

**TOWN OF HERNDON, VIRGINIA
TOWN COUNCIL**

ORDINANCE

MARCH 26, 2024

Ordinance- **to approve Zoning Map Amendment ZMA #22-02, 13100 and 13150 Worldgate Drive, in the Planned Development-Worldgate (PD-W) zoning district with proffered conditions to allow the redevelopment of the site with single-family attached and multi-family residential uses.**

In adopting this Ordinance, the Town Council has considered the factors set out in 15.2-2284, Code of Virginia (1950) as amended.

THEREFORE, BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia that:

1. The zoning of the property described below, lying in the Town of Herndon, Fairfax County, Virginia, is amended to allow multi-family and single-family attached residential uses in the PD-W, Planned Development-Worldgate zoning district as proposed in the Boston Properties / Wire Gill LLP / URBAN, LTD / KTG Y / Gorove Slade Associates, INC. Generalized Development Plan dated March 18, 2024, the Proffer Statement dated March 18, 2024 of ZMA #22-02, and in accordance with Section 78-50.9 and 78-155.1 of the Town of Herndon Zoning Ordinance.

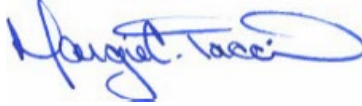
The property comprising of two parcels is shown in the above referenced Generalized Development Plan and described in the land records of Fairfax County in Deed Book 25544 on page 1450 (parcel 1) and Deed Book 25544 on page 1450 (parcel 2). The Fairfax County Tax Map Numbers are 0161 02 0025 and 0163 02 0002A and the total combined land area is 10.42 acres.

2. This rezoning shall be governed by this ordinance, the Town of Herndon Zoning Ordinance, the above referenced Proffer Statement for ZMA #22-02, and the above referenced Generalized Development Plan for ZMA #22-02. The Proffer Statement is included as an attachment to this ordinance. This Zoning Map Amendment is consistent with the adopted 2030 Comprehensive Plan of the Town of Herndon.
3. The Town Council approves the following modifications to the zoning regulations, as allowed under Section 78-50.2(d):

- a. A modification to Section 78-100.2 to allow for a reduction in off-street parking spaces for the multi-family building in accordance with the associated parking study exhibit dated January 16, 2024 and the Generalized Development Plan for ZMA #22-02.
- b. A modification to Section 78-30.6(b)(1) to allow for a reduction in the street width along the frontage of single-family attached residential dwelling (townhouses) in accordance with the Generalized Development Plan for ZMA #22-02.
- c. A modification to Section 78-30.6(b)(2) to allow reduced widths for single-family attached residential dwelling (townhouses) in accordance with the associated exhibits dated November 1, 2023 and the Generalized Development Plan for ZMA #22-02.
- d. A modification to Section 78-30.6(b)(3)(c) to allow for longer spans without wall offsets along the facades of multi-family buildings in accordance with the associated exhibits dated November 1, 2023 and the Generalized Development Plan for ZMA #22-02.
- e. A modification to Section 78-110.3 to allow a reduction in site landscaping for multi-family and single-family attached (townhouse) residential dwellings in accordance with the Generalized Development Plan for ZMA #22-02.
- f. A modification to Section 78-110.5 to allow a reduction in the required vehicular use landscaping in accordance with the associated exhibit dated November 1, 2023 and the Generalized Development Plan for ZMA #22-02.
- g. A modification to Section 78-110.4 to allow a reduction in required perimeter buffer landscaping in accordance with the associated exhibit dated March 7, 2024 and the Generalized Development Plan for ZMA #22-02.
- h. A modification to Section 78-112 to allow for a deviation from the streetscape standards in accordance with the associated exhibit dated March 7, 2024 and the Generalized Development Plan for ZMA #22-02.
- i. A modification to Section 78-30.6(b)(3)(b) to allow single-family attached residential dwelling (townhouses) end units to have front entrances in accordance with the associated exhibits dated November 1, 2023 and the Generalized Development Plan for ZMA #22-02.

