

**ELM STREET DEVELOPMENT, INC.
JCE, INC.
PROFFERED CONDITIONS**

**RZ 2003-PR-026
September 22, 2005**

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 parcels under consideration and shown on the Fairfax County Tax Maps as Tax Map Reference 39-3 ((1)) Parcels 15, 16, 17, 18, 18A, 18B, 18C, 18D, 18E, 32, 33A, 33B, 33C and 39-3 ((38)) Outlot "A" (hereinafter referred to as the "Property") will be in substantial conformance with the following conditions if, and only if, said Rezoning request for the provisions of the PDH-2 Zoning District is granted by the Board of Supervisors in conjunction with the Conceptual/Final Development Plan (CDP/FDP) for residential development consisting of 24 units at a density of 1.99 units per acre. In the event said application request is denied, these proffers shall be null and void. The Property 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agree that these proffers shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board of Supervisors of Fairfax County, Virginia, in accordance with applicable County and State statutory procedures and supercede the previous proffers applicable to this Property. 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 CDP/FDP containing eleven (11) sheets prepared by Dewberry and Davis LLC, dated July 23, 2004 and revised through August 25, 2005.

2. Lot Yield and Orientation of Units. The development shall consist of a maximum of 24 single family detached residential units. The footprints shown on the CDP/FDP are subject to minor modifications provided that any such changes shall be in conformance with the lot typicals proffered as part of the CDP/FDP and the requirements of these proffered conditions. Notwithstanding the above, the building footprint on Lot 1 shall be in conformance with the setback from Luckett Avenue and the limits of clearing and grading as shown on the CDP/FDP. Notwithstanding the "Typical Lot Layout and Landscape Plan" on Sheet 10 of the CDP/FDP, the minimum setback from the Northern Virginia Regional Park Authority (NVRPA) property boundary to the enclosed space, including any future additions, of the residential units shall be a minimum of 60 feet for Lots# 14 to 21. Areaway access from basements and elevated decks as described in Proffer #42 "Walk-out Basements" and #43 "Elevated Decks" is allowed to be located within the 60-foot setback from the NVRPA property boundary. The requirements of this proffer shall be disclosed in the Homeowner Association (HOA) documents

3. Public Access Easement. A public access easement in a form approved by the County Attorney shall be placed on the sidewalks and trails located outside of the public Right-of-Way (ROW), but within the approved development, including the Connector Trail as shown on Sheet 3 of the CDP/FDP and described in Proffer #19 "Connector Trail Design and Implementation." The requirements of this proffer shall be disclosed in the Homeowner Association (HOA) documents.

4. Ingress/Access Easement. An ingress/access easement in a form approved by the County Attorney shall be placed and recorded across the driveway shown on the CDP/FDP to the east of Lot #23 to the benefit of Lot 24 for future vehicular access to Wedderburn Station Drive as shown on Sheet 3 of the CDP/FDP. The requirements of this proffer shall be disclosed in the HOA documents.

5. Ingress/Access Driveway for Lot #24. As shown on Sheet 3 of the CDP/FDP, the construction of a driveway from Wedderburn Station Drive to access Lot #24 as shown on Sheet 3 of the CDP/FDP shall be in place prior to final subdivision bond release. If a new dwelling is constructed on Lot #24, the existing driveway to Cedar Lane shall be removed. The requirements of this proffer shall be disclosed in the HOA documents.

6. Density Credit. Applicant reserves density credit as may be permitted by the provisions of Paragraph 4, Section 2-308 of the Zoning Ordinance for all dedications herein and as may be reasonably required by Fairfax County of Virginia Department of Transportation (VDOT) whether such dedications occur prior to or at the time of subdivision plan approval.

II. TRANSPORTATION

7. Right-of-Way Dedication and Associated Frontage Improvements. At the time of subdivision plan approval or upon demand, whichever occurs first, the Applicant shall dedicate at no cost to the County in fee simple to the Board of Supervisors, the ROW along the site frontage along Luckett Avenue approximately 25 ft. from the centerline of Luckett Avenue, along Wedderburn Lane approximately 25 ft. from centerline of Wedderburn Lane, and along Cedar Lane approximately 40 ft. from the centerline of Cedar Lane, as generally shown on the CDP/FDP. The Applicant shall construct curb and gutter and a 5-foot sidewalk in the ROW extending along Wedderburn Lane along the frontage of Lots 2-4 from Cedar Lane to the corner of Luckett Avenue and Wedderburn Lane as shown on the CDP/FDP, subject to review and approval by DPWES. The Applicant shall construct curb and gutter and a 5-foot sidewalk along Luckett Avenue beginning at the corner of Wedderburn Lane and Luckett Avenue along the frontage of Lot #1. The Applicant shall construct a 5-foot sidewalk from the southeast corner of Lot #1 to Aponi Road, within existing ROW, and subject to review and approval by DPWES. Applicant shall construct

