

PCA 82-P-069-14
PROFFER STATEMENT
FAIR LAKES LAND BAYS V-A, V-B, VI-A AND VII-A
February 22, 2005
March 11, 2005
March 24, 2005
April 13, 2005
April 14, 2005

Pursuant to Section 15.2-2303A of the Code of Virginia, as amended, and subject to the Board of Supervisors approval of PCA 82-P-069-14, The Peterson Companies, L.C. (the "Applicant") and the undersigned owners, for themselves and their successors and assigns, hereby reaffirm the previous proffers, accepted by the Board of Supervisors (the "Previous Proffers") for Fairfax County Tax Map Parcels 45-4-((1))-25E; 45-4-((11))-A2; 55-2((1))-6, 6A, 8, 9A, 11A1, 11B1, 11C1, 11D and 18, containing approximately 81.21 acres (the "Property"), except as amended below. In the event this application is denied, these revised proffers shall immediately be null and void and the Previous Proffers shall remain in full force and effect. In the event this application is approved, all of the Previous Proffers remain in full force and effect except as hereby amended.

1. **Substantial Conformity with Conceptual Development Plan Amendments.** The subject 81.21-acre PCA Application Property shall be developed in substantial conformance with the Conceptual Development Plan Amendments approved by the Board of Supervisors for the respective land bays, as further modified by all relevant Proffered Conditions for Fair Lakes, as follows: (i) CDPA 82-P-069-1 for Land Bay VI-A consisting of one sheet prepared by Dewberry & Davis as revised through July 12, 1984 and approved by the Board of Supervisors on September 24, 1984; (ii) CDPA 82-P-069-3 for Land Bays V-A and VII-A consisting of one sheet prepared by Dewberry & Davis, as revised through June 26, 1987 and approved by the Board of Supervisors on July 20, 1987; and (iii) pending CDPA 82-P-069-7 for a portion of Land Bay V-B consisting of four sheets of the combined CDPA/FDPA plan prepared by Dewberry & Davis and dated September 21, 2004, as revised through April 13, 2005.

2. **Allocation of Land Uses.** Paragraph 2 of the Previous Proffers under "Land Use" shall be revised to read as follows: Allocation of land uses as provided in the text accompanying the Conceptual Development Plan Amendment is affirmed as follows:

No more than 7,182,823 square feet of principal and secondary uses shall be constructed on subject property. Non-residential uses shall not exceed 5,364,820 square feet. However, up to 945,877 square feet in Land Bay II may be converted from non-residential to residential uses exclusive of ADUs and up to 14,200 square feet may be converted to eating establishments/fast food restaurant/personal service establishment uses in Land Bay II. Residential units shall not be fewer than 1,464.

The specific uses to be provided in the first phase of development are depicted in FDPs submitted for Land Bays I-A, I-B, V-A, VI-A and VI-B. Land Bay II shall be approximately 120

acres, and shall be developed in 1,463,616 square feet of employment, residential and eating establishment/fast food restaurant uses specified in the CDPA for Land Bays II-A and II-B. The residential square footage in Land Bay II shall not exceed 945,877 square feet which shall be exclusive of the square footage for affordable dwelling units. In addition, the residential square footage in Land Bay II shall not be counted towards, i.e., shall be deemed in its entirety to be in excess of, the fifty (50) percent limitation for residential use in the Fair Lakes PDC District as specified in Par. 5 of Sect. 6-206 of the Zoning Ordinance as well as the 2:1 ratio of primary to residential uses recommended for office-mixed use areas in the Fairfax Center Area. Residential square footage located in the remainder of Fair Lakes may be developed in excess of the fifty (50) percent (based upon the principal, non-residential uses in all of Fair Lakes) limitation set forth in Paragraph 5 of Section 6-206 of the Zoning Ordinance, as modified by the Board of Supervisors in the subject PCA application.

