

PROFFERS

RZ 2000-PR-056

July 5, 2001

Pursuant to Section 15.2-2303(a), *Code of Virginia*, 1950 as amended and subject to the Board of Supervisors approving a rezoning to the PDH-20 District, for property identified as Tax Map 46-4 ((1)) 36 and 37 and 56-2 ((1)) 15F, 16, 22 (hereinafter referred to as "Land Bay A") and Tax Map 56-2 ((1)) 18A (hereinafter referred to as "Land Bay B"), with both Land Bay A and Land Bay B being referred to as the "Property", the Applicant and owner proffer for themselves, their successors and assigns the following conditions, which if approved, supersede all previously approved proffers for the Property:

1. Development Plan.

- A. Development of the Property shall be in substantial conformance with the Conceptual Development Plan/Final Development Plan (CDP/FDP) prepared by Land Design, Inc., consisting of 10 sheets, dated September 15, 2000 through May 7, 2001.
- B. Notwithstanding that the CDP/FDP is presented on 10 sheets and said CDP/FDP is the subject of Proffer 1 above, it shall be understood that the proffered portion of the CDP shall be the entire plan shown on Sheet 2 relative to the points of access, the maximum number and type of dwelling units, the amount and general location of open space, the general location of the Environmental Quality Corridor (EQC), the general location of the limits of clearing and grading, and the general location and arrangement of the buildings and parking garages. The Applicant has the option to request a FDPA for elements other than the CDP elements from the Planning Commission for all or a portion of the CDP/FDP in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance with respect to the remaining elements.
- C. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the Final Development Plan (FDP) may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layouts shown on the FDP without requiring approval of an amended FDP provided such changes are in substantial conformance with the FDP as determined by the Zoning Administrator and do not increase the total number of dwelling units, decrease the amount of open space; decrease the setback from the peripheries; or reduce open space or landscaping.
- D. The CDP/FDP maintains the existing surface parking lot on Tax Map 56-2 ((1)) 18A serving office buildings on adjacent parcels identified as Tax Map 46-4 ((1))

15B and 56-2 ((1)) 15C, 15D, which is subject to Special Exception approval as a secondary use in a P-District, in accordance with Par. 6C of Sect. 6-106 of the Ordinance.

2. Transportation

A. Waples Mill Road

- (1) At the time of site plan approval or upon written demand by Fairfax County, whichever shall occur first, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors right-of-way along the Property's Waples Mill Road frontage, north of Waples Mill Road's intersection with Fairfax Ridge Road North, measuring to a maximum of 70 feet from the existing centerline as shown on the CDP/FDP.
- (2) The Applicant shall construct a right turn deceleration lane on southbound Waples Mill Road at Fairfax Ridge Road North, as shown on the CDP/FDP and approved by the Virginia Department of Transportation (VDOT), prior to issuance of the 420th or last residential use permit (RUP) for the Property, whichever occurs first.
- (3) If at any point within one year following the issuance of the last RUP for the Property, a signal warrant study is requested by either the County or VDOT, the Applicant shall complete said warrant study and if warranted shall install a traffic signal at the intersection of Fairfax Ridge Road North and Waples Mill Road.
- (4) At the time of site plan approval or upon written demand by Fairfax County, whichever shall occur first, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors right-of-way along the Property's Waples Mill Road frontage, south of Waples Mill Road's intersection with Fairfax Ridge Road South, measuring to a maximum of 57 feet from the existing centerline. The Applicant shall construct an extension of the existing westernmost lane on southbound Waples Mill Road at Route 50 from its existing terminus to its intersection with Fairfax Ridge Road South, subject to securing appropriate grading and sidewalk easements for work on Tax Map 56-2 ((1)) 21. Said improvement shall be complete and open for use by the public prior to the issuance of the 50th RUP for the Property.

