

**PROFFER STATEMENT
MINTBROOK**

PROJECT No.: REZN11-LE-002, CCRV11-LE-001 and CPAM11-LE-001,

Rezoning of the Property to Mixed Use – Bealeton (MU-B), Planned Residential Development (PRD), and Revised Proffer Statement for existing PRD to Create a Unified Development.

PROPERTY: The “Property” comprises 252.82 acres more or less consisting, of the following parcels:

1. Cheatham/ Goulding, G.P.I.N. 6889-89-6214
2. Steffey/Weaver, G.P.I.N. 6899-05-7716
3. Hodgson, G.P.I.N. 6899-18-3742

The Applicant is also the contract purchaser from Cheatham/Goulding of property comprising an additional 90.86 acres more or less, zoned RA, a portion of Geographic Parcel Identification Number (G.P.I.N.) 6889-89-6214, that is not a part of the Property as that term is defined above, but that is part of the Mintbrook development, and that shall remain zoned RA to be dedicated to others or otherwise used as set forth herein (the "Additional Land".)

All parcels are in the Lee Magisterial District.

RECORD OWNERS: Jean Elizabeth Cheatham, and William W. Goulding; James F. Steffey and Gary W. Weaver; Terry L. Hodgson and David L. Hodgson.

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ORIGINAL DATE

OF PROFFERS: February 18, 2011

REVISION DATE:

May 23, 2011

July 29, 2011

November 18, 2011

The undersigned hereby proffers that the use and development of the Property and the Additional Land as described above, shall be in conformance with the following proffered conditions, which shall supersede all other proffers that may have been made prior hereto with respect to the Property or any portion thereof. In the event the above referenced rezoning is not granted as applied for by the applicant ("Applicant"), these amended proffers shall be deemed withdrawn and shall be null and void. In the event an appeal is considered by a court of competent jurisdiction and the application is thereafter remanded to the Board of Supervisors (the "Board") for reconsideration or the rezoning is invalidated by that court, then these amended proffers shall be deemed withdrawn unless the Applicant affirmatively readopts all or any portion in writing specifically for that purpose. The headings of the amended proffers set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provision of the proffers.

1. GENERAL PROVISIONS:

- 1.1. All improvements proffered herein to be constructed or otherwise provided by the Applicant shall be provided at the time of development of that portion of the Property immediately adjacent thereto or including the improvement or other proffered requirement, unless otherwise specified herein, or in the Code of Development as that term is defined below.
- 1.2. The term "Applicant" as referenced herein shall include the current owner of the Property and all future owners, heirs, assigns and successors in interest.
- 1.3. When used in these proffers, the "C/GDP" shall refer to the plan entitled "Concept/General Development Plan, MINTBROOK" prepared by Bowman Consulting Group, dated July 29, 2011, revised November 18, 2011, and the "COD" shall refer to the MINTBROOK Code of Development prepared by Katherine Galvin, AIA, and Bowman Consulting, dated November 2011.

2. THE PROPERTY:

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- 2.1. The Property comprises a total of 252.82 acres. Pursuant to this Rezoning, the following shall apply:
 - 2.1.1. A portion of the Property heretofore rezoned PRD consisting of 60.90 acres, and as shown on the Rezoning Plat submitted with the application in this case incorporated into these Proffers by reference, shall remain zoned PRD, provided, however, that this property shall be considered rezoned under the ordinance in effect on the date of approval of this Rezoning.
 - 2.1.2. An additional portion of the Property comprising 148.27 acres more or less as shown on the Rezoning Plat, shall be rezoned PRD (Planned Residential - District) in effect on the date of approval of this Rezoning.
 - 2.1.3. That portion of the Property comprising 43.65 acres more or less as shown on the Rezoning Plat, shall be rezoned MU-B (Mixed Use – Bealeton District) in effect on the date of approval of this Rezoning.
 - 2.1.4. The Property shall be developed as a single, unified development; provided that the development may be phased as the Applicant determines appropriate, subject to any proffered conditions otherwise relating to phasing.