A mix of principal and secondary uses shall be distributed over the remainder of the site, with other retail, hotel and other residential uses to be located in Land Bays III, IV and V. The aggregate non-residential square footage shall not exceed 5,364,820 square feet, of which 200,000 to 750,000 square feet shall be allocated to hotel use, 200,000 to 1,150,000 square feet, exclusive of any eating establishment/fast food restaurant/personal service establishment uses in Land Bay II, to uses such as retail uses, accessory service uses, retail sales establishments, child care centers, eating establishments, financial institutions, health clubs, theaters, service stations, car washes and other principal and secondary PDC uses that are neither residential, hotel nor office/research in character, and 2,250,000 to 4,964,820 square feet to office, research and other non-retail uses. Specific uses shall be designated at the time the FDPs are submitted. For purposes of this proffer, the designation of a building as office or other employment use shall be construed to permit inclusion of fast food (e.g., delicatessen), financial institution, and other such accessory and personal service uses on the ground and/or first floor level of such building, it being understood that the details of any drive-through and/or child care uses must be the subject of final development plan or special exception approval.

3. **Final Development Plan Amendments.** Notwithstanding that CDPA 82-P-069-7 appears on the same development plan with FDPA 82-P-069-6-8/FDPA 82-P-069-11-3, consisting of four sheets and described in Proffer Number 1 above, it shall be understood that (i) said CDPA plan shall consist of the entire plan relative solely to points of access, general location of the proposed buildings, on-site vehicular circulation and common open space areas; and (ii) the Applicant has the option to request Final Development Plan Amendment ("FDPA") approvals from the Planning Commission in accordance with Section 16-402 of the Zoning Ordinance with respect to the remaining elements. The Applicant further retains the option to file partial Conceptual Development Plan Amendment(s) in the future.

4. **Minor Modifications.** Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the approved CDPA/FDPAs described above encompassing the application Property may be permitted, as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layout shown on the CDPA/FDPA, provided such changes are in substantial conformance with the CDPA/FDPA and proffers, and do not increase the total square footage, decrease the minimum amount of open space or the peripheral setbacks shown to be provided.

5. **Maximum Residential Square Footage.** In accordance with the Board of Supervisors' approval of the modification of Paragraph 5 of Section 6-206 of the Zoning Ordinance to permit an increase in the gross floor area devoted to dwellings as a secondary use in excess of fifty (50) percent of all principal uses in the development, up to 150,000 gross square feet of residential use shall be permitted within Land Bay V-B, not including any ADUs which may be provided pursuant to Paragraph 7 below. The Applicant reserves the right to develop fewer square feet than the maximum gross square footage of residential uses referenced in this paragraph without the need for a PCA.

6. **Architectural Design.** The architectural design of the multi-family and office building shall be consistent with the general character of the elevations shown on Sheets 4-6 of the FDPA. The Applicant reserves the right to revise the elevations as a result of final architectural design, so long as the character and quality of design remains consistent with those shown. Building materials for the office building shall be compatible with the existing office building. Building materials for the residential building shall consist of masonry, brick, stone, pre-cast concrete, ground and/or split face CMU. In addition to the preceding materials, EFIS that is visually compatible with the masonry materials may be utilized on the upper floors. The design of the office and residential plazas shall be in substantial conformance with the CDP/FDP.

7. **ADU Contribution.** Applicant shall choose to either a) provide 5% of the total units in the multi-family building as ADU's, or b) donate ½% of the projected sales prices of each unit in the multi-family building to the Housing Trust Fund prior to issuance of the building permit for the multi-family building. In the event that the multi-family units are available for rent, the Applicant's ½% contribution would be based on the total development cost of the multi-family building as determined by the Applicant in consultation with the staff of the Fairfax County Department of Housing and Community Development and the Department of Public Works and Environmental Services ("DPWES").

8. **Public Schools Contribution.** At the time of issuance of the building permit for the multi-family residential building located within the CDPA 82-P-069-7 portion of the Application Property, the Applicant shall provide to the Fairfax County Board of Supervisors a contribution of \$780 per non-ADU dwelling unit. Such contributions shall be available for use in any of the public schools in Fairfax County.

