

## PROFFERS

**RZ 2010-LE-005**  
**Jennings Business Park, LLC**  
**November 9, 2010**

Pursuant to Section 15.2-2303(a), *Code of Virginia*, 1950 as amended, and subject to the Board of Supervisors (BOS) approval of the requested Rezoning from the R-1 and R-3 Districts to the C-8 District on property identified as Tax Map 90-4 ((1)) 6A (hereinafter referred to as the "Parcel 6A") and Tax Map 90-4 ((1)) 7 (hereinafter referred to as "Parcel 7") and collectively referenced as (the "Property"), the Applicant/Owner for itself, its successors and assigns, (hereinafter referred to as the "Applicant") hereby proffer that development of Parcel 6A and Parcel 7 shall be in accordance with the following proffered conditions provided that Rezoning application 2010-LE-005 is granted. In the event that RZ 2010-LE-005 is approved, then any previous proffers for Parcel 6A and/or Parcel 7 are hereby deemed null and void and hereafter shall have no effect on Parcel 6A or Parcel 7.

### A. GENERAL

1. Generalized Development Plan. The Property shall be developed in substantial conformance with the combined Generalized Development Plan and Special Exception Plat (the "GDP/SE Plat"), prepared by Walter L. Phillips, Inc., entitled Jennings Toyota and consisting of a total of 14 sheets, dated February 19, 2010, as revised through October 1, 2010.
2. Minor Modifications. Minor modifications from what is shown on the GDP/SE Plat and these Proffers due to the final site design or engineering may be permitted pursuant to Section 16-403 (4) of the Zoning Ordinance. The building footprint may be adjusted within the proposed building envelope as shown on the GDP/SE Plat so long as the minimum required open space identified on the GDP/SE Plat tabulations and the minimum dimensions to the lot lines are not significantly diminished, and continue to meet the minimum required setbacks.
3. Maximum Intensity. A maximum of 90,000 square feet of gross floor area, shall be permitted on Parcel 6A. The maximum total floor area ratio on Parcel 6A shall not exceed 0.04 FAR as provided on the GDP/SE Plat. Any additional development on the remaining portion of Parcel 6A above which is shown on the GDP/SE Plat shall require the approval of a Proffered Condition Amendment (PCA) application.
4. Density Credit. Density credit is hereby reserved pursuant to Section 2-308 of the Zoning Ordinance for all eligible dedications described herein or as may be required by Fairfax County or VDOT pursuant to the Public Facilities Manual (PFM), at the time of subdivision and/or site plan approval for Parcel 6A and/or Parcel 7.

5. Uses. The primary use on Parcel 6A shall be a vehicle sale, rental, and ancillary service establishment. Ancillary uses, which shall be accessory to the dealership use and permitted by this approval, may include, but not be limited to, the following: retail sales; vehicle rental establishments; vehicle major and vehicle minor service; a car wash and fueling station for use by the dealership; and telecommunication facilities limited to those that are mounted on the rooftop, mounted to the penthouse, or located within the building.
6. Architecture. The architectural design of the dealership building shall be in substantial conformance with the character of the elevations shown on Sheet 12 of the GDP/SE Plat. Modifications may be made to the final architectural designs if in substantial conformance with the elevations shown on the GDP/SE Plat.

## **B. TRANSPORTATION**

7. Future Widening of Loisdale Road. As shown on the GDP/SE Plat, the Applicant shall reserve for future dedication approximately 101,970 square feet of land (which varies, but is approximately 80 feet in width from the centerline of Loisdale Road) along Parcel 6A frontage on Loisdale Road. This dedication shall occur upon written demand to the Applicant but no earlier than Site Plan approval. The Applicant shall dedicate the right-of-way in fee simple without encumbrance to the Board of Supervisors. The Applicant shall provide ancillary easements up to twenty (20) feet in width along the frontage of Parcel 6A if required for the construction of the future widening.
8. Traffic Signal. Prior to issuance of the Non Residential Use Permit ("Non-RUP") for Parcel 6A, the Applicant shall submit a traffic signal warrant to VDOT for the intersection of Loisdale Road with the southern site entrance. If the warrants have been met, as determined by VDOT, the Applicant shall design and construct (in coordination with VDOT) a traffic signal at the intersection in accordance with VDOT standards.
9. Off-Site Road Improvements. Should VDOT grant approval for eleven (11) foot lanes or another design which does not require off-site right-of-way, the Applicant shall design and construct a second left turn lane and design and provide the necessary signal improvements on Newington Road at its intersection with Fairfax County Parkway prior to issuance of the Non-RUP for Parcel 6A.

