

**PROFFERS**  
**RZ 2002-SU-021**  
**December 12, 2002**

Pursuant to Section 15.2-2303(A), Code of Virginia (1950), as amended, Myung S. Kim as the owner of Tax Map Nos. 54-3((2))-40, 41 (collectively, "Subject Property") and ALD Group, Inc., as the Applicant, Contract Purchaser, and Contract Assignor, and Carl Bernstein, Trustee, as Contract Purchaser and Contract Assignee, for themselves and their respective successors and assigns, hereby proffer to develop the Subject Property in accordance with the following conditions, provided that the Board of Supervisors rezones the Subject Property to the R-8, WS Zoning Districts for seventeen (17) townhouse dwelling units. For the purpose of these Proffers, the term "Developer" refers to the Applicant, its successors and assigns.

1. GDP Subject to the provisions of Section 18-404 of the Fairfax County Zoning Ordinance (the "Ordinance"), development of the Subject Property shall be in substantial conformance with the generalized development plan entitled "Generalized Development Plan Victoria's Landing", consisting of four sheets, prepared by Patton Harris Rust and Associates, P.C., dated April 2002 and revised through September 30, 2002 (the "GDP").

2. Minor Modifications Pursuant to Section 18-204 of the Ordinance, minor modifications to the GDP may be permitted, as determined by the Zoning Administrator. The Developer reserves the right to make minor adjustments to the internal lot lines of the proposed development at the time of subdivision or site plan submission, without requiring approval of an amendment to the GDP or a proffer condition amendment, provided that such minor modifications or adjustments are in substantial conformance with the GDP, do not increase the total number of dwelling units, decrease the amount of open space, decrease the tree save area, or decrease the setbacks from the peripheral lot lines, or increase intrusion onto the stream.

3. Architecture.

(A) Illustrations A, B, C, and D attached to these Proffers are provided to show the design intent for the proposed townhouse units. The front elevations shall be generally consistent in character and quality with the options shown on Illustrations A and B. The front elevations of the residential dwellings shall be brick as shown on Illustrations A & B, but with vinyl and wood trim and other materials for features such as roofs, doors, windows, entrance steps and garage doors. Illustration C depicts side elevation options for those proposed dwelling units with a side elevation exposed to O'Day Drive, shown as units 1 and 17 on the GDP, and these side elevations shall be brick as shown on Illustration C, but with vinyl and wood trim and other materials for features such as roofs, doors, windows, entrance steps, and garage doors. Except for these designated units 1 and 17, the primary materials for the side and rear elevations of the townhouse units may be siding, as shown on Illustration D, but such elevations shall incorporate other materials, such as wood, in trim work such as soffits, friezeboards, corner

boards, and shall incorporate architectural features, generally as shown on Illustrations C and D. Specific features for the townhouse units, such as the exact location and size of windows, doors, shutters and roofline, are subject to modification upon final engineering and final architectural design, but shall be consistent with Illustrations A, B, C and D.

(B) The development shall include the following elements:

(1) Exterior lights near the driveways for some of the townhouse units, spaced as determined by the Developer, of a design substantially as shown on Illustration E. These lights will be shielded downward to prevent extraneous glare.

(2) Additional ornamental trees and shrubs, selected in accordance with the guidance provided in the Fairfax County Public Facilities Manual, shall be planted on the individual lots and shown, for review and approval by the Urban Forestry Division, on the landscape plan submitted as part of site plan review.

(3) The Developer may construct a small monument style entrance feature at the approximate location indicated on the GDP, substantially in the design, or its equivalent, shown on Illustration F. As noted on the GDP, the height and dimensions of this monument shall be in conformance with Article 12 of the Ordinance. If this entrance feature is lighted, it shall be downwardly lit.

(4) The driveway for each townhouse unit shall be a minimum of eighteen (18) feet in length, as shown on the GDP.

4. Landscape Plan As part of site plan review, Applicant shall prepare and submit a landscape plan for new plantings for review and approval by the Urban Forestry Division. The landscape plan shall incorporate the following elements:

(A) Subject to the provisions on special landscaping in Proffer 4(B), the new plantings may be of the type and quantity indicated on Sheet 3 of the GDP and at the approximate locations indicated on the GDP, but the type and exact location of such plantings shall be as recommended by the Urban Forestry Division.