frontage improvements along Cedar Lane within existing ROW, subject to review and approval by DPWFS, extending from the Washington & Old Dominion (W&OD) Park Boundary at the northeast corner of the Property to Wedderburn Lane to include curb, gutter, 6-foot wide asphalt trail, a right turn lane into the proposed Wedderburn Station Drive and a center turn lane between the two travel lanes from the site entry onto northbound Cedar Lane, as shown on Sheets 3 and 4 of the CDP/FDP. A portion of the 6-foot wide asphalt trail will be constructed within the open space area, as shown on sheet 3 of the CDP/FDP. The Applicant shall construct an 6-foot wide asphalt trail extending from the northeast corner of the Property at the W&OD Park boundary to intersect with the W&OD Trail, as shown on Sheet 3 of the CDP/FDP provided the Applicant obtains permission for such improvement on NVRPA property or public ROW, as applicable, with only reasonable processing costs to the Applicant. If the Applicant is unable to obtain permission, then the Applicant shall donate funds equal to the value of the unconstructed extension to NVRPA for general trail maintenance prior to bond release.

8. Ancillary Easement. At the time of subdivision plan approval or upon demand, whichever occurs first, the Applicant shall dedicate at no cost to the Fairfax County Board of Supervisors, a 10-foot ancillary easement in the areas shown as open space along Cedar Lane, as shown on Sheet 3 of the CDP/FDP, for the purpose of allowing the County the ability to improve or maintain the frontage improvements along Cedar Lane, as described in Proffer #7 "Right-of-Way Dedication and Associated Frontage Improvements". Such easement shall be null and void upon completion of the improvements to Cedar Lane and acceptance of such improvements by VDOT for maintenance.

9. Traffic Calming. The Applicant shall diligently pursue approval from VDOT, DPWES or other affiliated County Agencies to install and, if approved, will install traffic calming measures to include three (3) of the following measures (speed table, speed

hump, stop signs, or sign limiting cut-through traffic) on Lockett Avenue between Wedderburn Lane and Redwood Drive, and on Aponi Road between Lockett Avenue and Addison Street in accordance with all procedural requirements established by County DOT, VDOT and/or the Board of Supervisors for such traffic calming measures. Failed attempts to obtain any necessary permission shall be documented in writing to the DPWES and the Providence District Supervisor prior to the issuance of the first Building Permit of the approved units. If the necessary permission is not granted, the funds for any of the unconstructed three (3) improvements shall be donated at the time of bond release to the Providence District Trail Fund in an amount of \$4,500 per improvement. If permission has been granted to the Applicant to install the improvements, the improvements shall be installed prior to final bond release.

10. Pedestrian Crossing at Cedar Lane and the Washington and Old Dominion Trail. The Applicant shall diligently pursue permission from VDOT, NVRPA and DPWES to install and, if permitted, will install a pedestrian crossing warning light at a cost not to exceed \$45,000 for the design and installation of the warning light at the intersection of Cedar Lane and the W&OD Trail, provided such improvement can be constructed without the need for additional public ROW or easements. If additional permission to access NVRPA property is necessary for the improvement, such permission shall be provided with only reasonable processing costs to the Applicant. Implementation of the pedestrian crossing warning light shall not require the Applicant to change the existing horizontal or vertical alignment of Cedar Lane at the intersection of the W&OD Trail. Failed attempts to obtain the necessary permission and/or approvals shall be documented in writing to DPWES and the Providence District Supervisor prior to the issuance of the Final RUP and the \$45,000 earmarked for the improvement shall be donated to NVRPA prior to final bond release. If

permission has been granted to the Applicant to install the improvement, the improvement shall be installed prior to final subdivision bond release.

III. LANDSCAPING AND OPEN SPACE

11. Landscaping. Landscaping shall be provided in substantial conformance with the landscaping shown on Sheet 3, 4, 5, 6, 10 and 11 of the CDP/FDP and subject to the final review and approval of a Landscape Plan by Urban Forest Management (UFM). If, during the process of subdivision plan review, any new landscaping shown on the CDP/FDP cannot be installed, then the proposed landscaping shall be relocated to an alternate location on the Property, subject to approval by the UFM. Native species shall be used exclusively in connection with all new landscaping.

12. Landscape Buffer on Property Adjacent to Washington & Old Dominion Trail. The Applicant shall provide a minimum of 40-foot wide landscape buffer located on the Property and as part of the common area open space generally along northern portion of the Property as depicted on Sheet 3 of CDP/FDP. Landscaping in the buffer, along Lots #14 - 21 shall facilitate year-round screening of the units from the W&OD Trail as determined by the UFM and shall consist of existing trees shown to be saved on the CDP/FDP and new native species to be planted as approved by the UFM. Applicant may install storm drain improvements within the landscape buffer as shown on the CDP/FDP.

