



County of Fairfax, Virginia

MEMORANDUM

DATE: September 25, 2018

TO: Members, Fairfax County Planning Commission

FROM: Sharon Williams, Staff Coordinator
Zoning Evaluation Division, Department of Planning and Zoning

SUBJECT: Revised Proffers
RZ/FDP 2018-SU-008 and PCA 2009-SU-020-03; K. Hovnanian Homes at
Pender Oaks, LLC
Planning Commission Decision Only: September 27, 2018

Please find the attached revised proffers dated September 24, 2018, for the application for K. Hovnanian Homes at Pender Oaks, LLC; RZ/FDP 2018-SU-008 & PCA 2009-SU-020-03. The updated proffers are highlighted with changes in black-line from those in the Staff Report. The following changes were included:

Proffer Changes:

- Proffer 7 (Architectural Design) – Reformatted the bullet lists.
 - o Proffer 7 Par. E – Establishes “Land Records” as a term used consistently throughout the rest of the proffers.
- Proffer 10 (Property Owners Association) – Revised to give more direction to future Master POA and to include Pet Waste Stations
 - o Proffer 10 Par. A – Revised to include language directing the applicant and/or the Master POA to meet with adjacent HOA Board of Directors on an annual basis and to ensure that updated contact information will be provided if there is a change in the Master POA President.
 - o Proffer 10 Par. B – Added to include the provision of pet waste stations throughout the site.

- Proffer 21 (Affordable Dwelling Units) – Revised to reference the correct sheet number on the GDP/FDP.
- Proffer 22 (Workforce Dwelling Units) – Revised to ensure the dispersion of WDU's throughout the Condo Flats, per the BOS WDU Administrative Policy Guidelines.
 - o Proffer 22 Par. B – Revised for clarification to ensure that the cost of parking for WDUs is included in the sales price of the unit.

PROFFERS

K. HOVNANIAN AT PENDER OAKS, LLC

RZ 2018-SU-008

September 246, 2018

Pursuant to § 15.2-2303 (A) of the Code of Virginia, 1950, as amended, and § 18-204 of the Zoning Ordinance of Fairfax County, Virginia (“Zoning Ordinance”), and subject to the Board of Supervisors approving a rezoning of the properties identified as Tax Map #46-3 ((1)) 15A1 and 15C (jointly, the “Property”) from the PDC zoning district to the PDH-12 zoning district, K. Hovnanian At Pender Oaks, LLC (the “Applicant”), for the property owner, itself, its successors, and assigns, agrees that development of the Property will be in accordance with the following conditions (“Proffers”) if, and only if, the Fairfax County (the “County”) Board of Supervisors approves RZ 2018-SU-008 (the “Application”). If accepted, these Proffers will replace and supersede any previous proffers approved on the Property. In the event the Application is denied, these Proffers will be null and void and of no further force and effect.

I. CONCEPTUAL DEVELOPMENT PLAN & DEVELOPMENT SCOPE

1. Conceptual Development Plan (“CDP”). Development of the Property will be in substantial conformance with the plan set titled “Conceptual Development Plan/Final Development Plan/Proffer Condition Amendment For Pender Oaks”, consisting of 44 sheets, prepared by Urban, Ltd., dated October 19, 2017, and revised through September 6, 2018 (the “Development Plan”). The CDP represents the points of access, the maximum number and type of dwelling units, the amount and general location of open space, the general location and arrangement of the buildings, maximum building heights, and the building setbacks from the property lines (the “CDP Elements”). The remaining elements are Final Development Plan (“FDP”) Elements.
2. Development Scope. The Property may be developed with a maximum of 219 residential dwelling units, containing up to 91 single family attached units (“Townhomes”), 56 multifamily stacked townhomes (the “Stacked Townhomes”), and 72 multifamily condominium flats in two buildings (each, a “Condominium Flat”). The Applicant has the option to request a FDPA for FDP Elements from the Planning Commission for all or a portion of the Development Plan in accordance with the provisions set forth in § 16- 402 of the Zoning Ordinance.
3. Amenity Phasing. Development of amenities in the proposed development is divided into four phases (each an “Amenity Phase”) as depicted in the Amenity Phasing Illustration contained on Sheet 39A of the Development Plan. Development of the Property and Amenity Phases may proceed in any order and

may be developed concurrently, provided that all proffers, together with any associated improvements, that apply to any such Amenity Phase(s) are addressed with the development of said Amenity Phase(s). The Applicant shall construct the streets, streetscape, and provide pedestrian improvements, publicly-accessible parks, private amenities, recreational amenities, and other facilities on the Property in conjunction with the development of each new building in a manner that reflects the intent of that shown within the Amenity Phasing Illustration. Each Amenity Phase shall also comply with the minimum parking requirements of Article 11 of the Zoning Ordinance. Adjustments to the phasing may be approved by the Zoning Administrator without the need for a CDPA, FDPA, or PCA, provided any such adjustments do not materially adversely affect other phases.