4. As to the modifications set out in item 3 above, the Town Council finds that such modifications will afford equal or greater assurance of meeting the goals of the zoning ordinance, Town of Herndon, Virginia, as set out in the preamble of that ordinance.
5. This ordinance shall be effective on and after its adoption.

A Copy – Teste:



Margie C. Tacci
Deputy Town Clerk



MOTION: LeBlanc
SECOND: del Aguila
RE: ORDINANCE 24-O-06
ACTION: Adopted

Votes

Ayes: del Aguila, LeBlanc, Scherff, Mayor Olem

Nays: None

Absent from Vote: Hedrick, Alam, Dhakal

Absent from Meeting: Hedrick, Alam, Dhakal

PROFFERS

Worldgate Development Plan Amendment and Proffer Condition Amendment

March 18, 2024

Pursuant to Section 15.2-2303 of the Code of Virginia (1950, as amended) and Section 78-50.8 of the Town of Herndon Zoning Ordinance, as amended (the “Zoning Ordinance”), the undersigned, for themselves and their successors and/or assigns (referred to hereafter, both collectively and, where appropriate, individually, as the “Applicant”), hereby proffers that the development (the “Development”) of the parcel that is the subject of this application, which is shown on the Fairfax County 2024 Tax Map as parcels 016-1 ((02)) 0025 and 016-3 ((02)) 0002A (the “Property”) shall be in substantial conformance with the conditions set forth below (the “Proffers”) if and only if Zoning Map Amendment # 22-02 is approved. Upon approval, these Proffers will supersede any and all previously approved proffers and development conditions and subsequent amendments associated with Worldgate Land Bays A1, and A2. The Application Property consists of individual Land Bays totaling approximately 10.42 acres.

1. DEVELOPMENT PLAN.

- a. The Applicant is permitted to maintain the existing office use on the property until such time as demolition permits are issued for the redevelopment of the property. The Applicant shall maintain the office buildings, parking structure and landscaping in their current condition until the permits are issued for the redevelopment.
- b. The Property shall be developed in substantial conformance with the development plan entitled Worldgate prepared by Urban LTD. dated March 18, 2024 (the “Development Plan,” “General Development Plan,” and/or “GDP”) and these Proffers. It is understood by the Applicant that all other applicable regulations and policies governing land development within the Town of Herndon (the “Town”) shall apply to the Property and its development unless specifically modified by the language of this approval.
- c. Minor modifications of the Development Plan may be permitted without the need for an amendment to this approval when necessitated by final engineering or site design provided that the development is in substantial conformance with the Development Plan, these Proffers, and as approved by the Architectural Review Board (“ARB”), if applicable. Substantial conformity shall be determined as provided in the Zoning Ordinance.
- d. A preliminary subdivision plan is not required with the approval of the GDP. While

not required with the approval of the Development Plan, the Applicant may proceed with the approval of a preliminary subdivision plan without the need to amend these Proffers, provided that the proposed preliminary subdivision does not adversely impact the ability of the site to develop in accordance with the Development Plan and these proffers.

2. ARCHITECTURE AND URBAN DESIGN

- a. The final architectural treatment and exterior design of all buildings within the Development Plan and in accordance with the Architectural Review Board approval(s) shall create a sense of identity and place through the use of unifying elements such as materials, textures, color, lighting, and landscaping as generally reflected in the materials and exhibits contained in the Development Plan and the Herndon Streetscape Manual.
- b. Architectural plans may be revised subsequent to the final approval of the Development Plan and pursuant to approval by the ARB.
- c. Development Phasing. The Applicant shall construct the streets and provide pedestrian improvements, and private amenities on the Property in conjunction with the development of each development phase in a manner that reflects the intent of that shown within the Phasing Exhibits contained in the Development Plan's Sheet #10A. Development may proceed first with either the multifamily phase or the townhouse phase (or portions thereof), or with both phases occurring at the same time, provided that each phase provides the phasing conditions depicted on the Phasing Exhibits and as described in the Transportation proffer #4.d below regarding bus stops.
 - i. Under either phase, the remaining portion of the multifamily garage will be finished and painted to be substantially similar to the existing exposed finished garage.
 - ii. Each phase of the project shall also comply with the minimum parking requirements, for that given phase, as approved under the requested parking modification.
 - iii. Adjustments to the phasing boundaries may be approved with the site plan approvals provided that the adjustments do not materially adversely affect the other phases.
 - iv. If one phase of the project is built, and the other phase of the project remains unbuilt 2 years after the last certificate of occupancy has been issued for the first phase, the Applicant shall construct a more substantial fence around the unbuilt phase. The Applicant will obtain ARB approval of the fence

prior to any such fence being installed.

d. Conceptual Open Space Plan.

