

## PROFFERS

RZ 2006-LE-018  
FLEET DRIVE, LLC

April 10, 2007

Pursuant to Section 15.2-2303A. of the 1950 Code of Virginia, as amended, the undersigned applicant and owners, for themselves and their successors or assigns (hereinafter referred to as "Applicant"), hereby proffer the following conditions provided the Subject Property is rezoned as proffered herein.

1. **Generalized Development Plan.** Development of the property shall be in substantial conformance with the plan entitled "Generalized Development Plan Beulah Fleet" ("GDP"), prepared by Charles P. Johnson & Associates, Inc. (Sheets 1 through 9), revised as of March 20, 2007.
2. **Energy Efficiency.** All homes constructed on the property shall meet the thermal standards of the CABO Model Energy Program for energy efficient homes, or its equivalent, as determined by the Department of Public Works and Environmental Services ("DPWES") for either electric or gas energy homes, as applicable.
3. **Recreational Facilities.** At the time of site plan approval, the Applicant shall contribute the sum of \$955 per approved dwelling unit for the total number of dwelling units on the approved site plan, to the Fairfax County Park Authority for recreational facilities at the nearby Manchester Lakes Public Park as determined by the Park Authority, subject, however, to a credit for expenditures on-site for a gazebo, benches and a sidewalk within the open space area depicted on the GDP.
4. **Road Dedication/Construction.** At the time of subdivision plat approval, or upon demand by Fairfax County, whichever occurs first, right-of-way up to forty-five feet (45') from centerline along the Fleet Drive road frontage, necessary for public street purposes and as shown on the GDP, shall be dedicated and conveyed to the Board of Supervisors in fee simple. The Applicant shall also construct road widening, with curb gutter and sidewalk thirty-five feet (35') from centerline along the Fleet Drive frontage of the Subject Property plus a taper as shown on the GDP.
5. **Stormwater Management Pond Landscaping.** Subject to DPWES approval, the Applicant shall provide an extended detention stormwater management pond on the Property. In order to restore a natural appearance to the proposed stormwater management pond and to plant water-tolerant plants in the bed of the pond, if determined feasible by DPWES, the landscape plan to be submitted as part of the first submission of the site plan shall show the maximum feasible amount of landscaping that will be allowed in the planting areas of the pond, in keeping with the planting policies of Fairfax County.

**6. Homeowners' Association.**

- a. The Applicant shall establish a Homeowners' Association ("HOA") for the proposed development to own, manage and maintain the open space areas, private streets, common parking areas, and all other community-owned land and improvements.
- b. The HOA shall also maintain the acoustical wall shown on the GDP. In cases where the wall is installed on a lot, the conveyance of that lot shall be subject to an easement to the benefit of the HOA permitting the HOA access to maintain the acoustic wall on that lot. This easement shall be a covenant running with the land and recorded in the County's land records. The HOA documents shall disclose these maintenance responsibilities.
- c. The Applicant shall deposit the sum of \$10,000 into a maintenance account that will be available for utilization by the HOA for street maintenance after the Applicant turns over control of the HOA to the homeowners.
- d. At such time as the Applicant is prepared to turn over full control of the HOA to the homeowners, the Applicant shall host a meeting with the HOA board and invite representatives of the Franconia Commons Board of Directors to attend. The purpose of the meeting will be to allow the HOA to determine whether it would be advantageous or desirable for the residents of the subject property to participate in the use and maintenance of the common facilities within Franconia Commons, if Franconia Commons is amenable to such participation. However, the final determination shall be made solely by the HOA for the subject property.
- e. In the event that tax map 91-1 (5) Parcel 7 redevelops as a single family attached development, the Applicant shall host a meeting with the HOA board and invite representatives of the Parcel 7 single family attached development to attend. The purpose of the meeting will be to allow the HOA to determine whether it would be advantageous or desirable for the residents of the subject property to allow the residents of the Parcel 7 single family attached development to join the HOA, if the Parcel 7 developer or residents are amenable to such participation. However, the final determination shall be made solely by the HOA for the subject property.

- 7. Private Streets.** The on-site private streets shall be constructed in conformance with the Public Facilities Manual ("PFM"). Said streets shall be constructed of materials and depth of pavement consistent with the PFM for public streets. Initial purchasers shall be advised in writing, prior to entering into a contract of sale, that the HOA shall be responsible for the maintenance of all the private

streets in the development. The HOA documents shall specify that the HOA is responsible for the maintenance of the private streets.