13. Landscape Planting on NVRPA Property. The Applicant shall diligently pursue permission from Dominion Virginia Power and NVRPA to install and, if permitted, will install landscaping in accordance with a landscaping plan as shown on Sheet 3 of the CDP/FDP consisting of trees and shrubs and the reasonable removal, as determined by the UFM and the Applicant, of invasive vegetation along portions of the W&OD Trail in the vicinity of Outlot A and Lots #14 - 20. The Applicant shall suppress re-emergent vegetation pursuant to NVRPA's vegetation management plan until final bond release. Failed attempts,

if any, to obtain the necessary permission shall be documented in writing to the DPWES and the Providence District Supervisor prior to the issuance of the first Building Permit for approved units and, if permission is not granted, the funds equal to the value of this landscaping shall be donated to NVRPA. If permission has been granted to the Applicant to install the landscaping, the landscaping shall be installed prior to the release of the final subdivision bonds

14. Easement on Landscape Buffer. Prior to the time of issuance of the first Residential Use Permit (RUP) and in a form acceptable to the County Attorney and NVRPA, the Applicant shall record an easement over the open space areas generally adjacent to W&OD Trail which shall prohibit the removal of existing vegetation (with the exception of invasive non-native vegetation), and those trees installed pursuant to these proffers, without prior approval by the UFM. The easement shall prohibit the construction of any new structures or fencing except for the utility and trail connections shown on Sheet 3 of CDP/FDP. Utilities and trail connections shall be installed in the least disruptive manner to the existing and proposed vegetation and shall be subject to approval by NVRPA and UFM. The limits of this easement are shown on Sheet 3 of the CDP/FDP. The requirements of this proffer shall be disclosed in the HOA documents. To the extent permitted by law, NVRPA shall be a beneficiary of the easement in the form required by the proffers. If it is determined that NVRPA cannot lawfully be a beneficiary, the easement shall still be conveyed to an appropriate lawful beneficiary that may include the County or another public or non-profit entity.

15. Stream Buffer. The Applicant shall provide a 50-foot buffer on both sides of the centerline of the intermittent stream bed for a total of 100-feet across the stream beginning south of the pond outfall and continuing south to the point where the stream exits the Property as depicted on Sheet 3 of CDP/FDP. Within this buffer, the Applicant may only

demolish existing structures as described in Proffer #25 "Demolition of Existing Structures," reforest the areas where structures are removed as described in Proffer #27 "Reforestation Plan," and make downstream improvements as described in Proffer #33 "Stormwater Management." The HOA common property beyond the stream conservation easement shall be preserved and maintained as a tree save and buffer area. Any work within the 50 foot buffer to remove dead and dying trees and invasive vines shall be first approved by UFM, DPWES.

16. Easement on Stream Buffer. Prior to the time of issuance of the first RUP and in a form acceptable to the County Attorney, the Applicant shall record an easement on the 100-foot wide stream buffer described in Proffer# 15 "Stream Buffer" which shall prohibit disturbance within the stream buffer except as allowed by Proffer #15 "Stream Buffer," Proffer #27 "Reforestation Plan", Proffer #25 "Demolition of Existing Structures", Proffer #30 "Stormwater Management – Dry Pond Landscaping" and Proffer #33 "Stormwater Management"; however, if required by the County or other public agencies or utilities, the easement shall allow for the undergrounding of utilities in the stream buffer in the least disruptive manner to the existing and proposed vegetation, subject to approval by DPWES and the UFM. To the extent such undergrounding of utilities requires the removal of any existing vegetation, equivalent replacement plantings of a type and amount determined by the UFM shall be provided. The limits of this easement are shown on Sheet 3 of the CDP/FDP. Fairfax County shall be the beneficiary of the easement. The requirements of this proffer shall be disclosed in the HOA documents.

17. Sight Distance Improvements on NVRPA Property. The Applicant shall diligently pursue permission from NVRPA to improve the sight distance at the southwest corner of the intersection of Cedar Lane and the W&OD Trail. If permission is granted, the improvement shall be provided and shall consist of, at a minimum, clearing undergrowth at

the corner of the intersection on NVRPA property. If after clearing the undergrowth and in consultation with NVRPA and the Providence District Supervisor, the improvement to the sight distance is not sufficient as determined by the Providence District Supervisor, NVRPA and the Applicant, then the Applicant may attempt to further improve the sight distance within the NVRPA property and the open space area on the Applicant's Property, as shown on Sheet 3 of the CDP/FDP, by re-grading the NVRPA property and the Applicant's Property. The grading work, subject to Proffers #20 "Tree Preservation Plan", Proffer #21 "Protection of Existing Understory Vegetation and Soil Conditions in Tree Preservation Areas", Proffer #22 Tree Preservation Walk-Through", Proffer #23 (B) "Tree Protection Fencing", Proffer #24 "Root Pruning", Proffer #26 "Site Monitoring", Proffer #27 "Reforestation Plan" and Proffer #28 "Tree Value Determination", will require permission from NVRPA, UFM and DPWES prior to commencement of grading. The grading will be completed prior to the issuance of the first RUP or at some other mutually agreeable time determined by the County and the Applicant.