- i. The Development Plan includes a conceptual open space plan for the Property as shown on Sheet 10 consisting of approximately 3.37 acres. The Applicant shall provide open space improvements generally consistent with the Development Plan concepts for streetscapes, plazas, courtyards and private amenity areas.
- ii. The Applicant shall preserve trees as generally consistent with Sheets 22-24.
- iii. The Applicant shall provide a public access easement and trail along the northern property line as generally shown on the Development Plan.
- iv. As part of each plan approval, more detailed landscape plans for each building phase shall be provided and subject to the review and approval of the ARB, provided that the detailed landscaping and hardscape plans are found to be in substantial conformance with the concepts included in the Development Plan.
- v. Construction of the amenities in the open space area located at the corner of Elden Street and Worldgate Drive requires the approval of a license agreement from the Town Council for encroachment into the right-of-way as shown on Sheet 28. If a license agreement is not approved, the Applicant may be permitted to redesign the amenities in this open space area at the time of site plan approval without the need for an amendment to this approval, provided that the amenities are in substantial conformity with the Development Plan as determined by the Zoning Administrator.

e. Interior Noise Attenuation. The Applicant shall submit a roadway noise study, prepared by a qualified acoustical consultant, at the time of each building permit submission to determine what if any noise attenuation measures are needed to achieve Day-Night Average Sound Levels (DNL) of no more than 45 dBA for interior residential uses. Based on the findings of the study, the Applicant shall incorporate the appropriate noise attenuation elements into the design and construction documents to achieve the recommended DNL for the applicable building(s) or portions thereof.

f. Streetscape Furnishings, Materials and Lighting. Streetscape furnishing, materials and lighting plans shall be provided as part of the site plan and shall be in substantial conformance with the Herndon Streetscape Manual and subject to review and approval by the ARB. Unified and high-quality streetscape materials shall be provided and may include, but not be limited to, unit pavers, seat walls, tree space

edging, lighting, benches, trash receptacles and other hardscape elements. These plans submitted as part of the site plan shall include general product information and approximate locations of furnishings and materials to be located in the streetscape between the building face and the curb.

- g. Design of Internal Streets and Alleyways. The internal streets and alleyways shall be installed as depicted in the Development Plan.
 - h. Existing Utilities Relocation. The Applicant shall relocate, at its expense, any existing utilities (and associated easements) necessary to accommodate the proposed development as shown on the Development Plan. The relocation shall be shown at the time of site plan approval as required by the Town. Any necessary utility relocation shall occur with construction of the Development and prior to issuance of any certificate of occupancy. Any existing utilities that are in conflict with or impede the placement, growth, or health of any street trees or trees on-site, may be relocated at the time of final site plan and in coordination with Town Staff. If relocation of an existing utility is not feasible or allowed by the utility provider, then any landscaping that is proposed within the Development Plan shall be relocated to a location on the Property in close proximity to where it was shown on the Development Plan after coordination with and the approval of the Town's Zoning Administrator. Proposed utilities shall not be placed in a location that impedes the placement, growth, and health of any tree on-site and within abutting public right-of-way.
 - i. Townhouse Architecture. The architecture of the townhouse and stacked townhouse units shall reflect the quality and architectural expression of the multifamily building.
 - j. Multifamily Garage Door. The multifamily loading bays will include roll-up garage doors. These doors will include a design aesthetic, materials, and colors coordinated with the surrounding architecture as generally depicted in the GDP.
 - k. HVAC Unit Screening. The Applicant will screen ground level exterior HVAC units facing Worldgate Drive and Wiltshire Lane, as generally depicted in the GDP.
3. USES. Unless modified by an amendment to the approved Development Plan, any use or combination of uses permitted in the PD-W may be established on the Property so long as the Project is in substantial conformance with the plans and notes on Development Plan Sheet 2 and the following:
- a. The total maximum project floor area is limited to 608,752 square feet of GFA which is a 1.34 FAR based on a lot area of 453,958 square feet.

