

PROFFERS

**RZ/FDP 2004-SU-009
POPLAR TREE LLC**

September 21, 2004

Pursuant to Section 15.2-2303(a) of the Code of Virginia, 1950, as amended, the property owners and Applicant in this rezoning proffer that the development of the parcel under consideration and shown on the Fairfax County Tax Maps as Tax Map Reference 44-4-((1))-9A (hereinafter referred to as the "Property") will be in accordance with the following conditions if, and only if, said Rezoning request for the PDH-2 District is granted. In the event said application request is denied, these proffers shall be null and void. The Owners and the Applicant ("Applicant"), for themselves, their successors and assigns, agree that these proffers shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board of Supervisors of Fairfax County, Virginia, in accordance with applicable County and State statutory procedures. The proffered conditions are:

I. GENERAL

1. Substantial Conformance. Subject to the proffers and the provisions of Article 16 of the Zoning Ordinance, under which minor modifications to an approved development plan are permitted, the development shall be in substantial conformance with the Conceptual Development Plan/Final Development Plan (CDP/FDP), containing nine (9) sheets prepared by Urban Engineering, Inc., dated January, 2004 as revised through September 1, 2004.

2. Minor Modifications. Minor modifications from what is shown on the CDP/FDP and these Proffers which may become occasioned as a part of final

architectural and engineering design may be permitted as determined by the Zoning Administrator in accordance with the provisions set forth in Section 16-403 of the Zoning Ordinance.

3. Lot Yield. The development shall consist of a maximum of forty-nine (49) single family detached units. The Applicant reserves the right to develop the site with a lesser number of lots/units.

4. Establishment of HOA. Prior to Record Plat approval, the Applicant shall establish a Homeowners Association (HOA) for the purpose of establishing the necessary residential covenants governing the design and operation of the approved development and to provide a mechanism for ensuring the ability to complete certain maintenance obligations of these proffer conditions.

5. Escalation. All monetary contributions required by these proffers shall be adjusted upward or downward based on changes to the Construction Cost Index published in the Engineering News Record occurring subsequent to the date of rezoning approval and up to the date of payment.

6. Length of Driveways. All driveways serving the approved residential units shall be a minimum of 18 feet in length without overhanging into the sidewalk from the inside of the sidewalk to the edge of the entrance to the garage.

7. Architectural Compliance. To ensure reasonable transition to and consistency with the context of the established development, the type and proportion of materials and overall architectural design of the front façade of the approved units (i.e. predominantly masonry fronts) shall be in substantial conformance with the illustrative elevations shown on the CDP/FDP and be compatible with the general style and materials typically found in surrounding neighborhoods; however, this "compatibility" shall not

require strict conformance to existing architectural styles or exact types or proportions of materials found or used in surrounding neighborhoods. Modifications may be made with the final architectural designs if in substantial conformance with the elevations shown on the CDP/FDP, as determined by the Zoning Administrator. The Applicant shall provide appropriate photographic or other illustrative evidence to demonstrate compliance with this proffer. The side elevation of those units visible from public rights-of-way (units 1, 2, 21, 38, 40, 14, 39, 49, 16) shall have a façade treatment with a type and general proportion of materials consistent with the front elevation requirements of this proffer.

8. Garage Conversion. The Applicant shall place a covenant on each garage that prohibits the use of the garage for any purpose which precludes motor vehicle storage. The covenant shall be in a form acceptable to the County Attorney and it shall be recorded among the land records of Fairfax County prior to the sale of lots and shall run to the benefit of the HOA and the Board of Supervisors. Initial purchasers shall be advised in writing of this restriction prior to execution of the sales contract; this restriction shall also be included in the HOA documents.

9. Encroachment of Decks and Similar Appurtenance. Notwithstanding the "lot typical" generally described on the CDP/FDP, decks, bay windows, patios and mechanical equipment may encroach into peripheral minimum yards as permitted by Section 2-412 and/or Article 10 of the Zoning Ordinance.

10. Entrance Feature. Any entrance feature shall be of a size and height that complies with Article 12 of the Zoning Ordinance.

II. TRANSPORTATION

11. Removal of Temporary Cul-de-Sac. At the time of subdivision plan approval, the Applicant shall commit to remove the existing cul-de-sac that forms the

present terminus of Autumn Glory Way. This obligation shall include scarifying and replanting areas not needed for the public road with turf grass as generally determined by DPWES. Following completion of this obligation, the Applicant shall be entitled to receive any funds previously escrowed for the removal of this cul-de-sac.

