

## PROFFER STATEMENT

James S. Audia and Manuel G. Serra. RZ/FDP 2003-PR-037

March 29, 2004

Pursuant to Section 15.2-2303 (A), Code of Virginia (1950, as amended) and Section 18-204 of the Zoning Ordinance of Fairfax County (1978, as amended), the property owners and applicants for themselves and their successors and/or assigns (hereinafter collectively referred to as the "Applicant") in this Rezoning Application ("RZ") proffer that the development of the parcel under consideration and shown on the Fairfax County Tax Maps as Tax Map 48-3 ((1)) 25 and 48-3 ((25)) A (collectively the "Property") will be in accordance with the following conditions if, and only if, Rezoning and Conceptual/Final Development Plan 2003-PR-037 is granted. In the event that this Rezoning is denied, these proffers will immediately be null and void and of no further force and effect. The proffered conditions are:

### GENERAL

1. Conceptual/Final Development Plan. The Property shall be developed in substantial conformance with the Concept/Final Development Plan ("CDP/FDP") Plat dated May 30, 2003 and revised through February 27, 2004, prepared by Urban Engineering & Associates, Inc. (collectively, the "Development Plan") consisting of eight (8) sheets.

2. Minor Modifications. Minor modifications to the Development Plan may be permitted when necessitated by sound engineering or that may become necessary as part of final site engineering, pursuant to Section 16-403(4) of the Zoning Ordinance provided such changes are in substantial conformance with the CDP/FDP. Building footprints may be increased or decreased as long as the minimum open space tabulation and landscaping provided on Sheet 2 of the Development Plan is not reduced and the minimum building setbacks from the property lines (as provided in accordance with the dimensions and typicals shown on the Development Plan) and entrances are maintained.

### DEVELOPMENT PLAN

3. Residential Units. The Property shall be developed with 73 single-family attached units, including 72 market-rate units, as depicted on Sheet 5 of the Development Plan, and one Affordable Dwelling Unit, as indicated in the tabulations on Sheet 2 of the Development Plan.

4. Stormwater Management.

- A. The Applicant shall provide stormwater management detention via one of the following two options, as approved by the Department of Public Works and Environmental Services ("DPWES"). The Applicant shall determine which of the two options to pursue.

**Option 1:** Stormwater management ("SWM") detention shall be provided on the Property in a SWM dry pond facility and an underground box culvert detention system ("Underground Detention System") as indicated on the CDP and subject to approval of DPWES. If DPWES will not

permit use of an underground box culvert detention system, the Applicant shall provide a SWM dry pond in the vicinity of the Underground Detention System.

1. The Applicant shall provide plantings in and around the dry pond to the maximum extent feasible using native or other hydrophyllic vegetation as determined by the Urban Forestry Division pursuant to the policy adopted by the Board of Supervisors.

**Option 2:** Subject to approval by DPWES, in lieu of the SWM dry pond facility indicated on the plan, the Applicant reserves the right to replace the proposed dry pond with a second underground box culvert detention system. With installation of an underground detention system in place of the dry pond, the Applicant shall provide additional visitor parking in the vicinity of the dry pond, as indicated on Sheet 7 of the Development Plan.

B. To ensure the safety of the Underground Detention System(s), any manhole or vault door shall include a lock, so the device can be locked when maintenance or inspections are not taking place. Steps shall be placed inside each vault at least one of the vault doors to provide access into and out of the vault.

C. The Applicant shall provide plantings over and around the Underground Detention System(s) to the maximum extent feasible as determined by the Urban Forestry Division.

D. Filterra devices (or similar filtration units) or innovative Best Management Practices devices ("BMP") shall be provided on the Property to satisfy the County's BMP requirements. The quantity and location of the devices shall be determined at the time of site plan review.