- b. Total residential development shall not exceed 608,752 square feet of GFA.
- c. Subject to Zoning Ordinance Article IX, Temporary uses and Structures, the Applicant, or its designee, shall be permitted to operate or hold festivals, fairs farmers' markets, food trucks/carts or similar activities on the Property, within publicly-accessible privately-owned open spaces, pedestrian ways and private streets. Portions of the private street network may be closed for such activities, provided that alternate circulation, garage and parking access is maintained.

4. TRANSPORTATION.

- a. Right of Way Dedication. The Applicant shall dedicate the right-of-way along the Elden Street and Worldgate Drive frontage as shown on Sheet 6 of the Development Plan prior to the first site plan approval. The Applicant reserves future density credit from the Right-of-Way dedication in accordance with the terms and conditions of Zoning Ordinance Section 78-155.9 in effect as of the date of the approval of these Proffers. The open space at the corner of Worldgate Drive and Elden Street, though dedicated as Right-of-Way, will be maintained by the Applicant.
- b. Private Street and Utility Easements.
 - i. The Applicant will grant public vehicular access and utility easements over the project's internal streets shown on Development Plan sheets 6 and 7.
 - ii. These easements will enable the Applicant to close the street for the construction of future phases and street maintenance.
 - iii. Prior to Town approval of any site plan, the Applicant will make good faith efforts to acquire any necessary offsite easements for the offsite grading and temporary construction access from the immediately adjacent property owners for installation of offsite grading, curb tie-ins, vehicular directional arrows, and trail connections as shown on the Applicant's Offsite Permission Exhibit on GDP sheet #07B For the improvements at the corner of Worldgate and Wiltshire, the Applicant shall advise the Town of such acquisition efforts and shall, to the best of its ability, attempt to acquire such off-site easements without the need for eminent domain proceedings. Where easements necessary for these proffered improvements cannot be obtained, despite such good faith efforts, either (i) voluntarily through donation or proffer to the Town, or (ii) through purchase by the Applicant at a fair market value, the Applicant shall request that the Town acquire such easements by appropriate eminent domain proceedings by the Town, with all costs associated with the eminent domain proceedings to be borne by the

Applicant, including, but not limited to, land acquisition costs and appraisal fees. The initiation of such eminent domain proceedings is solely at the discretion of the Town. If the necessary off-site easements cannot be acquired by the Applicant and the Town chooses not to exercise its right of eminent domain, the Applicant shall be released from the obligation to acquire such easements and installation of the improvements. If the Town elects to defer its exercise of eminent domain, then the Applicant's proffer requiring such acquisition or installation shall likewise be deferred. It is understood by the Applicant that the Town may, in its sole discretion, seek off-site improvements from other landowners as development occurs.

- c. Streetscape Improvements. As shown on the Development Plan, the Applicant will construct the streetscape improvements along the Elden Street and Worldgate Drive frontages prior to the issuance of the first certificate of occupancy for the Project.
- d. Bus Stops.
 - i. Worldgate Drive. With the first phase of the development, prior to the issuance of the first certificate of occupancy, the Applicant shall relocate and make improvements to the existing bus stop on Worldgate Drive. Improvements include a concrete pad and bus shelter, a trash and recycling receptacle, and a bicycle rack per the standards found in the Herndon Streetscape Manual as identified in the bus shelter detail provided on Development Plan sheet 02.
 - ii. Elden Street. With the first phase of the development, prior to the issuance of the first certificate of occupancy, the Applicant shall make improvements to the existing bus stop on Elden Street. Improvements include a bus pull-off area, a rerouted sidewalk, a concrete pad, a trash and recycling receptacle, and a bicycle rack per the standards found in the Herndon Streetscape Manual as identified in the bus shelter detail provided on Development Plan sheet 02. The bus shelter shall be constructed within 5 years of the construction of the Elden Street bus pull-off area, or concurrent with construction of the multifamily building, whichever comes first.
- e. Northern Trail. As shown on the Development Plan, the Applicant will construct an onsite trail along the northern property line, and will connect the trail to the Elden Street public sidewalk and the existing Worldgate trail and pedestrian bridge in the northeast of the site. The onsite trail will include pedestrian lighting with either garage-mounted lights or landscaping lights, or a combination thereof. The Applicant will make commercially reasonable efforts to obtain required permissions to construct the short offsite segment of sidewalk to connect the onsite

