

**PROFFERS**  
**SPECTRUM DEVELOPMENT, LLC**  
**RZ 2014-MA-011**

**WBL 1.5.15**

Pursuant to Section 15.2-2303(a) of the Code of Virginia, 1950, as amended, the property Owners and Applicant in this Rezoning proffer that the development of the parcels under consideration and shown on the Fairfax County Tax Map as Tax Map Reference Nos. 61-2 ((18)) 0001, 0002, 0003, 0004, 0005, and 61-2 ((17)) (D) 0001, 0003, 0004, 0005 (hereinafter referred to as the "Property") will be in accordance with the following conditions if, and only if, said rezoning request for the C-6, CRD, H-C and S-C Districts for the Property is granted by the Board of Supervisors of Fairfax County, Virginia (the "Board"). In the event said application request is denied or the Board's approval is overturned by a court of competent jurisdiction, these proffers shall be null and void. The Owners and the Applicant (the "Applicant"), for themselves, their successors and assigns, agree that these proffers shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board, in accordance with applicable County and State statutory procedures.

**GENERAL**

1. **Substantial Conformance.** Development of the Property shall be in substantial conformance with the Generalized Development Plan and Special Exception Plat entitled "The Shops at Baileys Crossroads" ("GDP Plan" and "SE Plat"), prepared by Kimley-Horn and Associates, Inc., and last dated \_\_\_\_\_.
2. **Minor Modifications.** In addition to that described above, pursuant to Paragraph 4 of Section 18-204 of the Zoning Ordinance, minor modifications to the GDP and these proffers may be permitted as determined by the Zoning Administrator.

3. Maximum Intensity. The Applicant reserves the right to construct a lesser amount of Gross Floor Area (“GFA”) from that shown on the GDP provided that the buildings and Property remain in substantial conformance with that shown on the GDP Plan as determined by the Zoning Administrator.

4. Architecture.

A. The final architectural design shall be in substantial conformance with the general type, quality and proportion of materials depicted in the elevations, and sections shown on the GDP Plan and SE Plat. The materials on the building façade shall be brick, stone, EIFS and Hardie-board siding and shall be graffiti resistant.

B. Rooftop Equipment. Rooftop mechanical equipment will be shielded from view from the nearby public roads using parapet walls and designed not to exceed roof coverage limitations of the Zoning Ordinance. Other screening measures may be used such as including the facilities as part of the architecture of the buildings, utilizing compatible colors.

5. Unifying Elements. All street furniture, including garbage cans, benches and lamp posts, shall be consistent, both in terms of materials and design, throughout the development.

6. Signage. All signage shall comply with Article 12 of the Zoning Ordinance. Pole signs or flashing signs shall not be permitted on the Property. All directional and way finding signage shall be consistent, both in terms of materials and design, throughout the development. No signs on the building fronting Washington Drive shall be mounted on the South façade. No monument type signs shall be placed on Washington Drive or Charles Street. There shall not be

any lit signs in storefront windows. No temporary A-frame type signs or live individuals holding signs shall be used at the Property.

7. Charles Street Right of Way. The area shown on the GDP which is labeled “Proposed Right of Way Dedication” shall be dedicated, in fee simple, as public Right Of Way to Fairfax County Board of Supervisors at no cost upon site plan approval of the project. The Applicant shall reserve a license, or the County shall grant a license, that allows the Applicant to maintain and landscape the said area until it is used for the road realignment.

8. Leesburg Pike Right of Way and Turn Lane Extension. The area shown on the GDP which is labelled “Proposed Right of Way Dedication” shall be dedicated, in fee simple, to Fairfax County Board of Supervisors at no cost upon site plan approval of the Project. If approved by the Virginia Department of Highways and Transportation (“VDOT”) and the Fairfax County Department of Transportation (“DOT”), the right turn lane shall be extended from its current terminus westward to Charles Street. Curb and Gutter shall be installed along the entire Leesburg Pike frontage. Pavers shall be used in the Leesburg Pike sidewalk as shown on the GDP subject to VDOT approval.

The Applicant shall enter into a maintenance agreement with VDOT for the maintenance or replacement, in-kind, by the Applicant, of streetscape elements, installed by the Applicant, that are located in the public right-of-way, excluding vegetation removed by the County and/or VDOT.

Sidewalks for the development shall connect to the County’s walkway project on Leesburg Pike.

