

PROFFER STATEMENT

11-7 Associates, LLC
RZ 2008-SP-012

Tax Map Parcel 56-2-((1))-66

Revised May 27, 2009

Pursuant to Section 15.2-2303(A) of the Code of Virginia, 1950 as amended, and Section 18-204 of the Zoning Ordinance of the County of Fairfax, Virginia, as amended as of the date hereof ("Zoning Ordinance"), the property owners and the applicant/contract purchaser ("Applicant") in this rezoning, proffer that the development of the parcel under consideration and shown on the Fairfax County Tax Maps as Tax Map Reference 56-2-((1))-66 ("Property") shall be developed in accordance with the conditions set forth below, if and only if, said rezoning request for the C-2 zoning district is granted by the Board of Supervisors of Fairfax County ("Board"). In the event said application is denied or the Board's approval is overturned by a court of competent jurisdiction, these proffers shall be null and void. The property owners and the 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agree that these proffers shall be binding on the future development of the Property, unless modified, waived or rescinded in the future by the Board in accordance with Fairfax County and State statutory procedures. The proffers are as follows:

I. GENERALIZED DEVELOPMENT PLAN.

1. Substantial Conformance. The Property shall be developed in substantial conformance with the Generalized Development Plan, dated May 30, 2008, amended through February 9, 2009, titled "11717 Lee Highway Generalized Development Plan," prepared by Walter L. Phillips Incorporated, which consists of eleven (11) sheets ("GDP"), subject to minor engineering modifications as permitted by the Zoning Ordinance and subject to review and approval by the Department of Public Works and Environmental Services ("DPWES").

2. Minor Modifications. In addition to that described above, pursuant to paragraph 5 of Section 18-204 of the Zoning Ordinance, minor modifications to the GDP and these proffers may be permitted as determined by the Zoning Administrator.

3. Lighting.

(a) Exterior Lighting - All parking lot and sidewalk lighting on the Property shall be in accordance with Part 9 of Article 14 of the Zoning Ordinance, and shall be focused downward and directly on parking/driving areas and sidewalks. All outdoor parking lot and sidewalk lighting (exclusive of security lighting) that is located along the Property's southern and eastern property lines shall be set on timers that shall turn off at approximately 11:00 p.m. The proposed patio located near the northeastern corner of the building, as depicted on the GDP, shall only be lighted by wall packs and shall only be used during daylight hours. The Applicant shall use dark sky friendly luminaires to reduce any light pollution. In addition, along the southern and eastern property lines, these "Gullwing" style light fixtures shall be on poles that do not exceed 15' in height. All building accent lighting shall be directed towards the building surfaces. All lighting for outdoor signage shall be designed to minimize glare. The Applicant shall submit an exterior lighting plan to DPWES at time of site plan review.

(b) Interior Lighting - The Applicant shall minimize the effect of the interior lighting of the building on the residential lots located to the south and east of the Property by a combination of the use of non-glare glass, tinted windows, and motion sensors for the interior lights in the building. The interior lighting system for all exterior facing offices shall have natural light overrides, as well as motions sensors, so that these lights shall turn off during unoccupied hours.

4. Architectural Design. The final architectural design of the building shall be in substantial conformance with the general type, quality and proportion of materials depicted in the illustrative perspectives, elevations and sections shown on the

GDP. More particularly, the building shall incorporate elements that offer its occupants the latest in office amenities, including a state of the art low solar heat gain glass curtain wall system with double and triple glazing to optimize natural light and energy efficiency. In addition, a combination of 'brise-soleil' elements, vertical louvers and shaded and spandrel glass shall be used for the building. The 'brise-soleil' elements, louvers and other storefront elements shall be a silver-grey in color to compliment the different shades of blue of the window glass. The building shall have strong horizontal elements that unify it with the plane of the site and help to keep the building proportional to the adjacent shopping center and other smaller structures that surround it. The silver-grey color of the building shall coordinate with the grey stone of the retaining and privacy walls, as shown on the GDP. The unifying elements on the site shall match the silver-grey color of the building's storefront and other metal systems. The front pylon sign shall sit on a stone base to integrate it into the design of the site.