18. Features on NVRPA Property along Washington & Old Dominion Trail.

Applicant shall diligently pursue obtaining permission from the NVRPA to install and will install, if permitted, the following features along the W&OD Trail , as shown on Sheet 10 of the CDP/FDP: (a) drinking fountain in the general vicinity of the intersection of Cedar Lane and the W&OD Trail; (b) an interpretative panel which will describe the history of the Wedderburn rail stop; and, (c) a \$5,000 contribution to NVRPA for trail amenities, to include but not be limited to, benches or similar features to be located on the W&OD Trail within the Providence District at NVRPA's and the Providence District Supervisor's discretion. Failed attempts to obtain the necessary permission for the proffered features shall be documented in writing to the DPWES and the Providence District Supervisor prior to the issuance of the first Building Permit of the approved units. If permission is not granted for the drinking fountain

or interpretative panel improvements, funds equal to the value of each improvement but not to exceed a total of \$2,000, shall be donated to NVRPA prior to bond release.

19. Connector Trail Design and Installation. In order to minimize site disturbance, the Connector Trail as shown on Sheet 3 of CDP/FDP shall be field located in consultation with UFM, DPWES, prior to first submission of the subdivision plan, beginning at the corner of Lockett Avenue and Wedderburn Lane, traversing in a northwesterly direction along the western edge of the stormwater facility, across the cul de sac, and terminating at the W&OD Trail. The trail shall be shown on the subdivision plan within the limits of clearing and grading reflecting the minimum amount required for access and construction. Additional features to be installed with the Trail are:

- As shown on sheet 10 of the CDP/FDP, two (2) dog waste receptacles to be located on the Property in the vicinity of the entrances to the Trail: At the corner of Lockett Avenue and Wedderburn Lane; and, where the Trail connects to the NVRPA property. The HOA shall be responsible for refuse disposal.
- Signs noting that the Trail is accessible to the public shall be posted on the Property in the vicinity of the corner of Lockett Avenue and Wedderburn Lane and where the Trail connects to the NVRPA property.
- The requirements of this proffer shall be disclosed in the HOA documents.

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 shall be subject to the review and approval of UFM, DPWES.

- The tree preservation plan shall consist of tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees 10 inches in diameter and greater, and 25 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 any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

21. Protection of Existing Understory Vegetation and Soil Conditions in Tree

Preservation Areas.

- All tree preservation-related work occurring in or adjacent to tree preservation areas shall be accomplished in a manner that minimizes damage to vegetation to be preserved, including any woody, herbaceous or vine plant species that occurs in the lower canopy environment, and to the existing top soil and leaf litter layers that

provide nourishment and protection to that vegetation. Removal of any vegetation, if any, or soil disturbance in tree preservation areas, including the removal of plant species that may be perceived as noxious or invasive, such as poison ivy, greenbrier, multi-floral rose, etc. shall be subject to the review and approval of UFM, DPWES.

The use of equipment in tree preservation areas will be limited to hand-operated equipment such as chainsaw, wheel barrows, rake and shovels. Any work that requires the use of equipment, such as tree transplanting spades, skid loaders, tractors, trucks, stump-grinders, etc., or any accessory or attachment connected to this type of equipment shall not occur unless pre-approved by UFM, DPWES.

22. 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 walk-through meeting. During the tree-preservation walk-through meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with an UFM, DPWES, representative to determine where adjustments to the clearing limits can be made to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustment shall be implemented. Trees that are identified specifically by UFM in writing as dead or dying may be removed as part of the clearing operation. Any tree that is so designated shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. 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 and associated understory vegetation and soil conditions. Applicant shall notify Providence District Supervisor ten (10) days in advance of the tree preservation walk through meeting. At the

discretion and direction of the Providence District Supervisor, the adjacent and abutting property owners shall be notified by United States Mail no later than five (5) days in advance of the walk-through meeting and invited to the meeting to discuss the limits of clearing and grading.

23. (A) Limits of Clearing and Grading. The Applicant shall conform strictly to the limits of clearing and grading as shown on the CDP/FDP, subject to allowances specified in these proffered conditions and for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. If it is determined necessary to install utilities and/or trails in areas protected by 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 UFM, DPWES. A replanting plan shall be developed and implemented, subject to approval by UFM, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.

23. (B) Tree Protection Fencing. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading as shown on the demolition, and phase I & II erosion and sediment control sheets, as may be modified by Proffer #24 "Root Pruning" below. All tree protection fencing shall be installed after the tree preservation walk-through meeting described in Proffer #22 but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist and UFM, and accomplished in a

manner that does not harm existing vegetation that is to be preserved. Ten (10) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFM, DPWES and the Providence District Supervisor shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by UFM, DPWES. At the discretion and direction of the Providence District Supervisor, the adjacent and abutting property owners shall be notified by United States Mail no later than five (5) days prior to the commencement of any clearing, grading or demolition activities and invited to a meeting with the Providence District Supervisor to inspect the site to ensure that all tree protection devices have been correctly installed.

