for the CD-RH zoned portion of the Property;

3.1.1.e. The Neighborhood Common (pocket park) labeled as #1 and the Pocket Parks labeled ##2, 3 and 4 on Sheet 24 of the CP as detailed on Sheet 25 of the CP: with the Neighborhood Common #1 constructed prior to the issuance of the 1<sup>st</sup> occupancy permit for buildings BB, CC, DD, EE or FF; with Pocket Park #2 constructed prior to the issuance of the 1<sup>st</sup> occupancy permit for buildings CC or X; with Pocket Park #3 constricted prior to the issuance of the 1<sup>st</sup> occupancy permit for buildings L, M, N or O; and with Pocket Park #4 constructed prior to the issuance of the 1<sup>st</sup> occupancy permit for buildings H or S;

3.1.1.f. The Owner shall construct a ten-foot wide asphalt shared use trail through the Property as shown on Sheet 2 of the CP. The shared use trail shall be constructed in three segments as follows: (i) One segment runs from Davis Court Relocated to the bridge over Tuscarora Creek and shall be constructed prior to the issuance of the first occupancy permit for buildings C-1, C-2 and C-3; (ii) the second segment is part of the bridge across Tuscarora Creek and shall be constructed concurrently with the improvements specified in ~~proffer-Proffer~~ 2.2.1; and (iii) the third segment runs from the bridge across Tuscarora Creek to Gateway Drive and shall be constructed prior to the issuance of the 1<sup>st</sup> occupancy permit for buildings EE or FF.

### 3.1.2 Bicycle Facilities

The Owner shall install a minimum of 16 bicycle parking spaces in bicycle racks in the CD-C zoned portion of the Property and 32 bicycle parking spaces in bicycle racks in the CD-MUO zoned portion of the Property as shown in the site tabulations on Sheet 4 of the CP.

### 3.1.3 Community Room

The Owner shall provide a minimum of 2,000 square feet of the ground floor commercial space in Building MU-4 for a community room which can be used as meeting space, party room, facility for classes or other uses by the POA or residents of Crescent Parke deemed suitable by the Property Owners' Association established pursuant to ~~proffer~~ Proffer 6 and which shall own the 2,000 square foot condominium space. The use of this space by the POA may cease only upon the POA gaining control of the association and upon a vote of the majority of the residential property owners to terminate the use of the community meeting room after which the condominium space may be sold and/or used as retail space.

### 3.3 Olde Izaak Walton Park Property Dedication

The Owner shall dedicate approximately 18.65 acres of the parcel identified as 2016 Loudoun County PIN 232-37-3721, owned by Failmezger Investments (the "Park Property"), which is currently leased by the Town for use as Olde Izaak Walton Park, to the Town of Leesburg for public park purposes. Dedication of the Park Property shall occur no later than two years after the date of approval of this rezoning application, TLZM-2013-0006, Crescent Parke. The Owner shall prepare the Deed of Conveyance and/or Boundary Line Adjustment and associated plat(s), and pay all recording fees, taxes and costs, to effectuate the dedication of the Park Property to the Town. The Town acknowledges that a 2.34 acre portion of the Park Property will not be conveyed to the Town-, will be released from the Town's lease with Failmezger Investments for the Park Property. and will become a portion of the development. The Owner further agrees that it will (i) reimburse the Town for any and all lease payments beyond the June 2017 monthly payment, including ~~the~~ all payments for real property taxes-, or (ii) in lieu of reimbursement, the Owner may forego these lease payments and all real property tax payments and shall notify the Town, in writing, of either (i) or (ii). ~~During the period of time between the approval of the rezoning and the time of dedication of the Park Property, the Owner agrees that the Park Property shall at all times remain dedicated for park purposes.~~

