

## **PROFFER STATEMENT**

**October 9, 2013**

**RZ/FDP 2013-SU-010  
Christopher Land, LLC**

Pursuant to Section 15.2-2303(A), Code of Virginia, 1950 as amended, the undersigned Owner/Applicant, in this rezoning proffers that the development of the parcel under consideration and shown on the Fairfax County Tax Map as Tax Map Reference 44-4 ((1)) 18 (hereinafter referred to as the "Property") will be in accordance with the following conditions (the "Proffered Conditions"), if and only if, said rezoning request for the PDH-2 Zoning District is granted. In the event said rezoning request is denied, these Proffered Conditions shall be null and void. The Owner/Applicant, for themselves, their successors and assigns hereby agree that these Proffered Conditions shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board of Supervisors of Fairfax County, Virginia, in accordance with applicable County and State statutory procedures. The Proffered Conditions are:

### **I GENERAL**

1. Substantial Conformance. Subject to the provisions of Article 16 of the Fairfax County Zoning Ordinance (hereinafter referred to as the "Zoning Ordinance"), development of the Property shall be in substantial conformance with the Conceptual Development Plan/Final Development Plan (CDP/FDP) titled "Jennell Property", prepared by Charles P. Johnson & Associates, Inc. consisting of Ten (10) sheets, dated April 29, 2013 as revised through October 1, 2013 and further modified by these proffered conditions.
2. Minor Modifications. Minor modifications from what is shown on the CDP/FDP and these Proffers, which may become occasioned as a part of final architectural and/or engineering design, may be permitted as determined by the Zoning Administrator in accordance with the provisions set forth in Section 16-403 of the Zoning Ordinance. Additionally, except as may be further qualified by these proffered conditions, minor modifications to the building envelopes including footprints, lot areas, dimensions, utility layouts and limits of grading and clearing and house location may be permitted in accordance with Section 16-403 of the Zoning Ordinance as long as such changes do not materially decrease the amount of open space, the building set backs are not violated on the CDP/FDP's typical lot layout, and the limits of clearing and grading are adhered to on the perimeter of the property. As shown on the typical lot layout in the CDP/FDP, under no circumstances shall the houses be less than 12' apart.

3. Architectural Design. The building elevations prepared by Devereaux & Associates, P.C., shown on Sheet 10 of the CDP/FDP, are provided to illustrate the architectural theme and design intent of the residential dwellings. The architectural design of the proposed dwellings shall generally conform to the character and quality of these illustrative elevations, but the Applicant reserves the right to modify these elevations and revise architectural ornamentation based on final architectural design.

The building materials shall vary and may be a combination of brick, stone, and siding supplemented with trim and detail features. Dwellings shall incorporate a brick, or stone water table on all facades visible from public or private streets.

**Comment [G1]:** Define "water table." This is not a common phrase. Generally, it refers to the level of the water below the surface of the soil.

4. Universal Design. Dwelling units shall offer optional features designed with a selection of Universal Design features as determined by the Applicant which may include, but not be limited to, a seat in the Master Bath shower where possible, emphasis on lighting in stairs and entrances, lever door hardware, slip resistant flooring, optional hand-held shower heads at tubs and showers, and optional front-loading washers and dryers.
5. Parcel B. Parcel B is a +/- 7,600 square foot area of land that shall be dedicated to the future Homeowner's Association. This area is reserved for future driveway connections and or development rights of Fairfax Tax Map 44-4 ((1)) 15 when that property is developed in the future. The Homeowners Association may be compensated for any connections or development rights it deems to be appropriate. If any landscaping is removed from this Parcel as part of the redevelopment of the adjacent property, that property owner must replace the landscaping on the Jennell Property's Open Space area or another area that the Homeowner's Association deems appropriate.

## II. RECREATION FACILITIES

6. Recreation Contribution. Pursuant to Sect. 16-404 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall provide recreational facilities to serve the property as shown on the CDP/FDP. Per Sect. 16-404, recreational facilities such as tot lots, gazebos, trails and sitting areas, retaining walls and similar features may be used to fulfill this requirement. The siting and installation of such features shall not interfere with tree save areas. In the event it is demonstrated that the proposed facilities do not have sufficient value, at the time of the issuance of the first Residential Use Permit, the Applicant shall contribute funds in the amount needed to achieve the overall proffered amount of \$1,700 per unit for the Seven (7) homes to be built on the Property for the PDH requirement.