3. CODE OF DEVELOPMENT

- 3.1. The COD is incorporated herein by reference as a proffer. The standards established in the COD shall govern all commercial, residential, common open space, and other construction on the Property as set forth therein. Further, the COD sets forth design standards and guidelines for the Property that shall be binding on the development thereof. Notwithstanding anything to the contrary herein, or in the COD, colored renderings included in that document are illustrative in nature and are included solely to provide a visual reference for what may be built on the Property pursuant to the COD, and shall not be binding on the development.
- 3.2. Variations from the requirements of the COD will be permitted in accordance with the standards set forth in the COD.

4. LAND USE, RESIDENTIAL AND COMMERCIAL:

- 4.1. Residential development of the area of the Property depicted on the C/GDP as MU-B “Core Sub-District,” and the PRD Residential portion of the Property, shall be in substantial conformance with the C/GDP and the COD, as further set forth

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below.

- 4.2. Residential development of the Property shall not exceed the following number of units in the locations generally depicted on the C/GDP, and subject to the requirements of the COD.
 - 4.2.1. There shall be not more than 475 residential dwelling units constructed.
 - 4.2.2. The total authorized number of residential dwelling units shall be comprised of not fewer than 18 residential over commercial units to be located in the MU-B Village Center, and not fewer than 54 multi-family units to be located in the MU-B Village Center. It shall also be comprised of not fewer than 100 single-family attached, and not more than 303 single-family detached dwelling units.
 - 4.2.3. Of the single-family detached dwelling units authorized herein, not fewer than 12 shall be one to one and one-half stories in height. Not fewer than 3 such units shall be included in Phase 1; not fewer than 2 such units shall be included in Phase 2; and not fewer than 7 such units shall be included in Phase 3, as those Phases are defined in Proffer 5, below. Such units shall be equally distributed within each Phase and shall not be grouped together, placed adjacent to or across any street from one another.
- 4.3. Commercial development of the Property depicted on the C/GDP as “MU-B Core Subdistrict” and the PRD Commercial portion of the Property shall be developed in accordance with the applicable regulations for such development set forth in the Zoning Ordinance for the MU-B District.
- 4.4. Reasonable adjustments in acreage (not including modifications to zoning lines), road locations, lot lines, lot widths and depths, utility lines, stormwater management, natural drainage, and other features depicted on the C/GDP or COD may be made at the time of site or subdivision plan approval consistently with § 4-718 of the Fauquier Zoning Ordinance, and in conformance with the provisions of the COD.
- 4.5. The Applicant may, in its discretion, retain the existing farmhouse on the Additional Land, and may construct customary accessory farm structures associated therewith and a garage capable of housing no more than three vehicles in a structure architecturally compatible with the existing farmhouse. No additional residential units may be constructed north of the East-West Connector Road, except

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that in the event that the Applicant demolishes the farmhouse, it may construct one single-family house and garage in the place thereof. The existing duplex home adjacent to the farmhouse on the Additional Land shall be removed prior to the issuance of the first occupancy permit for the Property.

5. RESIDENTIAL AND COMMERCIAL PHASING

5.1. The Applicant may construct no more than the following number of single-family detached or attached residential dwelling units in any given year on the residentially-designed portions of the PRD properties; provided further that any units not constructed in a given year may be constructed in subsequent years, so long as no more than 100 residential dwelling units are constructed in any one calendar year. This does not apply to the residential over commercial units or multifamily units authorized in the MU-B Core Subdistrict. The first year of development as referenced herein, shall begin on the last day of the 12th month following the date of the Board's approval of this amended rezoning ("Year 1").

5.1.1. Year 1 - issuance of building permits for 75 units

5.1.2. Year 2 - issuance of building permits for 75 units

5.1.3. Year 3 - issuance of building permits for 75 units

5.1.4. Year 4 - issuance of building permits for 75 units

5.1.5. Year 5 - issuance of building permits for 75 units

5.1.6. Year 6 - issuance of building permits for 50 units

5.1.7. Year 7 - issuance of building permits for 50 units

5.2. There may be not more than 385,300 gross square feet of permitted commercial development on the commercially designated portions of the Property. Such commercial development shall be allocated as 220,000 gross square feet in the MU-B Village Center, 125,000 gross square feet in the MU-B Future Commercial, and 40,300 gross square feet in the PRD Future Commercial, and shall occur as follows:

5.2.1. There shall have been issued building permits for 8,000 gross square feet of commercial development prior to the issuance of the 150th residential occupancy permit.