E. The Homeowners Association ("HOA") shall be responsible for maintenance of the BMP devices and underground box culvert device(s). Prospective purchasers shall be advised of the maintenance responsibility prior to entering into a contract of sale. HOA maintenance responsibility shall also be disclosed in the HOA documents. The HOA shall be required to contract with a maintenance/management company to perform regular routine maintenance of the stormwater management devices, and the HOA shall provide a maintenance report annually to the Fairfax County Maintenance and Stormwater Management Division of DPWES.

F. The Applicant shall establish a stormwater management maintenance fund for use by the HOA. Prior to bond release, the Applicant shall establish an HOA stormwater maintenance fund and fund it with adequate funds to cover the cost of maintenance of the stormwater management and BMP devices for a period of twenty (20) years beginning after bond release, as determined in coordination

with DPWES. The HOA shall be responsible for maintenance of the fund. The Applicant shall be responsible for maintenance of the stormwater management devices until bond release.

5. Lighting. All on-site outdoor lighting shall comply with the Outdoor Lighting Standards in Section 14-900 of the Zoning Ordinance. Pole or building-mounted outdoor lighting shall be provided in the front yard of each unit. Such lighting shall be installed to turn on automatically at dusk and turn off at dawn. Compact fluorescent lights shall be installed in these fixtures.

6. Recreational Facilities. The Applicant shall construct a tot lot for residents of the Property as indicated on Sheet 7 of the Development Plan. In the area of the tot lot, signage shall be provided indicating that the tot lot is closed after dark and use of the tot lot is for residents only. The tot lot shall include climbing apparatus and swinging apparatus appropriate for toddlers through children of age 12. As selected by the Applicant, additional amenities such as seating areas, formal gardens/hardscape or picnic areas may be incorporated into the site.

7. Architectural Design and Building Materials. The front facades of the buildings and the side facades of Lots 1, 45 and 52 shall be comprised of at least 25% masonry (brick, painted brick, stone, stucco, etc.). Siding used on the front façade of the buildings shall be some form of composite siding such as James Hardi, i.e. "Hardi Plank." No vinyl or aluminum siding shall be provided on the front facades of the units.

8. Unit Roofs. In an effort to promote energy conservation and awareness, the Applicant shall provide light to medium colored roof shingles on a minimum of one-third of the proposed units.

9. Deck Disclosure. The Applicant shall include a restrictive covenant in the Homeowners Association ("HOA") documents indicating that decks shall not extend in excess of 3.5' from the unit, as indicated on the CDP/FDP.

10. Fence. The Applicant shall provide six-foot high fencing on portions of the Property boundaries for security purposes, as indicated on the CDP/FDP. The fence will be constructed of brick, wood or metal (not to include chain link).

11. Crosswalks. The Applicant shall utilize concrete pavers, scored concrete, brick pavers, stamped asphalt or porous asphalt to treat the crosswalks and driveway aprons proposed throughout the site as shown on Sheet 5 of the Development Plan.

12. Telecommuting. In an effort to encourage telecommuting and in recognition of internet demand, the Applicant shall pre-wire each unit with a minimum of three (3) network point of access ready wiring locations consisting of Ethernet cable and/or coaxial cable as well as an exterior point of connectivity.

## TREE SAVE AREAS AND LANDSCAPING

13. Limits of Clearing and Grading. The Applicant shall adhere to the Limits of Clearing and Grading ("LOC") as noted on the Development Plan. Minor adjustment of the LOC at time of final design and engineering and the location of proposed utilities may be permitted pursuant to Section 16-403 and Section 18-204 of the Zoning Ordinance. To the extent any such utilities are required to be extended outside the limits of clearing and grading shown on the CDP/FDP, a plan indicating the location of utilities and the impact on the tree save shall be submitted to the Fairfax County Urban Forestry Division for review and comment prior to final approval by DPWES. The Applicant shall use best efforts to avoid intrusion into the open space area to locate utilities and shall diligently pursue alternative locations to connect to utilities outside of the tree save area; documentation of such efforts shall be provided to the Urban Forestry Division. If the Applicant needs to encroach into the open space/tree save area along the eastern portion of the site to locate utilities, the Applicant shall work with the Urban Forestry Division to minimize disturbance to existing vegetation and/or replant the disturbed areas.