8. **Affordable Housing Contribution.** Prior to the issuance of the first building permit, the Applicant shall contribute to the Fairfax County Housing Trust Fund a sum equal to one half of one percent (.5%) of the aggregate sales price of all the units subject to the contribution as if all of those units were sold at the time of the issuance of the first building permit and as estimated through comparable sales of similar type units, as determined by the Department of Housing and Community Development and DPWES in consultation with the Applicant to assist the County in its goal to provide affordable dwellings elsewhere in the County.
9. **Density.** All density and intensity of use attributable to land areas dedicated and conveyed to the Board of Supervisors pursuant to these proffers shall be subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance and density is hereby reserved to be applied to the residue of the Subject Property.
10. **Tree Preservation.**
  - a. **Tree Preservation Plan.** The Applicant shall submit a tree preservation plan as part of the first and all subsequent subdivision plan submissions. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and reviewed and approved by the Urban Forestry Management ("UFM"), DPWES. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown radius and condition rating percentage of all trees ten inches (10") in diameter or greater, and located within twenty feet (20') to either side of the limits of clearing and grading shown on the GDP for the entire site. The tree preservation plan shall provide for the preservation of those areas shown on the tree preservation plan. The condition 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, soil treatments, mulching, fertilization and others as necessary, shall be included in the plan.
  - b. **Tree Value Determination.** The Applicant shall retain a professional arborist with experience in plant appraisal, such as a certified arborist or landscape architect, to determine the replacement value of all trees ten inches (10") in diameter or greater and located within twenty feet (20') of the outer edge of the limits of clearing and grading (i.e. outside the limits of clearing and grading) as shown on the GDP which are identified to be preserved 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 Site Plan. The replacement value shall take into consideration the age, size and condition of these trees and shall be determined by the "Trunk Formula 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.

- c. **Tree Bond.** In order to provide a remedy for any unintended disruption to trees required to be preserved under these proffers, at the time of bond approval, the Applicant shall both post a cash bond and a letter of credit or similar corporate surety 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 the previous proffer (hereinafter the "bonded trees") that die or are dying due solely to unauthorized construction activities. The Applicant shall have no obligation for trees that die or are dying for reasons unrelated to unauthorized construction activities, or for no apparent reason. The letter of credit shall be equal to fifty percent (50%) of the replacement value of the bonded trees. The cash bond shall consist of thirty three percent (33%) of the amount of the letter of credit.

During the time period in which the Tree Bond is required to be held, should unauthorized construction activity cause any bonded trees to die, or be removed, the Applicant shall replace such trees at its expense. As stated above, the Applicant shall have no obligation to replace trees that die or are dying for causes unrelated to unauthorized construction activities. The replacement trees shall be of equivalent size, species and/or canopy cover as approved by UFM and shall incorporate native plant species. 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 valuation methodology described in Proffer 10.b. above (the Trunk Formula Method) and paid to a fund established by the County for furtherance of tree preservation objectives. Upon release of the site performance bond for the site, any amount remaining in the tree bond required by this proffer shall be returned/released to the Applicant. At the time of approval of the final RUP, the Applicant may request a release of any monies remaining in the cash bond and a reduction in the letter of credit to an amount up to twenty percent (20%) of the total amounts originally committed provided they are in good standing with the tree proffer commitments. Any funds remaining in the letter of credit or cash bond will be released concurrently with the site performance bond release, or sooner, if approved by UFM.

- d. **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 in the lower canopy environment, and to the existing top soil and leaf litter layers that provide nourishment and protection to that vegetation. Any removal of any vegetation 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.

- e. **Use of Equipment.** Except as qualified herein, the use of motorized equipment in tree preservation areas will be limited to hand-operated equipment such as chainsaws, wheel barrows, rakes and shovels. Any work that requires the use of motorized 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.
- f. **Root Pruning and Mulching.** The Applicant shall 1) root prune, 2) mulch, and 3) provide tree protection fencing in the form of four foot (4') high, fourteen (14) gauge welded wire attached to six foot (6') steel posts driven eighteen inches (18") into the ground and placed no further than ten feet (10') apart, or other forms of tree protection fencing approved by UFM, DPWES for all tree preservation relevant areas. All treatments shall be clearly identified, labeled and detailed on the erosion and sediment control sheets and demolition plan sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by UFM, 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, vibratory plow to a depth of eighteen inches (18").
  - 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.
  - Tree protection fencing shall be installed immediately after root pruning, and shall be positioned directly in the root pruning trench and backfilled for stability, or just outside the trench within the disturbed area.
  - Immediately after the Phase II Erosion and Sedimentation activities are complete, mulch shall be applied at a depth of four

inches (4") extending ten feet (10') inside the undisturbed area without the use of motorized equipment.

