

PROFFERS
Hunter's Branch – Land Bay D

PCA 80-P-039-8

September 27, 2004

Pursuant to Section 15.2-2303(a), Code of Virginia, 1950 edition as amended, subject to the Board of Supervisors approval of the requested Proffered Condition Amendment (PCA) for the subject application, the Applicant, Beazer Homes Corp, proffers for themselves, their successors and assigns that the development of the application property identified as Tax Map 48-4 ((1)) 58 (the "Property"), shall be subject to the following conditions. These proffers supercede all previous proffers for the Property.

1.
 - a. Development of Tax Map 48-4 ((1)) 58 (Land Bay D) shall be in substantial conformance with the CDPA/FDPA prepared by Dewberry & Davis LLC dated November 12, 3003, revised through July 22, 2004.
 - b. Notwithstanding that the CDPA/FDPA is presented on eight (8) sheets and said CDPA/FDPA is the subject of Proffer 1a above, it shall be understood that the CDPA shall be the entire plan shown on Sheets 2 and 3, relative to the points of access, the type of dwelling units, the amount of open space, the general location and arrangement of buildings and parking, and the peripheral setbacks. The Applicant or successors have the option to request a FDPA for elements other than the CDPA elements from the Planning Commission for all of or a portion of the CDPA/FDPA in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance, if in conformance with the approved CDPA and proffers.
 - c. Pursuant to Paragraph 4 of 16-403 of the Zoning Ordinance, minor modifications may be permitted as determined by Fairfax County. The Applicant shall have the flexibility to modify the layout shown on the Plan without requiring approval of an amended FDPA provided such changes are in substantial conformance with the FDPA as determined by the Department of Planning and Zoning (DPZ) and do not increase the square footage or building footprint, increase building heights, decrease the amount of open space, or decrease buffer area along the western property line.
2. A maximum of 305,500 square feet of residential use gross floor area (approximately 259 multi-family dwelling units) shall be provided on the Property. The number of dwelling units may be adjusted up or down, depending on the final design of the structure which shall be in substantial conformance with that shown on the CDPA/FDPA; however, in no case shall the amount of gross floor area of residential uses exceed 305,500 gross square feet.
3. Recreational amenities for Land Bay D shall include a swimming pool, an indoor multi-purpose community room, weight/fitness room, landscaped pedestrian plazas for passive and active recreation, overlook areas adjacent to the stream valley with seat walls and access pathways, and a trail to and through the stream valley, as illustrated on Sheets 5 and 6 of the CDPA/FDPA.

4. Prior to any land disturbing activities on the Property, the Applicant shall conduct a Phase I Archeological Study of the Property. If warranted, the Applicant shall undertake Phase II and Phase III Archeological Studies. Both prior to and during the development of the Property, the Applicant will permit the on-site research, if any, by members of the Fairfax County Heritage Resources Staff, provided however, that such on-site research shall not interfere with the planned development of the Property and shall not restrict the timing of the development of the Property. The Applicant shall give the Heritage Resources Staff ninety (90) days notice prior to commencement of land disturbing activities.
5. Subject to Fire Marshal approval, an emergency access lane shall be provided in accordance with the Fairfax County Public Facilities Manual along the rear of the building as shown on the CDPA/FDPA. In addition, the Applicant shall design and construct the emergency access lane in a Low Impact Development ("LID") manner, without curb and gutter, and utilizing porous or grass pavement material, as may be approved by the Fire Marshal. However, if the Fire Marshal requires an alternative surfacing material, the Applicant shall comply with the Fire Marshal's determination.
6. The Applicant shall provide the following landscaping and tree preservation measures:
 - a. Landscaping shall be provided as shown on Sheets 2, 5 and 6 of the CDPA/FDPA. A landscape plan shall be submitted to the Urban Forester for review and approval at the time of site plan review. The exact location of the proposed plantings may be modified in coordination with the Urban Forester, but shall at a minimum, provide for the quality and quantity of plantings depicted on the CDPA/FDPA.
 - b. Landscaping and hardscaping of the four courtyards shall be provided as generally shown on Sheets 5 and 6. Each courtyard shall have its own thematic design, but each shall include plantings, specialty pavers, benches or other seating opportunities, and pedestrian scaled lighting.
 - c. The streetscaping along Hunters Branch Road shall be provided as shown in detail on Sheet 2. The Applicant shall plant shade trees, grasses and perennials within an eight (8) foot planting area between the curb and the five (5) foot wide sidewalk, and shall plant shrubs, grasses and perennials within a minimum four foot between the sidewalk and building as shown on Sheet 2.
 - d. The retaining wall proposed at the northern end of the emergency access lane shall be a maximum of four (4) feet in height and shall be faced with stone. If determined necessary by DPWES, appropriate safety railing will be installed on this retaining wall.