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- 5.2.2. There shall have been issued building permits for 20,000 gross square feet of commercial development prior to the issuance of the 225th residential occupancy permit.
- 5.2.3. There shall have been issued building permits for 30,000 gross square feet of commercial development prior to the issuance of the 300th residential occupancy permit.
- 5.2.4. There shall have been issued building permits for 50,000 gross square feet of commercial development prior to the issuance of the 350th residential occupancy permit.
- 5.2.5. There shall have been issued building permits for 70,000 gross square feet of commercial development prior to the issuance of the 400th residential occupancy permit.
- 5.2.6. There shall have been issued building permits for 100,000 gross square feet of commercial development prior to the issuance of the 475th residential occupancy permit.
- 5.2.7. The remaining permitted commercial and residential development may occur at any time during the development of the Property, as market conditions dictate.

6. EMPLOYMENT OPPORTUNITIES

- 6.1. In order to provide continued support for the Bealeton community and Fauquier County, bona fide efforts will be made to cause employment opportunities during the development of the Property to be made public during that development. Advertisements will be published in a newspaper of general circulation in the County listing requests for proposals for services to include, but not be limited to, carpentry, plumbing, electrical, heating and air conditioning, roofing, bricklaying, and landscaping. Such advertisements may be provided by a general contractor or by individual builders that may acquire properties for development. The Applicant will insure that employment opportunities, and a current list of both future commercial tenants and residential homebuilders, are reasonably made public, provided that this shall not include disclosure of proprietary information. Responsible and responsive contractors whose principal place of business is Fauquier County will be considered.

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7. ARCHITECTURE, LANDSCAPING, OPEN SPACE, RECREATION, AND TRAILS / COD CONFORMANCE.

7.1. Each of the elements of the development of the Property set forth in the title to this section of these proffers shall be in substantial conformance with the provisions of the COD therefor.

8. CREATION OF PROPERTY OWNERS' ASSOCIATIONS:

8.1. Property Owners' Associations:

8.1.1. One or more property owners' associations (hereinafter "POA") shall be created and in addition to any other duties and responsibilities as may be assigned. Such POA shall have title to and responsibility for (i) common open space areas not dedicated to public use in accordance with these proffers and (ii) common buffer areas located outside of residential lots. The POA shall also have (iii) responsibility for the perpetual maintenance of any entrance feature (subdivision) signs, private street, private alleyways and perimeter or road buffers for those purposes to be granted to the POA; (iv) responsibility for the maintenance of any street trees located in common open space areas; (v) maintenance of any street trees located within the street tree easement(s) or within the VDOT right-of-way to the extent permitted or required by that Department, and (vi) all landscaping in common areas and open spaces.

8.1.2. The POA shall be granted such other responsibilities, duties, and powers as are customary for such associations, or as may be required to effect the purposes for which such POA is created. It shall be also granted sufficient powers as may be necessary, by regular or special levies or assessments, to raise revenues sufficient to perform the duties assigned hereby, or by the documents creating the POA.

8.1.3. If the Applicant elects to establish more than one POA within the community, an umbrella organization or agreement shall be established whereby costs of and responsibility for maintenance of all open spaces and storm-water management facilities are shared by all owners within the property, whether commercial, residential or civic.

8.1.4. The POA documents shall prohibit (i) conversion of garages to living area or conversion to any other use that prohibits the storage of vehicles; and

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(ii) parking of recreational vehicles within the residential area of the PRD and MU-B Core Subdistrict. Recreational vehicles shall include but not be limited to boats, trailers, and campers.

8.1.5. POA documents shall include provisions that assure that common open space and facilities for common use are made available to all residents.

9. WATER AND SEWER

9.1. The Property shall be connected to public water and sewer systems at the Applicant's expense.

10. SCHOOLS

10.1. In recognition of the very substantial dedication of property to the County for public school purposes, the Applicant shall contribute to the Board for school purposes in the amount of \$2,793.00 per residential single-family detached units, payable upon the issuance of an occupancy permit for each such unit.