In the event there is not sufficient right-of-way for these improvements, the Applicant will make a good faith effort to obtain the needed right-of-way from that landowner. If the Applicant is able to obtain the needed right-of-way, the Applicant shall complete the design and construction of a second left turn lane and provide the necessary signal improvements within twenty-four (24) months from the date that the right-of-way is acquired.

In the event the Applicant is not able to acquire the subject right-of-way necessary to construct the off-site improvements, the Applicant shall submit a written request prior to the issuance of the Non-RUP. The written document will request that Fairfax County to acquire the right-of-way by means of its condemnation powers. In conjunction with such request, the Applicant shall forward to the appropriate County agency: (a) a plat, plans and profiles showing the necessary right-of-way to be acquired; (b) an appraisal prepared by an independent appraiser approved by the County which will appraise the value of the right-of-way; and (c) cash in the amount equal to the appraised value of the right-of-way of the off-site parcel. In the event the land owner of the off-site parcel is awarded more than the above-referenced appraised value of the right-of-way in a condemnation suit, the Applicant shall provide the amount of the award in excess of the cash amount to the County within 15 calendar days of said award.

If condemnation is pursued by the County, a Non-RUP shall not be withheld for the dealership prior to the completion of the condemnation process and the Applicant shall complete construction of the intersection and signal improvements within twenty-four (24) months of the acquisition of the off-site right-of-way. Should the County opt not to pursue condemnation for any reason, the Applicant shall provide a monetary contribution of \$75,000.00 toward the cost of the improvement and have no further obligation to obtain the off-site right-of-way.

Should the land owner of the off-site parcel propose to redevelop its property prior to the issuance of the Non-RUP for the dealership, or prior to the completion of a condemnation proceeding, the Applicant shall provide a monetary contribution in the amount of \$75,000.00 as its share for the cost of the improvement and shall have no further obligation to provide this improvement..

10. Bus Shelter Pad. Prior to issuance of a Non-Residential Use Permit (“Non-RUP”) for the dealership, the Applicant shall construct a bus shelter pad and any related sidewalk modifications for a bus stop along the Property frontage as shown on the GDP/SE Plat. Final location, size and any associated easement, if required, for the bus shelter pad is subject to coordination with appropriate County agencies.
11. Interparcel Access. A public ingress-egress easement shall be provided between Parcels 90-4 ((1)) 5 and 6A as shown on the GDP/SE Plat. This access easement shall be shown on the initial and all subsequent site plan submissions and shall connect Parcel 6A and Tax Map Parcel 99-2 ((1)) 2A and provide adequate two-way access to all site access points subject to Fairfax County Department of Transportation’s approval.

The construction of the interparcel access on the balance of Parcel 6A (which is not governed by SE 2010-LE-009) may be constructed at such time that the balance of Parcel 6A is redeveloped, or earlier if desired by the Applicant. The Applicant reserves flexibility to locate interparcel access on the balance of Parcel 6A. Final location of the interparcel access through the balance of Parcel 6A may

occur at the time of site plan, or at the time that the balance of Parcel 6A redevelops.