(B) Reference is made to the note on Sheet 3 of the GDP reading "PROPOSED STREAM RESTORATION/REVEGETATION AREA (SEE LANDSCAPE PLAN DETAIL, SHEET 4)" (hereafter referred to as "Restoration Area"). If DPWES grants a waiver of any requirement for an on-site storm water management/BMP pond, then a BMP rain garden shall be planted within the Restoration Area substantially as depicted on the sketch on Sheet 4 of the GDP referred to as "APPLICABLE WITH APPROVAL OF A STORM WATER MANAGEMENT WAIVER". The Developer may also consider other innovative alternatives to satisfy applicable BMP requirements. If DPWES does not waive a requirement for an on-site stormwater management/BMP pond, then the Restoration Area will be restored/revegetated substantially as depicted on the sketch on Sheet 4 of the GDP referred to as "APPLICABLE WITH PLAN SHOWN ON SHEET 2, WHEN STORMWATER MANAGEMENT PLAN IS

REQUIRED.” This landscape plan shall be incorporated with the tree preservation plan required in Proffer No. 5.

5. Tree Preservation Plan.

(A) The Developer shall submit a tree preservation plan as part of the first and all subsequent site plan submissions. The tree preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and reviewed and approved by the Urban Forestry Division. The approximate tree preservation area shall be as depicted on Sheet 2 of the GDP. However, if a stormwater management/BMP waiver is granted, waiving any requirement for an on-site stormwater/BMP pond, then the tree preservation area shall be expanded as shown on the Alternative Plan on Sheet 4 of the GDP.

The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees 10 inches or greater in diameter, measured four (4) feet above the ground, ten feet to either side of the limits of clearing and grading shown on the GDP for the Subject Property. The tree survey shall also include areas of clearing and grading for utilities or stormwater outfall. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture. Specific tree preservation activities that will maximize the surveyability of trees identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, may be included in the plan.

(B) The Applicant shall retain the services of a certified arborist or landscape architect, and shall have the limits of clearing flagged prior to the pre-construction meeting. Before or during the pre-construction meeting, the applicant’s certified arborist or landscape architect shall walk the limits of clearing and grading with an Urban Forestry Division representative to determine where minor adjustments to the clearing limits can be made to increase the surveyability of trees at the edge of the limits of clearing and grading. Trees that are not likely to survive construction due to their species and/or their proximity to disturbance will also be identified at this time, and the Developer shall be given the option of removing them as part of the clearing operation. Any tree that is designated for removal at the edge of the limits of clearing and grading or within a tree preservation area, shall be removed using a chain saw to avoid damage to surrounding trees. 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 adjacent trees.

(C) All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fencing. Tree protection as specified on the tree preservation plan shall be erected at the limits of clearing and grading as shown on the demolition, and phase I & II erosion and sediment control sheets for the area shown as tree save area and proposed conservation easement.

(D) All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing, except super silt fence, shall be performed under the supervision of a certified

arborist. Three days prior to the commencement of any clearing, grading, or demolition activities, the Urban Forestry Division shall be notified and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed.

6. Stormwater Management If a stormwater management and/or BMP ("SWM/BMP") facility is not required to be provided on-site, the area depicted on the GDP as SWM/BMP facility shall remain as open space and shall be preserved as part of the tree preservation plan as depicted on Sheet 4 of the GDP. If an on-site SWM/BMP facility is required, the tree preservation/landscape plan shall show extensive landscaping in all possible planting areas of the pond, in keeping with the planting policies of DPWES.

7. Energy Efficiency All residential units constructed on the Subject Property shall meet the thermal standards of the CABO Model Energy Program of energy efficient homes, or its equivalent, as determined by DPWES, for either electrical or gas systems.

8. Transportation (A) The Developer shall dedicate and convey in fee simple to the Board of Supervisors right-of-way along the O'Day Drive frontage of the Subject Property, as shown on the GDP. Such dedication and conveyance shall be made upon demand by Fairfax County or VDOT, or at the time of site plan approval, whichever occurs first. All density related to such dedication is hereby reserved pursuant to paragraph 4 of Section 2-308 of the Ordinance.

(B) The Developer shall contribute to the Board of Supervisors the sum of \$1,764.00 per townhouse unit, to be held by Fairfax County in escrow for construction of an additional lane, and related highway improvements, to the portion of Lee Highway abutting the Subject Property's southern boundary. This contribution shall be made at the time of final site plan approval and shall be adjusted by increases to the Consumer Price Index for the Washington Metropolitan Area from the date of rezoning approval.

(C) The trail shown on the GDP along Route 29 as an existing 10 foot wide trail shall be verified as in compliance with PFM standards at the time of site plan review. If not in compliance, the Developer shall bring the trail into compliance with current PFM standards, subject to approval by VDOT.