10.2. In recognition of the very substantial dedication of property to the County for public school purposes, the Applicant shall contribute to the Board for school purposes in the amount of \$793.00 per residential single-family attached units, payable upon the issuance of an occupancy permit for each such unit.

11. PARKS AND RECREATION

11.1. In response to comments from the Department of Parks And Recreation, and in view of the provision of an extensive trail network, dedication of public recreation space, and inclusion of playgrounds and open spaces within the development, as set forth in this Proffer Statement, the Applicant shall not separately contribute to the Board funds for park and recreation purposes.

12. LIBRARIES

12.1. The Applicant shall contribute to the Board for library purposes the amount of \$707.00 per residential unit, payable upon the issuance of an occupancy permit for each such unit.

13. EMERGENCY SERVICES

13.1. The Applicant shall contribute to the Board for emergency services the amount of

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\$3003.00 per residential unit, payable upon the issuance of an occupancy permit for each such unit.

14. SHERIFF

14.1. The Applicant shall contribute to the Board for the County Sheriff's Department the amount of \$468.00 per residential unit, payable upon the issuance of an occupancy permit for each such unit.

15. ENVIRONMENTAL SERVICES

15.1. The Applicant shall contribute to the Board for Environmental Services the amount of \$641.00 per residential unit, payable upon the issuance of an occupancy permit for each such unit.

16. ANIMAL SHELTER

16.1. The Applicant shall contribute to the Board for the Animal Shelter the amount of \$128.00 per residential unit, payable upon the issuance of an occupancy permit for each such unit.

17. TRANSPORTATION

17.1. The Applicant shall dedicate sufficient right-of-way for and shall construct those improvements as set forth in the C/GDP, and as detailed in the COD.

18. COMMERCIAL DEVELOPMENT CONTRIBUTION.

18.1. The Applicant shall contribute to the Board the sum of \$0.50 per square foot of commercial development to be paid upon the issuance of an occupancy permit for each such individual commercial use.

19. RESIDENTIAL USES IN THE MU-B CORE SUBDISTRICT

19.1. The Applicant shall make no monetary contribution for any residential units authorized within the MU-B Core Subdistrict.

20. REQUIREMENTS FOR CONSTRUCTION OF SUBSURFACE STRUCTURES.

20.1. For all residences constructed on the Property that will include basements, no below grade basements shall be constructed on soils with high water tables, unless the foundation drainage system of the structure is designed by licensed profes-

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sional engineers to assure a dry basement and to preclude wet yards and recirculation of pumped or collected water, and approved by the County.

- 20.2. Drainage easements, where required, shall be placed on the final plat.
- 20.3. The deeds to each unit with a basement so constructed shall include the following language:

This house has been constructed on property that has been determined to possess a high subsurface water table. A foundation drainage system for this home and lot has been engineered and built according to standard engineering practices. The property owner is advised that any disturbance of this foundation drainage system may result in excess water in the yard or basement of the home, and that any such disturbance is undertaken at the sole risk of the property owner. The owner is advised to consult with a competent civil or geotechnical engineer prior to undertaking any land disturbance activity, which means any activity that changes the volume, velocity, or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity that bares soil or rock or involves the diversion or piping of any natural or man-made watercourse that may affect the foundation drainage.

21. DEDICATION OF REAL PROPERTY FOR PUBLIC USES

- 21.1. The Applicant shall dedicate from the Additional Land, to Fauquier County, approximately 89.06 acres more or less, a portion of Geographic Parcel Identification Number (G.P.I.N.) 6889-89-6214, of which 72.76 acres will remain zoned to the RA Classification and 16.30 acres zoned to the PRD Classification, as depicted on the CDP as Public Use Property. Such dedications shall be made as follows:
 - 21.1.1. Approximately 3.39 acres of land shall be dedicated for a (i) fire station, (ii) approximately 16.30 acres of land for an elementary school, and (iii) approximately 22.17 acres of land for a proposed facility for that organization now or formerly known as the Young Men's Christian Association ("YMCA"), or similar nonprofit organization as may be approved by the Zoning Administrator, will each be dedicated to the County within one

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year following approval of the first site or subdivision plan for the development of the Property upon written request by the County. Such sites will be rough graded prior to or following the conveyance thereof and public sewer and water will be extended to the boundary of such parcel at such time as the Applicant commences development of any portion of the Property that is accessed by means of the East-West Connector Road.