**C. ENVIRONMENTAL**

12. Stormwater Management Facilities/Best Management Practices Techniques/Low Impact Development. As shown on Sheets 10 and 11 of the GDP/SE Plat, Stormwater Management (SWM) and Best Management Practices (BMP) shall be provided in a combination of an underground SWM/BMP facility and individual BMP facilities located on Parcel 6A. At the time of the site plan, the Applicant shall incorporate Low Impact Development (LID) features into the site design subject to the approval of DPWES. Examples include, but are not limited to, the use of vegetated swales, natural open space or Filterstrips. At the time of site plan, the Applicant shall pursue a waiver request of Public Facilities Manual (PFM) Section 6-0201 for Department of Public Works and Environmental Services ("DPWES") consideration to maintain the existing outfall condition (sheet flow) across Fairfax County Tax Map parcel 90-4 ((1)) 6B in lieu of the requirement to construct channels for stormwater outfall.
13. Landscaping. Site Plan submissions shall include a landscape plan that is in substantial conformance with the approved GDP/SE Plat. The exact number, size, and spacing of trees and other plant materials shall be submitted at the time of final site plan review and shall be subject to review and approval by Urban Forestry Management Division (UFMD).
14. Tree Preservation. The Applicant shall submit a Tree Preservation Plan and narrative as part of the first and all subsequent site plan submissions. The preservation plan and narrative shall be prepared by a Certified Arborist or a Registered Consulting Arborist, and shall be subject to the review and approval of the UFMD and DPWES.

The Tree Preservation Plan shall include a tree inventory that identifies the location, species, critical root zone, size, diameter at breast height (DBH), and condition analysis percentage rating for all individual trees to be preserved, as well as all on and off-site trees, living or dead, with trunks 8 inches in diameter and greater (measured at 4 ½ feet from the base of the trunk or as otherwise allowed in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture) located within 25 feet to either side of the limits of clearing and grading. 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 GDP/SE Plat and those additional areas in which trees can be preserved as a result of final engineering. The Tree Preservation Plan and narrative shall include all items specified in PFM 12-0506 and 12-0508. 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.

15. 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, which shall occur prior to clearing and grading, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with an UFMD/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 which are identified 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. Stump removal 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.
16. Limits of Clearing and Grading. The Applicant shall conform to the limits of clearing and grading, as shown on the GDP/SE Plat, 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 GDP/SE, they shall be located in the least disruptive manner necessary as determined by the UFMD/DPWES. A replanting plan shall be developed and implemented, subject to approval by the UFMD/DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.
17. Tree Preservation Fencing. All trees shown to be preserved on the Tree Preservation Plan shall be protected by tree protection fencing. 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 site plan, as may be modified by the "Root Pruning" proffer below.

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 fencing 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. Three (3) days prior to the commencement of any clearing, grading, or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD/DPWES, 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 the UFMD/DPWES.

18. 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 Tree Preservation Plan of the site plan submission. The details for these treatments shall be reviewed and approved by the UFMD/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 UFMD/DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.
19. Site Monitoring. During any clearing or tree/vegetation/structure removal on Parcel 6A and Parcel 7, 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 the UFMD. The Applicant shall retain the services of a certified arborist or Registered Consulting Arborist to monitor all construction work and tree preservation efforts in order to ensure conformation with all tree preservation proffers, and UFMD approvals. The monitoring schedule shall be described and detailed in the Landscaping Plan and Tree Preservation Plan, and reviewed and approved by the UFMD/DPWES.
20. Reforestation. A reforestation plan for the area as shown on the GDP/SE Plat shall be submitted concurrently with the first and all subsequent Site Plan submissions for review and approval in writing by the UFMD and DPWES, and shall be implemented as approved, and as field verified by UFMD. The plan shall contain an appropriate size, quality and selection, of species based on existing and proposed site conditions to restore the area to a native forest cover type. The reforestation areas will have the following densities of plantings per acre outside of utility and storm drainage easements: 100 overstory trees, 200 understory trees, and 1089 shrubs. Areas to be reforested within utility and storm drainage easements where planting trees is not allowed or suitable will have the following

densities of plantings per acre: 1,489 shrubs, and over-seeding with a conservation seed mixture approved by UMGD. The reforestation plan shall include, but not be limited to, the following:

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

21. Conservation Easement. The conservation easement areas shown on the GDP/SE Plat shall remain as undisturbed open space with the exception of permitted trails, seating areas, and other passive recreational amenities and shall be subject to a recorded conservation easement as shown on the GDP/SE Plat running to the benefit of Fairfax County, in a form approved by the County Attorney. The easement shall prohibit the removal of trees except those which are dead, diseased, noxious/invasive or hazardous. The conservation easement shall be recorded by the Applicant prior to conveyance of Parcel 7 to the Fairfax County Park Authority (FCPA), as described below in Proffer 25.
22. Geotechnical. Prior to Site Plan approval, if requested by DPWES, and in accordance with the provisions of the Public Facilities Manual, a geotechnical study of Parcel 6A shall be submitted to the Geotechnical Review Board through DPWES and shall incorporate appropriate engineering practices as recommended by the Geotechnical Review Board and DPWES to alleviate potential structural problems, to the satisfaction of DPWES.
23. Lighting. Any site lighting shall meet the requirements of Part 9 of Article 14 of the Zoning Ordinance. Any and all Field lighting shall meet FCPA lighting standards and specifications.

#### **D. ATHLETIC FIELD**

24. Athletic Field. A rectangular, athletic field (the "Field") shall be provided on Parcel 7. Per the note on Sheet 4 of the GDP/SE Plat, a minor lot line adjustment is proposed in order to locate the Field wholly on Parcel 7. The Field shall meet a

minimum dimension of 340 feet in length by 205 feet in width with ten (10) foot overruns on each side and shall be constructed with synthetic turf and lighting. The Applicant shall either construct the Field after site preparation is complete or pay the equivalent cash value (\$1,100,000.00) to FCPA to construct the Field. Under this option, the cash payment shall escalate from the date of rezoning approval to the date of payment consistent with the Code of Virginia and based on changes in the Consumer Price Index for all urban consumers (not seasonally adjusted) ("CPI-V"). Under the option that FCPA constructs the Field, the Applicant shall design and prepare the site plan; clear and rough grade the Field to a depth below finished grade as directed by FCPA; install all underground conduit and water lines; construct retaining walls, and construct the ditch and storm drainage system west of the Field, as shown on the GDP/SE Plat.

The Applicant's initial design of the Field as shown on the GDP/SE Plat meets FCPA standards as to the slope of the field surface. At the time of site plan, should FCPA request a crowned field surface instead of a sloped field surface, the retaining walls as shown on the GDP/SE Plat shall be permitted to be modified accordingly in both length and height. Additionally, should the finalized RPA redelineation require modification of the retaining walls due to the determined limits of the Resource Protection Area at the time of site plan, FCPA shall work with the Applicant to redesign the retaining walls or accept a reduced size for the Field. Modification of the proposed retaining walls and/or field size in consultation with FCPA shall not require the Applicant to amend the GDP/SE Plat or obtain approval of a PCA application.

The Applicant shall provide full water and electrical connections sufficient for Field lighting at the property line of Parcel 7 for future use by FCPA. The Applicant shall obtain all site plan approvals needed for construction of the Field and allow for full construction access should FCPA construct the Field.

If the FCPA is to construct the Field, completion of the Field or preparatory construction described above shall be no later than one year after the issuance of a Non-RUP for the dealership, recognizing that if seasonal timing of certain construction activities associated with the Field delays completion up to 18 months, a PCA shall not be required, and the Applicant shall not be deemed to be in violation of these proffers. The Applicant reserves the right to request an administrative extension of the date of completion due to unforeseen circumstances, as determined by the Zoning Administrator.

25. Dedication of Parcel 7. Dedication of Parcel 7 to FCPA shall be in fee simple without monetary or other encumbrances or covenants and shall occur no later than completion of the Field and release of bond requirements for Parcel 7. Any surface debris or waste currently on Parcel 7 shall be removed prior to dedication. Dedication of Parcel 7 to FCPA may occur earlier in the event the cash contribution option is provided to the FCPA for their construction of the Field.