A replanting plan shall be developed and implemented, subject to approval by the Urban Forestry Division, if disturbance occurs in areas outside the limits of clearing and grading.

14. Tree Save & Preservation Plan.

A. The Applicant shall submit a tree preservation plan as part of the first and all subsequent site 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 Forestry Division.

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 12 inches in diameter and greater 10 feet to either side of the limits of clearing and grading shown on the GDP for the entire site. The tree survey shall also include areas of clearing and grading not shown on the GDP resulting from 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, such as: crown pruning, root pruning, mulching, fertilization, and other as necessary shall be included in the plan.

B. The Applicant shall preserve those healthy trees located outside the limits of clearing and grading and designated as "TREE SAVE AREA" on Sheet 7 of the Development Plan.

C. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fencing. Tree protection fencing shall be four feet in height, 14 gauge welded wire attached to 6 foot steel posts driven 18 inches into the ground and

placed no further than 10 feet apart and shall be erected at the limits of clearing and grading as shown on the phase I and II erosion and sediment control sheets for the entire site.

All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fence, except super silt fence, 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 Forestry Division shall be notified and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed.

At the time of clearing and grading, the Applicant shall remove all dead, dying and diseased trees from the tree save area and install an appropriate number of supplemental understory plantings in selected areas in coordination with the Urban Forestry Division. Removal of any trees from the tree save area shall be done by hand using chain saws.

D. The Applicant shall retain the services of a certified arborist or landscape architect to monitor all construction work and tree preservation efforts to ensure conformance with all tree preservation proffers. The monitoring schedule shall be described and detailed in the tree preservation plan and reviewed and approved by the Urban Forestry Division.

E. The homeowners association covenants shall include a requirement for the association to monitor and maintain the on-site landscaping.

15. Landscape Plan. The Applicant's Development Plan includes a conceptual landscape plan for the Property shown on Sheet 6. As part of the site plan submission, the Applicant shall submit to the Urban Forestry Division of DPWES for review and approval a detailed Landscape Plan. Such Landscape Plan shall be consistent with the quality and quantity of plantings and materials shown on Sheet 6 of the Development Plan. Adjustments to the type and location of vegetation and the design of the plantings and hardscape shall be permitted in consultation with the Urban Forestry Division so long as the final landscape design and planting materials are in substantial conformance with Sheet 6 and the quality of this design. The Landscape Plan shall include a plan for the preservation of those trees so-designated on the Development Plan, new plantings (including deciduous trees, evergreen trees, shrubs, bushes and similar under plantings) and, if necessary, a plan for replacing and/or supplementing any trees that were designated for preservation on the Development Plan and have been determined could not be saved.

The Applicant shall work with the Urban Forester to select plant species that in addition to meeting other landscaping requirements, such as durability, availability and aesthetics, also aid in the maintenance of air quality.

## TRANSPORTATION

16. Kingsbridge Drive Re-Striping. Prior to the issuance of the first Residential Use Permit for the Property and subject to approval by the Virginia Department of Transportation ("VDOT"), the Applicant shall re-stripe Kingsbridge Drive approaching the intersection with Blake Lane to permit one inbound lane from Blake Lane and dedicated left and right turn lanes on Kingsbridge Drive (as determined by VDOT) for vehicles turning onto Blake Lane. A combined thru movement will be provided with either the left or right turn lane. The Applicant shall provide such re-striping as long as the three proposed lanes can be provided within the existing pavement section. Said restriping has been added to the CDP/FDP sheet for exhibit purposes only. The pavement marking and signage plan for the Kingsbridge Drive restriping shall be designed and submitted to VDOT for approval at the time of submission of the VDOT entrance permit application. The limits of restriping shall generally adhere to the illustrative striping shown on the CDP/FDP which includes striping on Kingsbridge Drive only between Blake Lane and the first entrance into the Tudor Hall Subdivision on the north side of Kingsbridge Drive. To accommodate the restriping of lanes, the Applicant will provide traffic control signage as required by VDOT. If VDOT does not permit the restriping, the Applicant shall escrow funds equal to the cost of the improvements, as determined by DPWES and the Fairfax County Department of Transportation, for use in the vicinity for road or transit improvements. Prior to the issuance of the first Residential Use Permit and subject to VDOT approval, the Applicant shall provide a "Do Not Block Intersection" sign on Kingsbridge Drive at the intersection with Welby Court (the exit from Tudor Hall).