In the event the Town Council adopts a resolution declining dedication of the Park Property within two (2) years from the date of approval of this rezoning application, then the Owner shall not dedicate the Park Property and (i) the Owner shall provide, upon issuance of each residential certificate of occupancy permit, a one-time cash contribution in the amount of \$1,000 per dwelling unit, which shall be used for

capital improvements for recreation facilities within the Town of Leesburg, (ii) the Owner shall pay a cash contribution of \$200,000 to the Town for traffic signal improvements in the vicinity of the S. King Street/Rt. 15 Bypass interchange, which shall be paid prior to the issuance of the 100<sup>th</sup> residential certificate of occupancy, and (iii) the Owner's obligation to reimburse the Town for lease payments and real property taxes shall end upon adoption of that resolution. During the period of time between the approval of the rezoning and the time of dedication of the Park Property or the Town Council's adoption of a resolution declining dedication of the Park Property, as the case may be, the Owner agrees that the Park Property shall at all times remain restricted for park purposes only.

#### 4. **SITE DESIGN**

##### 4.2 Energy Saving Design

All dwellings on the Property shall be designed and constructed as ENERGY STAR Version 3 ® or Home Energy Rating System (HERS) qualified homes with a maximum rating of 90. With the submission of a zoning permit for each building, the Applicant shall provide certification that the construction documents have been reviewed by a qualified Home Energy Rater, and that the building meets ENERGY STAR Version 3 ® or HERS standards with a maximum rating of 90. Prior to the issuance of an occupancy permit, a "wet" ENERGY STAR Version 3 ® or HERS label must be verified at each dwelling unit's electrical panel and a copy of the Home Energy Rating report shall be provided by the Home Energy Rater. The Home Energy Rating report shall include the unit address, builder's name, Rater's name and date of verification.

##### 4.3 Dumpster Pad

The dumpsters use for the mixed-use buildings MU-1, MU-2, MU-3 and MU-4 shall be designed to compact the refuse and minimize odors emanating from the dumpster. The dumpster enclosures shall include a sign limiting the hours trash and recycling pick-up may occur.

##### 4.4 Filtterra Devices

If Filtterra devices are used to satisfy BMP requirements and conflict with proposed street tree locations, alternate spacing of street trees to accommodate the Filtterra device shall be provided prior to any determination that the required street trees cannot be provided. Understory trees, subject to the approval of the Zoning Administrator, shall be installed as the vegetative material with Filtterra devices.

##### 4.5 Stormwater Management (SWM) and Best Management Practices (BMP) Strategy

4.5.1 Water Quality Requirements: Any site plan submitted for development of the property shall include Best Management Practices ("BMPs") in

accordance with the Town's Design and Construction Standards Manual ("DCSM") as well as Virginia's stormwater regulations, whichever is more restrictive. BMP strategies listed in the Virginia State Clearinghouse that may be utilized with this project may include but shall not be limited to, stream restoration, grassed swales, vegetative filter strips, mechanical devices and bioretention facilities.

4.5.1.1 Exceptions: The purchase of off-site nutrient credit for BMPs is expressly prohibited by Zoning Ordinance Section 14.2.2. as all water quality devices must be constructed *on-site* when a modification of the Creek Valley Buffer is requested.

4.5.2 Stormwater Detention Requirements for the 100 year storm: In addition to all other Town required stormwater management requirements as defined by the DCSM, the Town's 1990 Overall Stormwater Management Master Plan, and all other local, State and Federal regulations, the Owner shall in addition, provide storm water detention on the Property for the 100-year storm.

4.5.3 Alternate Compliance for providing detention for the 100 year Storm Event: In lieu of the requirements stated in Proffer 4.5.2 above, the Owner may elect to prepare a 100-year stormwater detention study (herein referred to as the "Study"). If the Alternate Compliance Option is chosen, the Owner shall adhere to the following process.

4.5.3.1 The Owner shall prepare an updated 100 year stormwater Study for the entire Tuscarora Drainage Shed (Upper and Lower) including all contributing tributaries, following generally accepted best engineering, hydraulic and hydrologic practices. This study shall be submitted prior to or concurrent with the first submission of any site plan or construction drawing associated with the Property. The Study shall be reviewed and approved by a third party expert (see proffer-Proffer 4.5.3.3), the Town and any other applicable review agencies prior to the approval of any site plan or construction drawing associated with the Property. At a minimum, the Study shall include but not be limited to the following criteria:

- (a) Provide an analysis based upon current buildout of the drainage shed.
- (b) Provide an analysis based upon the maximum potential development of the drainage shed based upon the maximum possible runoff.
- (c) Provide an analysis that encompasses all ponds within the drainage shed and associated routings.