5. Unifying Elements. All street furniture, including trash receptacles, tables, benches and lamp posts shall be consistent, both in terms of materials and design, throughout the Property and in quality and character with the illustrative examples included on the GDP.
6. Trash. All outdoor trash receptacles shall conform to the standards set forth in the Public Facilities Manual for the screening of such receptacles and shall be located as shown on the GDP. The Applicant shall : (a) provide at least one (1) trash receptacle in the general vicinity of the outdoor seating and patio area, (b) provide for the removal of the trash at least one (1) time per week from this area, and (c) generally clean and clear the outdoor seating and patio area of trash. The Applicant shall arrange for trash pick up from the dumpster one (1) to two (2) times per week and such trash pickups shall occur on weekdays, no earlier than 7 a.m. and no later than 9 p.m.
7. Signage. All signage provided on the Property shall comply with Article 12 of the Zoning Ordinance. Any permanent freestanding signs shall be monument

type and shall be generally located as shown on the GDP. Pole signs shall not be permitted on the Property. No illuminated signs shall be permitted on the façade of the building facing the residential lots on the southern and eastern sides of the Property. All directional signage shall be consistent, both in terms of materials and design with the illustrative example included on the GDP.

8. LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (“LEED”)

CERTIFICATION. (a) The Applicant shall include, as part of the site plan submission and building plan submission, a list of specific credits within the most current version of the U.S. Green Building Council’s Leadership in Energy and Environmental Design-New Construction (LEED®-NC) rating system, or other LEED rating system determined to be applicable to the building by the U.S. Green Building Council (“USGBC”), that the Applicant anticipates attaining. A LEED-accredited professional, who is also a professional engineer or architect licensed to practice in the Commonwealth of Virginia shall provide certification statements at both the time of site plan and the time of building plan review confirming that the items on the list shall meet at least the minimum number of credits necessary to attain LEED Certification of the project.

(b) Prior to site plan approval, the Applicant shall submit documentation to the Environment and Development Review Branch of Department of Planning and Zoning (“DPZ”), regarding the USGBC’s preliminary review of design-oriented credits in the LEED program. This documentation should demonstrate how the building shall attain a sufficient number of design-related credits that, along with the anticipated construction-related credits, shall be sufficient to attain LEED Certification. At the time of site plan approval, the Applicant shall execute a separate agreement and post a “green building escrow” in the form of cash or a letter of credit from a financial institution acceptable to DPWES as defined in the Public Facilities Manual, in the amount of \$197,000.00. This green building escrow shall be in addition to and separate from other bond requirements and shall be released upon demonstration of attainment of LEED Certification, by the USGBC, under the most current version of the LEED-NC rating system or other

LEED rating system determined, by the USGBC, to be applicable to the building. The provision to submit documentation from the USGBC to the Environment and Development Review Branch of DPZ that the building has attained LEED Certification shall be sufficient to satisfy this commitment. Should the Applicant fail to provide documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED Certification within one (1) year of issuance of the first non-RUP for the building, the green building escrow shall be released to Fairfax County and shall be posted to a fund within the Fairfax County budget supporting implementation of its environmental initiatives.

(c) Prior to the approval of the first non-RUP, the Applicant shall provide to the Environment and Development Review Branch of the DPZ, a letter from a LEED[®]-accredited professional certifying that a green building maintenance reference manual has been prepared for use by future building occupants (including tenants of premises to be rented or leased), that this manual has been written by a LEED-accredited professional, that copies of this manual shall be provided to all future building occupants and that this manual, at a minimum: (i) provides a narrative description of each green building component, including a description of the environmental benefits of that component and including information regarding the importance of maintenance and operation in retaining the attributes of a green building; (ii) provides, where applicable, product manufacturer's manuals or other instructions regarding operations and maintenance needs for each green building component, including operational practices that can enhance energy and water conservation; (iii) provides, as applicable, either or both of the following: (y) a maintenance staff notification process for improper functioning equipment; or (z) a list of local service providers that offer regularly scheduled service and maintenance contracts to assure proper performance of green building-related equipment and the structure, to include, where applicable, the HVAC system, water heating equipment, water conservation features, sealants and caulks; and (iv) provides contact information that building occupants can use to obtain further guidance on each green building component. Prior to approval of non-RUPs, the Applicant shall provide an

electronic copy of the manual in pdf format to the Environment and Development Review Branch of the DPZ.