trail with the existing offsite Worldgate trail. In the event the Applicant is unable to obtain offsite permissions to construct the small offsite trail segment, the Applicant will work with Town staff to design and construct a functionally equivalent alternative pedestrian bridge or other connection directly from the Applicant's property into Chandon Park.

- f. Transportation Demand Management. This Proffer sets forth the programmatic elements of a transportation demand management program (the "TDM Program") that shall be implemented by the Applicant to encourage the use of transit (Metrorail, Fairfax Connector, Metrobus, or other public transit service), other high-occupant vehicle commuting modes, walking, biking and teleworking, all in order to reduce peak hour automobile trips generated by the multifamily dwellings, stacked townhouse dwellings, and townhouse dwellings constructed on the Property. The proffered elements of the TDM Program will be implemented through a Transportation Demand Management Work Plan (the "TDM Work Plan") developed by the Applicant with input from and approval by the Town of Herndon Department of Community Development. This TDM Work Plan shall be submitted for approval prior to approval of the first site plan on the Property. It is the intent of this Proffer that the TDM Work Plan will be adapted over time to respond to the changing transportation related circumstances of the Property, the surrounding community and the region, as well as to technological and/or other improvements. The Applicant's TDM Work Plan has the objective of meeting the trip reduction goals for single occupancy vehicles measured at the peak AM/PM hours by 15%. The TDM Work Plan shall incorporate the elements listed or elements similar in purpose and form, as approved by the Town:
- a. Appointment of a TDM Program Manager.
 - b. Contributions to resident Metro fare cards.
 - c. Contributions to Fairfax Connector, WMATA, or other public transit service approved by the Town.
 - d. Bicycle racks and bicycle share stations.
 - e. Bicycle storage rooms.
 - f. Tenant incentives to participate in yearly transportation management surveys.
 - g. Program monitoring to include surveys and/or vehicular traffic counts.
 - h. Yearly reporting to Town staff on utilization of TDM Funds.

The results of surveys and/or vehicular traffic counts shall be provided to the Town as part of the Annual Reporting process. If the Annual Report demonstrates that the trip reduction goals are not being met, then the Applicant shall meet with the Town to review the TDM elements in place and to develop modifications to the TDM Work Plan to address the surplus of trips.

- g. Parking. Parking shall be provided in phases concurrent with development of the Property and in substantial conformance with the Development Plan and these proffers. Notwithstanding the above, Applicant reserves the right to provide parking at revised ratios as may be permitted at time of site plan by the Town of Herndon Zoning Ordinance or may seek future parking reductions for the Property as permitted by the Town of Herndon Zoning Ordinance, either of which shall not require a Development Plan amendment.
- h. Townhouse Garages. The use of the Townhouse and Stacked Townhouse garages will not interfere with the parking of vehicles. This restriction must be disclosed in the COA documents. Prospective purchasers will be advised of this use restriction, in writing, prior to entering into a contract of sale. Additionally, information regarding the exact dimensions of the garages with a graphic depicting the area available for the parking will also be disclosed per the parameters in this proffer. The initial deeds of conveyance and COA governing documents will expressly contain these disclosures. A covenant setting forth these restrictions will be recorded among the land records of Fairfax County in a form approved by the Town Attorney prior to the sale of any lots and will run to the benefit of the COA and the Town Council. Notwithstanding the above, within the model unit for a particular phase, the Applicant will be entitled to use such garage space for a temporary sales office until such unit is sold. Prior to occupancy of such unit, the garage space must be converted to garage space and will be subject to this proffer.
- i. Road A Design Details. The final design of Road A is subject to the review and approval of Town staff prior to Site Plan approval.