B. Route 50

The Applicant shall contribute the sum of \$600,000 to Fairfax County for construction of a second left turn lane on eastbound Route 50 at Waples Mill Road and associated signal modifications or for other improvements at that intersection as determined by VDOT and Fairfax County. The contribution shall be made in three installments, with \$200,000 being contributed prior to the

issuance of the first building permit, a second payment of \$200,000 contributed prior to the issuance of the 200th building permit, and the third payment of \$200,000 to be contributed prior to the issuance of the 400th building permit for the Property, or no later than 36 months following the issuance of the first building permit, whichever shall occur first.

In lieu of the contribution above, the Applicant may elect to obtain bids from two VDOT qualified contractors for an alternative design, to be approved by VDOT and Fairfax County, for construction of the second left turn lane within the existing median and associated signal modifications. Should the bid estimates be less than \$600,000, the Applicant may elect to build the improvements, with said improvements being complete and open for public use prior to the issuance of the 100th RUP for the Property.

- C. Interstate 66. The Applicant shall dedicate and convey in fee simple to the Board of Supervisors right-of-way along the Property's Interstate 66 frontage, which measures approximately 132 feet to 206 feet from centerline and contains approximately 0.75 acres, as indicated on the CDP/FDP. Dedication shall occur at the time of site plan approval or upon request, whichever occurs first.
 - D. Fairfax Center Area Road Fund. The Applicant shall provide a contribution to the Fairfax Center Area Road Fund consistent with the Procedural Guidelines adopted by the Board of Supervisors on November 22, 1982, as may be revised. In accordance with the Fairfax Center Road Fund Policy, the Applicant shall receive credit against the Fairfax Center Road Fund contribution for those improvements that are creditable expenses.
 - E. Density Credit. Advanced density credit shall be reserved as may be permitted by the provisions of Paragraph 5 of Section 2-308 of the Fairfax County Zoning Ordinance for all eligible dedications described herein, or as may be required by Fairfax County or VDOT at time of site plan approval.
 - F. Interparcel Access Easement. Prior to site plan approval, an interparcel access easement shall be recorded that permits ingress/egress across the Property for future use by Tax Map 56-2 ((1)) 19, 20 and 21.
3. Landscape Plan. A landscape plan in general conformance with the landscape design shown on Sheets 4, 4A, 4B and 5 of the CDP/FDP shall be submitted prior to the second submission of the site plan. The landscape plan shall include detailed streetscape, courtyard and open space landscaping. Said plan shall be coordinated with and approved by the Urban Forester. Street trees along Waples Mill Road and Fairfax Ridge Road shall be a minimum of 3½ to 4 inch caliper at the time of planting. The Applicant shall provide maintenance and replacement of landscaping as necessary.
4. Tree Preservation. For the purposes of maximizing the preservation of trees in tree save areas, the Applicant shall prepare a tree preservation plan. The Applicant shall contract with a certified arborist (the "Project Arborist") to prepare a tree preservation plan to be

submitted as part of the first site plan submittal. The tree preservation plan shall be reviewed and approved by the Urban Forestry Branch. The tree preservation plan shall consist of a tree inventory which includes the location, species, size, crown spread and condition rating percent of all trees 12 inches or greater in diameter, measured 4½ feet from the ground, and located within twenty (20) feet of the limits of clearing and grading for the entire Application Property. The condition analysis shall be prepared using methods outlined in the latest edition of *The Guide for Plant Appraisal*. Specific tree preservation activities designed to maximize the survivability of trees designated for preservation shall be incorporated into the tree preservation plan. Activities should include, but are not limited to, crown pruning, root pruning, mulching and fertilization.

All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fencing. Tree protection fencing, consisting of four foot high, 14 gauge welded wire attached to 6 foot steel posts driven 18 inches into the ground and placed no farther than 10 feet apart, shall be placed at the limits of clearing and grading as shown on the Phase I and Phase II erosion and sedimentary control sheets in all areas. The tree protection fencing shall be made clearly visible to all construction personnel. The tree protection fencing shall be installed prior to the performance of any clearing and grading activities on the site. All tree preservation activities, including installation of tree protection fencing, shall be performed under the supervision of the Project Arborist. Prior to the commencement of any clearing or grading on the site, the Project Arborist shall verify in writing that the tree protection fencing has been properly installed.