- (d) Provide a detailed analysis of the timing of individual peak flows. Specifically, the timing of the peak flows from Town Branch and the peak flows of Tuscarora Creek.
  - (e) Provide justification for any differences found between the results of the Town of Leesburg Stormwater Management Master plan and the results determined by the applicant.
- 4.5.3.2 The purpose of said Study is to compare the new updated Study to the Town's 1990 Overall Stormwater Management Master Plan and determine whether detention of the 100 year storm event for the Property would increase or decrease the peak 100 year flood water surface elevations along Tuscarora Creek on downstream adjacent properties near the confluence of Town Branch. The analysis to be done with this Study, is to determine the net benefit or detriment of detaining the 100-year storm event and its impact on the Property and adjacent downstream properties.
- 4.5.3.3 This Study shall be prepared by the Owner's engineer and reviewed by both the Town as well as a third party expert to be mutually agreed upon by both the Town and the Owner.
- 4.5.3.4 The Owner shall contract with the mutually agreed upon third party expert directly. The Owner shall also be responsible for all contractual services and payments for services rendered to the mutually agreed upon third party expert.
- 4.5.3.5 Alternate compliance in lieu of stormwater detention on the Property for the 100-year storm event shall only be permitted with the expert's finding and the Town's concurrence that such detention of the 100-year storm would result in increased peak 100-year stormwater elevations within Tuscarora Creek which would have a negative impact on the stream itself and or a negative impact on the downstream adjacent properties.

~~4.6~~ Building Elevations

4.6 Building Elevations. The final design of the buildings for which a rezoning to increase the building height is requested shall be in substantial conformance with the conceptual building elevations, which are attached to these proffers as Exhibit B, as follows:

4.6.1 Building C-1: The elevations prepared by DBI Architects including the east elevation dated January 22, 2015, the south elevation dated January 23, 2015, the west elevation dated January 27, 2015, and the north elevation dated February 9, 2016.

4.6.2 Buildings MU 1-4: The elevations prepared by DBI Architects dated January 22, 2015.

4.6.3 Townhouses: The elevations prepared by DBI Architects dated April 21, 2015.

4.6.4 Two-Over-Two Units: The elevations prepared by DBI Architects dated May 22, 2015.

## 5. **FIRE AND RESCUE SERVICES**

### 5.1 Residential Uses

Upon issuance of the Zoning Permit for each residential unit on the Property, the Owner shall provide the Town with a one-time cash contribution of \$100.00 per residential unit for distribution to the fire and rescue companies providing primary service to the Property. This contribution shall be divided equally between those fire and rescue companies that primarily serve the Property.

### 5.2 Non-residential Uses

Upon issuance of each Zoning Permit for each non-residential use, the Owner shall provide the Town with a one-time cash contribution of ~~TEN-CENTS~~ Ten Cents (\$.10) per gross square foot of commercial use on the Property for distribution to the fire and rescue companies providing primary service to the Property. This contribution shall be divided equally between the primary servicing fire and rescue companies.

### 5.3 Emergency Vehicle Access during Construction

The Owner shall provide, no later than the framing stage of construction, all-weather, gravel-compacted access for emergency vehicles, acceptable to the Fire Marshal, to all portions of the Property under construction.

## 6. **PROPERTY OWNERS ASSOCIATION**

### 6.1 Town Review

Documents to establish a Property Owners' Association (POA) for the Property, in which all property owners (both residential and non-residential) will be required to be a member, will be submitted to the Town for review and approval as to form and consistency with these proffers. The POA documents shall state

that no provisions shall be amended by the POA which address any matters that are proffered or are otherwise required by this rezoning approval without prior approval by the Town.