- e. The Applicant shall select plant species in coordination with the Urban Forester that in addition to meeting other landscaping requirements such as durability, availability and aesthetics, also aid in the maintenance of air quality. The Applicant shall also work with representatives of the adjacent Hunters Branch Homeowners Association in Land Bay C immediately north of the Property to select plant species to be installed on the Property within the planting area adjacent to the townhouse community.
- f. The Applicant shall make a cash contribution of \$5000.00 to the adjacent Hunters Branch Homeowners Association in Land Bay C immediately north of the Property to enable the association to plant supplemental landscaping on the townhouse association owned land proximate to the boundary with Land Bay D. Said contribution shall be made prior to site plan approval for Land Bay D.
- g. The Applicant shall strictly conform to the limits of clearing and grading as shown on the CDPA/FDPA. All utilities and other improvements illustrated on the CDPA/FDPA shall be installed in the least disruptive manner possible as determined by the Urban Forester. The Applicant shall have the limits of clearing and grading marked with a continuous line of flagging prior to the pre-construction meeting and shall clearly delineate the limits of clearing and grading with such flagging throughout the construction period. Before or during the pre-construction meeting, the Applicant shall walk the limits of clearing and grading with an Urban Forestry Management Branch representative to determine where adjustments to the clearing limits can be made to increase the survivability of trees at the edge of the limits of clearing and grading. Trees along the edge of the limits of clearing and grading that are not likely to survive construction due to their proximity to disturbance by the Urban Forester in concert with the Applicant shall also be identified at this time, and the Applicant shall remove such trees as part of the clearing operation. Any tree designated for removal at the edge of the limits of clearing and grading and within the tree preservation area shall be removed using chain saws. The stump shall be cut as close to ground level as practical. If a stump must be removed this shall be done using a stump grinding machine in a manner causing as little disturbance as possible to the tree preservation area.
- h. To ensure preservation of trees within the 100-year floodplain, the limits of clearing and grading shown on the CDPA/FDPA shall be protected by tree protection fencing. Tree protection fencing, consisting of four foot high, 14 gauge welded wire attached to 6 foot steel posts driven 18 inches into the ground and placed no farther than 10 feet apart, shall be placed at the limits of clearing and grading as shown on Sheets 2 and 8 of the CDPA/FDPA. Three (3) days prior to the commencement of any clearing, grading, or demolition activities, the Urban Forestry Management Branch shall be notified in writing and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed. The tree protection fencing

12. The architectural design of the residential building shall be in substantial conformance with the character illustrated on Sheet 7 of the CDPA/FDPA. The Applicant reserves the right to refine the elevations as a result of final architectural design, so long as the character and quality of design is in substantial conformance with those shown. Building materials may include one or more of the following: brick, stone, pre-cast concrete, siding, stucco (excluding dryvit or other similar synthetic stucco material) and glass. These architectural elevations shall be returned to the Planning Commission for review and comment prior to building permit issuance.

13. All outdoor lighting fixtures shall be in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Fixtures used to illuminate residential streets, parking areas and walkways shall not exceed twenty (20) feet in height.

Subject to approval by DPWES, a street light a maximum of 20 feet in height shall be installed at the intersection of Nutley Street and Vienna Metro Center Drive, and bollard lighting or other pedestrian scale lighting a maximum of 42 inches in height shall be installed behind the existing sidewalk along Nutley Street between the Metro access road and Vienna Metro Center Drive outside of the public right-of-way) provided the developer of Land Bay D can obtain an easement or letter of permission from the owner of Tax Map 48-4((1)) 1G at no cost. If, after two notification attempts by certified mail, the Owner does not agree, or does not respond, the Applicant shall document the notification attempts with DPWES, and the requirement to install these lighting fixtures shall become null and void.

