

PROFFERS

RZ 2010-LE-007/PCA 2006-LE-018 FLEET DRIVE, LLC

March 4, 2011

Pursuant to Section 15.2-2303A of the Code of Virginia, as amended, and subject to the Board of Supervisors approval of RZ 2010-LE-007 and PCA 2006-LE-018, Fleet Drive Associates LLC (the "Applicant") and the undersigned owners of the approximately 4.328 acres (known as Fairfax County Tax Map 91-1((5)), Parcels 2, 3, 4 7 and 91-1((1), Parcels 59A, 59B and 60) included in this application (the "Property"), hereby proffer for themselves and their successors and assigns that development of the Property shall be in conformance with the proffer conditions contained herein, provided the Property is rezoned to the R-12 District as proffered herein. In the event this application is denied, these proffers shall immediately be null and void. (Note: These proffers shall supersede the Proffers in RZ 2006-LE-018 as they relate to Tax Map 91-1((5)) Parcels 2, 3 and 4 and 91-1 ((5)) Parcels 59A, 59B and 60. (Tax Map 91-1((5)) Parcel 7 was not included in RZ 2006-LE-018.) However, these proffers do not apply to Fairfax County Tax Map Parcels 91-1 ((5)) Parcels 5 and 6 and 91-1 ((1)) Parcel 58, as those parcels remain subject to the proffers in RZ 2006-LE-018. These three parcels are hereinafter collectively referred to as the "RZ 2006 Property".)

1. **Generalized Development Plan.** Development of the Property shall be in substantial conformance with the plan entitled "Generalized Development Plan Fosters Crest" ("GDP"), prepared by Charles P. Johnson & Associates, Inc. (Sheets 1 through 8), revised through January 21, 2010. Outlots 1, 2 and 3 as depicted on the GDP are hereby reserved to provide side yard setbacks for the contiguous single-family attached lots on the RZ 2006 Property to be developed pursuant to RZ 2006-LE-018, as generally depicted on the proffered GDP in RZ 2006-LE-018. The Applicant shall authorize the Developer of the RZ 2006 Property to include said outlots in a site plan submitted to Fairfax County. Upon site plan approval, the Applicant shall convey said outlots to the owner of the RZ 2006 Property.
2. **Energy Efficiency.** All homes constructed on the Property shall meet the thermal standards of the CABO Model Energy Program for energy qualified Star homes, or the equivalent, as determined by the Department of Public Works and Environmental Services ("DPWES") for either electric or gas energy homes, as applicable. All homes constructed on the property shall meet the guidelines of the Energy Star program and will be so certified.
3. **Recreational Facilities.** The recreational equipment provided on the Property shall be IPEMA certified and installed in conformance with ASTM standards, or the equivalent, as determined by DPWES.
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 without encumbrances. Upon site plan approval, 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 Property as shown on the GDP, subject to the approval of the Fairfax County Department of Transportation and the Virginia Department of Transportation. The applicant shall also construct a concrete pad behind the sidewalk on Fleet Drive for bus stop pedestrians at the location delineated on the GDP.

5. **Stormwater Management Pond Landscaping.** Subject to DPWES approval, the Applicant shall provide an enhanced 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. In the event that the developer of the RZ 2006 Property develops first, the Applicant shall convey the stormwater management area to the homeowners association (HOA) responsible for the common areas of the subdivision.
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. The HOA documents shall be designed to include the lot owners of the RZ 2006 Property within the HOA upon the development of that subdivision.
 - b. The HOA shall also maintain the acoustical wall on the Property, as 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 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 on the Property 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 Property.
10. **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 acoustical wall shall be constructed in lieu of the vinyl wall shown in the Acoustical Barrier Detail on Sheet 2 of the GDP. In order to achieve a maximum exterior noise level of 65 dBA Ldn, a six (6') to eight foot (8') high acoustical 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 wall. The HOA shall be responsible for the maintenance of the acoustical 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 wall 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.
11. **School Contribution.** Prior to the issuance of the first building permit, the Applicant shall contribute \$107,548 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 thirty (30) market rate units on the Property, this contribution amount shall be reduced proportionately based upon a ratio of thirty (30) units to \$107,548.
12. **Landscaping.** Landscaping for the site shall be in substantial conformance with the landscaping shown on Sheet 6 of 7 of the GDP, subject to minor adjustments approved by UFM.