4. Minor Modifications. Pursuant to § 16-403 (4) of the Zoning Ordinance, minor modifications to the Development Plan may be permitted as determined by the Zoning Administrator. The Applicant will have the flexibility to modify the layouts shown on the Development Plan without requiring approval of an amended Development Plan provided such changes are in substantial conformance with the Development Plan as determined by the Zoning Administrator. Irrespective of the open space location or amounts depicted on the Development Plan, the provision of open space shall be a minimum of 47 percent of the Development Plan's land area.

5. Existing Development. As depicted on Sheet 8 of the Development Plan, the Property is currently developed with a three-story office building and an associated surface parking lot (the "Existing Development"). The Existing Development may remain in use until such time it is removed to accommodate this Application's development in accordance with this Application or as otherwise stated in these Proffers.

- ~~5-6.~~ Recreation Facilities For Residents. Pursuant to §§ 6-110 (2) and 16-404 (2) of the Zoning Ordinance, and as depicted on the Amenity Phasing Illustration, the Applicant will provide amenity areas and facilities designed to meet the on-site recreational needs of the future residents of the Property. The specific design of these areas may be adjusted at the time of Final Development Plan or final site plan approval, provided the quality and character of the designs are comparable with those shown on the Development Plan. The Applicant will expend a minimum of \$1,900.00 per market rate residential dwelling unit toward said recreational facilities, which shall be made available to all residents of the development, and which may include, but will not be limited to, the following:

- A. Exterior recreational areas, which may include walking paths and sidewalks, fitness stations, outdoor furniture, outdoor kitchen/grills, fire pits, pedestrian-scaled lighting, specialty landscaping, lawn areas, tot lots, playgrounds, Zen gardens, and outdoor adult exercise areas;

- B. Courtyard areas, which may include a pavilion, pool and related bathhouse facilities, seating areas, landscaping, and hardscape areas; and
- C. Club rooms and/or entertainment centers for resident gatherings, which may be located in the bathhouse.

At a minimum, the Applicant will construct those recreational amenities depicted on the Development Plan in conjunction with the development of each new building in a manner that reflects the intent of that shown within the Amenity Phasing Illustration depicted on Sheet 39 of the Development Plan. Prior to final bond release for the Property, the balance of any funds not expended for the Property, if any remain as determined by the Department of Land Development Services (“LDS”), will be contributed or may be escrowed, and contributed to the Fairfax County Park Authority for the provision of recreational facilities located in the service area for the Property based on consultation with the District Supervisor.

6.7. Architectural Design. Building elevations depicted on Sheets 38 through 39 of the Development Plan are provided to illustrate the architectural theme and design intent of the residential buildings. The architectural design of the proposed dwellings will generally conform to the character and quality of these illustrative elevations, but the Applicant reserves the right to modify these elevations based on final architectural design, provided the modifications are consistent with the lot typical graphic on Sheet 3A of the Development Plan.

- A. As shown on the Development Plan, building materials may vary and may be a combination of brick, stone, and siding supplemented with trim and detail features, so long as the following standards are observed:
 - 1. The Townhomes and Stacked Townhomes will provide a primarily brick façade, with accent cementitious siding elements on the front facades, with the exception of windows and doors. Side and rear façades will consist of six-inch beaded vinyl siding, cementitious siding elements, and/or brick, with the exception of windows and doors.
 - 2. The Condominium Flat building façades will consist of brick and cementitious siding, with the exception of windows and doors.
- B. Decks, patios, porches, sunrooms, balconies, bay windows, chimneys, areaways, mechanical equipment, and similar appurtenances may encroach into minimum yards as depicted on Sheet 2 of the Development Plan, and as may be permitted by § 2-412 (10) of the Zoning Ordinance.

C. The Applicant will provide the following Universal Design Options in all residential units on the Property:

1. The ~~following Applicant will provide the following~~ Universal Design Options shall be installed in all residential units on the Property at no additional cost:
 - a. Blocking for reinforcement of fall grab bars;
 - ~~b. _____~~
 - ~~e.b.~~ Front entrance doors that are a minimum of 36 inches wide;
 - ~~d.c.~~ Electrical outlets that are a minimum of 18 inches high on the wall; and
 - ~~e.d.~~ Light switches and thermostats that are located a maximum of 48 inches high on the wall. Thermostats will be relocated to a maximum of 48 inches high on the wall at the request of the original home purchaser at the time of sale.
2. In addition to the Universal Design Options offered pursuant to Proffer 7.C.1, above, Additionally, at the time of initial purchase, for units that have not yet been constructed, each purchaser shall be offered the following Universal Design Options in all residential units on the Property at no additional cost:
 - a. Clear knee space under the kitchen sink; and
 - b. Lever door handles instead of door knobs.
3. In addition to the Universal Design Options offered pursuant to Proffer 7.C.1 ad 2, above, aAt the time of initial purchase, and prior to construction, each purchaser will be offered the following additional Universal Design options at the purchaser's sole cost, which will include, but not necessarily be limited to:
 - a. A curb-less shower or a shower with a maximum two inch high curb;
 - b. Step-less entry for ground floor residential units from the garage to the house, to the extent permitted by the then current edition of the Virginia Statewide Building Code;
 - c. A turning radius of five feet near the first floor bathroom commode;
 - d. ADA compliant grab bars in the bathrooms; and

- e. A first floor bathroom console sink in lieu of a cabinet-style vanity.