9. Green Building Practices. Prior to the issuance of a building permit for the three buildings (individually a “Building”), the Applicant will post a “green building escrow,” in the

form of cash or a letter of credit from a financial institution acceptable to DPWES as defined in the Public Facilities Manual, in the amounts as set forth below. The escrow will be divided among the three buildings as follows:

- Pharmacy \$80,000.00
- Retail building fronting Route 7 \$25,000.00
- Retail building fronting Washington Drive \$10,000.00

This escrow will be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of certification, by the U.S. Green Building Council, for each building, under the most current version of the U.S. Green Building Council's ("USGBC") Leadership in Energy and Environmental Design – New Construction ("LEED®-NC") rating system or other LEED® rating system determined, by the USGBC, to be applicable to the Building. The provision to the Environment and Development Review Branch of DPZ of documentation of the USGBC preliminary review of the design oriented credits that along with the anticipated construction credits will be sufficient to support the attainment of LEED® certified, or documentation from the USGBC that the Building has attained LEED® certification will be sufficient to satisfy this commitment. If the Applicant fails to provide documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED® certification within two years of issuance of the final non-RUP for each of the Buildings, the escrow will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

If the Applicant provides to the Environment and Development Review Branch of DPZ, within two years of issuance of the final non-RUP for each of the buildings, documentation demonstrating that LEED® certified status for any Building has not been attained but that the

Building has been determined by the USGBC to fall within three points of attainment of LEED® certified status, 50% of the escrow will be released to the Applicant; the other 50% will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

If the Applicant fails to provide, within two years of issuance of the final non-RUP for any building, documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED® certified status or demonstrating that the Building has fallen short of certification by three points or less, after sufficient written notice to the Applicant, the entirety of the escrow for the Building will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

If the Applicant provides documentation from the USGBC demonstrating, to the satisfaction of the Environment and Development Review Branch of DPZ, that USGBC completion of the review of the LEED® certified application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, the time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made to the Applicant or to the County during the extension.

The Applicant will include, as part of the site plan submission for each Building, a statement certifying that a LEED®-accredited professional who is also a professional engineer or licensed architect is a member of the design team, and that the LEED®-accredited professional is working with the team to incorporate sustainable design elements and innovative technologies into the Building with a goal of having the Building attain LEED® certified status.

The Applicant will include, as part of the site plan submission and building plan submission for the Building, a list of specific LEED® credits that the Applicant intends to pursue.

Prior to site plan approval for the Building, the Applicant will designate the Chief of the Environment and Development Review Branch of DPZ as a team member in the USGBC's LEED® online system. This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team, but will not be assigned responsibility for any LEED® credits and will not be provided within the authority to modify any documentation or paperwork.

10. Stormwater Management.

A. Stormwater Management ("SWM") Facilities. Subject to review and approval by the Department of Public Works and Environmental Services (DPWES), stormwater management and Best Management Practices (BMP) measures for the Property shall be provided through the use of an underground stormwater detention facility and a bioretention area, as shown on the GDP. Other innovative BMP measures such as, but not limited to biofiltration swales or pervious pavers may be substituted as determined by the Applicant and approved by DPWES. Any innovative BMP measures shall be maintained by the Applicant, in accordance with the procedures as determined by DPWES.

11. Landscaping.

A. Landscaping and Landscaped Open Space. The site plan submitted for the development shall include a landscape plan consistent with that on Sheet 4 of the GDP. The Applicant shall maintain the proposed landscaping as shown on the GDP and any diseased or dead trees shall be replanted at the next spring or fall planting season. All new deciduous trees

provided as shown on such landscape plan, shall be a minimum of 2 to 2.5 inches in caliper at the time of planting. All new evergreen trees used in peripheral screening and landscaping areas and public spaces shall be a minimum of six feet (6') in height at the time of planting. Such landscape plan shall be provided in substantial conformance with the landscaping concepts shown on the GDP and SE as determined and approved by the Urban Forest Management Division ("UFMD").

B. Landscape Pre-Inspection Meeting. Prior to installation of plants to meet requirements of the approved landscape plan, the Contractor/Developer shall coordinate a pre-installation meeting on site with the landscape contractor and a representative of the County Urban Forest Management Division (UFMD). Any proposed changes to the location of planting, size of trees/shrubs, and any proposed plant substitutions for species specified on the approved plan shall be reviewed at this time and must be approved prior to planting. The installation of plants not specified on the approved plan, and not previously approved by UFMD, may require submission of a revision to the landscape plan or removal and replacement with approved material. Field location of planting material, when required by the approved plan, shall be reviewed at the pre-installation meeting. The Landscape Contractor shall stake proposed individual planting locations in consultation with the Contractor/Developer prior to the pre-installation meeting, for review by UFMD staff. Stakes shall be adjusted, as needed, during the course of the meeting as determined by UFMD staff based on discussion with the Contractor/Developer and the Landscape Contractor.