13. **Interparcel Access.** As a part of the subdivision plat approval, the Applicant shall convey access easements allowing interparcel access between the subject property and the RZ 2006 Property over the area so designated on the GDP. Said easements shall be subject to a requirement that the residents of the RZ 2006 Property pay their pro rata share for the ongoing maintenance of the private streets on the Property providing access from Fleet Drive to the RZ 2006 Property. In addition, the Applicant shall place conspicuous signs at these locations stating that these areas will be the site of future construction of the road extensions by others to provide interparcel connections. All prospective new home purchasers shall be advised of these future extensions prior to entering into a contract of sale and notice of the interparcel connections shall also be placed within the HOA documents. The signs shall remain in place until the future road connections are made. The HOA shall maintain the signs in good repair. In the event that the developer of the RZ 2006 Property develops first, the Applicant shall convey said interparcel access easements upon the written request of that developer provided a covenant is recorded among the land records of Fairfax County requiring all lot owners within the RZ 2006 Property to make pro rata payments to the HOA for the maintenance of the private streets on the Property.
14. **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 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.
15. **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.
16. **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, 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. Driveways on all lots shall be a minimum of 18 feet in length.

17. **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.
18. **VDOT Parcel.** Subject to approval by the Virginia Department of Transportation (VDOT), the applicant shall construct an emergency access road over the parcel owned by VDOT as depicted on the GDP. In addition, subject to approval by VDOT, the Applicant shall clear, fine grade and vegetate the balance of this parcel. The HOA shall maintain the new vegetation on this parcel, if permitted to do so by VDOT.
19. **Architectural Treatment.** The rear of all façades that are visible from Beulah Street (i.e., the rear facades of units 21 through 30) 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.
20. **Tree Preservation Plan.** The Applicant shall contract with a certified arborist to prepare a tree preservation plan to be submitted as part of the first and all subsequent subdivision plan submissions. The plan shall be reviewed and approved by the Urban Forestry Division in accordance with all applicable PFM and Zoning Ordinance requirements, as such may be modified by appropriate approvals. The certified arborist responsible for the preparation of the tree preservation plan shall be referred to as the "Project Arborist." Said tree preservation plan shall provide for preservation of specific quality trees or stands of trees within the tree save areas depicted on the GDP to the maximum extent reasonably feasible, subject to the potential installation of utilities, and to the maximum extent reasonably feasible without precluding the development of a single family home typical to this project on each of the building envelopes and lots shown on the GDP. The Urban Forester may require reasonable modifications of such plan to the extent these modifications do not alter the number of dwelling units shown on the GDP, reduce the size of the proposed units, significantly move their location on the lot, or require the installation of retaining walls. The tree preservation plan shall consist of a tree survey which includes the locations, species, size, crown spread, and condition rating percent of all trees measuring twelve (12) inch diameter at breast height ("dbh") or greater located within ten feet (10) inside and twenty-five (25) feet outside the limits of clearing areas depicted on the GDP. Additionally, included in the tree preservation plan shall be a condition analysis and rating for all trees measuring twelve (12) inch dbh or greater located within ten (10) feet of the inside and

twenty-five (25) feet outside of the limits of clearing and grading for all tree buffer areas shown to be preserved on the GDP. The condition analysis shall be prepared using methods outlined in the latest edition of "The Guide for Plant Appraisal." Specific tree preservation activities shall be incorporated into the tree preservation plan. Activities should include, but not be limited to, crown pruning, root pruning, mulching and fertilization.