12. Poplar Tree Road Improvements. Prior to the issuance of the twenty-fifth (25th) Residential Use Permit ("RUP") and unless condemnation proceedings for off site right-of-way and easements are required in accordance with Proffer 15, the Applicant shall construct improved Poplar Tree Road along the site frontage in the lane configuration as generally shown on the CDP/FDP and Exhibit A attached hereto. The final design and configuration of this improvement shall be subject to approval by FCDOT, VDOT and DPWES. For the purpose of this proffer, "construct" shall mean open to traffic and generally completed, but for final "top coating" of the road. Once completed, the road shall be accepted by VDOT for maintenance, prior to final bond release.

13. Traffic Signal Warrant Analysis. Prior to Subdivision Plan approval, the Applicant shall prepare a traffic signal warrant analysis for the intersection of Poplar Tree Road and Autumn Glory Way/Lees Corner Road. Such analysis shall be of a form and scope acceptable to VDOT, and submitted to VDOT for review and approval.

14. Traffic Signal Funding. If warranted, the Applicant shall design, equip, and install a traffic signal at the intersection of Poplar Tree Road and Autumn Glory Way/Lees Corner Road prior to the issuance of the final RUP. The installation of the signal shall be in compliance with the requirements of VDOT.

The Applicant's obligation to construct the signal shall be subject to its acquisition of any necessary off-site easements and/or acquisition of right-of-way. In the

event the Applicant is unable to acquire such necessary easements and/or right-of-way for fair market value, then the Applicant shall request that the Board condemn the necessary easements and/or right-of-way, in accordance with Proffer 15 below. In the event the warrant analysis required by Proffer 13 does not warrant the installation of the signal, the Applicant shall escrow funds, at the time of issuance of final building permit, in an amount sufficient to cover its pro-rata share of the cost of a future traffic signal at the intersection of Poplar Tree Road and Autumn Glory Way/Lees Corner Road, as determined by FCDOT and DPWES.

15. Off-Site Right-of-Way Easements. In order to implement the above described improvements, including but not limited to, the traffic signal (Proffer 14) and the widening of Poplar Tree Road (Proffer 12) (herein the "Improvements"), the Applicant shall diligently pursue acquisition of any necessary off-site right-of-way and/or temporary or permanent easements for construction of the Improvements, such improvements to include transitional taper and/or turn lanes required as part of the transportation improvements reflected on the CDP/FDP and/or as outlined in these proffers. If the Applicant is unable to acquire the right-of-way and/or temporary or permanent easements necessary for the Improvements at fair market value, the Applicant shall request Fairfax County to acquire the necessary right-of-way and/or temporary or permanent easements through its powers of eminent domain, at the Applicant's expense. The Applicant's request will not be considered until it has been forwarded, in writing, to the Director of Property Management accompanied by:

- (a) Plans and profiles showing the necessary right-of-way and/or temporary or permanent easements;

- (b) An independent appraisal, by an appraiser who is not employed by the County, of the value of the land taken and damages, if any, to the residue of the affected property;
- (c) A sixty (60) year title search certificate of the right-of-way and/or temporary or permanent easements to be acquired; and
- (d) A Letter of Credit in an amount equal to the appraised value of the property to be acquired and of all damages to the residue which can be drawn upon by Fairfax County. It is understood that in the event the property owner of the right-of-way and/or temporary or permanent easements to be acquired is awarded more than the appraised value of the property and of the damages to the residue in a condemnation suit, the amount of the award shall be paid to Fairfax County by the Applicant within five (5) days after said award has become final. It is further understood that all other costs incurred by Fairfax County in acquiring the right-of-way and/or temporary or permanent easements shall be paid to Fairfax County by the Applicant upon demand.

In the event condemnation of right-of-way and/or temporary or permanent easements is required, such condemnation shall not serve to delay approval of the subdivision plan, provided that any improvement whose contribution is impeded by the unavailability of right-of-way or easement shall be bonded in a form and amount acceptable to the County. To ensure that condemnation proceedings, if any, for right-of-way and/or temporary or permanent easements do not serve to delay approval of the subdivision plan, the Applicant may, at its discretion, submit plans for the Improvements

separately from the subdivision plan, in which case approval of the subdivision plan shall not be contingent upon approval of plans for the Improvements; provided, however, that any improvement whose contribution is impeded by the unavailability of right-of-way or easements shall be bonded in a form and amount acceptable to the County.