24. Root Pruning. The Applicant shall root prune, as needed to comply with the tree preservation requirements of these proffers. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by UFM, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
- Root pruning shall take place prior to any clearing and grading, or demolition of structures.
- Root pruning shall be conducted with the supervision of a certified arborist.

- An UFM, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.

25. Demolition of Existing Structures. The demolition of all existing features and structures within areas protected by the limits of clearing and grading areas shown on Sheet 3 of the CDP/FDP shall be done by hand without heavy equipment and conducted in a manner that does not impact individual trees and/or groups of trees that are to be preserved as reviewed and approved by UFM, DPWES.

26. Site Monitoring. During any clearing or tree/vegetation/structure removal on the Applicant 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 UFM. The Applicant shall retain the services of a certified arborist or landscape architect to monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with all tree preservation proffers, and UFM approvals. The monitoring schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by UFM, DPWES. The Providence District Supervisor shall be notified of the name and contact information of the Applicant's representative responsible for site monitoring at the tree preservation walk-through meeting described in Proffer #22 "Tree Preservation Walk-Through."

27. Reforestation Plan. A reforestation plan shall be submitted for: areas where structures were removed as described in Proffer # 25 "Demolition of Existing Structures;" areas disturbed by pipe installation as shown on the Sheets 3 and 11 CDP/FDP; are as disturbed for the undergrounding of utilities and that area surrounding the stormwater management pond; the southwest boundary of the Property currently not forested and specified areas of the intermittent stream identified for replanting on the CDP/FDP. This Plan

shall be submitted concurrently with the first and all subsequent subdivision plan submissions for review and approval by UFM, DPWES, and shall be implemented as approved. The plan shall propose an appropriate selection of species based on existing and proposed site conditions to restore the area to a native forest cover type. The reforestation plan shall include but not be limited to the following:

- Plant list detailing species, sizes and stock type of trees and other vegetation to be planted;
- Soil treatments if necessary;
- Mulching specifications;
- Methods of installation;
- Maintenance;
- Mortality threshold;
- Monitoring; and
- Replacement schedule.

28. Tree Value Determination. The Applicant shall retain a professional arborist with experience in plant appraisal, to determine the replacement value of all trees 10 inches in diameter or greater located within 25 feet of the outer edge of the limits of clearing and grading as shown on Sheet 3 of the CDP/FDP and shown on the Tree Preservation Plan. These trees and their value shall be identified on the Tree Preservation Plan at the time of the first submission of the Subdivision Plan. The replacement value shall take into consideration the age, size and condition of these trees and shall be determined by the so-called "Trunk Value Method" contained in the latest edition of the Guide for Plan Appraisal published by the International Society of Arboriculture, subject to review and approval by UFM, DPWES.

29. Tree Bonds. At the time of subdivision plan approval, the Applicant shall both post a cash bond and a letter of credit payable to the County of Fairfax to ensure preservation and/or replacement of the trees for which a tree value has been determined in accordance with Proffer #28 (herein the "bonded trees") that die or are dying due to unauthorized construction activities. The letter of credit shall be equal to 50% of the replacement value of the bonded trees. The cash bond shall consist of 33% of the amount of the letter of credit.

At any time prior to final bond release, should any bonded trees die, be removed, or are determined to be dying by UFM due to unauthorized construction activities, the Applicant shall replace such trees at its expense. The replacement trees shall be of equivalent size, species and/or canopy cover as approved by UFM. In addition to this replacement obligation, the Applicant shall also make a payment equal to the value of any bonded tree that is dead or dying or improperly removed due to unauthorized activity. This payment shall be determined based on the Trunk Value Method and paid to a fund established by the County for furtherance of tree preservation objectives. At the time of approval of the final RUP, the Applicant shall be entitled to request a release of any monies remaining in the cash bond and a reduction in the letter of credit to an amount up to 20% of the total amounts originally committed.

Any funds remaining in the letter of credit or cash bond will be released two years from the date of release of the Applicant's property's conservation escrow, or sooner, if approved by UFM, DPWES.

30. Stormwater Management – Dry Pond Facility Landscaping. In order to restore a natural appearance to the proposed stormwater management pond, as described in Proffer #33 "Stormwater Management" and as shown on Sheets 5-8 of the CDP/FDP, a landscape plan shall be submitted as part of the first submission of the subdivision plan and

all subsequent revisions to the subdivision plan. The plan shall show the restrictive planting easement for the pond, and landscaping in all areas outside of that restrictive planting easement as shown on sheets 5-8 of the CDP/FDP to the maximum extent feasible as permitted by Fairfax County. The HOA is responsible for the maintenance of pond landscaping.