5. GREEN BUILDING.

- a. Residential Building Certifications. For the multifamily residential building and the stacked and conventional townhouses, the Applicant shall achieve either LEED v4 certification from U.S. Green Building Council, Multifamily Building certification from National Green Building Standard (NGBS), EarthCraft Multifamily certification, or an equivalent green building program as determined by the Town, within 3 years of the issuance of the first certificate of occupancy for each phase.
- b. The Applicant shall include, at the time of application for a building permit for each building, a list of specific credits or design elements incorporated into the building using the then current documentation of the selected green building program for the multifamily building and each townhouse and stacked townhouse building.

- c. The Applicant shall meet with the Town following application for each site plan to coordinate green building strategies and priority credits, such priorities shall include evaluating green infrastructure for stormwater management and potential bird-friendly design features, and the installation of electric vehicle charging stations for at least 5% of the total parking spaces within the multifamily garage, with EV charging infrastructure for up to 10% of the total parking spaces within the multifamily garage.
- d. Low Impact Development. The Applicant will meet all required onsite stormwater management regulations, and in addition, shall provide LID (Low Impact Development) measures onsite at any development phase. The Applicant shall provide at least 2 LID measures on the property at the time of project completion, which may include but are not limited to, green roof areas, tree filters, and/or other LID features not listed here. The type and location of these features will be decided at the time of site plan to ensure the most effective and appropriate measures are chosen, and to accommodate limitations and constraints set by the final engineering of the property.

6. ENVIRONMENTAL.

- a. Planting Species Diversity. In order to promote biodiversity, 10% maximum of each species of deciduous shrubs, 10% maximum of each species of deciduous trees, 25% maximum of each species of evergreen shrubs, and 25% maximum of each species of evergreen trees shall be specified within any development phase.
- b. Refuse and Recycling Service. The Development shall be served by a private refuse and recycling service. For the multifamily building, any refuse and recycling containers brought from inside the building must be placed on the concrete pad for service, and removed in a timely manner after service.
- c. Multifamily Garage Paint. The Applicant shall paint the top floor of the garage with sun-reflecting paint to reduce the “heat island” effect.
- d. Manufactured Stormwater Devices. Manufactured stormwater filtration systems will be provided to meet BMP requirements.
- e. Tree Preservation Measures. Tree preservation will be provided on the Property as shown on the GDP Plan Sheets 22 -24.

7. UNIVERSAL DESIGN. The Applicant will offer the following Universal Design options in all townhouse and stacked townhouse units on the Property:

- a. At the time of initial purchase, for units that have not yet been constructed, each

purchaser will be offered the following Universal Design options at no additional cost to the purchaser:

- i. Blocking for reinforcement of bathroom fall grab bars;
 - ii. Front entrance doors that are a minimum of 36 inches wide;
 - iii. Electrical outlets that are at least 18 inches high off the floor;
 - iv. Light switches and thermostats that are a maximum of 48 inches off the floor;
 - v. Clear knee space under the kitchen sink; and
 - vi. Lever door handles instead of doorknobs.
- b. In addition to the Universal Design options offered pursuant to Proffer 7.a above, at the time of initial purchase, for units that have not yet been constructed, each purchaser will be offered the following additional Universal Design options at the purchaser's sole cost, which will include, but not necessarily be limited to:
- i. A curb-less shower, or a shower with a maximum 2-inch high curb;
 - ii. Step-less entry for ground floor residential units from the garage to the house, to the extent permitted by the then current edition of the Virginia Statewide Building Code;
 - iii. A turning radius of 5 feet near the first-floor bathroom commode;
 - iv. ADA compliant grab bars in the bathroom; and
 - v. A first-floor bathroom console-style sink instead of a cabinet-style vanity.