14. In accordance with the provisions of Paragraph 2 of Section 6-110 and as approved by DPWES, a minimum expenditure of \$955.00 per unit, excluding ADUs, shall be provided for on-site recreational facilities as described in Proffer 3 above, which includes a swimming pool, an indoor multi-purpose community room, weight/fitness room, landscaped pedestrian plazas for passive and active recreation, overlook areas adjacent to the stream valley with seat walls and access pathways, and a trail to connect to the stream valley trail. Any additional money remaining, which is not spent on on-site facilities, shall be contributed to the Fairfax County Park Authority.

15. In addition to Proffer 14 above, prior to the time of issuance of the first RUP for the Property, the Applicant shall make a monetary contribution of \$50,000.00 to the Fairfax County Park Authority for the development of public parkland in the vicinity of the Property.

16. Private streets shall be constructed of materials and depth of pavement that conform to standards set forth in Section 7-502 of the Public Facilities Manual (PFM). Purchasers of units shall be advised in writing prior to entering into a contract of sale that the homeowners association shall be responsible for the maintenance of private streets.

17. Mass transit, ride-sharing and other transportation strategies shall be utilized to reduce single occupancy vehicular (SOV) traffic during peak hours by a minimum of 30 percent of the trips

generated according to the Institute of Transportation Engineers (ITE) Trip Generation Manual, 7th Edition. Purchasers shall be advised of this transportation strategy development proffer in the HOA documents.

To achieve the foregoing, the Applicant shall provide a one-time contribution of \$25,000 to establish an initial fund to support the development, implementation, and evaluation of the TDM program. This fund ("HOA/TDM fund"), shall be part of the Homeowner's Association budget, and shall be established prior to the issuance of the first RUP for the Property.

The Applicant shall designate an individual(s) to act as the Transportation Coordinator(s), one of whose primary responsibilities shall be to implement the TDMs in coordination with the FCDOT. The transportation strategies management position may be a part of other duties assigned to the individual(s). The transportation management strategies shall be implemented prior to the issuance of the 151st RUP. Strategies shall include the following:

- A. Providing amenities for bicycle storage;
- B. Providing an on-site business center for all residents' use with access to a copier, fax machine and broad band internet connection;
- C. Providing at least two broad band, high capacity data/network internet connections in all dwelling units to facilitate working at home;
- D. Providing a sidewalk system designed to encourage/facilitate pedestrian circulation;
- E. Participating in the Fairfax County Ride Share Program;
- F. Disseminating of Ridesharing information in residential purchase packages;
- G. Making ridesharing display maps and forms available to in each multi-family building;
- H. Providing SmarTrip card to new tenants and/or initial purchasers at time of settlement;
- I. Implementing a comprehensive Ozone Action Days Program; and
- J. Developing a web page for residents of the Application Property describing and updating information on TDM strategies and services.

Strategies may also include but not be limited to:

- A. Providing a concierge service/central area where residents can arrange certain services such as dry cleaning/pharmacy/grocery deliveries;
- B. Participating in a shuttle service to the Vienna Metro Station; and
- C. Any other strategies found to be effective in reducing the number of single-occupancy vehicle trips, mutually agreed upon by the Applicant and FCDOT.

The Transportation Coordinator may work with adjacent homeowner associations to develop and share carpool, vanpool and other ride sharing information.

The Applicant shall notify FCDOT of the date that the TDM strategies are implemented. One year after the TDM strategies are implemented, and but in any event prior to final bond release, the Applicant shall conduct a survey of residents, visitors and employees to determine the transportation characteristics of building tenants and employees. This survey will form the basis of the on-going transportation management program.

Annually thereafter, the Transportation Coordinator shall conduct a multi-modal transportation split survey of the residents to demonstrate whether the goal of reducing SOV trips by 30 percent has been met during peak hours. The Transportation Coordinator shall prepare an report, in coordination with, and for review and approval of the FCDOT, which shall include the results of the survey and assess the success of the TDM strategies in reaching the stated goal and recommend adjustments in TDM strategies. If performance goals are achieved after build-out as evidenced by two consecutive yearly surveys, surveys may be conducted on a bi-annual basis; however, if a survey indicates that the goal is not being achieved, surveys will return to an annual basis.

If the multi-modal transportation split surveys indicate that a reduction of SOV trips by 30 percent has not occurred, \$50.00 per constructed dwelling unit shall be contributed annually to the HOA/TDM fund described above until such time as the reduction has occurred. The HOA/TDM fund shall be used by the Transportation Coordinator to implement existing or new strategies to reduce SOV trips during peak hours. The terms of this proffer with regard to contributing to a HOA/TDM fund shall expire fifteen (15) years after the last RUP is issued.