31. Native Plant Species Removal. To facilitate an opportunity to rescue native plant species before the initiation of land disturbing activity on the Property, the Applicant shall allow *Earth Sangha and Land and Waters* or other similar not-for-profit organization, whose purpose is to rescue and preserve native plant species, to remove native plant species outside of the tree preservation areas as shown on the CDP/FDP. After approval of the rezoning, the Applicant shall mark the general area of the tree save areas and shall notify the Providence District Supervisor's office, and *Earth Sangha and Land and Waters* or other similar organization twice; at time of the first and second subdivision plan submissions. Except for the conditions identified herein, the implementation of this proffer shall in no way interfere with the land development process or construction schedule after approval of this rezoning. This proffer shall not interfere with the tree preservation plan and reforestation plan as described in Proffer #20 and #27. *Earth Sangha and Land and Waters*, or any other not-for-profit organization, or any of their agents, shall hold harmless the Applicants and Property Owners from any loss, cost or liability resulting from or related to their entry upon the Property and removal or transplantation of any plant material therefrom.

IV. RECREATION

32. Park Authority Contributions. The Applicant shall contribute \$955 per new single family dwelling unit for park purposes and/or facilities in the area to the Fairfax

County Park Authority prior to the issuance of the first Residential Use Permit (RUP) of the approved units.

V. ENVIRONMENTAL

33. Stormwater Management. The Applicant shall provide Stormwater Management and Best Management Practices (BMP) measures in accordance with the Public Facilities Manual (PFM), as determined by DPWES. The Applicant shall provide a stormwater management and BMP facility as an enhanced dry pond with wetland vegetation as shown and described on Sheets 5 - 8 of the CDP/FDP, to satisfy detention and water quality requirements in accordance with the requirements of the PFM, DPWES, and Chapter 118 of the Fairfax County Code (the Chesapeake Bay Preservation Ordinance). The Applicant shall make downstream improvements to reduce erosion along the stream banks between the dry pond outfall and Aponi Road to the satisfaction of the Land Development Services section of DPWES.

34. Clean Water Act. Applicant shall comply with the requirements of Section 404 of the Clean Water Act.

35. Erosion/Sedimentation. The functioning and integrity of all erosion and sedimentation controls (e & s controls) required by DPWES shall be inspected, by the Applicant or their designated representative, no later than the next business day following each storm event during the period of construction on site. If the e & s controls have been damaged or breached, the e & s controls shall be repaired in accordance with the requirements of the Fairfax County, Virginia Public Facilities Manual.

36. Geotechnical Investigation. If required by DPWES, the Applicant shall submit a geotechnical investigation of the site and implement such measures as determined by the investigation, subject to the satisfaction of DPWES.

37. Capped Wells. Existing wells on the site shall be identified, capped, and abandoned subject to review and approval by the Health Department, prior to the demolition of existing structures on the Property.

38. Noise Mitigation. Polysonics Corp., an Independent third party consultant, has prepared a noise analysis, dated April 12, 2004, to determine the impact of traffic noise upon the proposed development and recommends measures, including fencing, to mitigate traffic noise. The design of the fence shall be as shown on Sheet 10 of the CDP/FDP, and the fence shall be located on Lots #4, 5 and 23 along the side yards, not to encroach into the front yards as shown on sheet 3 of CDP/FDP. All sound attenuation fences or walls shall not have any gaps or openings, and shall be constructed only with materials indicated on the CDP/FDP. The fence shall be installed on Lots #4, 5 and 23 prior to RUP issuance for each individual lot.

VI. AFFORDABLE HOUSING

39. Affordable Housing. At the time of building permit issuance, a contribution shall be made to the Fairfax County Housing Trust Fund of 0.5% of the projected price of each new single family dwelling actually constructed. The amount of said contribution shall be determined by the Department of Housing and Community Development.

VII. ARCHITECTURE/DESIGN

40. Architecture. The final architecture and design of the approved units shall be of a size, general architectural style and type, and proportion of materials and design elements that are consistent with the illustrated architectural renderings as shown on Sheet 9 of the CDP/FDP and as determined by DPWES. When Lot #24 is redeveloped with a single-family dwelling unit, the architecture of the new dwelling shall be of a size, general architectural style and type, and proportion of materials and design elements that are consistent with the illustrated architectural renderings as shown on Sheet 9 of the CDP/FDP

and as determined by DPWES. Where siding is used on the approved units, it shall be cementitious siding or an equivalent material. The predominant building material for the sides and rears of Lots 1, 4, 5, 14-21 and 23 shall be masonry (brick and/or stone) or shall correspond to the predominant material of the front elevation of those units. These requirements shall be disclosed in the HOA documents.

41. Building Height for Dwellings along the Washington and Old Dominion Trail. The Applicant shall limit the height of the rear elevations of the dwellings on Lots 14-21 to thirty-two (32) feet. For the purpose of this Proffer, building Height is defined as the vertical distance from the average finished grade along the entire length of the rear elevation to the mid-point between the rear elevation eaves and the ridge line. The requirements of this proffer shall be disclosed in the HOA documents.

42. Walk-out Basements. The dwellings on Lots #14-21 shall not include full walk-out basements. Areaway access from the basements required by the applicable building codes is permitted. The requirements of this proffer shall be disclosed in the HOA documents.