9. **Recreational Facilities.** Pursuant to Section 6-209 of the Zoning Ordinance the Applicant shall provide the recreational facilities to serve residential units located within that portion of the Application Property subject to CDPA 82-P-069-7. At the time of building permit approval for the residential building, the Applicant shall demonstrate that the value of any proposed recreational amenities within the respective site plan area is equivalent to a minimum of \$955.00 per market-rate residential unit on such site plan, as required by Article 6 of the Zoning Ordinance. To the extent the Applicant's expenditure for on-site recreational facilities totals less than \$955 per market-rate residential unit on such site plan, the Applicant shall, at the time of building permit approval, contribute an amount equal to the difference in total recreational funds expended (as compared to \$955 per market-rate unit for that site) for on-site amenities to FCPA for use for athletic facilities and fields at the Popes Head Assemblage.

A swimming pool with bathroom facilities shall be provided within or on the top level of the multi-family building. An exercise room shall be provided within the multi-family structure.

10. **Additional Park Contribution.** In addition to any recreational contribution made pursuant to Proffer #8, Applicant shall contribute \$484 per non-ADU dwelling unit at time of building permit approval to the Fairfax County Park Authority ("FCPA") for use for athletic facilities and fields at the Popes Head Assemblage.

11. **Limits of Clearing and Grading/Tree Preservation.** 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 shall be subject to the review and approval of the Urban Forest Management, DPWES.

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 10 inches in diameter and greater, and 20 feet to either side of the limits of clearing and grading shown on the CDP/FDP for the entire site. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the CDP/FDP, and those additional areas in which trees can be preserved as a result of final engineering. 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 others as necessary, shall be included in the plan.

All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing shall be four foot high, 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 erected at the limits of clearing and grading as shown on the demolition, and phase I & II erosion and sediment control sheets.

The installation of all tree protection fence types shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved.

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 and/or trails outside of 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 Urban Forest Management, DPWES. A replanting plan shall be developed and implemented, subject to approval by Urban Forest Management, DPWES, for any areas outside the limits of clearing and grading that must be disturbed.

During any clearing or tree/vegetation/structure removal or transplantation of vegetation on the Application Property, a representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted as proffered and as approved by Urban Forest

Management, DPWES. The Applicant shall retain the services of a certified arborist or landscape architect to monitor all construction work and tree preservation efforts in order to ensure conformance with all tree preservation proffers/conditions, and Urban Forest Management, DPWES approvals. The monitoring schedule shall be described and detailed in the landscaping plan, and reviewed and approved by Urban Forest Management, DPWES.

12. **Traffic Signal.** The Applicant shall submit a traffic signal warrant analysis of the Land Bay V-B entrance onto Fair Lakes Circle most proximate to Tax Map Parcel 55-2-((1))-18, subject to review and approval by VDOT, two years from the date of issuance of the first occupancy permit for the new multi-family residential building to be constructed in Land Bay V-B, but not later than the time of final bond release for the residential building. Only if deemed warranted based upon the above analysis, the Applicant shall design and install a traffic signal at said intersection. If, based on said analysis, VDOT determines that a traffic signal is not warranted, then the Applicant shall be released from this proffer obligation and escrowed funds, if any have been posted by the Applicant towards said signal, shall be returned to the Applicant.

13. **Bus Shelter.** The Applicant shall provide one (1) bus shelter, with no requirement for a turnoff lane or additional road improvements, along Fair Lakes Circle, in the vicinity of the multi-family building, as determined by the Director of DPWES at the time of building permit issuance for that building, only (i) if a bus shelter has not been constructed by that time by others, and (ii) if it is determined that scheduled public or private bus service shall utilize said shelter. If the shelter is provided, the Applicant shall maintain the shelter and said maintenance obligation shall be provided for in Condominium Owners Association documents.

14. **Trails.** The Applicant shall provide a four-foot wide, concrete sidewalk along Fair Lakes Circle starting at the multi-family entrance and extending up to the second median break to the east (approximately 1,000 feet) and up to the next median break to the west (approximately 1,000 feet), as depicted on the FDPA, prior to issuance of the 60th RUP.

15. **Office Transportation Demand Management.** The new office owner shall provide: (i) dissemination of Transportation Demand Management materials discussing available transit information, car/van pooling formation, and the Metrocheck program to lessees/purchasers; (ii) convenient parking in preferred locations of office parking structures for car pool/van pool use; (iii) broadband, high capacity data/network connections to the office building; and (iv) bicycle storage facilities in the office building or in the adjacent office building on Tax Map 55-2-((1))-9A.