21. **Lot 20 Restriction.** A covenant shall be recorded which prohibits plantings or fencing within that portion of Lot 20 that is located within the line of site area depicted on sheet 5 of the GDP. 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 for Lot 20; this restriction shall also be included in the HOA documents.
22. **Environment.** As a supplement to the environmental development drainage system, the Developer shall construct a "Permeable Open Joint Pavement Block" area at the location described herein. The construction method and design shall be in accordance with the Fairfax County Public Facilities Manual, Plate 79-6, except modified as follows: Prior to commencing work, a percolation test at the location shall be taken to determine the acceptance of storm water runoff absorption. If the percolation test is determined to be acceptable, the construction detail (Plate 79-6) shall eliminate the filter fabric and 4 inch diameter perforated underdrain. Otherwise, the detail shall be constructed as specified. The precise area location of the open joint block shall be in the Emergency Turnaround on Royal Crest Lane at station 12+50. The area of coverage is approximately eighteen by twenty feet, the dimensions of which are to be determined at time of construction.
23. **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.
24. **Park Authority Contribution.** At the time of site plan approval, the Applicant shall contribute the sum of \$51,000.00 to the Fairfax County Park Authority for recreational facilities and/or resource management at Manchester Lakes Public Park, as determined by the Park Authority, subject, however to a credit for expenditures on-site for a tot lot, as depicted on the GDP.

**APPLICANT/CONTRACT PURCHASER OF TAX
MAP 91-5 ((5)) Parcels 2, 3, 4 and 7; 91-1 ((1)), Parcels
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

OWNERS OF TAX MAP 91-1 ((5)) PARCEL 2

DALLAS R. SMITH

By: Ray E. Smith, III, Agent and Attorney-in-Fact for Dallas R. Smith
Ray E. Smith, III, Agent and Attorney-in-Fact for
Dallas R. Smith

OWNER OF TAX MAP 91-1 ((5)) PARCEL 3

JULIO C. GONZALEZ

By: Ray E. Smith, III, Agent and Attorney-in-Fact for Julio C. Gonzalez
Ray E. Smith, III, Agent and Attorney-in-Fact for
Julio C. Gonzalez

OWNER OF TAX MAP 91-1 ((5)) PARCEL 7

NAJIB AHMAD

By: Ray E. Smith, III, Agent and Attorney-in-Fact for Najib Ahmad
Ray E. Smith, III, Agent and Attorney-in-Fact for
Najib Ahmad

OWNERS OF TAX MAP 91-1 ((5)) PARCEL 4

ERIC B. MCGEE

By: *Ray E. Smith, III, Agent and Attorney-in-Fact for Eric B. McGee*
Ray E. Smith, III, Agent and Attorney-in-Fact for
Eric B. McGee

GLORIA CARHUANCHO

By: *Ray E. Smith, III, Agent and Attorney-in-Fact for Gloria Carhuanchu*
Ray E. Smith, III, Agent and Attorney-in-Fact for
Gloria Carhuanchu

OWNERS OF TAX MAP 91-1 ((1)) PARCEL 59A

SUNG SOO KIM

By: *Ray E. Smith, III, Agent and Attorney-in-Fact for Sung Soo Kim*
Ray E. Smith, III, Agent and Attorney-in-Fact for
Sung Soo Kim

LAI-FOONG GOH

By: *Ray E. Smith, III, Agent and Attorney-in-Fact for Lai Foong Goh*
Ray E. Smith, III, Agent and Attorney-in-Fact for
Lai-Foong Goh

OWNER OF TAX MAP 91-1 ((1)) PARCEL 59B

SUNG WON KIM

By: *Ray E. Smith, III, Agent and Attorney-in-Fact for Sung Won Kim*
Ray E. Smith, III, Agent and Attorney-in-Fact for
Sung Won Kim