17. Blake Lane Dedication. Prior to the issuance of the first Residential Use Permit, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors right-of-way along the Blake Lane Service Drive, as indicated on the CDP/FDP. Advanced density credit is reserved consistent with the provisions of the Fairfax County Zoning Ordinance for all eligible dedications described herein or as may be required by Fairfax County or VDOT pursuant to the Public Facilities Manuel (PFM), at the time of site plan approval for the Property.

18. Kingsbridge Drive/Blake Lane Median. Prior to the issuance of the first Residential Use Permit for the Property and subject to VDOT approval, the Applicant shall improve the median island in the service drive off Blake Lane near the intersection with Kingsbridge Drive. Such improvements include removing portions of the existing concrete island and replacing it generally as shown on the CDP/FDP. The existing island and pavement will be saw-cut to permit the easy removal of the island with limited disturbance to the adjacent pavement areas. The improvements to this island shall include increasing the radius along Blake Lane to 15' while maintaining a 3' radius on the service drive side of this island. The materials for the median improvements shall consist of concrete curb and gutter, consistent with VDOT standards and specifications. A pavement wedging detail shall be provided with the site plan for reconstruction of the asphalt area disturbed immediately around the island improvements. The improvements to this island shall not require the applicant to remove, replace, or relocate any traffic signal, signal equipment, electrical equipment, etc. located underground, above ground, or on the median island. The proposed median improvements shall be shown on the site plan. If VDOT does not permit the median improvements, the Applicant shall escrow funds equal to the cost of the improvements for use in the vicinity for road or transit improvements. Subject to VDOT approval and prior to the issuance of the first Residential Use Permit, the Applicant shall

install a sign prohibiting right turns when pedestrians are present on Blake Lane at Kingsbridge Drive.

19. Bus Shelter. Prior to the issuance of the first Residential Use Permit for the Property and subject to approval the Fairfax County Department of Transportation, the Applicant shall provide a bus shelter on Kingsbridge Drive in the vicinity of the Property. If a bus shelter is not permitted in the vicinity of the Property, the Applicant shall contribute \$20,000 to the Fairfax County Department of Transportation at the time of the issuance of the fiftieth (50) Residential Use Permit for use in constructing a bus shelter at a location convenient to the residents of the Property.

20. Private Streets. The Applicant shall construct the private streets shown on the CDP/FDP of materials and with a pavement depth consistent with the PFM standards for public streets. Initial purchasers shall be advised of the requirement to maintain private streets and the alternative pavement materials utilized throughout the site and shall be informed of the estimated costs prior to entering into a contract of sale. This requirement to maintain the private streets as constructed and the estimated maintenance costs shall be included in the HOA documents prepared for the Application property.

#### FAIRFAX COUNTY PARK AUTHORITY

21. On-Site Recreational Amenities: In accordance with Section 16-404 of the Fairfax County Zoning Ordinance, the Applicant shall provide on-site recreational amenities as shown on the Development Plan and identified in Proffer 6 above. The Applicant expects to expend an amount approximating \$955 or more per market-rate unit for these recreational facilities. To the extent the Applicant's expenditures for onsite recreational facilities totals less than \$955 per market-rate residential unit, the Applicant shall contribute an amount equal to the per unit difference in total recreational funds expended (as compared to \$955 per market-rate unit) for onsite amenities to the Fairfax County Park Authority for use at Mosby Woods Park. If such funds cannot be used at Mosby Woods Park, the funds may be used for improvements and/or facilities at Blake Lane Park/Puppy Park.