~~C.D.~~ All Townhomes and Stacked Townhomes on the Property will have driveways a minimum of 18 feet in length, measured from the back of the sidewalk or the face of curb (whichever is applicable) to the face of the garage door. The Master POA documents, established pursuant to Proffer 10, below, will specifically prohibit vehicle parking in a manner which overhangs or blocks sidewalks or streets.

~~D.E.~~ All garages will have minimum interior dimensions as depicted on Sheet 6 of the Development Plan. Any conversion of garages that will preclude the parking of vehicles and the storage of trash and recycling containers within the garage is prohibited. This shall not preclude the use of garages as sales offices in the model homes during the initial marketing of the development, with the understanding that the sales offices will be converted back to garages upon sale of the models. A covenant setting forth these restrictions will be recorded among the ~~L~~and ~~R~~ecords of Fairfax County (the “Land Records”) in a form approved by the Office of the County Attorney prior to the sale of any lots and will run to the benefit of the Master Property Owners Association (the “Master POA”), established pursuant to Proffer 10. Prospective purchasers will be advised of these restrictions, and the interior dimensions of the garages, in writing, prior to entering into a contract of sale. These restrictions and the interior dimensions of the garages will be included in the marketing materials for the initial sales of units on the Property and included prominently in the HOA documents in order to provide notice to prospective purchasers in connection with future resale of the units.

8. Signage. Signage for the Property will be provided in accordance with the requirements of Article 12 of the Zoning Ordinance or pursuant to a Comprehensive Sign Plan approved by the Planning Commission in accordance with § 12-210 of the Zoning Ordinance. The Applicant will be permitted to install wayfinding signage on the Property to provide directions to locations of parks and trails in accordance with Article 12 of the Zoning Ordinance.
9. Fire Marshal Coordination. The Applicant has coordinated with the Fire Marshal regarding the site design and layout of the Property shown on the Development Plan. Notwithstanding such coordination, if it is determined during site plan review that elements of the Development Plan including, but not limited to, adjustments to streetscape and building, tree plantings, open space, courtyards, tree buffers, and tree preservation areas, require adjustment to allow for required emergency vehicle access or are necessary to respond to subsequent comments from the Fire Marshal, the Applicant may be permitted to relocate, replace, or modify such conflicting

elements without the need for a CDPA, FDPA, or PCA, provided any such modifications are found to be a minor modification in accordance with Proffer 4.

10. Property Owners Association. Prior to the issuance of the first RUP for the Property, the Applicant will record a declaration and governance documents (the “Master POA Documents”) creating a master property owners association (“Master POA”) as an overall umbrella association for the Property. The Applicant may establish as many as three sub-associations, including a Townhouse owners sub-association, a Stacked Townhouse owners sub-association, and/or a Condominium Flat owners sub-association. The Master POA Documents will address the general governance, maintenance, and operational obligations of the owners of individual dwelling units, their successors, and assigns including, but not limited to, stormwater management, roads, parking, use of common areas and amenities, landscaping, and the fulfillment of these Proffers. The Master POA Documents will specify that the Master POA, or assigned sub-association, as appropriate, is responsible for the maintenance of any private streets. Purchasers of individual dwelling units will be advised in writing of these Proffers and maintenance obligations prior to entering into a contract of sale.

A. Notice To Adjacent Owners & Associations. The Applicant or Master POA, as applicable, will offer to meet with the Alder Woods Homeowners Association Board of Directors and the Fair Oaks Estates Homeowners Association Board of Directors on an annual basis to discuss and address neighborhood concerns regarding to construction, traffic management, maintenance of vegetation, open space usage, and other matters of mutual concern. The Applicant, or the Master POA, as applicable, will annually provide the contact information (including name, email address, and phone number) of the Master POA president, or his/her designee, to the Sully District Supervisor, the Alder Woods Homeowners Association Board of Directors, the Fair Oaks Estates Homeowners Association Board of Directors, and the owners of the Pender Village Center, located on Tax Map #46-3 ((1)) 15A3. Updated contact information will be provided any time there is a change in the Master POA President or his/her designee. A mailing or emailing to the last-known address or email address to the Sully District Supervisor, the Alder Woods Homeowners Association community manager, the Fair Oaks Estates Homeowners Association community manager, and the owners of the Pender Village Center will satisfy this proffer.