9. Noise Standards (A) In order to achieve a maximum interior noise level of approximately 45 dBA Ldn within a noise contour between 65dBA Ldn and 70dBA Ldn, which contour is an area within approximately 370 feet from the centerline of existing Lee Highway (Route 29), residential units within this contour, which shall be annotated on the site plan, shall have the following acoustical attributes:

(i) Exterior walls shall have a laboratory sound transmission class ("STC") rating of at least 39.

(ii) Doors (excluding garage doors) and windows shall have an STC rating of at least 28. If glazing (excluding any glazing in a garage door) constitutes more than

twenty percent (20%) of any facade, then such windows shall have the same STC rating as that facade.

(iii) Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

(iv) As an alternative to the above, the Developer may elect to have a refined acoustical analysis performed, subject to approval by DPWES to verify noise contour locations and to determine the alternative appropriate noise attenuation measures necessary to meet established county standards and/or to determine which buildings may have sufficient shielding to permit reduction in the mitigation measures described above. Any refined acoustical analysis shall be submitted and approved prior to the issuance of a building permit for a residential unit. The Applicant shall implement said mitigation measures subject to whatever reductions are permitted pursuant to this paragraph.

(B) In order to achieve a maximum interior noise level of approximately 45 dBA Ldn, within a noise contour between 70dBA Ldn and 75dBA Ldn, which contour is an area within approximately 170 feet from the centerline of existing Lee Highway (Route 29), residential units within this contour, which shall be annotated on the site plan, shall have the following acoustical attributes:

(i) Exterior walls shall have an STC rating of at least 45.

(ii) Doors (excluding garage doors) and windows shall have an STC rating of at least 37. If glazing (excluding any glazing in a garage door) constitutes more than twenty percent (20%) of any facade, then such windows shall have the same STC rating as that facade.

(iii) Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmissions.

(iv) As an alternative to the above, the Developer may elect to have a refined acoustical analysis performed, subject to approval of DPWES, to verify noise contour locations and to determine the alternative appropriate noise attenuation measures necessary to meet established County standards and/or to determine which buildings may have sufficient shielding to permit reduction in the mitigation measures described above. Any refined acoustical analysis shall be submitted and approved prior to the issuance of a building permit for a residential unit. The Applicant shall implement said mitigation procedures subject to whatever reductions are permitted pursuant to this paragraph.

(C) In order to reduce the maximum exterior noise, as shown on the Plan, to a level of approximately 65 dBA Ldn for outdoor recreation areas of the townhouse units, a noise attenuation fence shall be provided at the locations indicated on Exhibit 1 attached to these Proffers pursuant to a noise analysis, dated September 3, 2002, prepared by Wyle Laboratories, if such area is otherwise unshielded by topography or built structures to satisfy this requirement. It

is understood that gates may be constructed in any barrier, to connect walkways within the Subject Property to any trail, as shown on the Plan. Consequently, any acoustical barrier shall be architecturally solid from ground up with no gaps or openings, except as may be necessary for drainage and for gates. Satisfaction of this proffer shall be evaluated during site plan review in light of any requirement for gates in the fence or in any other noise barrier. Any required noise attenuation barrier shall be constructed prior to the issuance of the first RUP for a new dwelling. As an alternative to the above, prior to the issuance of a building permit, the Developer may elect to have a refined acoustical analysis performed, subject to approval of DPWES, to verify noise contour locations and to determine the alternative appropriate noise attenuation measures necessary to meet established County standards. Any noise attenuation fence shall be in compliance with Section 10-104 of the Ordinance.

10. Affordable Housing The Applicant shall, at the time of final site plan approval, contribute one percent (1%) of the estimated sales price of each new dwelling to Fairfax County for the County's Housing Trust fund for the provision of affordable housing in accordance with Board of Supervisors policy. The Applicant, in consultation with the staff of the Fairfax County Department of Housing and Community Development, shall determine the estimated sales price.

11. Recreation The Developer shall construct improvements to the existing basketball court, and adjacent facilities, on the adjacent Barros subdivision (Tax Map 54-3((25))), i.e. the basketball court to the east of the Subject Property on Barros South, substantially in accordance with the description and sketch attached as Illustration G to these Proffers. Developer shall, upon first site plan submission, send a written notice (the "Notice"), by certified mail, return receipt requested, to the Fairfax County Housing and Redevelopment Authority ("FHRA") requesting written approval of plans for the work and written permission (collectively, the "Approval") to enter onto Barros to perform the work. Copies of the Notice shall be contemporaneously mailed to the Sully Supervisor and to the Sully Planning Commissioner. Once the Approval has been received by the Developer, the work shall be completed within 120 days after final site plan approval for the Subject Property or 120 days after receipt of the Approval, whichever is later. However, if FHRA does not deliver the Approval, within 90 days of the date of the Notice, then this Proffer No. 11 may be deemed satisfied by a contribution by the Developer of \$955.00 per townhouse unit approved for the Subject Property to the Fairfax County Park Authority for off-site recreational improvements in the Centreville area.