22. Additional Contribution to the Fairfax County Park Authority: The Applicant shall provide a contribution of \$45,267.30, above any contribution received as part of Proffer 21, to the Fairfax County Park Authority at the time of issuance of the first Residential Use Permit. The funds from the contribution shall be used for improvements and/or facilities at Mosby Woods Park. If such funds cannot be used at Mosby Woods Park, the funds may be used for improvements and/or facilities at Blake Lane Park/Puppy Park.

#### FAIRFAX COUNTY PUBLIC SCHOOLS

23. Public Schools. Prior to issuance of the first building permit, the Applicant shall contribute \$7,500 per student to the Fairfax County Board of Supervisors to be utilized for the provision of capital facilities at Mosby Woods Elementary School. The Applicant shall make a contribution of \$202,500, assuming 27 students are generated by the development. If the Applicant reduces the number of units proposed on the site, the contribution to Mosby Woods Elementary School shall be reduced commensurately.

## SIGNS

24. Signage. All signage on the Property shall conform to the requirements of Article 12 of the Zoning Ordinance. If lit, signage shall be in conformance with the Performance Standards in Part 9 of Article 14 of the Zoning Ordinance.

25. 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 by any builder or at the Applicant's or any builder's direction to assist in the initial marketing and sale of dwelling units on the Property. Furthermore, the Applicant and every builder shall direct its agents and employees involved in marketing and/or sales of dwelling units for the Property to adhere to this proffer. This proffer does not preclude the use of onsite signage per Section 12-103 Para. 3D.

## GARAGES

26. Garage Restriction. The Applicant shall place a covenant on each residential lot prohibiting the conversion of garages that would preclude the parking of vehicles within the garage. A covenant setting forth this restriction shall be disclosed in the HOA documents and recorded among the land records of Fairfax County in a form approved by the County Attorney prior to the sale of any lots. The Applicant shall advise prospective purchasers of this use restriction in writing prior to entering into a contract of sale.

## CONSTRUCTION ACTIVITY

27. Construction Access. In order to provide for the safety of schoolchildren walking to Mosby Woods Elementary School (the "School"), the Applicant shall not provide heavy construction vehicle access to the Property from Kingsbridge Drive. Heavy construction vehicles shall be defined as earth moving vehicles, vehicles to assist in pouring foundation and dump trucks, backhoes, bulldozers and trucks carrying excessively heavy or large materials or equipment. Signage shall be provided at Kingsbridge Drive and Blake Lane to direct construction traffic to the appropriate entrance. The Applicant shall advise contractors of construction access and monitor the construction access on the Property.

As an option, if the Applicant is physically or legally prohibited from using an alternative entrance to the site, the Applicant may permit heavy construction vehicle access on Kingsbridge Drive. If access is provided via Kingsbridge Drive, the Applicant shall comply with the following conditions:

- Construction traffic will be directed to utilize Draper Drive and the Property's existing entrance on Kingsbridge Drive to minimize the length of time trucks spend on Kingsbridge Drive;
- The Applicant will designate an employee of the construction company to serve as a liaison with the community and the School and as a point of contact throughout the construction period ("Construction Liaison");

- The Applicant or Construction Liaison shall meet with the principal of the School, a representative of the Fair Oaks Police Station and a representative(s) of the Kingsbridge Task Force prior to beginning construction on the Property to coordinate the construction traffic activity and work with the School to draft a letter to the parents of children attending Mosby Woods Elementary School alerting them of the construction activity;
- An employee of the construction company will direct construction traffic entering and exiting the site for a period one-half hour before and after the beginning of the school day and one-half hour before and after the end of the school day at Mosby Woods Elementary School;
- Signage shall be provided at Kingsbridge Drive and Blake Lane to direct construction traffic to the appropriate entrance. The Applicant shall advise contractors of construction access and monitor the construction access on the Property; and
- To offset the inconvenience and disruption caused by the construction access and provide funds for the Tudor Hall Community Association to make improvements within their community, the Applicant shall provide the Tudor Hall Community Association with a contribution of \$10,000 prior to issuance of the first building permit and a contribution of \$5,000 prior to issuance of the first Residential Use Permit. The Applicant shall document to DPWES that such funds have been paid.