In the event the County is successful in acquiring the off-site right-of-way and/or temporary or permanent easements necessary to fully complete any or all of the Improvements, the Applicant shall construct the Improvement(s) for which right-of-way and/or temporary or permanent easements are available. It is expressly understood that in the event the County abandons efforts to or does not acquire the aforesaid right-of-way and/or temporary or permanent easements by means of its condemnation powers within one (1) year of the Applicant's written request, the Applicant shall be relieved of any responsibility under these proffers to construct any off-site portion of the aforesaid Improvement(s) specifically affected by the unavailability of the right-of-way or associated easements and any bonds held by the County for such Improvement(s) shall be released, provided that the Applicant shall escrow funds with the County sufficient for the construction of the Improvement(s) not constructed pursuant to this condition. The amount of such escrowed funds will be determined by the Applicant and approved by the County, such approval not to be unreasonably denied.

The existing bus stop on Poplar Tree at the western boundary of this property shall be relocated, subject to FCDOT approval, closer to the Autumn Glory Way intersection, and a bus stop shelter pad paved for future installation of a bus shelter (by others).

III. ENVIRONMENTAL

16. Stormwater Management Facilities and Best Management Practices. The Applicant shall implement stormwater management techniques and Best Management Practices ("BMPs") to control the quantity and quality of stormwater runoff from the Property as determined by DPWES. Stormwater management facilities/BMPs shall be provided as generally depicted on the CDP/FDP. Any on-site detention facility shall be landscaped generally as shown on the CDP/FDP and in accordance with the planting policies of the Board of Supervisors, as determined by the Urban Forest Management Branch. Adequate outfall shall be demonstrated to the satisfaction of DPWES. In addition to the structural facility shown on the CDP/FDP, the Applicant reserves the right, if in substantial conformance with the CDP/FDP to install additional SWM and/or BMP measures not presently shown including, but not limited to, rain gardens or infiltration systems within open space areas on the Property. Any such facilities shall be designed and maintained in a manner acceptable to DPWES and in substantial conformance with the CDP/FDP, or a Proffer Condition Amendment (PCA) will be required. Any maintenance obligations of such facilities shall be disclosed in the HOA documents. Any rain gardens shall be maintained in accordance with the requirements attached hereto as Exhibit B; this requirement shall also be included in the HOA documents. To the extent that implementing the stormwater management concepts identified on the CDP/FDP involve crossing existing drainage divides, the Applicant acknowledges that the same requires approval by DPWES and may require a PFM modification. If such approvals are not obtained, the Applicant further acknowledges that a PCA may be required.

17. Limits of Clearing and Grading and Landscaping. The Applicant shall conform to the limits of clearing and grading as shown on the CDP/FDP subject to the

installation of utilities and/or trails as determined necessary by the Director of DPWES. If it is determined necessary to install utilities, stormwater facilities, and/or trails within the limits of clearing and grading as shown on the CDP/FDP, they shall be located in the least disruptive manner necessary as determined by the Urban Forester, DPWES. A replanting plan shall be developed and implemented, subject to approval by the Urban Forester, for any areas within the limits of clearing and grading that must be disturbed.

18. Landscaping. Landscaping shall be provided in substantial conformance with the landscaping concepts shown on the CDP/FDP. If, during the process of subdivision plan review, any new landscaping shown on the CDP/FDP cannot be installed in order to locate utility lines, trails, etc., as determined necessary by the Urban Forest Management Branch, then an area of additional landscaping consisting of trees and/or plant material of a type and size generally consistent with that displaced, shall be substituted at an alternate location on the Property, subject to approval by the Urban Forest Management Branch.

19. Supplemental Planting. At the time of subdivision plan review, the landscape plan shall incorporate supplemental plantings designed to ensure year round screening of adjacent Lots 8-10 to the south. Such supplemental plants shall generally be within the 40' wide buffer/conservation area located at the southern boundary of the Property. The species and size of such plantings shall be reviewed and approved by the Urban Forest Management Branch. The selection, location and method of installation shall not preclude the 40' wide buffer/conservation area from being used to fulfill applicable BMP credits for undisturbed open space.