II. TRANSPORTATION/TRAILS.

1. Bicycles. A bicycle parking area shall be provided for the exclusive use of the tenants of the building and their visitors. At a minimum, one (1) bicycle rack with storage sufficient for at least ten (10) bicycles shall be provided.
2. Right-of-Way Dedication. The Applicant shall dedicate and convey to the Board, in fee simple, the land area shown on the GDP (consisting of approximately 13,885 square feet) ("proposed right-of-way") for public street purposes, which includes adequate space for a future on-road bicycle lane. The dedicated land area shall be conveyed subject to all existing easements and other encumbrances. Dedication of such right-of-way area shall be made prior to or concurrent with site plan approval, or upon demand by Fairfax County, whichever occurs first.
3. Lee Highway (Route 29) Improvements. Subject to Virginia Department of Transportation ("VDOT") and DPWES approval, the Applicant shall : (a) construct a service drive which could accommodate two-way traffic within the proposed right-of-way area, in the location as generally shown on the GDP, along the Property's Lee Highway frontage, to extend and connect said service drive to the existing service drive located to the east and west of the Property, (b) construct a ten (10) foot wide trail within the proposed right-of-way area, as generally shown on the GDP, and (c) complete the pedestrian connection between the existing sidewalk on the retail property located to the west of the Property (known as Lee Plaza) to the proposed ten (10) foot wide trail referenced herein (said service drive, sidewalk and trail improvements are collectively referred to as the "Lee Highway Improvements"). The Lee Highway Improvements shall be constructed prior to the issuance of any non-RUP. For purposes of this proffer, "constructed" shall mean open and available for use by the public, but not necessarily accepted by VDOT into the state secondary road system for maintenance. To the extent the final trail location requires approval from any off-site owner and/or governmental agency, the Applicant shall diligently pursue such permission from any applicable owner and/or governmental agency, at no cost to the Applicant, except for typical administrative fees and costs associated with the preparation, approval and recordation of deeds, plan

and plats. If the Applicant is unable to obtain the necessary permission and has demonstrated such to DPWES through the submission of documented attempts to obtain said permission, the Applicant shall escrow the cost for such unconstructed trail improvement with DPWES, in an amount not to exceed \$6,000.00.

4. On-Road Bicycle Lane. In lieu of the construction of an on-road bicycle lane along the Property's Lee Highway frontage, prior to the issuance of the first non-RUP, the Applicant shall contribute funds to the Springfield District Walkway Fund, in a form deemed appropriate by Fairfax County, equal to the cost of such constructed on-road bicycle lane in accordance with the prices listed in the Fairfax County Unit Price List.
5. Fairfax Center Area Road ("FCAR") Fund. The Applicant shall contribute to the FCAR Fund in accordance with the Procedural Guidelines adopted by the Board of Supervisors on November 22, 1982, as amended, as escalated, subject to credit for all creditable expenses as determined by Fairfax County Department of Transportation and/or DPWES.
6. Density Credit. Density credit shall be reserved for the Property as provided by Section 2-308 of the Zoning Ordinance for all dedications described herein and/or as shown on the GDP, or as may reasonably be required by Fairfax County, VDOT or others at the time of site plan review.
7. Lee Highway/Village Drive. Within one (1) year after issuance of the first Non-Residential Use Permit for the building, the Applicant shall apply to VDOT for approval of the installation of a "No Right On Red" sign for the east-bound right turn lane on Lee Highway (Route 29) at its intersection with Village Drive.

III. STORM WATER MANAGEMENT.

Storm water management for the Property is provided by Regional Pond D-77, which shall accommodate both water quality and quantity requirements that shall be generated by the Property. At the time of site plan review, if it is determined by the Applicant to be feasible, the Applicant shall provide additional low impact development ("LID") water

quality measures. These measures shall include, but may not be limited to, pervious pavers, tree box filters, vegetated swales or a vegetated roof. Any additional measures that the Applicant provides shall be designed and approved in coordination with DPWES.