A. Pet Waste Stations. The Applicant or the Master POA, as applicable, will install a minimum of five pet waste stations around the Property, each of which will include disposable plastic bags for residents to pick up pet waste. The Applicant or Master POA, as applicable, shall ensure that said pet waste stations are maintained, stocked, and in good working order. The initial locations of said pet waste stations will be determined by the Applicant prior to approval of the first site plan for the Property, and may be adjusted by

the Applicant or the Master POA, as applicable, on an as-needed basis for maximum utilization and community need, and/or to address maintainance concerns, volume of use, or reduction in visible waste.

B.

11. Archaeological Review. Prior to site plan approval for the Property, the Applicant will conduct a Phase I archaeological study of the previously undeveloped portions of the Property within the limits of clearing and grading, and will provide the results of such study to the Cultural Resources Management and Protection Section of the Fairfax County Park Authority ("CRMP") for review. The study will be conducted by a qualified archaeological professional approved by CRMP. No land disturbance activities will be conducted on previously undeveloped portions of the Property until this study is submitted to CRMP. If the Phase I study concludes that an additional Phase II study is warranted, the Applicant will 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 will also complete said work in consultation and coordination with CRMP, prior to, or in conjunction with the issuance of a grading permit for any affected areas.
12. Park Contribution. Prior to the issuance of the first RUP for the Property, the Applicant will make a one-time cash contribution to the Fairfax County Park Authority in the amount of \$893 per unit to be actually constructed on the Property, for a potential total contribution \$428,640.00. Said contribution will be utilized for recreational facility development at one or more park sites which serve the Property.

II. TRANSPORTATION

13. Parking. Parking for the Property will be provided as depicted on Sheet 7 of the Development Plan and in accordance with the parking requirements of Article 11 of the Zoning Ordinance, as determined by the Fairfax County Department of Public Works and Environmental Services ("DPWES"). Up to a maximum of 100 surface parking spaces, as designated on Sheet 7 of the Development Plan, may be used to provide parking for the benefit of the owner of the adjacent Pender Village Center in accordance with the Reciprocal Easement Agreement recorded in Deed Book 19426 at Page 1881 of the Land Records ~~of Fairfax County (the "Land Records")~~, as amended by First Amendment recorded in Deed Book 24797 at Page 1673 of the Land Records.
 - A. Loading/Short-Term Parking. As depicted on Sheet 7 of the Development Plan, the Applicant will install signage and pavement markings to state that four parking spaces adjacent to the Condominium Flats are reserved for short-term parking for visitor, delivery, and service vehicles visiting the Property.

- B. Parking For Condominium Flat Owners. A minimum of one parking space per Condominium Flat residential unit shall either be provided in parking garages below each Condominium Flat building or in those surface spaces depicted as “Assigned Condominium Unit Parking” on Sheet 7 of the Development Plan. The remainder of the required parking spaces for the Condominium Flat residential units shall be located on the surface parking lots in proximity to the Condominium Flat buildings.
14. Private Streets. Private streets on the Property will be constructed of materials and depth of pavement consistent with that required by the Public Facilities Manual ("PFM"). A public access easement in a form acceptable to the County Attorney will be recorded over all private streets and associated sidewalks internal to the development at the time of record plat recordation. Residential purchasers will be advised in writing prior to entering into a contract of sale that the Master POA, or assigned sub-association, as appropriate and as established pursuant to Proffer 10, will be responsible for the maintenance of all private streets in the development.
15. Sidewalk System. The Applicant will provide a comprehensive sidewalk system within the Property as generally shown on Sheet 12 of the Development Plan. Construction of sidewalks will be concurrent with development activity on the Property and installed when units are completed. A sidewalk or temporary paved pedestrian pathway connecting the Property with the Pender Village Center will be established prior to the issuance of the RUP for the first residential unit on the Property and made available between the two properties at all times, even if in a temporary location. The Applicant will record a public access easement over all permanent sidewalks on the Property.
16. Inter-Parcel Pedestrian Connection. At the time of site plan approval for the Property, the Applicant will record an inter-parcel pedestrian access easement from the terminus of the private street in the southwest corner of the Property to the western property line, to permit a future connection to the adjacent Fair Woods townhome community open space parcel, identified as Tax Map 45-2 ((7)) M1.
17. Bicycle Infrastructure. As generally depicted on Sheets 9, 10, and 11 of the Development Plan, the Applicant will provide spaces for a minimum of four exterior bicycle racks, each with a capacity for a minimum of five bicycles, on the Property. Installation of the bicycle racks will be concurrent with development activity on the Property and installed when adjacent residential units are completed. Exterior bike racks will be an inverted "U" design or another design approved by the Fairfax County Department of Transportation ("FCDOT"). The Applicant may adjust the specific locations for the exterior bicycle racks at time of site plan from that depicted on the Development Plan and, if so, will provide the new location of all bicycle rack(s) to FCDOT. Additionally, the Applicant will provide a minimum of one interior long-term bicycle space per Condominium Flat unit on the ground floor of the Condominium Flat buildings.