The Applicant shall construct a 6' wide asphalt trail connection to the Walney Woods subdivision with permission from the Walney Woods HOA. The applicant shall remove the existing gravel driveway serving the existing on the property and install a 5' wide asphalt and concrete trail and 2 sets of benches as shown on the CDP/FDP with permission from the Parkside Manor and Walney Woods HOAs ("HOAs") which own that land. If permission is not granted by the HOAs then the Applicants requirement to install these items shall be waived without the need for a proffer interpretation, proffer condition amendment or modification of the CDP/FDP and the Applicant shall contribute \$15,486.00 to the Sully District trail fund.

### III SCHOOLS

7. Contribution. Prior to the issuance of the first Building Permit, a contribution of \$20,976 shall be made to Fairfax County DPWES, then transferred to the Fairfax County School Board to be utilized for capital improvements or capacity enhancements to schools within the Chantilly High School pyramid which serves the Property.

### IV, ESCALATION

8. Escalation. All monetary contributions required by these proffers shall be adjusted upward or downward based on the percentage change in the annual rate of inflation with a base year of 2014 as calculated by referring to the Consumer Price Index for all urban customers (CPI-U), (not seasonally adjusted) as reported by the United States Department of Labor, Bureau of Labor Statistics occurring subsequent to the date of final site plan approval and up to the date of payment. In no event shall an adjustment increase exceed the annual rate of inflation as calculated by the CPI-U.

### V. CONSTRUCTION HOURS

9. Construction Hours. Construction shall occur between the hours of 7:00 a.m. until 7:00 p.m. Monday through Friday, 8:00 a.m. until 6:00 p.m. on Saturday and 9:00 a.m. until 6:00 p.m. on Sunday. Construction activities shall not occur on the holidays of Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving, Christmas, Easter, and New Years Day. The construction hours shall be posted on the property. The allowable hours of construction as specified in this proffer shall be listed within any contract with future sub-contractors associated with construction on the site.

VI. SEPTIC TANK / WELL ABANDONMENT

10. Abandonment. The existing septic tank and well shall be properly abandoned as required by the Fairfax County Health Department prior to the approval and issuance of the demolition permit for the existing single family detached residential unit.

VII. ENERGY CONSERVATION

11. Energy Star Qualification. The dwelling units shall be constructed to achieve one of the following:
  - A. Qualification in accordance with ENERGY STAR® (version 3.0) or Homes, as demonstrated through documentation submitted to the Environment and Development review Branch of the Department of Planning and Zoning (DPZ) and from a home energy rater certified through the Home Innovation Research Labs that demonstrates that each dwelling unit has attained the certification within thirty (30) days after the issuance of the Residential Use Permit (RUP) for each dwelling; or
  - B. Certification in accordance with the National Green Building Standard (NGBS) using the ENERGY STAR® (version 3.0) Qualified Homes path for energy performance, as demonstrated through documentation submitted to the Environment and Development review Branch of the Department of Planning and Zoning (DPZ) and from a home energy rater certified through the Home Innovation Research Labs that demonstrates that each dwelling unit has attained the certification within thirty (30) days after the issuance of the Residential Use Permit (RUP) for each dwelling; or
  - C. Certification in accordance with the Earth Craft House Program, as demonstrated through documentation provided to DPWES and DPZ within thirty (30) days the issuance of the RUP for each dwelling.

Certification testing shall be accomplished prior to the issuance of a RUP for each dwelling. The Certification testing requirement shall be met by e-mailing the building inspector, the preliminary inspection report of the third party inspector prior to the issuance of the RUP. Prior to Bond Release, the Applicant shall show proof to DPWES that all units met one of the conditions A-C.

VIII. GARAGE CONVERSION

12. Garage Conversion. Any conversion of garages that will preclude the parking of vehicles within the garage shall be prohibited. A covenant setting forth this

restriction shall be recorded among the land records of Fairfax County in a form approved the County Attorney prior to the sale of any lots and shall run to the benefit of the HOA and the Board of Supervisors. This restriction shall also be disclosed in the HOA documents. Prospective purchasers shall be advised of this use restriction, in writing, prior to entering into a contract of sale.