43. Elevated Decks. The dwellings on Lots #14-21 shall not include rear decks which are elevated more than four (4) feet above the average finished grade at the rear elevation of the dwelling. The requirements of this proffer shall be disclosed in the HOA documents.

44. High Speed Internet Access. All dwellings shall be pre-wired with broadband, high capacity data/network connections in addition to standard phone lines.

45. Garage Conversion. Any conversion of garages that will preclude the parking of vehicles within the garage is prohibited. A covenant setting forth this restriction shall be recorded among the land records of Fairfax County in a form approved by the County Attorney prior to the sale of any lots and shall run to the benefit of the HOA and the Board of

Supervisors. This restriction shall also be disclosed in the HOA documents. Prospective purchasers shall be advised of this use restriction, in writing, prior to entering into a contract of sale.

46. Length of Driveways. All driveways serving the approved residential units shall be a minimum of 18 feet in length from the edge of the sidewalk nearest the dwelling to the face of the garage door.

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

VIII. MISCELLANEOUS

48. Ride-Sharing Information. Information regarding the County's Ride-Sharing program shall be distributed once per year by the HOA to members of the HOA. The requirements of this proffer shall be disclosed in the HOA documents.

49. Historic Data. Subject to the review and approval of the Department of Planning and Zoning and prior to the issuance of a demolition permit by DPWES to allow the removal of the existing structures on the site, the "Historical Narrative" portion of the study prepared by History Matters, dated March 2003, shall be expanded to include a description of the history of the remaining single-family 20th century cottages located on the site, including exterior photographic documentation of the facades of the cottages.

50. Establishment of HOA. Prior to record plat approval, the Applicant shall establish a HOA and demonstrate that the Property, with the exception of Lot #24 unless and until it redevelops with a new single family dwelling, will be governed by one HOA for the proposed development and subject to a Declaration of Covenants, Conditions and Restrictions consistent with the requirements of Article 2 of the Zoning Ordinance. The Declaration of Covenants, Conditions and Restrictions shall include language that recognizes

that Lot #24 will be governed by the HOA covenants, conditions and restrictions when it develops with a new single family dwelling. When Lot #24 is redeveloped, it shall become subject to the Declaration of Covenants, Conditions and Restrictions consistent with the requirements of Article 2 of the Zoning Ordinance.

51. Dedication to HOA. In conjunction with the appropriate subdivision review processes, sidewalks/trails, and common areas and amenities not otherwise conveyed or dedicated to the County and/or VDOT (i.e. ROW shown as to be dedicated for public streets) shall be dedicated to the HOA and maintained by the same with such maintenance to include the tree preservation obligations of these proffered conditions. The HOA documents shall incorporate and disclose the tree maintenance and preservation obligations of those proffered conditions.

52. Signs. No temporary signs (including "popsicle" 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 of dwellings on the Subject Property. Furthermore, the Applicant shall direct its agents and employees involved in marketing and sale of residential units on the Subject Property to adhere to this proffer.

53. School Contributions. A contribution of \$3,548.00 per new single family dwelling unit shall be made to the Board of Supervisors designated for capital equipment for schools impacted by the proposed development. The required contribution shall be made at the time of, or prior to, issuance of the first Building Permit.

54. Street lighting. Street light fixtures shall be provided if required by DPWES per Article 14, Section 14-900.

55. Construction Hours and Traffic. The hours of initial construction shall be posted in English and in Spanish and shall be limited to the hours between 7:00 a.m. and 7:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. on Saturdays. No construction will occur on Sundays or Federal Holidays.

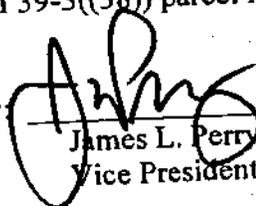
56. Construction Traffic. Construction traffic shall be directed by temporary "Haul Route" signage installed along Cedar Lane in the public ROW from Cedar Lane onto the Property. The property shall be posted with signs in English and in Spanish prohibiting truck traffic on Wedderburn Lane, Luckett and Redwood Avenues.

57. Notification. Copies of the subdivision plan and revisions thereto shall be sent to the office of the Providence District Supervisor and the Providence District Planning Commissioner for review and comments concurrent with the submission of the same to Fairfax County.