20. Tree Preservation Plan. The Applicant shall submit a tree preservation plan as part of the first and all subsequent subdivision plan submissions. The

preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and reviewed and approved by the Urban Forest Management Branch (UFMB). The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees twelve (12") inches in diameter dbh and greater within twenty (20') feet of the property limits. The 48" oak located near Lots 36-37 on the CDP/FDP shall be preserved unless UFMB determines it should not be preserved due to its health. The tree survey shall also include areas of clearing and grading not shown on the CDP/FDP, as well as additional areas on-site that can be preserved, based on final engineering requirements, such as off-site clearing and grading for utilities or stormwater outfall. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture. Specific tree preservation activities that will maximize the survivability of trees identified to be preserved, including the 48" oak tree located near the eastern boundary of the application property, such as: crown, pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the Plan. Subject to obtaining the necessary approvals from the County, such tree preservation activities shall be implemented prior to any land disturbing activity and/or within four months of rezoning approval whichever first occurs.

21. Tree Preservation Walk Through. The Applicant shall retain the services of a certified arborist or landscape architect and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the pre-construction meeting. Before or during the pre-construction meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with an Urban Forest

Management Branch representative to determine where minor 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 not likely to survive construction due to their species and/or proximity of disturbance will also be identified at this time and the Applicant shall also be given the option of removing them as part of the clearing operation. Any tree designated for removal at the edge of the limits of clearing and grading or within tree preservation area shall be removed using a chain saw to avoid damage to surrounding trees. 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 adjacent trees.

22. Tree Protection Fencing. All trees shown to be preserved on the Tree Preservation Plan and the exposed rock surrounding the 48" oak shown to be preserved shall be protected by tree protection fencing. Tree protection fencing consisting of four foot high, 14 gauge welded wire attached to six foot steel post driven 18 inches into the ground and placed no further than ten feet apart shall be erected at the limits of clearing and grading as shown on the demolition and phase 1 and 2 erosion and sediment control sheets of the subdivision plan for the tree save and protection areas generally delineated on the GDP. All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures within or adjacent to tree save areas. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist. Three days prior to the commencement of any clearing, grading or demolition activities, the Urban Forest Management Branch shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed.

23. Energy Conservation. All homes on the Property shall meet the thermal guidelines of the CABO Model Energy Program for energy-efficient homes, or its equivalent as determined by DPWES, for either gas or electric energy systems as may be applicable.

24. Lighting. All lighting shall be in conformance with Part 9, Article 14 of the Zoning Ordinance.

IV. RECREATION

25. Parks and Recreation. Pursuant to Section 6-409 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall provide the recreational facilities to serve the Application Property. Per Section 6-409, recreational facilities such as tot lots, fitness courses, gazebos, playgrounds, and recreational trails may be used to fulfill this requirement. Any proposed construction of active recreation facilities shall be completed prior to final bond release. At the time of subdivision plan review, the Applicant shall demonstrate that the value of any proposed recreational amenities is equivalent to a minimum of \$955.00 per unit as required by Article 6 of the Zoning Ordinance. In the event it is demonstrated that the proposed facilities do not have sufficient value, the Applicant shall have the option to: (1) provide additional on-site recreational amenities within the open space areas shown on the Plan, if it is determined that the location would be in substantial conformance with the CDP/FDP; and/or (2) contribute funds in an amount to total \$955.00 per unit to the Fairfax County Park Authority for off-site recreational purposes in location(s) that are reasonably expected to serve the future residents of the approved development.

26. Park Authority Contributions. In addition to Proffer 25 above, the Applicant shall contribute \$42,665.00 to the Fairfax County Park Authority prior to the issuance of the first RUP for park purposes and/or facilities in the area.

V. OTHER

27. Temporary Signage. 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 marketing and sale of homes on the subject Property. Furthermore, the Applicant shall direct its agents and employees involved in marketing and/or sale of residential units on the subject Property to adhere to this proffer.

28. School Contribution. Per the residential Development Criteria Implementation Motion adopted by the Board of Supervisors on September 9, 2002, effective January 7, 2003, prior to subdivision plan approval, the Applicant shall contribute a sum of \$82,500 to the Board of Supervisors for transfer to the Fairfax County School Board (FCSB). Such funds shall be spent for capital facilities for schools within the serviced area. The Applicant further reserves the right to fulfill all or a portion of this \$82,500 obligation through a contribution of actual capital equipment. The capital equipment for which these funds are used shall be determined by the Sully District School Board member. If this option is exercised, prior to subdivision plan approval, the Applicant shall provide documentation to the DPWES that the Applicant has purchased and provided through the Fairfax County Public School System (FCPS) actual capital equipment for the schools in the amount of the required contribution.