IV. LANDSCAPING/FENCING.

1. Landscape Plan. The Property shall be developed in substantial accordance with the landscape plan, as generally shown on Sheet 4 of 11 of the GDP, subject to modification and review by the Urban Forest Management Division (“UFMD”) of DPWES, as part of site plan review. In coordination with UFMD, the exact locations and species of plantings may be adjusted during site plan review and shall include the planting of native and desirable tree and plant species suitable for the specific conditions and topography of the Property. The Applicant shall professionally maintain all landscaping on the Property.
2. Fence/Supplemental Landscaping. Prior to the commencement of construction, the Applicant shall provide and install at its sole cost, a powder coated cast aluminum four (4) foot high fence along the property line running between the Property and the adjacent parcel known as Tax Map Reference 56-2-((25))-65A (“cemetery”). The Applicant shall maintain that portion of the fence that it installs. The fence shall match the existing four (4) foot fence that runs along the Property’s eastern boundary with the cemetery. In addition, the Applicant shall coordinate with a designated representative of the cemetery to relocate, at its sole cost, the gate to the existing four (4) foot high fence to an area that shall allow for more efficient ingress and egress into the cemetery of the vehicles and equipment necessary for the cemetery use. The Applicant shall coordinate with a designated representative of the cemetery to determine if supplemental landscaping is desired by the owners of the cemetery, and thereafter use its best efforts to accomplish the planting of such supplemental landscaping along its common fence line with the cemetery, in an amount to be paid by the Applicant, not to exceed \$1,000.00. In the event that such supplemental landscaping is desired, the Applicant shall install the chosen low plantings along the eastern fence line. After installation, the

Applicant shall have no further obligation for the maintenance, care or replacement of said landscaping. In addition, the Applicant shall contact and use its best efforts to coordinate with the owners of the residential lots known as Tax Map References 56-2-((25))-18A, 19A, 20, 21 and 26, to provide supplemental landscaping on said lots, in an amount to be paid by Applicant, not to exceed \$1,000.00 per lot. After installation, the Applicant shall have no further obligation for the maintenance, care or replacement of said landscaping. In the event that at the time of site plan review, the owners of lots 18A, 19A, 20, 21 and 26 have not worked in good faith with the Applicant to establish the supplemental landscaping, the Applicant shall provide written documentation of its attempts to DPWES, and this proffer, as it relates to the lots 18A, 19A, 20, 21 and 26 shall be considered null and void and of no further effect.

V. **SITE AMENITIES.** The Applicant shall provide the site amenities and outdoor seating and patio area(s) as generally depicted on Sheets 3 and 7 of the GDP, including a rooftop patio area. A roof garden shall be provided in the rooftop patio area that shall form a 'U' around the mechanical equipment. Any lighting in the rooftop patio area shall be provided by wall packs placed along the interior of the parapet, and shall not be visible from the ground. No light poles shall be placed on the rooftop. All mechanical equipment on the rooftop shall be located at the center of the roof and behind a screen to shield it from the view of and in an effort to minimize any sound to the adjacent residential properties. The exact elements that shall comprise such amenities shall be determined at the time of site plan review.

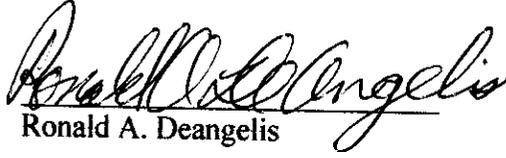
VI. **CONSTRUCTION PARKING.** In order to minimize any affect on the adjacent residential properties during the time of construction of the building, the Applicant shall enforce the following guidelines for the construction vehicles: (1) no access or parking of construction vehicles on McKenzie Avenue and (2) no construction parking along the existing service drive.

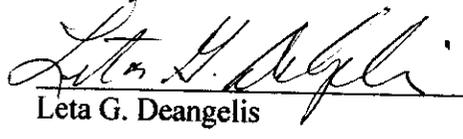
VII. **MISCELLANEOUS.** The Applicant shall deliver a courtesy copy of the initial site plan for the proposed building to the President of the Estates at Leewood Homeowners Association upon submission of such plan to DPWES.

VIII. GENERAL PROVISIONS.

1. Successors and Assigns. These proffers shall bind and inure to the benefit of the Applicant and its successors and assigns. Each reference to the "Applicant" in these proffers shall include and be binding upon the Applicant's successor(s) in interest and/or developer(s) of any portion of the Property.
2. Counterparts. These proffers may be executed in one or more counterparts, each of which when so executed shall be deemed an original document and all when taken together shall constitute but one and the same instrument.

Property Owners:


Ronald A. Deangelis


Leta G. Deangelis

Applicant/Contract Purchaser:

11-7 Associates, LLC

By: 
Name: Robert B. Seidel
Title: Managing Member