Cleaning, grading and construction shall conform to the limits of clearing and grading as shown on the CDP/FDP, subject to the installation of necessary utility lines, trails and other required site improvements, all of which shall be installed in the least disruptive manner possible, considering cost and engineering, as determined in accordance with the approved plans. Similarly, care shall be taken within the Environmental Quality Corridor to construct the regional storm management facilities and install necessary utility lines, trails and required improvements in the least disruptive manner possible. The Applicant shall have the limits of clearing and grading marked with a continuous line of flagging prior to the pre-construction meeting, the Applicant and Project Arborist shall walk the limits of clearing and grading with an Urban Forestry Division representative to determine where adjustments to the clearing limits can be made to increase the survivability of trees at the edge of the limits of clearing and grading.

The County Urban Forester may require modifications of such plans to the extent these modifications do not alter the number of dwelling units shown on the CDP/FDP, reduce the size of the proposed units, significantly move their location on the lot, or require the installation of retaining walls greater than 2 feet in height. Trees that are not likely to survive construction due to their proximity to disturbance shall also be identified at this time and the Applicant shall remove such trees as part of the clearing operation. Any tree designated for removal at the edge of the limits of clearing and grading and within the tree preservation area shall be removed using chain saws. The stump shall be cut as close to ground level as practical. 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 tree preservation area.

5. Stormwater Management

- A. Prior to the issuance of the first Residential Use Permit (RUP) for the Property, a regional stormwater pond in the location shown on the CDP/FDP (the "Pond") shall have been bonded, permitted and be under construction. For purposes of this proffer, "under construction" is defined as having the Phase I permit, siltation and erosion control inspection complete. The Pond shall be constructed in accordance with the plans and specifications approved by DPWES, and, to the extent approved by DPWES, generally consistent with the Schematic Pond Design set forth on Sheet 8 of the CDP/FDP, with the following design characteristics.
- (1) A micropool designed to contain a minimum of 10 percent of the BMP value, subject to DPWES approval.
 - (2) Sediment forebays sized to contain either 0.1 inch of runoff for impervious acre or a minimum of 10 percent of the BMP value associated with the contributing drainage of each forebay, subject to DPWES approval.
 - (3) The two-year post development peak flow rate reduced to a level that is two-thirds less than the predevelopment rate, to the extent feasible.
 - (4) The detention of the one-year storm and release over a 24-hour period, to the extent feasible.
 - (5) Removal of trees (greater than three inches in diameter) below an elevation that is the lower of (i) three feet below the two-year elevation, or (ii) two feet below the BMP elevation, except as required by grading for the construction and development of the community as depicted on the CDP/FDP. If trees die from inundation during the first two years after completion between the elevations described above, the Applicant shall remove the tree stem and leave the roots intact.
- B. Upon release of bonds, DPWES shall assume all maintenance responsibilities for this regional stormwater facility.
- C. As the entity responsible for the construction of the regional pond, the Applicant shall be eligible for reimbursement of the actual cost of constructing the regional pond which exceeds the estimated cost of a conventional onsite stormwater management/best management practice pond(s) designed to accommodate development of the site upon entering into a reimbursement agreement with the County. The actual cost of the pond will equal the total estimated cost to be incurred by the Applicant in connection with the construction of the pond including without limitation, the cost of design, engineering, construction and

10% of the design, engineering and construction for ordinary overhead and administration costs. The actual cost does not include the value of the land acquired and/or conveyed for the pond or its ancillary easements. The Applicant shall pay all pro-rata share assessments for the entire development project.

D. Notwithstanding that the Applicant shall construct the regional pond as described above, the Applicant shall be able to construct alternative stormwater management/Best Management Practices facilities to serve development on a temporary basis, as determined by DPWES if in substantial conformance with the CDP/FDP.

6. Recreational Facilities. Pursuant to Paragraph 2 of Section 6-409 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall provide recreational facilities to serve the Property. These facilities shall include a swimming pool, passive seating areas, tot lot, on-site trail and an indoor recreational/leasing facility, a minimum of 4,500 square feet in size. The Applicant proffers that the minimum expenditure for the above-referenced recreational facilities shall be \$955.00 per residential unit. In the event the total cost of recreational improvements constructed on site by the Applicant is demonstrated to be less than \$955 per unit, the Applicant shall provide the remainder in a cash contribution to the Fairfax County Park Authority for the development of active recreational facilities in the vicinity of the Property.