29. Affordable Dwelling Units. At the time of first building permit issuance, the Applicant shall contribute to the Fairfax County Housing Trust Fund the sum equal to one half of one percent (1/2 %) of the projected sales price for each house to be constructed. The projected sales price shall be determined by the Applicant in consultation with the Fairfax County Department of Housing and Community Development (HCD) and DPWES.

30. Grave Site Preservation. The Applicant reserves the right to relocate the grave site in accordance with the applicable laws governing the same. In the event the grave site identified on the CDP/FDP is preserved, the Applicant shall convey the same to the HOA established for the approved residential development. A similar type fence used for tree save areas shall be used to protect the limits of clearing and grading around the grave site. The Applicant shall grant a public ingress-egress easement to allow public access to the grave site. If retained, the HOA shall be responsible for maintaining the existing grave site and such maintenance obligations shall be disclosed in the HOA documents. The grave's headstone has, for many years, been dislocated from the grave. The Applicant has located the headstone and has packaged and removed it from the property for safekeeping. Prior to final bond release, the Applicant shall replace the headstone on the grave site. If the grave is relocated, the Applicant shall place the headstone at the new grave site.

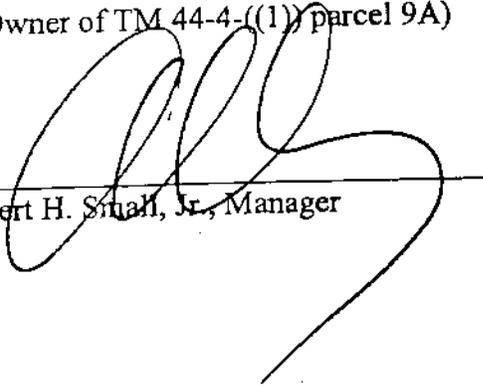
31. Trail Extensions. Subject to obtaining any necessary permission from any off-site land owner, at no cost, the Applicant shall provide the trail connections to Ridge Rock Drive and along Poplar Tree Road to the east and west as shown on the CDP/FDP. If permission is not granted to build the trail connections, the Applicant shall demonstrate the process undertaken to acquire said permission, prior to final bond release.

32. Heritage Resources. Prior to any land disturbing activities on the Application Property, Applicant shall conduct a Phase I archaeological study on those areas of the Application Property identified by the Heritage Resources Branch of the Fairfax County Park Authority ("Heritage Resources") and provide the results of such study to Heritage Resources. The study shall be conducted by a qualified archaeological professional approved by Heritage Resources, and shall be reviewed and approved by Heritage Resources. The study shall be completed prior to subdivision plat recordation. If the Phase I study concludes that significant artifacts are present on the Application Property, Heritage Resources shall notify Applicant, in writing within thirty (30) days of the submission of the study results to Heritage Resources that additional investigations are warranted. The Applicant shall then conduct a Phase II archaeological study, including tight interval shovel testing around the historic foundation occurring at no greater than 20 ft. intervals between shovel test pits (STP). Additionally, the study shall be supplemented by selectively placed excavation squares (based on Phase II STP results) to determine the presence or absence of undisturbed features. At least two squares shall be placed within the foundation and one along the outside edge (to assess cellars and builder's trenches). Based on the findings of the Phase II study, a Phase III study may be necessary.

These proffers may be executed in counterparts and the counterparts shall constitute one and the same proffer statement.

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POPLAR TREE LLC
(Title Owner of TM 44-4-((1)) parcel 9A)

By: 
Albert H. Small, Jr., Manager

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EXHIBIT B

SPECIFICATIONS FOR MAINTENANCE OF RAIN GARDENS

Description	Method	Frequency	Time of the Year
SOIL			
Inspect and Repair Erosion	Visual	Monthly	Monthly
ORGANIC LAYER			
Remulch any void areas	By hand	Whenever needed	Whenever needed
Remove previous mulch layer before applying new layer (optional)	By hand	Once every two to three years	Spring
Any additional mulch added (optional)	By hand	Once a year	Spring
PLANTS			
Removal and replacement of all dead and diseased vegetation considered beyond treatment	See planting specifications	Twice a year	3/15 to 4/30 and 10/1 to 11/30
Treat all diseased trees and shrubs	Mechanical or by hand	N/A	Varies, depends on insect or disease infestation
Watering of plant material shall take place at the end of each day for fourteen consecutive days after planting has been completed	By hand	Immediately after completion of project	N/A
Replace stakes after one year	By hand	Once a year	Only remove stakes in the Spring
Replace any deficient stakes or wires	By hand	N/A	Whenever needed
Check for accumulated sediments	Visual	Monthly	Monthly