C. Tree Replacement. The contractor/developer shall install a minimum of six (6) new *Ilex opaca* (American Holly), or other similar species approved by the Urban Forester, at 10-foot size as part of the overall plantings in the transitional screening buffer adjacent to the southern

property line. The final location and cultivar selection shall be subject to the approval of the UFMD.

D. Native Species Landscaping. All landscaping provided shall be native or regionally adapted to the middle Atlantic region to the extent feasible and non-invasive as determined by the Mid-Atlantic Exotic Pest Plant Council Plant List or Virginia DCR. In addition, the quality and quantity of landscaping provided shall be in substantial conformance with the GDP/SE Plat.

12. Location of Utilities. Along all existing and proposed public rights-of-way, utility lines shall be generally located so as not to interfere with the landscaping concepts shown on the GDP and SE. The Applicant reserves the right to make minor modifications to relocate such landscaping to reasonably accommodate utilities lines and Virginia Department of Transportation (VDOT) sight distances provided such relocated landscaping shall retain a generally equivalent number of plantings and continues to reflect the concepts illustrated on the GDP and SE and shall conform to the tree canopy calculations specified in the Fairfax County Public Facilities Manual (PFM). Any tree or shrub determined to impact utilities lines and sight distance shall be replaced with an appropriate size or relocated elsewhere on the site with equal size and quality, as determined by UFMD. For all other areas of the Property, in the event that, during the process of site plan review any landscaping shown on the GDP and SE cannot be installed in order to locate utility lines, as determined by DPWES, then an area of additional landscaping consistent of equivalent flora generally consistent with that displaced shall be substituted at an alternate location on the Property, subject to approval by UFMD. The Applicant shall not place utility vaults under sidewalk and bicycle facilities designated for dedication for public use.

#### **MISCELLANEOUS PROFFERS**

13. Trash. All outdoor trash receptacles shall conform to the standards set forth in the Public Facilities Manual for the screening of such receptacles. The Applicant shall: (a) provide trash cans in the general vicinity of any outdoor seating and patio area; (b) provide for the removal of trash bi-weekly from this area, if any; and (c) generally clean and clear any outdoor seating and patio area of trash daily. The Applicant shall arrange for site clean-up to occur, no earlier than 7 a.m. and no later than 9 p.m. Trash removal by emptying the dumpsters shall take place twice a week and shall occur between the hours of 8:00 a.m. and 6:00 p.m., Monday through Saturday. Trash pickup shall occur more often if necessary.

14. Food Odor. The Applicant shall not allow the discharge of air contaminants/objectionable odors generated by the restaurants, if any, or their solid waste. For any restaurant located on the Property, the Applicant shall employ, but not be limited to, the following control measures:

A. All putrescible material as defined by the Fairfax County Code Section 109-1-1-2, shall be stored in sealed containers and shall be disposed in a container(s) reserved exclusively for use by the restaurant(s). Such putrescible material shall not be shredded or unsealed.

B. All putrescible materials shall be removed from the subject property by a commercial refuse hauler as needed, Monday through Saturday. These standards shall be in addition to any other performance standards, regulations, ordinances, or restrictions promulgated by the County.

15. Parking Enforcement.

A. The Applicant shall prohibit parking of vehicles by people not visiting the shopping center and shall provide signage to alert the public. The Applicant shall maintain a

contract with a towing service and have parked vehicles which are in violation towed from the Property at the violator's expense.

16. The Applicant shall provide bicycle racks as shown on the GDP. The total number of bike parking/storage spaces and design of the bike racks shall be consistent with the Fairfax County Policy and Guidelines for Bicycle Parking, as determined at site plan.

17. Outdoor Construction. Outdoor construction of the improvements on the Property shown on the GDP shall take place only during the hours from 7:00 a.m. to 9:00 p.m. Monday through Friday and from 8:00 a.m. to 6:00 p.m. on Saturday. There shall be no outdoor construction activity taking place on Sunday. There will be no outdoor construction on 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 construction shall be posted on-site in both English and Spanish. There shall be no parking of construction vehicles on Charles Street or Washington Drive.

18. Community Liaison. The Applicant agrees to identify a person(s) who will serve as liaison to the community throughout the duration of construction. This individual shall oversee the construction site throughout the hours of construction, including weekends, if applicable. The name and telephone number of the individual(s) shall be posted at the entrance of the project.