21.1.2. Approximately 47.2 acres of land for a planned middle school will be dedicated to the County within two years following approval of the first site or subdivision plan for the development of the Property upon written request by the County. Such site will be rough graded prior to or following the conveyance thereof and public sewer and water shall be extended to the boundary of such time as the Applicant commences development of any portion of the Property that is accessed by means of the East-West Connector Road.

21.1.3. The Applicant shall retain the right to stage development activities and perform other on-site improvements, remove soil from any parcel, and to store soil on any parcel to be so dedicated, either before or after such dedication is made, provided that if such staging, removal or storage of such soil is done after conveyance thereof, such removal does not unreasonably interfere with or restrict the County's ability to use and develop such parcels as it may determine.

21.1.4. In order to assure that the rough grading, removal of such soil, or the storage thereof does not unreasonably and adversely affect the County's future use and development of such parcels, after receiving from the County its final construction plans ("FCP") for any elementary, middle school, fire station, YMCA or other facility as authorized herein, the Applicant shall prepare and submit rough grading plans, or plans for soil removal and/or storage as appropriate, that shall be consistent with any such FCP. The Applicant's plans shall be subject to approval by the County, and shall assure the retention or replacement of sufficient top soil for any public or quasi-public use as set forth in these Proffers.

21.2. Property to be dedicated to the County in accordance with these Proffers, or otherwise lying north of the East-West Connector Road, shall, upon such dedication, be subject to a restrictive covenant that precludes the use of such property for residential purposes.

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21.3. Without purporting to restrict or limit the County's authority with respect to the provision of public sewer and water services under law, the Applicant shall construct no sewer or water lines into or on land to be dedicated to the County except as may otherwise be specifically authorized herein.

21.4. Notwithstanding anything to the contrary in these Proffers, public sewer and water may be extended to the farmhouse existing in Additional Area at the time of the rezoning of the Property, and to any non-residential use north of the East-West Connector Road.

22. ENERGY CONSERVATION

All residential builders on the project will be required to use building components that are designed to improve the energy efficiency in all residential units. These components will include: Low-E rated and/or higher performance windows and exterior doors; increased R-value of insulation in floors, walls, and attic; ridge vents and attic fans; enhanced exterior caulking and weather sealing; programmable thermostats to regulate heating and air conditioning systems; Energy Star appliances and ceiling fans; high SEER rated and/or high efficiency heating and air conditioning systems. Residential builders will also be encouraged to include low flow shower heads, low flush toilets, tankless water heaters, and low VOC paints and carpeting.

23. FUTURE "UN-PLANNED" COMMERCIAL AREAS

The areas identified as "Future Commercial" on the C/GDP (Blocks 4, 5, and 6; Neighborhood A), while included in the overall Mintbrook project and subject to the zoning, land use, building orientation and architectural controls as outlined in the Mintbrook Code of Development, shall require a separate rezoning approval to establish the specific use, mix and layout for each Block prior to commencement of final engineering and development for that individual Block. It shall not be required that the use, mix, and layout be determined for all Blocks at the same time; this will allow each of the three Blocks to be developed individually.

24. ESCALATOR CLAUSE

Any monetary contributions set forth in this Proffer Statement which are paid to the Board after 36 months from the date of rezoning approval by the Board shall be adjusted in accordance with the Urban Consumer Price Index ("CPI-U"), as published by the United States Department of Labor. The adjustment shall be calculated from the CPI-U

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published most nearly to and following January 1st from that date 36 months after rezoning approval and the date the contributions are paid, subject to a cap of 3% per year, non-compounded.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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OWNER:

JEAN ELIZABETH CHEATHAM

By: _____

Date: _____

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OWNER

WILLIAM W. GOULDING

By: _____

Date: _____

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OWNER:

JAMES F. STEFFEY

By: _____

Date: _____

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OWNER:

GARY W. WEAVER

By: _____

Date: _____

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OWNER:

TERRY HODGSON

By: _____

Date: _____

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OWNER:

DAVID HODGSON

By: _____

Date: _____