#### 6.2 Timing

The POA will be established prior to approval of the first Site Plan for the Property.

#### 6.3 Duties

The POA shall have, among its duties, snow removal, trash removal and the maintenance of all commonly owned facilities on the Property including the underground stormwater management facility, private roads and private access easements, private parking areas, private storm drainage, private common areas, including the POA-owned open space, trails, greens, recreational facilities, bicycle parking facilities and play areas, the community room condominium space provided for in ~~proffer~~ Proffer 3.1.3. The POA also shall be responsible for enforcing the covenants on the property, including the covenant that garage space is not permitted to be converted to habitable space.

#### 6.4 Garage Conversions

The POA documents shall include a provision that will prohibit any garage space from being converted to any type of habitable and/or living space.

#### 6.5 Private Parking Courts

The POA documents shall include a disclosure that the private parking courts cannot be accepted as public roads by the Town of Leesburg and will be the responsibility of the POA.

#### 6.6 Private Yard Maintenance

The POA documents shall include a provision making the POA responsible for maintaining the yards and landscaping of all of the lots within the Property, including the individually owned lots for the single family attached dwelling units. The POA shall monitor the building-mounted light fixtures on the rear of the dwelling units, which provide safety lighting for residential common parking court travel ways (alley ways), to ensure these light fixtures remain lit during nighttime hours and to ensure light bulbs are replaced in a timely fashion.

#### 6.7 Street Tree Maintenance

The POA documents shall include a provision making the POA responsible for maintaining the street trees within the public street right-of-way, including the replacement of any diseased or dead trees.

**7. NOISE ATTENUATION**

The Owner shall install windows and doors with a minimum 32 Sound Transmission Class (“STC”) rating on the south, east and west sides of the following buildings as shown on Sheet 2 of the CP: the four units of building A closest to the Route 15 Bypass, the three units of building C closest to the Route 15 Bypass, and all of the units in buildings D, K, P, Q, R, U, V, Y, Z and AA. A Commonwealth of Virginia licensed acoustical engineer shall submit a report with the engineer’s seal prior to issuance of the occupancy permit for any of the units in the buildings as listed in this proffer certifying the following information: the STC rating of the installed windows and the interior noise level. Furthermore, the Owner shall include a disclosure statement to the buyers of the units in the buildings as listed in this proffer, which indicates that the home is located with the Noise Abatement Corridor Overlay District (NAC). The Owner also shall provide copies of the report provided to the Town of Leesburg pursuant to this proffer.

**8. CAPITAL FACILITIES CONTRIBUTION**

The Owner shall provide, upon issuance of each occupancy permit for a dwelling unit, a one-time cash contribution in the amount of \$5,100 per each multi-family dwelling unit, \$6,652 per each two-over-two dwelling unit, and \$11,974 for each single-family-attached dwelling unit, which shall be used for capital projects for public schools serving the Town of Leesburg or other capital improvement projects in the Town of Leesburg.

**9. CONSTRUCTION TRAFFIC**

The Owner shall prohibit construction traffic from using Davis Court to access the Property. Instead, construction traffic shall use Davis Avenue Extension for access or a temporary construction access drive in the Davis Avenue Extension right-of-way until the permanent roadway is constructed.

**10. WAIVERS AND MODIFICATIONS**

Approval of this application #TLZM-2013-0006 does not express or imply any waiver or modification of the requirements set forth in the Subdivision and Land Development Regulations, the Zoning Ordinance, or the Design and Construction Standards Manual, except as expressly approved in application #TLZM-2013-00036 and all final plats, development plans, and construction plans shall remain subject to these applicable Town regulations.

**11. ESCALATION CLAUSE**

All monetary contribution proffers shall escalate on a yearly basis beginning one year from the date of approval of the first site plan containing residential buildings and/or mixed use buildings or the first record plat containing such buildings, whichever occurs first in time, and which shall change effective each January 1 thereafter, based on the Consumer Price Index (CPI) for the Washington SMSA.