8. CONTRIBUTIONS.

- a. Recreation/Community Amenities/Civic Facilities. Prior to the issuance of the last certificate of occupancy for the multifamily building and for the last townhome unit, the Applicant shall separately demonstrate that the value of any proposed recreational on-site amenities/community amenities/civic facilities for each product type are equivalent to a minimum of \$2,100.00 per residential unit, for that phase. The value calculation shall include the cost of amenities such as, but not limited to, benches and seating, outdoor seating and gathering areas, fitness centers, community rooms, swimming pools, decks, artwork, fire pits, trellises, etc. Project building materials are not included in the calculation. The Applicant shall submit the verification of the cost of these improvements to the Town as provided by its general contractor. In the event it is demonstrated that the proposed facilities do

not have sufficient value, the Applicant shall provide the remainder in a cash contribution to the Town of Herndon for use on recreational facilities in the Town of Herndon.

b. Offsite Recreation Contribution. The Applicant shall make a per GFA square foot contribution payment of \$0.35 to the Town for offsite recreation improvements for multifamily residential GFA prior to the issuance of the first certificate of occupancy based on the actual GFA of the building for that phase. In addition, the Applicant shall make a per residential unit contribution payment of \$2,100.00 to the Town for offsite recreation improvements for the townhouse and stacked townhouse units prior to the first certificate of occupancy per building. Such funds shall be used for the improvements of Town recreational facilities in locations that logically serve the approved development.

c. School Contribution.

i. Per the Residential Development Criteria Implementation Motion adopted by the Fairfax County Board of Supervisors on January 7, 2003, as amended, the Applicant will use the Fairfax County Public Schools' School Impact Proffer Formula and Student Yield Ratio Update dated May 23, 2022, to determine the school contribution amount. Prior to the issuance of the first certificate of occupancy for that phase, the Applicant will contribute funds at the assumed rates below, multiplied by \$14,956.00 per student generated to the Board of Supervisors for transfer to the Fairfax County School Board to be used for capital improvements and capacity enhancements to schools that serve the Town of Herndon.

1. Multifamily units:

a. 0.061 elementary school

b. 0.019 middle school

c. 0.028 high school

2. Townhouse units:

a. 0.254 elementary school

b. 0.072 middle school

c. 0.141 high school

3. Stacked townhouse units:

- a. 0.202 elementary school
 - b. 0.057 middle school
 - c. 0.098 high school
- ii. The contributions will be based on the actual number of residential units constructed, as the total amount may vary. Following approval of this Development Plan and prior to the Applicant's payment of the amount(s) set forth in this Proffer, if Fairfax County should modify the ratio of students per units of the amount of the contribution per student, the Applicant will pay the modified contribution amount for that phase of development to reflect the then current ratio and/or contribution.
 - iii. Prior to beginning construction, the Applicant will notify the Fairfax County Public Schools of the intended construction and anticipated completion date.
- d. Public Safety Contribution. The Applicant shall contribute a total of \$28,000.00 to the Town of Herndon Police Department. The contribution shall be paid upon site plan approval.
9. DECLARATION OR OWNERS' ASSOCIATION. Prior to the issuance of the first certificate of occupancy for the townhouse phase of the project, the Applicant shall cause the recordation of one or more declarations creating an owners' association ("OA") and as necessary, condominium owners' associations ("COA") or declarations of covenants and agreements dealing with the governance of maintenance and operation of the townhouse phase of the Property or other governance documents which will legally bind the townhouse phase of the Property (collectively referred to as the "Governance Documents"). Such Governance Documents shall be prepared, be legally effective and recorded prior to the issuance of the first certificate of occupancy for the townhouse phase of the Property. The respective Governance Documents (including budgets provided in any offering or sale materials) shall specify the various proffer and maintenance obligations set forth in the Development plan and these Proffers, including the maintenance of certain streets, bicycle facilities, associated sidewalks and streetscapes, and site amenities such as, but not limited to, the recreation areas as well as funding, implementation and monitoring of the TDM program, all as related to the townhouse phase of the Property. Purchasers shall be advised in writing of these obligations, and other restrictions, prior to entering into a contract of sale, whether purchasing residential or commercial property. The Governance Documents shall be included in any offering, sale materials or contracts for any townhomes. Purchasers of land of buildings shall be advised of these obligations in the contract of sale.