18. Traffic Signal Preemption Devices. Prior to the issuance of the first RUP for the Property, the Applicant will make a one-time contribution in the amount of \$10,000.00 to the Capital Project titled "Traffic Light Signals – FRD Proffers in Fund 300-C30070, Public Safety Construction" for use in the installation of preemptive traffic signal devices on traffic signals within a five-mile radius of the Property, as determined by the Fire and Rescue Department. The Applicant will have no responsibility for actual installation or maintenance of the preemptive signal devices.
19. Fairfax Center Area Road Fund. The Applicant will contribute to the Fairfax Center Area Road Fund in accordance with the "Procedural Guidelines" adopted by the Board of Supervisors on November 22, 1982, as amended, subject to credits for creditable expenses allowed by the Procedural Guidelines, and as determined by FCDOT and DPWES.
20. Advanced Density Credit. The Applicant reserves density credit as may be permitted by the provisions of § 2-308 (4) of the Zoning Ordinance for all eligible dedications described herein or as may be required by the County or VDOT.

III. AFFORDABLE HOUSING

21. Affordable Dwelling Units. Unless otherwise exempt pursuant to § 2-800 et seq. of the Zoning Ordinance in effect as of the approval date of this Application (the "ADU Ordinance"), the Applicant will provide Affordable Dwelling Units ("ADUs") pursuant to the ADU Ordinance unless modified by the ADU Advisory Board. ADUs will be provided in the locations depicted on Sheet 9 of the Development Plan.
22. Workforce Dwelling Units. The Applicant will provide for-sale and/or rental housing units on the Property to be sold/rented as Workforce Dwelling Units ("WDUs") administered as set forth in the "Board of Supervisors' Workforce Dwelling Unit Administrative Policy Guidelines" adopted on October 15, 2007, in effect as of the approval date of this Application (the "Policy Guidelines"), such that a minimum of 12 percent of the total number of residential units constructed on the Property are sold/rented as either ADUs or WDUs. Any such WDUs provided within the Condominium Flat buildings shall be dispersed among the floors of said buildings. Such WDUs will be in addition to any requirement to provide ADUs in accordance with the ADU Ordinance in effect as of the approval date of this Application, provided the total number of required ADUs and WDUs does not exceed 12 percent of the total number of residential units constructed on the Property. When the required number of WDUs results in a fractional unit less than 0.5, the number will be rounded down to the next whole number. When the required number of WDUs results in a fractional unit equal to or greater than 0.5, the number will be rounded up to the next whole number.

- A. Separate Agreement. The Applicant reserves the right to enter into a separate binding written agreement with the appropriate County agency as to the terms and conditions of the administration of the WDUs following approval of this application without the need for a CDPA, FDPA, or PCA. Such an agreement will be on terms mutually acceptable to both the Applicant and the County, consistent with other agreements, and may occur after the approval of this Application. If such an agreement is executed by all applicable parties, then the WDUs will be administered solely in accordance with such an agreement and the provisions of this proffer will become null and void. Such an agreement and any modifications thereto will be recorded in the ~~County land records~~Land Records.
- B. Parking For WDUs. The Applicant will provide a minimum of one parking space for each WDU ~~(each a "Reserved Space"), with each such Reserved Space offered under the same terms of conveyance (e.g., whether for purchase or lease) under which parking spaces are offered to the owners of market rate units.~~ Any spaces provided for WDUs located within the Condominium Flat building will be provided either in parking garages below each Condominium Flat building, or in those spaces depicted as "Assigned Condominium Unit Parking" on Sheet 7 of the Development Plan. The cost of each Reserved Space will be provided as part of the maximum sales prices developed pursuant to the Policy Guidelines such that the maximum sales prices are not exceeded by the cost of the unit and parking when combined.

IV. ENVIRONMENTAL

- 23. Green Building Certification. In order to promote energy conservation and green building techniques, all new dwelling units on the Property will be constructed to achieve one of the following programs, or an alternative third-party certification as approved by the Environment and Development Review Branch ("EDRB") of the Department of Planning and Zoning. Selection of one of the following certification methods, or an alternative, will be within the Applicant's sole discretion at time of site plan submission:
 - A. Earth Craft. Certification in accordance with the Earth Craft House Program as demonstrated through documentation provided to DPWES and EDRB prior to the issuance of the RUP for each dwelling unit; or,
 - B. Alternative Program. Where the Applicant has provided evidence sufficient for EDRB to find that an alternative green building program that is administered by an independent third party or a proprietary program that has demonstrated equivalence to Earth Craft or Energy Star or another independent third party rating system, other than the foregoing programs, will ensure that equivalent environmental and energy efficiency will be achieved in the project, the Zoning Administrator may approve the use of

such alternative program, subject to such conditions as may be reasonably necessary to ensure that the alternative program will achieve the goals of this proffer.