**12. BINDING EFFECT**

The undersigned owners of record of the Property do hereby voluntarily proffer the conditions stated above, which conditions shall be binding on the Owner, its successors and assigns shall have the effect specified in Section 15.2-2303, et seq. of the Code of Virginia (1950), as amended.

[SIGNATURES ON FOLLOWING PAGES]

Witness the following signatures and seals this day of \_\_\_\_\_, 2016.

Loudoun County PIN ##: 232-37-7166,  
232-37-5627 and 232-38-9290

MREC LD Leesburg Crossing, LLC  
A Virginia Limited Liability Company

By: Lansdowne at Leesburg Crossing LLC  
A Virginia Limited Liability Company, its  
Manager

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

Name: Leonard S. Mitchel  
Its: Managing Partner

State of \_\_\_\_\_  
City/County of \_\_\_\_\_

to-wit:

I, Notary Public in and for the state and city/county aforesaid, do hereby certify that  
\_\_\_\_\_ whose name is signed to the foregoing instrument,  
personally appeared before me and has this day acknowledged that he executed  
the foregoing proffers with the full power and authority to do so.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
Date

Loudoun County PIN #: 232-28-3893

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

Name: Stephen W. Pournaras

Its: Trustee

State of \_\_\_\_\_

City/County of \_\_\_\_\_

to-wit:

I, Notary Public in and for the state and city/county aforesaid, do hereby certify that \_\_\_\_\_, whose name is signed to the foregoing instrument, personally appeared before me and has this day acknowledged that he executed the foregoing proffers with the full power and authority to do so.

Given under my hand this \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
Date

Loudoun County PIN #: 232-37-3721

Failmezger Investments, LLC  
A Virginia Limited Liability Corporation

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

Name: Carl Failmezger  
Its: Managing Member

State of \_\_\_\_\_  
City/County of \_\_\_\_\_

to-wit:

I, Notary Public in and for the state and city/county aforesaid, do hereby certify that \_\_\_\_\_, whose name is signed to the foregoing instrument, personally appeared before me and has this day acknowledged that he executed the foregoing proffers with the full power and authority to do so.

Given under my hand this \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
Date

# EXHIBIT A

Crescent Parke Concept Plan

Prepared by Bowman Consulting

Dated December 23, 2013 and Revised through July 7, 2016

TLZM 2013-0006, Crescent Parke  
Proffer Statement  
July 12, 2016

# EXHIBIT B

Crescent Parke Conceptual Building Elevations

Prepared by DBI Architects

Comparison Details	
Title	<b>pdfDocs compareDocs Comparison Results</b>
Date & Time	7/21/2016 5:53:00 PM
Comparison Time	3.29 seconds
compareDocs version	v3.4.4.34

Sources	
Original Document	[#L0236275.DOCX] [v2] 17 pm version.DOCX
Modified Document	[#L0236442.DOCX] [v1] 19 pm version).DOCX

Comparison Statistics	
Insertions	28
Deletions	7
Changes	33
Moves	0
TOTAL CHANGES	68

Word Rendering Set Markup Options	
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<a href="#">Insertions</a>	
<del>Deletions</del>	
<a href="#">Moves / <del>Moves</del></a>	
Inserted cells	
Deleted cells	
Merged cells	
Formatting	Color only.
Changed lines	Mark left border.
Comments color	ByAuthor
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Track Changes
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False



PRESENTED: July 26, 2016

ORDINANCE NO. \_\_\_\_\_

ADOPTED: \_\_\_\_\_

AN ORDINANCE: APPROVING TLZM 2013-0006, CRESCENT PARKE, REZONING THE PROPERTY FROM CRESCENT DISTRICT-COMMERCIAL, CRESCENT DISTRICT-MIXED USE OPTION AND CRESCENT DISTRICT-OPEN SPACE TO CRESCENT DISTRICT - COMMERCIAL, CRESCENT DISTRICT-MIXED USE OPTION AND CRESCENT DISTRICT-RESIDENTIAL HIGH DENSITY.