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

ELM STREET DEVELOPMENT, INC.
(Contract Purchaser of TM 39-3((1)) parcels 15,
16, 17, 18, 18-A, 18-B, 18-C, 18-D, 18-E
TM 39-3((38)) parcel A)

By



James L. Perry
Vice President

HEIRS OF NINA E. NIELSEN
(Title Owner of Tax Map No. 39-3-((1))-32)

By: Lawrence A. Nielsen, Attorney-in-fact on behalf of Chris E. Nielsen, Executor
Chris E. Nielsen, Executor, Beneficiary
By: Lawrence A. Nielsen,
Attorney-in-Fact on behalf and Beneficiary
of Chris E. Nielsen, Executor and Beneficiary
Executor and Beneficiary

HEIRS OF NINA E. NIELSEN
(Title Owner of Tax Map No. 39-3-((1))-32)

By: Lawrence A. Nielsen, Beneficiary
Lawrence A. Nielsen
Beneficiary

HEIRS OF NINA E. NIELSEN
(Title Owner of Tax Map No. 39-3-((1))-32)

By: Andres H. Nielsen, Jr., Beneficiary
Andres H. Nielsen, Jr.
Beneficiary

HEIRS OF NINA E. NIELSEN
(Title Owner of Tax Map No. 39-3-((1))-32)

By: *Lawrence A. Nielsen, Attorney-in-fact on behalf of*
Julia Lee Johnson, Beneficiary ~~*Beneficiary*~~
Julia Lee Johnson
Beneficiary

By: Lawrence A. Nielsen,
Attorney-in-Fact on behalf of
Julia Lee Johnson, Beneficiary

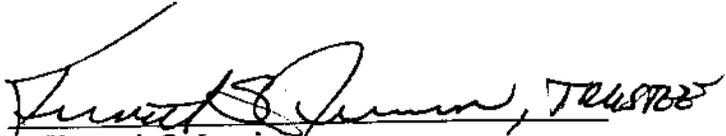
JCE, INC.
(Contract Purchaser of Tax Map No. 39-3-((1))-32,
33-A, 33-C)

By: John E. Cowles
John E. Cowles
President

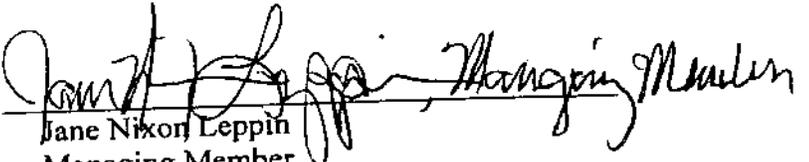
John E. Cowles, Trustee f/b/o
COURTLAND AT WEDDERBURN, L.C.
(Title Owner of Tax Map Nos.
39-3-((1))-33-A (portion), 33-B)

By: John E. Cowles, Trustee
John E. Cowles
Trustee

Kenneth S. Jennings, Trustee f/b/o
CEDAR LANE PARTNERSHIP
(Title Owner of Tax Map No. 39-3-((1))-33-A)

By: 
Kenneth S. Jennings
Trustee

WEDDERBURN PROPERTIES, L.L.C.
(Title Owner of Tax Map Nos.
39-3-((1))-15, 16, 17, 18, 18-C, 18-E,
39-3-((38))-A)

By: 
Jane Nixon Leppin
Managing Member

WEDDERBURN PROPERTIES, L.L.C.
(Title Owner of Tax Map Nos.
39-3-((1))-15, 16, 17, 18, 18-C, 18-E,
39-3-((38))-A)

By: Nan F. Nixon
Nan F. Nixon
Managing Member

WEDDERBURN PROPERTIES, L.L.C.
(Title Owner of Tax Map Nos.
39-3-((1))-15, 16, 17, 18, 18-C, 18-E,
39-3-((38))-A)

By: *Eloise Nixon Jones*
Eloise Nixon Jones
Member

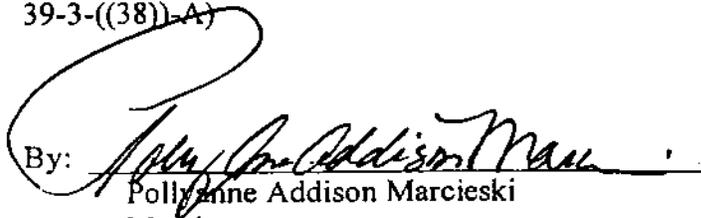
WEDDERBURN PROPERTIES, L.L.C.

(Title Owner of Tax Map Nos.

39-3-((1))-15, 16, 17, 18, 18-C, 18-E,

39-3-((38))-A)

By:

A handwritten signature in black ink, appearing to read "Pollyanne Addison Marcieski". The signature is written in a cursive style and is positioned above the printed name and title.

Pollyanne Addison Marcieski
Member

JANE NIXON LEPPIN
(Title Owner of Tax Map Nos.
39-3-((1))-18-A, 18-B, 18-D)

By:  _____
Jane Nixon Leppin

WALTER E. LEPPIN
(Title Owner of Tax Map Nos.
39-3-((1))-18-A, 18-B, 18-D)

By: Walter E. Leppin
Walter E. Leppin

PETER A. KNECHT TRUST
(Title Owner of Tax Map No. 39-3-((1))-33-C)

By: Peter A. Knecht

Peter A. Knecht
Trustee, Beneficiary

Trustee, Beneficiary

SUSAN D.F. KNECHT TRUST
(Title Owner of Tax Map No. 39-3-((1))-33-C)

By: *Susan D. Knecht*
Susan D.F. Knecht
Trustee, Beneficiary *Trustee*
Beneficiary