7. Noise Attenuation.

A. The Applicant shall provide the following noise attenuation measures as a result of the Traffic Noise Analysis prepared by Polysonics, Corp. dated April 2001:

- (1) In order to reduce exterior noise to a level of approximately 65 dBA Ldn at the proposed outdoor recreational areas, a noise attenuation barrier, composed of a combination sound wall and/or berm, shall be provided along the Subject Property's frontage of I-66 as shown on the CDP/FDP. The noise attenuation barrier shall be generally 20 to 28 feet in height yet shall not exceed a maximum of 32 feet in height. It shall be flush with the ground level, be architecturally solid from the ground up with no gaps or openings (except where necessary to provide for a gate, drainage or utilities, as determined by VDOT) and shall be designed consistent with VDOT standards with regard to barrier height and barrier materials, as determined by VDOT. At the time of site plan submission, the Applicant shall submit a supplemental noise analysis for approval to DPWES based on final engineering and grading ensuring that the design of the noise attenuation barrier is adequate to reduce noise levels at the upper floors of Buildings 1 through 4 to less than 75 dBA Ldn and identifying the projected 70 dBA Ldn and 65 dBA Ldn contours after the noise attenuation wall is in place. In the event that exterior noise levels cannot be reduced to less than 75 dBA Ldn with a maximum 32 foot noise attenuation barrier, the building heights for Buildings 1 through 4 shall be reduced as necessary to ensure reduction in noise levels at the upper levels

of Buildings 1 through 4 to less than 75 dBA Ldn. Under no circumstances shall dwelling units be constructed in areas with greater than 75 dBA Ldn exterior noise levels after the noise attenuation barrier is in place.

The noise attenuation barrier shall be built to VDOT standards and shall be located within the I-66 right-of-way. Neither the Applicant, nor its successors or assigns, shall be responsible for restoration, removal, relocation or reconstruction of the noise wall if such wall is removed or otherwise altered in conjunction with future improvements to I-66.

- (2) In order to reduce interior noise to a level of approximately 45 dBA Ldn, units identified in the supplemental noise analysis described in Proffer 7A(1), as being impacted by highway noise from I-66 having levels projected to be greater than 70 dBA Ldn after the noise attenuation wall is in place shall employ the following acoustical measures:

Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 45. Doors and glazing shall have a laboratory STC rating of at least 37 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 65 dBA or above. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of at least 45. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

- (3) In order to reduce interior noise to a level of approximately 45 dBA Ldn within units identified in the supplemental noise analysis described in Proffer 7A(1), as being impacted by highway noise from I-66 having levels projected to be between 65 and 70 dBA Ldn after the noise attenuation wall is in place shall employ with the following acoustical measures:

Exterior walls should have a laboratory sound transmission class (STC) rating of at least 39. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 65 dBA or above. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of at least 39. All surfaces should be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

- B. Alternative interior noise attenuation measures may be provided subject to the implementation of a refined noise study as reviewed and approved by DPWES after consultation with the DPZ.