12. Construction Activity (A) Construction activity shall be limited to between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday.

(B) Construction activity on Sundays shall be limited to interior work only and to the hours between 7:00 a.m. and 6:00 p.m.

13. Signs 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 Developer or at the Developer's direction to assist in the initial sale of homes on

the Property. Furthermore, the Developer shall direct its agents and employees involved with marketing and/or home sales for the Subject Property to adhere to this Proffer.

14. Homeowners Association (A) The Developer will establish a homeowners association ("HOA") for the proposed development to own, manage, and maintain the open space, including the private streets, and all other community-owned land and improvements within the Subject Property. Purchasers of residential units shall be advised in writing prior to entering into a contract as to the responsibilities of the homeowners association.

(B) Garages will be utilized only for those uses that will not interfere with intended purposes of the garages, namely, the parking of vehicles. A restrictive covenant to that effect, approved by the County Attorney, and running to the homeowners association and Fairfax County, shall be recorded among the land records of Fairfax County in the homeowners association documents.

(C) The HOA shall be responsible for the maintenance of the rain garden or any other alternative BMP that may be installed pursuant to Proffer No. 4 and the GDP. Maintenance of any rain garden shall be accomplished consistent with the standards set forth in Exhibit 2 to these Proffers. Prospective purchasers shall be advised of the maintenance obligations of the rain garden prior to entering into a contract for sale and the HOA documents shall include a provision that clearly sets out such maintenance obligations set forth in Exhibit 2 or other equivalent document as may be approved by DPWES.

15. Blasting. If blasting is required, and before any blasting occurs on the Application Property, the Applicant or its successors will ensure that blasting is done per Fairfax County Fire Marshal requirements and all safety recommendations of the Fire Marshal, including, without limitation, the use of blasting mats, shall be implemented. In addition, the Applicant or its successors shall:

a. Retain a professional consultant to perform a pre-blast survey of each nearby house or residential building, to the extent that any of these structures are located within two hundred fifty (250) feet of the blast site.

b. Require this consultant to request access to house, buildings, or swimming pools that are located within said 250-foot range if permitted by owner, to determine the pre-blast conditions of these structures. The Applicant's consultant will be required to give adequate notice of the scheduling of the pre-blast survey. The Applicant shall provide the Bryarton and Barros Homeowners' Associations, and all residences entitled to pre-blast inspections, of the name, address and phone number of the blasting contractor's insurance carrier.

c. Require the consultant to place seismographic instruments prior to blasting to monitor the shock waves. The Applicant shall provide seismographic monitoring records to County agencies upon their request.

d. Notify residences within 250 feet of the blast site, ten (10) days prior to blasting.

e. Upon receipt of a claim of actual damage resulting from said blasting, the Applicant shall cause the consultant to respond within five (5) days by meeting at the site of the alleged damaged to confer with the property owner. Any verified claims for damage due to blasting shall be expeditiously resolved.

f. The Applicant will require blasting subcontractors to maintain necessary liability insurance to cover the costs of repairing any damages to structures that are directly attributable to the blasting activity.

16. Miscellaneous These Proffers will bind and inure to the benefit of the Owner and the Applicant, and their respective successors and assigns. These Proffers may be executed in one or more counterparts, each of one when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but the same instrument.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

OWNER:

Myung S. Kim

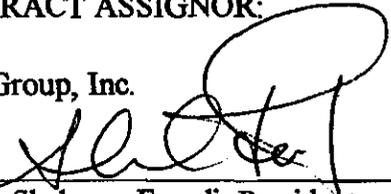
BY: Shahman Foradi, Agent and  
Attorney-in-Fact for Myung S. Kim  
Shahman Foradi, Agent and  
Attorney-in-Fact for  
Myung S. Kim

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

DEVELOPER/CONTRACT PURSHASER/  
CONTRACT ASSIGNOR:

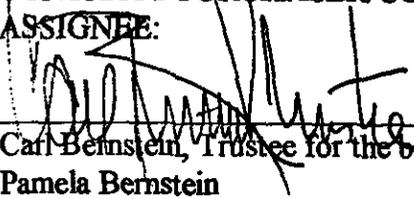
ALD Group, Inc.

BY:

  
Shahman Foradi, President

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

CONTRACT PURCHASER/CONTRACT  
ASSIGNEE:

  
\_\_\_\_\_  
Carl Bernstein, Trustee for the benefit of  
Pamela Bernstein

[FINAL PAGE]