28. Construction Hours. The Applicant shall restrict construction to the hours between 7:00 am and 7:00 pm Monday through Friday and 8:00 am and 6:00 pm on Saturday. No heavy construction activity shall be permitted on Sunday or Federal holidays. The Applicant shall post the construction hours on the site.

#### SCREENING OF THE INDUSTRIAL BUILDING

29. Climbing Vines. The Applicant will seek permission from the owner of the adjacent property at Tax Map 48-3 ((1)) 26A to install climbing vines, such as pyracanthus or a similar vine, on the northern façade of the industrial building located at Tax Map 48-3 ((1)) 26A. If the Applicant cannot obtain the adjacent property owner's permission, documentation of such attempts shall be provided to DPWES at the time of site plan.

#### PHASE ONE ENVIRONMENTAL STUDY

30. Phase One Environmental Study. Prior to site plan approval the Applicant shall submit a Phase I Environmental investigation of the property to DPWES for its review and approval in coordination with all appropriate reviewing agencies as determined by DPWES. The investigation will be generally consistent with the procedures described by the American Society of Testing and Materials (ASTM). If warranted by the results of the Phase I investigation and if determined necessary by DPWES and the State Water Control Board, the Applicant shall pursue a Phase II investigation and correction program. Subject to the findings of a Phase II program, if ground water, surface water and soil contaminants are found in sufficient quantities and at such levels to require a monitoring program, a remedial action program and corrective action plan shall be performed in accordance with all applicable Federal, State and County requirements, prior to final plan approval.

## PARKING

31. Additional Parking Spaces. In addition to the parking spaces indicated in the CDP/FDP, the Applicant shall provide two additional parking spaces as indicated on Additional Parking Exhibit 1 attached to the proffers.

If Option 2 of Proffer 4A is utilized for stormwater management, and a second underground stormwater management device is provided in lieu of a dry pond, the additional parking space near the SWM pond as indicated in Exhibit 1 shall not be provided. Instead, the Applicant shall provide parking as indicated in the Alternate Layout For Additional Underground SWM on Sheet 7 of the CDP/FDP.

## MISCELLANEOUS

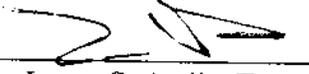
32. Successors and Assigns. These proffers will bind and inure to the benefit of the Applicant and his successors and assigns. Each reference to "Applicant" in this proffer statement shall include within its meaning and shall be binding upon Applicant's successor(s) in interest and/or developer(s) of the site or any portion of the site.

33. Counterparts. These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and all of which taken together shall constitute but one and the same instrument.

Signatures on following pages

Contract Purchaser of Tax Map 48-3 ((1)) 25

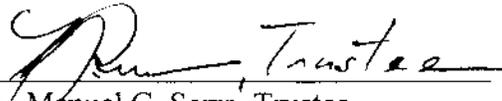
The James S. Audia Revocable Trust Agreement

By:  , Trustee  
Name: James S. Audia, Trustee

Date: 4/29/17

Contract Purchaser of Tax Map 48-3 ((1)) 25

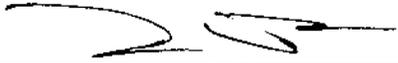
Norwood and Serra Trust

By:   
Name: Manuel G. Serra, Trustee

Date: March 29, 2004

Contract Purchaser of Tax Map 48-3 ((1)) 25

Merrifield Circle Corporation

By:  President

Name: James S. Audia

Title: President

Date: 3 29 81

Title Owner of Tax Map 48-3 ((1)) 25

Virginia Electric and Power Company

By:   
Name: Kenneth D. Burke  
Title: VP - Customer Planning  
Virginia Electric and Power Company

Date: March 29, 2004