8. Architectural Design. The architectural design of the buildings shall be in general character with the elevations shown on Sheet 2 of the CDP/FDP, and shall be generally consistent in style on all sides of the structure. The buildings shall be constructed with a mixture of masonry, siding and glass materials. The elevations may be refined as a result of final design and engineering so long as the character and quality of the buildings remain consistent with those shown. No balconies shall be provided for those dwelling units within Building 1 that face the noise wall.
9. Pedestrian Facilities.
 - A. The Applicant shall provide a comprehensive sidewalk system within the developed portions of the Property as generally shown on Sheets 2A and 2B of the CDP/FDP, including completion of sidewalks along the Property frontages and internal connections between all the residential buildings. Construction of sidewalks shall be concurrent with development activity on the Property.
 - B. The Applicant shall construct a six-foot wide asphalt pedestrian trail both along the southern side of the proposed stormwater management pond, and shall provide connections from this trail to the internal sidewalk system, with alternate paving materials (such as concrete or brick bandings) provided at crossings of the travel way/parking areas as shown on the CDP/FDP.
 - C. The Applicant shall construct an eight (8) foot wide asphalt trail along its Waples Mill Road frontage with the exact location and design determined at the time of site plan approval. Construction shall occur concurrent with development on the Property.
10. Housing Trust Fund. The Applicant shall contribute a sum of \$150,000.00 to the Fairfax County Housing and Community Development's Housing Trust Fund for affordable housing needs within Fairfax County.
11. Dedication of Environmental Quality Corridor ("EQC"). The Applicant shall dedicate and convey in fee simple to the Board of Supervisors the EQC as generally depicted and described on the CDP/FDP for Land Bay A. Dedication shall occur at the time of pond completion and bond release.
12. Exterior Lighting. Exterior lighting on the Property shall include full cut-off fixtures with light directed downward and inward to reduce light spillage and glare on adjacent properties.
13. Bicycle Racks. The Applicant shall provide bicycle racks in the vicinity of each residential building.
14. Use of Garages. The Applicant agrees that individual garages shall only be used for a purpose that will not interfere with the intended purpose of garages (e.g., parking of vehicles). Tenants shall be advised of the use restriction which shall be included in the lease documents.

15. Asbestos. If DPWES and the Applicant determine that a potential health risk exists due to the presence of asbestos-containing rock on the Property, the Applicant shall:
 - A. Take appropriate measures as determined by the Health Department to alert all construction personnel as to the potential health risks.
 - B. Commit to appropriate construction techniques as determined by DPWES in coordination with the Health Department and the Applicant to minimize this risk. Such techniques may include, but are not limited to, dust suppression measures during all blasting and drilling activities and covered transportation of removed material presenting this risk, and appropriate disposal.
16. Contribution. At the time of site plan approval, the Applicant shall contribute the amount of \$10,000 to the Waples Mill Elementary School.
17. Signs. The Applicant shall abide by the regulations in Article 12 of the Zoning Ordinance with regard to permanent and temporary signs on the Property.
18. Severability. Any of these land bays/sections/buildings within the Property may be subject to Proffered Condition Amendments and Final Development Plan Amendments without joinder or consent of the property owners of the other land bays/sections/buildings. The Applicant reserves the right to file for separate zoning action on either Land Bay A or B, which is consistent with the Comprehensive Plan without joinder or consent of the property owners of the other land bay.
19. Successors and Assigns. These proffers will bind and inure to the benefit of the Applicant and his/her successors and assigns.
20. Counterparts. These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but one in the same instrument.

[SIGNATURES BEGIN ON NEXT PAGE]

RZ 2000-PR-056

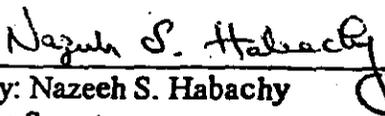
TITLE OWNER

OAC Fairfax, L.L.C.

By: Olayan America Corporation, its
Member



By: Anthony S. Fusco
Its: Vice President



By: Nazeeh S. Habachy
Its: Secretary

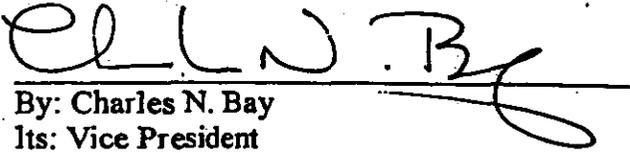
[SIGNATURES END]

RZ 2000-PR-056

APPLICANT/CONTRACT PURCHASER
OF TAX MAP 46-4 ((1)) 36, 37 AND 56-2
((1)) 15F, 16 AND 22
Fairfax Ridge Limited Partnership

By: TCR Fairfax Ridge Limited Partnership,
its General Partner

By: TCR Mid Atlantic Apartments, Inc., its
General Partner


By: Charles N. Bay
Its: Vice President

[SIGNATURES CONTINUE ON NEXT PAGE]