24. Electric Vehicle (“EV”) Charging Stations. A minimum of two EV charging stations shall be provided in the locations depicted on Sheet 7 of the Development Plan. Such charging stations will be fully wired and functional, and open to all residents on the Property. A fee associated with providing the EV charging service may be charged. Alternatively, if it is determined practicable by the Applicant prior to building permit approval, and at the Applicant’s sole discretion, each parking space within the two Condominium Flat buildings may be prewired to permit each owner to install a personal EV charging station. As a purchase option, the Applicant shall offer to prewire single family attached and stacked multifamily garages to permit the owner of that unit to install a personal EV charging station.
25. Landscaping. The Applicant will implement the landscape plan (the “Landscape Plan”) for the Property shown on Sheets 32 through 35 of the Development Plan, which illustrate the plantings, open space, courtyards, tree buffers, and other features to be provided on the Property. The Landscape Plan is conceptual in nature and the tree species and planting locations may be modified by the Applicant as part of final engineering and design for the Property, provided such modifications: (a) provide a similar quality and quantity of landscaping to that shown on the Landscape Plan; and (b) otherwise are in substantial conformance with the Development Plan.
 - A. Native Species. The Applicant will use principally native species or hardy drought tolerant, regionally-appropriate, adaptive plants throughout the Property, provided that the Applicant reserves the right, in consultation with and approval by the UFMD, to modify as part of site plan approval the exact species to be used, such as where some plant materials are not available or have been deemed by UFMD to no longer be appropriate.
 - B. Invasive Species. Invasive species, as defined by the Department of Conservation and Recreation’s Virginia Invasive Plant Specifies List, will not be used within the streetscape and landscaped open space areas on the Property.
 - C. Planting Quality. All plantings will be consistent with the quality and quantity of plantings and materials shown on the Landscape Plan, as may be modified by the Applicant, and may include the use of additional shade trees and other plant materials as determined by the Applicant. As part of final engineering and site design, the Applicant may adjust the type and location of vegetation and the design of the open spaces, courtyard areas and streetscape improvements and plantings, including adjusting the tree species to accommodate final architectural designs, sight distance concerns, and utilities, as well as to facilitate outdoor elements in the Proposed

Development, as may be approved by the Zoning Administrator and UFMD, provided such adjustments otherwise are in substantial conformance with the Development Plan.

- D. Pre-Installation Meeting. Prior to the installation of plants to meet the requirements of the minimum Landscape Plan approved during site plan submission and these Proffers, the Applicant will coordinate a pre-installation meeting on site with the landscape contractor and a representative of UFMD to review the landscape requirements of the approved Landscape Plan. Any proposed changes to the location of planting, size of trees/shrubs, and any proposed plant substitutions of species specified on the minimum Landscape Plan approved during site plan submission will be reviewed at this time, and must be approved by, UFMD prior to planting.
26. Stormwater Management. Storm-water management and best management practice ("SWM/BMP") facilities will be provided as required to meet or exceed the minimum requirement for storm water management and best management practices at the time of zoning approval. The type and quantity of SWM/BMPs shown on the Development Plan are conceptual in nature and are only provided to indicate the types of facilities that may be provided to meet the minimum requirements. The Applicant will implement onsite SWM/BMP techniques to control the quantity and quality of storm-water runoff from the Property in accordance with all federal, state and county regulations and standards in effect at the time of site plan approval for the Property. The final location, sizing and performance of the specific SWM/BMP facilities will be as approved by DPWES provided the design is in general conformance with the Development Plan, unless waived or modified by DPWES. The sizing of the proposed underground vault will be based on predeveloped hydrological conditions that reflect the site condition prior to the existing pond construction. The allowable release computation from the proposed underground vault will assume wooded predeveloped conditions.
- A. The Applicant or Master POA established pursuant to Proffer 10, as applicable, will be responsible for implementing the maintenance contract and funding mechanism to maintain the proposed SWM/BMP facilities. The maintenance responsibilities and funding mechanisms will be disclosed to all prospective purchasers prior to entering into a contract of sale. Prior to issuance of the first RUP on the Property, the Applicant will establish an account (the "SWM Maintenance Account") to be used as an escrow account for the initial maintenance of the SWM facilities. The Applicant will make an initial contribution to the SWM Maintenance Account in an amount equal to the estimated cost for the homeowner association's maintenance responsibility for the first 10 years of the facilities, as approved by DPWES. Thereafter, the SWM Maintenance Account will be funded through pro-rata assessments of subsequent owners of the Property.