18. Upon written demand by Fairfax County or VDOT, the Applicant shall dedicate in fee simple to the Board of Supervisors additional right-of-way to a maximum of sixty (60) feet in width parallel to the existing right-of-way of the WMATA Access Road located along the northern boundary of the Application Property, provided vacation of the existing conservation easement can be achieved. The Applicant shall diligently pursue vacation of the easement and failed attempts to vacate shall be documented to DPWES.
19. Prior to the issuance of the first RUP, and subject to VDOT approval, the Applicant shall modify the lane designation of the Hermosa Drive approach to Nutley Street to permit an exclusive left, a shared through and left, and an exclusive right turn from the Property onto Nutley Street. The Applicant shall also provide necessary modifications to the configuration of the traffic signal heads and signal operation to accommodate the lane re-designations.
20. Prior to the issuance of the first RUP and subject to VDOT approval, the Applicant shall modify the signal at the site's Hermosa Drive approach to Nutley Street to provide pedestrian signal heads and pedestrian crossing signal phase across Nutley Street.
21. Prior to the issuance of a Building Permit, the Applicant shall contribute the amount of

\$195,000 to the Board of Supervisors for capital improvements for the Fairfax County Public Schools. If the Applicant elects to develop fewer or more than 259 dwelling units, the amount of contribution to the schools shall be decreased or increased accordingly; the amount to be paid shall be determined by the formula adopted by the Board of Supervisors in effect at the time of the approval of this rezoning.

22. Construction activity shall be permitted Mondays through Fridays from 7:00 a.m. to 7:00 p.m., Saturdays and federal holidays from 8:00 a.m. to 6:00 p.m. No construction activity shall be permitted on Sundays, Thanksgiving Day, Christmas Day and New Year's Day. These construction hours shall be posted on the Application Property prior to any land disturbing activities. The Applicant shall include a construction hour notice in its contract with its general construction contractor.

The primary construction access shall be from Vienna Metro Center Drive in the general location of the proposed driveway to the parking beneath the building. The Applicant shall make best efforts to schedule truck deliveries during non-peak hours. The Applicant shall maintain the private streets adjacent to the Property in good repair during construction and install a wash rack at the construction entrance to keep construction dirt off the streets.

23. No temporary signs (including "Popsicle" style paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 or Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on- or off-site by the Applicant or at the Applicant's direction to assist in the initial sale or rental of residential units. Furthermore, the Applicant shall direct its agents and employees involved in marketing and sale and/or rental of residential units to adhere to this proffer.
24. Prior to the issuance of the first RUP, the Applicant shall establish a homeowners association in accordance with Virginia law. Further, prior to the issuance of the first RUP, the Applicant shall incorporate the HOA for Land Bay D into the Hunters Branch umbrella HOA, in accordance with Virginia law.
25. Prior to final site plan approval, the Applicant shall make a monetary contribution of \$95,000.00 to Fairfax County to support DPWES Stream Stabilization Projects in the Providence District between Lee Highway and Route 50.
26. During construction and prior to issuance of the 230th RUP, the Applicant shall remove any trash found within the Hunters Branch stream valley as well as dead vegetation that may be disrupting the stream's flow. Furthermore, if it is determined after consultation with DPWES that the existing fair weather crossing of the stream is detrimental to the flow and functioning of the stream, the Applicant shall remove said fair weather crossing. The HOA shall be responsible for maintaining this area free of trash and debris in the future. Purchasers shall be advised of this maintenance responsibility in the HOA documents.

27. These proffers will bind and inure to the benefit of the Applicants and their successors and assigns.
28. These proffers may be executed in one or more counterparts, each of which when executed and delivered shall be deemed an original document and all of which taken together shall constitute but one in same document.

SIGNATURES BEGIN ON NEXT PAGE

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APPLICANT/CONTRACT PURCHASER
OF TAX MAP 48-4 ((1)) 58

BEAZER HOMES CORP.



By: Brian S. Buchanan
Its: Senior Vice President

[SIGNATURES CONTINUED ON NEXT PAGE]

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TITLE OWNER OF TAX MAP 48-4 ((1)) 58

THE NORTHWESTERN MUTUAL LIFE
INSURANCE COMPANY


By: Robert J. Berdan,
Its: VP, General Counsel & Secretary

[SIGNATURES END]