WHEREAS, the rezoning application with concept plan and proffers, TLZM 2013-0006 Crescent Parke, has been filed by Lansdowne Development Group, LLC, to rezone the property from Crescent District - Commercial (CD-C), Crescent District-Mixed Use Option (CD-MUO) and Crescent District - Open Space (CD-OS) to Crescent District - Commercial, Crescent District-Mixed Use Option and Crescent District - Residential High Density (CD-RH); and

WHEREAS, approval of the rezoning application would permit 45,100 square feet of permitted uses in the CD-C district; and 114,625 square feet of permitted uses, a 2,000 square foot community room and 96 multifamily dwelling units in the CD-MOU districts; and a total of 284 town houses and/or stacked town houses in the CD-RH district; and

WHEREAS, the subject property of rezoning application TLZM 2013-0006 Crescent Parke, is identified by the Loudoun County Parcel Identification Numbers (PIN) 232-37-7166, 232-37-5627 and 232-38-9290 and 232-28-3893 and 232-37-3721; and

WHEREAS, duly advertised Planning Commission public hearings were held on June 4, 2015 and January 21, 2016; and

WHEREAS, at the August 20, 2015 and April 21, 2016 meetings, the Planning Commission recommended denial of this application to the Town Council; and

AN ORDINANCE: APPROVING TLZM 2013-0006, CRESCENT PARKE, REZONING THE PROPERTY FROM CRESCENT DISTRICT–COMMERCIAL, CRESCENT DISTRICT-MIXED USE OPTION AND CRESCENT DISTRICT–OPEN SPACE TO CRESCENT DISTRICT – COMMERCIAL, CRESCENT DISTRICT-MIXED USE OPTION AND CRESCENT DISTRICT–RESIDENTIAL HIGH DENSITY.

WHEREAS, the Town Council held duly advertised public hearing on this application on October 13, 2015 and May 24, June 14, June 28, and July 12, 2016; and

WHEREAS, staff recommended approval; and

WHEREAS, the Council has concluded that the application is in general conformance with the Crescent District policies contained in the Town Plan; and

WHEREAS, the Council has concluded that approval criteria of the Town's Zoning Ordinance § 3.3.15 have been satisfied in that mitigation of traffic impacts, including adequate accommodation for anticipated motor vehicle traffic volumes and emergency vehicle access have been provided; the proposed rezoning is compatible with surrounding neighborhoods and uses; provision of adequate public facilities have been provided including the proffer of a 18.65 acre public park; and

WHEREAS, the Council has concluded that the proposal would serve the public necessity, convenience, general welfare and good zoning practice.

The Council in the Town of Leesburg in Virginia hereby ORDAINS:

SECTION I. TLZM 2013-0006, Crescent Parke, is hereby approved, subject to the proffers last dated July 26, 2016; and

SECTION II. The property shall be developed in substantial conformance with the concept plan last dated July 7, 2016; and

AN ORDINANCE: APPROVING TLZM 2013-0006, CRESCENT PARKE, REZONING THE PROPERTY FROM CRESCENT DISTRICT–COMMERCIAL, CRESCENT DISTRICT-MIXED USE OPTION AND CRESCENT DISTRICT–OPEN SPACE TO CRESCENT DISTRICT – COMMERCIAL, CRESCENT DISTRICT-MIXED USE OPTION AND CRESCENT DISTRICT–RESIDENTIAL HIGH DENSITY.

SECTION III. The modifications listed in the applicant’s May 24, 2016 Modification Request Letter are hereby granted; and

SECTION V. All prior ordinances in conflict herewith are hereby repealed.

SECTION VI. Severability: If a court of competent jurisdiction declares any provision of this ordinance invalid, the decision shall not affect the validity of the ordinance as a whole or any remaining provisions of this ordinance; and

SECTION VII. This ordinance shall be in effect upon its passage.

PASSED this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
David S. Butler, Mayor  
Town of Leesburg

ATTEST:

\_\_\_\_\_  
Clerk of Council