27. Lighting. In an effort to minimize nighttime light pollution from the Property, all on-site outdoor and parking garage lighting provided on the Property will comply with the Outdoor Lighting Standards of § 14-900 et seq. of the Zoning Ordinance. All street lighting will be located on private travelways only. All proposed parking and building mounted security lighting on the Property will utilize full cut-off fixtures. The Applicant may install bollard lighting on the Property. Nothing contained in this proffer precludes the up-lighting, accent lighting, or backlighting of signage, entrance features, and related landscaping throughout the Property as permitted by applicable regulations of the Zoning Ordinance.
28. Tree Preservation. For the purposes of preserving certain trees located on the Property and adjacent properties, the Applicant will prepare a tree preservation plan. The Applicant will contract with a certified arborist or landscape architect (the "Project Arborist") to prepare a tree preservation plan to be submitted as part of the site plan submission (the "Tree Preservation Plan"). The Tree Preservation Plan will be reviewed and approved by UFMD. The Tree Preservation Plan will seek to preserve the trees identified on the Development Plan for preservation.
 - A. The Tree Preservation Plan will include a condition analysis for those trees that are 12 inches in diameter or more, and are located within 25 feet of the limits of disturbance, as depicted on the Development Plan. Such condition analysis will 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 will be incorporated into the Tree Preservation Plan. Activities should include, but are not limited to, crown pruning, root pruning, mulching and fertilization. The Project Arborist will visit the Property on a regular basis to monitor tree preservation efforts and ensure that all activities are conducted as identified in the approved tree preservation plan. The Project Arborist will prepare written reports detailing site visits for submission to UFMD and Site Development and Inspection Division ("SDID") site inspectors. A monitoring schedule will be included in the tree preservation plan at the time of site plan submission.
 - B. Clearing, grading, and construction will conform to the limits of clearing and grading as shown on the Development Plan, subject to the installation of necessary utility lines and other required site improvements, all of which will be installed in the least disruptive manner possible, considering cost and engineering, as determined in accordance with the approved plans.
 - C. The Applicant will 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 will walk the limits of clearing and grading with a UFMD representative to determine where adjustments to the clearing limits can be made, or other measures implemented, such as the addition of mulch beds and/or small retaining walls to increase the

survivability of trees at the edge of the limits of clearing and grading. Trees that are identified as dead or dying will be removed as part of the clearing operation. Trees that are not likely to survive construction due to their proximity to disturbance will also be identified at this time and the Applicant will remove such trees as part of the clearing operation. Any tree that is designated for removal within a tree preservation area or at the edge of the limits of clearing and grading will be removed using a chain saw to avoid damage to surrounding trees.

- D. All trees shown to be preserved on the Tree Preservation Plan will 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, or an equivalent fencing method as approved by UFMD, will 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 will be made clearly visible to all construction personnel. The tree protection fencing will 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, will be performed under the supervision of the Project Arborist. Prior to the commencement of any clearing or grading on the site, the Project Arborist will verify in writing that the tree protection fencing has been properly installed.

- 29. Noise Attenuation. Concurrent with the second submission of the first site plan for the Property, the Applicant will submit to the County an acoustical analysis ("Noise Study") prepared by a qualified acoustical consultant, and based on final site grades as shown on the site plan and final architectural plans, to determine whether noise attenuation measures are required to reduce the interior DNL to no more than 45 dBA for certain residential units in the vicinity of the existing electric power substation on Fairfax County Tax Map #46-3 ((1)) 15B. Noise contours for any units impacted with interior DNL greater than 60 dBA must be shown on the site plan. If the Noise Study concludes that certain residential units will be affected by noise levels above 65 dBA then the Noise Study will make specific recommendations about construction methods and/or materials needed to reduce the interior DNL to no more than 45 dBA for any such units. Such study will be submitted to the EDRB and DPWES for review, and the Applicant shall additionally notify the Chief of EDRB by letter that such submission has been made. The Applicant shall comply with the recommendations contained in the Final Noise Study. Failure by the EDRB to review and respond to the Applicant within 60 days of receipt of the Final Noise Study shall be deemed approval of such study. For those residential units that are projected to be affected by exterior noise levels above 65 dBA, the Applicant shall disclose in writing to the prospective purchasers of said units, prior to contract ratification and further disclosed in the POA Documents, that any exterior rear patios and decks may be impacted by higher noise levels.

30. Retaining Walls. Any retaining walls required due to final grading of the Property, will be constructed of stacked stone. If railings are required, they will be provided in accordance with the illustratives depicted on Sheet 34A of the Development Plan, constructed of a combination of metal railings and/or metal fencing, and installed in compliance with all relevant code requirements.

V. PUBLIC SCHOOLS CONTRIBUTION

31. Fairfax County Public Schools Contribution. Prior to issuance of the first RUP for the Property, the Applicant will make a one-time contribution to Fairfax County Public Schools ("FCPS") in the amount of \$12,262.00 per expected student generated by the Property. Said contribution will be based upon the actual number and type of dwelling units constructed on the Property, and utilized for capital improvements and capacity enhancements at the schools that students generated by the Property will attend. If, prior to issuance of the site plan approval for the Property, FCPS should modify, on a county-wide basis, the expected ratio of students per subject multifamily or single family attached unit or the amount of the contribution per student, or in the event the total number of units ultimately constructed in the building is less than that depicted on the Development Plan, the amount of the contribution will be modified to reflect the then-current ratio and/or contribution. If the County should decrease the ratio or contribution amount, the amount of the contribution will be decreased to reflect the current ratio and/or contribution.
32. Notification. To allow for adequate time to plan for anticipated student growth and ensure classroom availability, the Applicant will provide notification to the FCPS Office of Facilities Planning Services when the first site plan for development of any residential units on the Property has been filed with the County.