- a. Visitor Parking. The Governance Documents shall reserve the townhouse phase of the Property's on-street parking solely for the use of visitors to the townhouses and stacked townhouses. A separate recorded document shall specify that visitors to the multifamily building shall park within the multifamily parking structure.

10. MAINTENANCE. The Applicant shall maintain and replace in-kind all common area elements within the Development Plan during any development phase. Maintenance commitments include, but are not limited to:

- a. All plantings including trees, shrubs, perennials, and annuals;
- b. All associated irrigation elements;
- c. All hard surfaces;
- d. All streetscape furnishings including benches, bike racks, trash and recycling receptacles and non-standard structures;
- e. All lighting fixtures, poles and brackets;
- f. Snow removal;
- g. Leaf removal;
- h. Trash, recycling and litter removal;
- i. Decorative and structural retaining walls;
- j. Special drainage features, such as Low Impact Design facilities; and
- k. All open space amenities including horticultural care, maintenance of all water features, irrigation, lighting, furnishings, paving, and art.

11. METRORAIL TAX DISTRICT BUYOUT FOR FOR-SALE RESIDENTIAL USES. At least sixty days prior to registration with the Common Interest Community Board of any residential condominium documents that would change the use of all or any portion of the Property to a use that is not subject to the Phase II Dulles Rail Transportation Improvement District (the "Phase II District") tax, the Applicant shall provide a written notice to the Director of the Real Estate Division of the Fairfax County Department of Tax Administration advising that the Applicant intends to register such condominium documents for that portion of the Property. Prior to registering the condominium documents, the Applicant shall pay to Fairfax County a sum equal to the then-present value of Phase II District taxes estimated by the County to be lost as a result of that change in use.

12. ESCALATION. All monetary contributions required by these proffers, with the exception

of the proffer relating to the public school contribution, shall escalate on a yearly basis from the base year of 2023 and change effective each January 1 thereafter, based on the Consumer Price Index as published by the Bureau of Labor Statistics, the U.S. Department of Labor for the Washington-Baltimore, MD-VA-DC-WV Consolidated Metropolitan Statistical Area (the "CPI"), as permitted by Virginia State Code Section 15.2-2303.3.3.

13. SUCCESSORS AND ASSIGNS. These proffers shall bind and inure to the benefit of the Applicant and his/her successors and assigns.
14. COUNTERPARTS. These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but one and the same instrument.

TITLE OWNER/APPLICANT SIGNATURE TO FOLLOW ON THE NEXT PAGE:

AM WORLDGATE OWNER, LLC, a Delaware limited liability company


Title Owner of 016-1 ((02)) 0025 and 016-3 ((02)) 0002A

By: ABXP WORLDGATE INVESTMENTS LLC, a Delaware limited liability company, its sole member

By: BXP WORLDGATE MEMBER LLC, a Delaware limited liability company, its managing member

By: BOSTON PROPERTIES LIMITED PARTNERSHIP, a Delaware limited partnership, its managing member


By: BOSTON PROPERTIES, INC., a Delaware corporation, its general partner

By: 
Name: Peter V. Otteni
Title: EVP, Co-Head of the Washington, DC Region

DISTRICT OF COLUMBIA, to wit:

The foregoing instrument was acknowledged before me this 18th day of March, 2024, by Peter V. Otteni, as Executive Vice President, Co-Head of the Washington, DC Region of Boston Properties, Inc., a Delaware corporation, the general partner of Boston Properties Limited Partnership, a Delaware limited partnership, the managing member of BXP Worldgate Member LLC, a Delaware limited liability company, the managing member of ABXP Worldgate Investments LLC, a Delaware limited liability company, the sole member of AM Worldgate Owner, LLC, a Delaware limited liability company.




Notary Public

Notary Registration No: _____

My Commission Expires: January 14, 2029