16. **Residential Transportation Demand Management.** To encourage car and vanpooling, at the time of the initial sale of each residential unit, or if the building is a rental building, then at the time of entering into each respective initial lease, the Applicant shall provide to the initial purchaser, or to the initial lessee if a rental building, information about the County's ridesharing program. In addition, the Applicant shall: (i) make available Metro maps, schedules and forms, ridesharing and other relevant transit options in the respective initial residential sale/lease packages; (ii) make said information available to owners/tenants in a common area of the building; (iii) provide amenities for bicycle storage; and (iv) provide a sidewalk system designed to encourage/facilitate pedestrian circulation as shown on the FDPA.

17. **Fair Lakes Shuttle.** The multi-family community shall participate in the Fair Lakes Shuttle program as long as it is operated by the Fair Lakes League or similar Owners Association.

18. **Noise Attenuation.** Wyle has prepared a Traffic Noise Analysis of the Property dated January 7, 2005. This report provides an analysis of noise impacts associated with Route 66. The Applicant shall submit the report to DPWES with submission of the site plan. Based on the findings of that report, the Applicant shall provide the following noise attenuation measures:

- (i) In order to reduce interior noise to a level of approximately 45 dBA Ldn, units in the residential building which is projected to be impacted by highway noise from Route 66 having levels projected to be above 65 dBA Ldn, shall be constructed with the following acoustical measures:

Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any façade exposed to noise levels above Ldn 65 dBA. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have an STC rating of at least 39. All surfaces should be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission. Any units requiring mitigation shall be identified on the site plan.

- (ii) Prior to the issuance of building permits, alternative interior noise attenuation measures may be provided subject to the implementation of a refined noise study as reviewed and approved by DPWES after consultation with the Department of Planning and Zoning.
- (iii) Noise impacts shall be attenuated on the pool deck facility to reduce the highway noise levels to 65 dBA.

19. **Lighting.** 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 streets, parking areas and walkways shall not exceed forty (40) feet in height, shall be of low intensity design and shall utilize full cut-off fixtures which shall focus directly on the Property. All upper level parking deck lighting fixtures shall not exceed a height of twenty (20) feet.

20. **Energy Efficiency.** All residential units shall meet the thermal standards of the CABO Model Energy Program for energy efficient homes, or its equivalent, as determined by DPWES.

21. **Private Street Design.** Both the streets and sidewalks shall be constructed in conformance with Public Facilities Manual TS 5A Standards with regard to design, depth of pavement and materials consistent with public streets and sidewalk standards. The Applicant shall be responsible for the maintenance of all private streets and sidewalks.

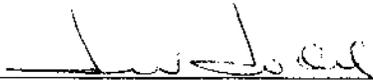
22. **Temporary Signs.** No temporary signs (including "Popsicle" style paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 or Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on- or off-site by the Applicant or at the Applicant's direction to assist in the initial sale or rental of residential units on the Property. Furthermore, the Applicant shall direct its agents and employees involved in marketing and sale and/or rental of residential units on the Property to adhere to this proffer.

23. **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.

24. **Counterparts.** To facilitate execution, this Proffer Statement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of all the parties to the Proffer Statement appear on each counterpart of this Proffer Statement. All counterparts of this Proffer Statement shall collectively constitute a single instrument.

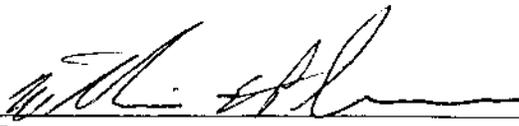
[SIGNATURES ON FOLLOWING PAGES]

THE PETERSON COMPANIES, L.C., *Applicant*

BY: 
NAME: James W. Todd
TITLE: Manager

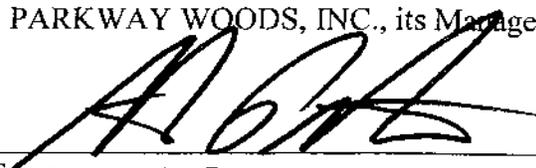
FAIR LAKES NORTH AND SOUTH L.C., *Title
Owner of Parcel 45-4-((1))-25E*