VI. MISCELLANEOUS

33. Construction Traffic Management. The Applicant will prepare and implement a construction congestion management plan during redevelopment of the Property, so as to provide safe and efficient pedestrian and vehicle circulation at all times on the Property and on the public roadways and sidewalks adjoining the Property. This management plan will identify anticipated construction entrances, construction staging areas, construction vehicle routes and procedures for coordination with FCDOT and/or VDOT concerning construction material deliveries, lane or street closures, and/or other construction related activities to minimize disturbance on the surrounding street and sidewalk network. Such plan will be prepared by a qualified professional and submitted for comment, but not necessarily approval, to VDOT and FCDOT prior to the first site plan approval for the Property. A copy of the construction traffic management plan will be provided to the Sully District Supervisor, the Alder Woods Homeowners Association Board of Directors, the Fair Oaks Estates Homeowners Association Board of Directors, and the owners

of the Pender Village Center prior to the commencement of construction. The Applicant will inform all contractors and subcontractors of the plan for the routing of construction trucks and signs identifying such construction truck routes will be posted at all construction entrances on the Property. The Applicant will instruct all contractors and subcontractors that contractors shall not park offsite on Ox Hill Road or other neighborhood streets or in the adjacent shopping center without specific agreement from the owner.

34. Pre-Construction Meeting. Prior to the commencement of construction, the Applicant will hold a meeting with the property owners and/or property owners associations in the immediate vicinity of the Property to provide information regarding planned construction activities for the Property. The information will include: (a) the anticipated phasing of construction, if any; (b) a preliminary schedule for each phase of construction, as applicable; (c) a preliminary plan for the routing of construction trucks; and (d) planned measures to minimize off-site dirt and debris in accordance with applicable law. In addition, the Applicant will provide the name, email address, and telephone number of a contact person responsible for managing construction activities on the Property to the Sully District Supervisor prior to the commencement of construction.
35. Outdoor Construction Hours. Outdoor construction on the Property will only take place between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, and between the hours of 9:00 a.m. and 6:00 p.m. on Saturday (the "Permitted Hours of Outdoor Construction"). There will be no outdoor construction on Sundays, New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving and Christmas Day. The Permitted Hours of Outdoor Construction will be posted on-site in both English and Spanish.
36. Perimeter Erosion Controls. As may be required by PFM and the latest edition of the Virginia Sediment and Erosion Control Handbook, the Applicant will, prior to any clearing and grading activities on the Property, install any necessary erosion and sediment control measures along the Property's limits of disturbance.
37. Successors and Assigns. These proffers will bind and inure to the benefit of the Applicant and its successors and assigns. Each reference to "Applicant" in these Proffers will include within its meaning and will be binding upon the Applicant's successor(s) in interest and/or developer(s) of the site or any portion of the site. Once portions of the Property are sold or otherwise transferred, the associated proffers become the obligation of the purchaser or other transferee and will no longer be binding on the seller or other transferee.
38. Counterparts. These Proffers may be executed in one or more counterparts, each of which when so executed and delivered will be deemed an original document, and all of which, taken together, will constitute but one in the same instrument.
39. Timing. Notwithstanding the foregoing, upon demonstration that, despite diligent

efforts or due to factors beyond the Applicant's control (including, but not limited to, construction schedules, availability of financing, weather delays, duration of approval process, or market conditions), proffered commitments have been delayed beyond the timeframes specified herein, the Zoning Administrator may agree to a later date for completion of such commitments.

40. Severability/Future Applications. Any portion of the Property may be the subject of a rezoning, special exception, special permit, comprehensive sign plan, variance, CDPA, FDPA, PCA, or other zoning action without the joinder and/or consent of the applicant(s)/property owner(s) of the other land area(s), provided that such application complies with § 18-204 (6) of the Zoning Ordinance and § 15.2-2302 of the Code of Virginia, as applicable. Previously approved proffered conditions or development conditions applicable to a particular portion of the Property that are not the subject of such an application will remain in full force and effect.
41. Annual Escalation Clause. All monetary contributions will adjust on a yearly basis from the base month of January 2019 and change effective each January 1st thereafter, as permitted by Virginia Code. Ann. § 15.2-2303.3.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

APPLICANT/CONTRACT PURCHASER OF
TAX MAP 46-3 ((1)) 15A1 & 15C

K. HOVNANIAN HOMES AT PENDER OAKS, LLC

By: _____
Name: Gary Chandler
Title: Division President

[SIGNATURES CONTINUE ON NEXT PAGE]

TITLE OWNER OF TAX MAP 46-3 ((1)) 15A1 & 15C

PENDER PROFESSIONAL CENTER, LLC

By: _____

Name: Paul Zhu

Title: Executive Vice President

[SIGNATURES END]