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

- g. **Tree Preservation Walk-Through.** The Applicant shall retain the services of a certified arborist or landscape architect, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the pre-construction meeting. Before or during the pre-construction meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with a UFM representative and a representative from the Lee District Land Use Advisory Committee to determine where adjustments to the clearing limits can be made to increase the area of tree preservation; increase the survivability of trees at the edge of the limits of clearing and grading; facilitate the removal of trees adjacent to the limits of clearing and grading; facilitate tree preservation activities such as root pruning or fencing; or facilitate the installation of erosion and sediment control devices. 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 but it is noted that unless a dead or dying tree presents a safety hazard, attempts will be made to retain the tree. The dead or dying tree may be topped in order to be retained if that eliminates the problem of a safety hazard. 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 the adjacent trees and associated understory vegetation and soil conditions.
- h. **Tree Protection Fencing.** All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fencing as proffered above. Tree protection fencing shall be installed prior to any clearing and grading activities including the demolition of any existing structures at the limits of clearing and grading as shown on the demolition, and Phase I and II erosion and sediment control sheets, as may be modified during the tree preservation walk-through with a UFM representative. All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. 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. Five (5) working days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices including fencing, UFM and Lee District

Supervisor staff shall be notified and given the opportunity to inspect the site to assure 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.

- i. **Site Monitoring.** During any clearing or tree/vegetation/structure removal, 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 inspection/monitoring schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by UFM, DPWES. The Lee 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.

11. **Noise Attenuation.** With reference to Beulah Street, the Applicant shall provide the following noise attenuation measures:

- a. In order to achieve a maximum interior noise level of approximately 45 dBA Ldn, the Applicant proffers that all residential units located between 82 feet and 148 feet from the centerline of Beulah Street, impacted by highway noise having levels between 65 and 70 dBA Ldn as depicted on the GDP, shall have the following acoustical attributes:
  - (1) Exterior walls shall have a laboratory sound transmission class ("STC") of at least 39.
  - (2) Doors and glazing shall have a laboratory STC of at least 28. If glazing constitutes more than twenty percent (20%) of any facade, they shall have the same laboratory STC rating as walls.
  - (3) Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.
- b. In order to achieve a maximum interior noise level of approximately 45 dBA Ldn, the Applicant proffers that all residential units located within 82 feet from the centerline of Beulah Street, impacted by highway noise having levels between 70 and 75 dBA Ldn as depicted on the GDP, shall have the following acoustical attributes:
  - (1) Exterior walls shall have a laboratory sound transmission class ("STC") of at least 45.

- (2) Doors and glazing shall have a laboratory STC of at least 37. If glazing constitutes more than twenty percent (20%) of any facade, they shall have the same laboratory STC rating as walls.
    - (3) Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.
  - c. A brick acoustic wall shall be constructed in lieu of the wooden barrier shown in the Acoustical Barrier Detail on Sheet 4. In order to achieve a maximum exterior noise level of 65 dBA Ldn, a six (6') to seven foot (7') high brick acoustic wall shall be provided as shown on the GDP for rear yard, ground level areas, unshielded by topography or built structures. Where necessary, utilities or drainage lines may cross under the noise fence or wall. The HOA shall be responsible for the maintenance of the acoustic wall as provided in proffer number 6 hereinabove.
  - d. Prior to site plan approval, the Applicant shall conduct a refined acoustical analysis based upon the final grading of the site to verify or amend the noise levels and impact areas set forth above to revise interior noise attenuation measures as prescribed above and/or to revise exterior noise mitigation in order to determine if the height of the acoustical fencing may be reduced to six feet (6'). The refined acoustical analysis and revisions to noise attenuation measures is subject to the approval of DPWES and the Department of Planning and Zoning. Any refined acoustical analysis shall also be forwarded to the Lee District Planning Commissioner at the time of filing with the County.
12. **School Contribution.** Prior to the issuance of the first building permit, the Applicant shall contribute \$135,000 to the Board of Supervisors ("Board") to be utilized for the provision of capital facilities within the Fairfax County schools serving this development. In the event that the approved final site plan yields less than forty-nine (49) market rate units, this contribution amount shall be reduced proportionately based upon a ratio of forty-nine (49) units to \$135,000.
13. **Landscaping.** Landscaping for the site and landscaping for the individual units shall be in substantial conformance with the landscaping shown on Sheet 3 of 8 of the GDP, subject to minor adjustments approved by UFM.
14. **Architectural Treatment.** The building elevations for the proposed dwelling units shall be generally in character with the illustrative elevations entitled "Ashlawn & Somerset Front Elevations" and "Somerset Rear Elevations & Building Section," prepared by Creaser/O'Brien Architects and dated May 2, 2006, attached hereto as Sheet 9 of 9 of the GDP. Exterior walls shall be constructed with siding, brick, stucco or stone facings, or a combination thereof. Elevated stoops may be provided to main entrances. The rear and sides of the