VIX. HOME OWNERS ASSOCIATION

13. Establishment of HOA. Prior to record plat approval, the Applicant shall establish a Homeowners Association (HOA) in accordance with Sect. 2-700 of the Zoning Ordinance for the purpose of, among other things, establishing the necessary residential covenants governing the design and operation of the approved development and to provide a mechanism for ensuring the ability to complete the maintenance obligations and other provisions noted in these proffer conditions.
14. Dedication to HOA. At the time of subdivision plat recordation, open space, common areas, private streets, fencing, and amenities not otherwise conveyed or dedicated to the County shall be dedicated to the HOA and maintained by the same. The HOA reserves the right to grant easements for any purpose on the common areas as the HOA deems necessary.
15. Best Management Practice ("BMP") Maintenance. After establishing the HOA, the Applicant shall provide the HOA with written materials describing proper maintenance of the approved BMP facilities.
16. Disclosure. Prior to entering into a contract of sale, prospective purchasers shall be notified in writing by the Applicant of the maintenance responsibility for the streets, storm water management facilities, common area landscaping and any other open space amenities and shall acknowledge receipt of this information in writing. The homeowner association covenants shall contain clear language delineating the tree save areas as shown on the CDP/FDP. The covenants shall prohibit the removal of the trees except those trees which are dead, diseased, noxious or hazardous and shall outline the maintenance responsibility of the homeowners association and individual homeowners. The initial deeds of conveyance and HOA governing documents shall expressly contain these disclosures. The HOA documents shall stipulate that a reserve fund to be held by the HOA be established for the private street maintenance. The Applicant shall be responsible for placing the sum of \$14,000 in such reserve fund prior to the issuance of the first Residential Use Permit (the "RUP") for the proposed single family dwelling units.
17. Public Access Easement. A public access easement in a form approved by the County Attorney shall be placed on the private streets, sidewalks and trails

within the approved development. The requirements of this proffer condition shall be disclosed in the HOA documents.

18. Potential Interparcel Access. The applicant or the future homeowners association shall permit the recording a public or private access easement to permit future connection of the private street to the adjacent property identified as Tax Map 44-4 ((1)) 15 at a location mutually acceptable to both parties. At such time, the applicant shall reserve for future dedication the 41-foot wide area designated on the CDP/FDP as a "Future Connection to Adjacent Property" easement. The future connection and expansion are to be provided by others. However, the Property owner of Tax Map 44-4 ((1)) 15 shall be responsible for removing any landscaping or retaining walls on the property necessary to accommodate the construction by others, and replacing the landscaping elsewhere on the property.

X. STORMWATER MANAGEMENT

19. Stormwater Management. Subject to review and approval by DPWES, stormwater management ("SWM") and Best Management Practice ("BMP") measures for the Property shall be provided in a Dry Pond and shall be developed in accordance with the PFM, unless waived or modified by DPWES. The stormwater management system shall be reviewed for adequacy by DPWES at the time of site plan review; if any inadequacies are identified, appropriate corrective measures shall be employed to the satisfaction of DPWES, prior to final site plan approval.

Effective July 1, 2014, all proposed stormwater discharges from development both during and after construction, and not yet approved by Fairfax County, shall comply with all applicable stormwater management requirements in accordance with the Virginia Stormwater Management Act (Section 62.1-44.15:24. et sequens), the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC 50-60 et sequens), the storm drainage technical criteria, plan review process, and permitting procedures of the Fairfax County Stormwater Management Ordinance, and PFM.

XI. TREE PRESERVATION

20. Tree Preservation Plan. 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 Urban Forest Management Division ("UFMD"), Department of Public Works and Environmental Services ("DPWES").

The tree preservation plan shall include a tree inventory that identifies the location, species, critical root zone, size, crown spread 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 12 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 25 feet outside the limits of clearing and grading and 10 feet inside of the limits of clearing and grading. Trees that are dead or a potential hazard to human health and property which are 12 inches in diameter or greater and located 100 feet outside the limits of clearing and grading and 10 feet within the limits of clearing and grading shall be identified in the inventory as well. The tree preservation plan and narrative shall include all applicable 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.

21. Tree Preservation Walk-Through. The applicant should retain the services of a Certified Arborist or Registered Consulting Arborist, 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, the Applicant's appointed representative shall walk the limits of clearing a 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 that are identified as dead or dying within the tree preservation area 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. 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 and associate understory vegetation and soil conditions.
22. Limits of Clearing and Grading. The Applicant shall conform strictly to the limits of clearing and grading as shown on the CDP/FDP, subject to allowances specified in these development 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 CDP/FDP, they shall be located in the least disruptive manner necessary as determined by the UFMD, DPWES. Five (5) foot wide wood chip trails shall be coordinated and field located with a UFMD representative. A replanting plan shall be developed and implemented, subject to approval by the UFMD, DPWES, for any area protected by the limits of clearing and grading that must be disturbed for such utilities.