BY: FAIR LAKES NORTH & SOUTH, INC., its
Manager

BY: 
NAME: William E. Peterson
TITLE: Vice President

PARKWAY WOODS L.C., *Title Owner of Parcel
45-4-((11))-A2*

BY: PARKWAY WOODS, INC., its Manager

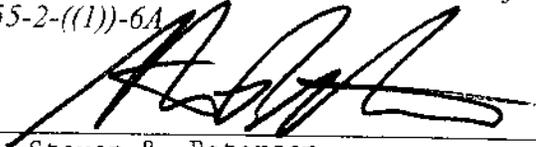
BY: 
NAME: Steven B. Peterson
TITLE: Vice President

FAIR LAKES ONE L.L.C., *Title Owner of Parcel
55-2-((1))-6*

BY: FAIR LAKES ONE, INC., its Manager

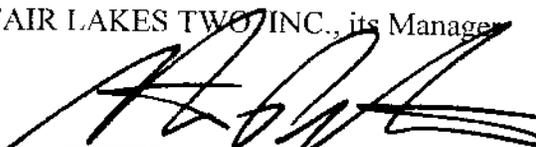
BY: 
NAME: Steven B. Peterson
TITLE: Vice President

EAST MARKET RETAIL L.C., Title Owner of
Parcel 55-2-((1))-6A

BY: 
NAME: Steven B. Peterson
TITLE: Manager

FAIR LAKES TWO L.L.C., Title Owner of Parcel
55-2-((1))-8

BY: FAIR LAKES TWO INC., its Manager

BY: 
NAME: Steven B. Peterson
TITLE: Vice President

HYATT PLAZA LIMITED PARTNERSHIP, Title
Owner of Parcel 55-2-((1))-9A

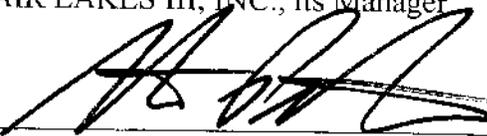
BY: FAIR LAKES HYATT LIMITED
PARTNERSHIP, its General Partner

BY: FAIR LAKES OF VIRGINIA, INC., its
General Partner

BY: 
NAME: James W. Todd
TITLE: Vice President

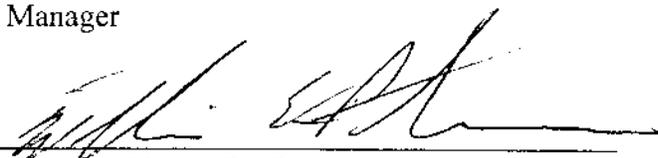
FAIR LAKES III L.C., Title Owner of Parcel
55-2-((1))-11A1

BY: FAIR LAKES III, INC., its Manager

BY: 
NAME: Steven B. Peterson
TITLE: Vice President

BUILDING IV ASSOCIATES L.C., *Title Owner of
Parcel 55-2-((1))-11B1*

BY: BUILDING IV ASSOCIATES, INC., its
Manager

BY: 
NAME: William F. Peterson
TITLE: Vice President

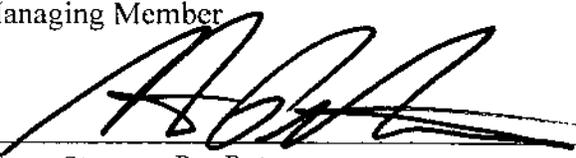
BUILDING V ASSOCIATES L.P., *Title Owner of
Parcel 55-2-((1))-11C1*

BY: BUILDING V ASSOCIATES, INC., its
General Partner

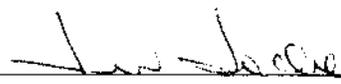
BY: 
NAME: James W. Todd
TITLE: President

BUILDING VII ASSOCIATES L.C., *Title Owner
of Parcel 55-2-((1))-11D*

BY: BUILDING VII INVESTMENTS L.C., its
Managing Member

BY: 
NAME: Steven B. Peterson
TITLE: Manager

FAIR LAKES ASSOCIATES L.C., *Title Owner of
Parcel 55-2-((1))-18*

BY: 
NAME: James W. Todd
TITLE: Manager