19. Deliveries. The Applicant shall direct the tenants to require that all deliveries utilize ingress and egress to the site via Route 7. No delivery vehicles shall utilize Washington Drive or Charles Street south of the entrance to the Property for ingress and egress to the site. This direction to the tenants shall be via rules and regulations incorporated into the shopping

center leases governing the operation of the shopping center. On-site deliveries shall only occur between 5:00 a.m. through 9:00 p.m., seven (7) days a week.

20. Construction Vehicles. During initial construction, and any subsequent major construction activity, all construction vehicles and construction material vehicles shall utilize ingress and egress to the site via Route 7. No construction vehicles shall utilize Washington Drive or Charles Street south of the entrance to the Property for ingress and egress to the site. This direction to the contractors and sub-contractors shall be set forth in the contracts. On-site deliveries shall only occur between 5:00 a.m. through 9:00 p.m., seven (7) days a week.

21. Lights. Full cutoff lighting shall be utilized and light fixtures shall be used that do not let light spill into the residential neighborhood southeast of the property.

22. Barrier Wall. The materials to be used in the rear screening barrier shall be brick as shown in the GDP. Piping or weep holes shall be placed at the bottom of the wall and shall remain unobstructed to allow water to pass through.

23. Dumpster Screening Wall. A screening wall shall be installed to screen any dumpsters placed on the Property which shall be constructed of masonry materials that match those used on the buildings. Door shall remain closed except during the times that trash is being removed.

24. Donation Boxes. No donation boxes or outdoor vending machines for clothing, books, etc. shall be allowed on the property.

25. Off-Site Landscaping. The Applicant will reimburse the owner of the property with a street address of 3407 Washington Drive, Falls Church, Virginia, 22041 (the "DeFalco Property") for certain landscaping improvements to the DeFalco Property. These improvements may include extending the fence on their northern boundary and installing screening landscaping in the front of the DeFalco Property. The Applicant shall reimburse the owner of the DeFalco

Property up to \$3,000.00 for the cost of implementing the above described improvements. Said reimbursement shall be made within fifteen days of delivery of paid invoices to the Applicant. Delivery to the County of copies of the paid invoices and checks issued for the payment shall be deemed to be sufficient to demonstrate compliance with this proffer.

26. Bus Shelter. Prior to site plan approval, the Applicant shall pay the County or an entity of their assigns \$5,000.00 to relocate the existing bus shelter on Route 7 frontage in coordination with and for approval by FCDOT. The Applicant shall be responsible for constructing the bus shelter pad on Leesburg Pike frontage for the bus shelter to be relocated back on the frontage after frontage improvement is completed. The construction and the location of the bus shelter pad shall be coordinated with and approved by FCDOT prior to site plan approval. The future bus shelter should have a minimum of 5-ft. landing pad from the curb and an ADA compliant sidewalk connection.

27. Successors and Assigns. These proffers shall bind and inure to the benefit of the Applicant and its successors and assigns. Each reference to "Applicant" in these proffers shall include and be binding upon the Applicant's successor(s) in interest and/or developer(s) of any portion of the Property.

28. Counterparts. These proffers may be executed in one or more counterparts, each of which when so executed shall be deemed an original document and all when taken together shall constitute but one and the same instrument.

[SIGNATURES TO APPEAR ON THE FOLLOWING PAGES]

Applicant:

Spectrum Development, LLC

By: \_\_\_\_\_

Name: Richard P. Buskell

Title: Managing Member

Owner:

Paul W. Byers

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By: Richard P. Buskell, Managing Member of  
Spectrum Development, LLC,  
as Power of Attorney

Kim S. Byers

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By: Richard P. Buskell, Managing Member of  
Spectrum Development, LLC,  
as Power of Attorney

Owner:

Christopher Tran

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By: Richard P. Buskell, Managing Member of  
Spectrum Development, LLC,  
as Power of Attorney

Christina Tran

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By: Richard P. Buskell, Managing Member of  
Spectrum Development, LLC,  
as Power of Attorney

Owner:

Culmore Properties, LLC

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By: Richard P. Buskell, Managing Member of  
Spectrum Development, LLC,  
as Power of Attorney

Owner:

My Leesburg Pike, LLC

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By: Richard P. Buskell, Managing Member of  
Spectrum Development, LLC,  
as Power of Attorney

Owner:

GEICO

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By: Terence Perkins  
Senior Vice President