23. Tree Preservation Fencing. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. 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 demolition, and Phase I & II erosion and sediment control sheets, 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 should 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. No grading or construction activities shall occur until the fencing is installed correctly, as determined by UFMD, DPWES.

24. Root Pruning. The Applicant shall root prune as needed to comply with the tree preservation requirements of these development conditions. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the subdivision 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 limited to the following:
- Root pruning shall be done with a trencher or vibratory plow to a minimum depth of 18 inches.
  - Root pruning shall take place prior to any clearing and grading, or demolition of structures.
  - An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.
25. Monitoring. During any clearing or tree/vegetation/structure removal on the Applicant Property, 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 should retain the services of a certified arborist or Registered Consulting Arborist to monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with all tree preservation proffer, development conditions, and UFMD approvals. The monitoring schedule shall be described and detailed in



the Landscaping and Tree Preservation Plan, and reviewed and approved by the UFMD, DPWES.

26. Reforestation Plan: A reforestation plan for the area to be reforested, as designated on the CDP/FDP, shall be submitted concurrently with the first and all subsequent site plan submissions for review and approval by Urban Forest Management Division, and shall be implemented as approved. The plan shall provide seedling plantings that include an appropriate selection of native species based on existing and proposed site conditions to restore the area to a native forest cover type. In addition to the reforestation with seedlings, a minimum of 10 overstory and 10 understory deciduous trees having a minimum one-inch caliper shall be provided. The reforestation plan shall include, but not be limited to the following:
- A. Plant list detailing species, sizes, and stock type of trees and other vegetation to be planted;
  - B. Soil treatments and amendments, if necessary;
  - C. Methods to reduce deer browse;
  - D. Methods to reduce weed competition;
  - E. Mulching specifications;
  - F. Details and methods of installation;
  - G. Maintenance activities (such as weeding and watering);
  - H. Mortality threshold; and
  - I. Monitoring and replacement schedule.

## XII TRANSPORTATION

27. Transportation. The Applicant shall construct the extension of the public street Walney Park Drive to the proposed development. The Applicant will remove the temporary turn around on Tax Map 44-4 ((18)) parcels 1 & 2 and establish front yards on both parcels and extend the sidewalk along both parcels.

## XIII. AFFORDABLE HOUSING

28. Housing Trust Fund. At the time each residential lot is issued a building permit, the Applicant shall contribute to Habitat for Humanity of Northern Virginia or the Fairfax County Housing Trust Fund, at the direction of the Sully District Supervisor, the sum of four thousand dollars (\$4,000.00) (equal to \$28,000 for (7) new dwelling units), which is equal to one half of one percent (1/2%) of the projected sale price for the new dwelling unit on the residential lot subject to the building permit. At the time of transfer to an initial third party purchaser, the Applicant shall contribute an amount equal to one half of one percent (1/2%) of that portion of the actual sale price over \$800,000 (i.e. if the sale price is \$850,000, the 1/2% of \$50,000) to Habitat for

Humanity of Northern Virginia or the Fairfax County Housing Trust Fund, at the direction of the Sully District Supervisor.

XIV. SIGNS

29. Signs. Any sign installed by the Applicant shall be in conformance with Article 12 of the Zoning Ordinance.

XV. ARCHAEOLOGICAL STUDY

30. Archaeological Review. At least 30 days prior to any land disturbing activities on the Property and prior to any land-disturbing activities associated with these Proffers on Tax Map 44-4 ((1)) 18, the Applicant shall conduct a Phase I archaeological study on the entire Property and provide the results of such study to the Cultural Resources Management and Protection Section of the Fairfax County Park Authority ("CRMP") for review and approval. The study shall be conducted by a qualified archaeological professional approved by CRMP. No land disturbance activities shall be conducted until this study is submitted to CRMP. 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 CRMP. 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 CRMP, however that process shall not be a precondition of site plan approval but rather shall be carried out in conjunction with site construction.

XVI. SUCCESSORS AND ASSIGNS

31. Successors and Assigns. These proffers shall bind and inure to the benefit of the Applicant and his/her successors and assigns.

**SIGNATURES BEGIN ON THE FOLLOWING PAGE**

APPLICANT/CONTRACT PURCHASER OF TAX MAP  
44-4 ((1)) 18

CHRISTOPHER LAND, LLC

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By: E. John Regan, Jr.  
Its: Member

TITLE OWNER OF TAX MAP  
44-4 ((1)) 18

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By: Marguerite A. Jennell