26. Shared Parking for Recreational Field. Fifty (50) parking spaces shall be provided in the area located in the northeast corner of Parcel 6A and identified as "Parking lot to be shared between dealership and recreational field" on Sheet 4 of the GDP/SE Plat. The Applicant shall coordinate with the FCPA on the terms of a shared parking agreement between the Applicant and FCPA. Should a shared parking agreement not be successfully completed in a form acceptable to the County Attorney prior to the completion of the Recreational Field, then the Applicant shall provide an easement over fifty (50) parking spaces located in the northeast corner of Parcel 6A which allows FCPA to have full use of these spaces during hours that the Recreational Field is open to the public. A public access easement shall be provided for the trail accessing the Field, as shown on the GDP/SE Plat and for the area of the designated shared or provided parking spaces to be used for the Field.

**E. MISCELLANEOUS**

27. Dedication of Parcel 90-4 ((1)) 6B to FCPA. The Applicant is the owner of Fairfax County Tax Map Parcel 90-4 ((1)) 6B (Parcel 6B) located east of Parcel 6A and east of the CSX railroad tracks. In connection with rezoning RZ 2010-LE-005, the Applicant shall dedicate Parcel 6B to FCPA at the time that Parcel 7 is dedicated, or sooner as determined by the Applicant. Dedication shall occur in fee simple without monetary or other encumbrances or covenants. Any surface debris or waste currently on Parcel 6B shall be removed prior to dedication. Prior to dedication, the Applicant shall enter Parcel 6B into the Commonwealth of Virginia Department of Environmental Quality (VDEQ), Voluntary Remediation Program (VRP). The VRP allows a participant to assess and clean up a property voluntarily, without assuming liability for environmental conditions not caused by their use or actions. Assessment and cleanup is conducted with VDEQ concurrence and, upon demonstration of successful completion of an assessment and cleanup, a No Further Action Determination in the form of a Certificate of Satisfactory Completion can be obtained from the VDEQ. The Certificate is transferable from owner to owner as long as property use (current and proposed) remains the same. Assessment and cleanup of Parcel 6B will be based on planned future site use which is undeveloped recreational use wooded land, with future improvements limited to construction of hiking, biking, and walking trails. Should RZ 2010-LE-005 not be approved by the BOS, this proffered commitment shall be null and void and hereafter shall have no further effect on Parcel 6B, nor the Applicant or its successors and assigns.
28. Sanitary Sewer on Parcel 6B. Due to the existing terrain on Parcel 6B and the potential for the presence of wetlands, the final location of the proposed sanitary sewer line as shown on the GDP/SE Plat may be relocated during final engineering in order to minimize the disturbance of wetlands as practicable.

29. Signage. Signage for Parcel 7 shall be the responsibility of the FCPA and shall be provided in accordance with the Zoning Ordinance. FCPA shall install the signage for the Field.

Signage for Parcel 6A shall be provided in accordance with Article 12 of the Zoning Ordinance, however, the Applicant, Toyota, or another agent hired by Toyota, may file a Category 6 Special Exception application for waiver of certain sign regulations.

30. Lee District Park Contribution. Prior to site plan approval, the Applicant shall make a contribution of twenty-five thousand dollars (\$25,000.00) to the Fairfax County Park Authority for the Robert Good Memorial portion of the Family Recreation Area at the Lee District Park. This contribution may be made in two separate payments.
31. Successors and Assigns. These proffers shall bind and inure to the benefit of the Applicant and his successors and assigns. Each reference to "Applicant" in this proffer statement shall include within its meaning and shall be binding upon Applicant's successor(s) in interest and/or developer(s) of the site or any portion of the site.

[SIGNATURES BEGIN ON THE NEXT PAGE]

APPLICANT / TITLE OWNER  
of Tax Map 90-4 ((1)) 6A and 7

Jennings Business Park, LLC

A handwritten signature in black ink, appearing to read "Michael F. Jennings", is written over a horizontal line. The signature is stylized and includes a large loop at the end.

By: Michael F. Jennings  
Its: President and Manager

[SIGNATURE ENDS]