approved units that are visible from Beulah Street and Fleet Drive (i.e., the sides of units 21, 22, 34 and 35 facing Beulah Street and the rear walls of units 25 through 31 and 35 through 39) shall incorporate the use of shutters or decorative trim and related accent materials on windows on portions of the rear façade that are not visually screened by the noise attenuation wall required by these proffers along Beulah Street (generally the second and third stories). Such shutters, trim or other accent materials shall be complementary in terms of type and color to those items or materials used on other portions of the façade.

15. **Interparcel Access.** As a part of the subdivision plat approval, the Applicant shall convey an access easement allowing interparcel access between the subject property and Tax Map 91-1 ((5)) Parcel 7 over the area so designated on the GDP. Said easement shall be subject to the residents of Parcel 7 paying their pro rata share for the maintenance of the private street on the subject property providing access from Fleet Drive to Parcel 7. In addition, the Applicant shall place a conspicuous sign at this location stating that this area will be the site of future construction of the road extension by others to provide an interparcel connection. All prospective new home purchasers shall be advised of this future extension prior to entering into a contract of sale and notice of the interparcel connection shall also be placed within the HOA documents. The sign shall remain in place until the future road connection is made. The HOA shall maintain the sign in good repair.
16. **Temporary Signage.** No temporary signs (including "popsicle" style paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 or Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on or off-site by the Applicant or at the Applicant's direction to assist in the initial marketing and sale of homes on the subject Property. Furthermore, the Applicant shall direct its agents and employees involved in marketing and/or sale of residential units on the subject Property to adhere to this proffer.
17. **Heritage Resources.** At least thirty (30) days prior to any land disturbing activities on the Property, Applicant shall conduct a Phase I archaeological study on those areas of the Property identified by CRMPS of the Fairfax County Park Authority ("CRMPS") and provide the results of such study for the review and approval of CRMPS. The study shall be conducted by a qualified archaeological professional. No land disturbance activities shall be conducted until this study is approved by CRMPS. If the Phase I study concludes that an additional Phase II study of the Property is warranted, the Applicant shall complete said study and provide the results to CRMPS; however, submission of the Phase II study to CRMPS shall not be a pre-condition of site plan approval. If the Phase II study concludes that additional Phase III evaluation and/or recovery is warranted, the Applicant shall also complete said work in consultation and coordination with CRMPS; however, any such Phase III work shall not be a pre-condition of site plan approval.

18. **Garage Conversion.** A covenant shall be recorded which provides that garages shall not be used for any purpose that will interfere with the parking of vehicles in the garage. The covenant 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, which shall be established, and to Fairfax County. Purchasers shall be advised of the use restriction prior to entering into a contract of sale; this restriction shall also be included in the HOA documents.
19. **Bus Stop.** Prior to subdivision plan approval, the Applicant shall contribute \$5,000 to Fairfax County to be utilized for a bus stop shelter in the general vicinity of the subject property.
20. **Geotechnical Investigation.** Prior to site plan approval, the Applicant shall submit a geotechnical investigation of the site for the review and approval of DPWES and implement such measures as determined by the investigation, subject to the satisfaction of DPWES.
21. **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.

**APPLICANT/CONTRACT PURCHASER OF TAX  
MAP 91-5 ((5)) Parcels 2, 3, 4, 5 and 6; 91-1 ((1))  
Parcels 58, 59A and 59B; Owner of Tax Map 91-1 ((1))  
Parcel 60**

**FLEET DRIVE, LLC**

By: *Ray E. Smith, III, Managing Member*  
Ray E. Smith, III, Managing Member