

**PROFFER STATEMENT  
FREEDOM PLACE**

REZONING: Project No. REZNO5-LE-001  
RA to Planned Residential Development  
("PRD") and Rural Residential ("RR-2")

PROPERTY: 338.34 acres more or less; Geographic Parcel  
Identification Number (G.P.I.N.) 6899-18-3742;  
6899-~~0705~~-7716 and 6889-89-6214 in the Lee  
Magisterial District, with a 219.64+/- acre area  
to be rezoned further identified as GPINs 6899-  
18-3742; 6899-05-7716 and 6889-89-6214 (a  
portion) (collectively, the "Property"), of which  
total acreage 116.87 shall be rezoned to the RR-  
2 Classification, and the remainder to the PRD  
Classification.

RECORD OWNERS: Estate of Robert H. Hodgson; James F. Steffey;  
Jean Elizabeth Cheatham and William W.  
Goulding and Gary W. Weaver

PROJECT NAME: Freedom Place

ORIGINAL DATE  
OF PROFFERS: June 29, 2004

REVISION DATA: August 20, 2004  
January 14, 2005  
August 8, 2005  
December 16, 2005  
February 3,  
March 17, 2006  
April 7, 2006  
May 8, 2006

The undersigned hereby proffers that the use and development of the subject property ("Property"), as described above, shall be in strict conformance with the following conditions, which shall supersede all other proffers that may have been made prior hereto. In the event the above referenced rezoning is not granted as applied for by the applicant ("Applicant"), these proffers shall be withdrawn and shall be null and void. If this application is denied by the Fauquier County Board of Supervisors (the "Board"), or in the event an appeal is considered by a court of competent jurisdiction and the application is thereafter remanded to the Board for reconsideration, then these proffers shall be deemed withdrawn unless the Applicant shall affirmatively readopt all or any portion hereof, in a writing specifically for that purpose. The headings of the 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.

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The improvements proffered herein shall be provided at the time of development of that portion of the Property adjacent to or including the improvement or other proffered requirement, unless otherwise specified herein.

The term "Applicant" as referenced herein shall include within its meaning the current owner of the Property and all future owners, heirs, assigns and successors in interest.

When used in these proffers, the "Development Plan" shall refer to the plan entitled "Conceptual Development Plan, Freedom Place" dated August 20, 2004, as revised through ~~February 3, April 7,~~ April 7, 2006, including the following:

1. "Cover Sheet," sheet 1, dated August 20, 2004, as revised through ~~February 3, April 7,~~ April 7, 2006;
2. "Existing Conditions," Sheet 2, as revised through ~~February 3, April 7,~~ April 7, 2006;
3. "Conceptual Development Plan," Sheet 3, as revised through ~~February 3, April 7,~~ April 7, 2006 (the "CDP");
4. "Conceptual Landscape Plan," Sheet 4, as revised through ~~February 3, April 7,~~ April 7, 2006;
5. "Conceptual Open Space and Pedestrian Network Plan," Sheet 5, as revised through ~~February 3, April 7,~~ April 7, 2006;
6. "Transportation Improvement Plan," Sheet 6, as revised through ~~February 3, April 7,~~ April 7, 2006;
7. "Transportation Improvement Details," Sheet 7, as revised through ~~February 3, April 7,~~ April 7, 2006; ~~and~~
8. ~~8.~~ "Conceptual Stormwater Management Plan," Sheets ~~8B, 8C, 8D,~~ 8A-, 8E, 8F, 8G, and 8H, dated April 7, 2006;
9. ~~9.~~ "Conceptual Stormwater Management Plan," Sheets ~~8A-, 8E, 8F, 8G, and 8H,~~ dated February 3, ~~2006-2006;~~ 2006; and
10. ~~9.~~ "Details and Architectural Elevations," Sheet 9, as revised through ~~February 3, April 7,~~ April 7, 2006.

1. LAND USE:

- 1.1. Development of the Property shall be in substantial conformity with the CDP, provided that reasonable adjustments in road locations, lot lines, lot widths and depths, utility lines, stormwater management, natural drainage, substitution of single-family detached units for single-family attached dwelling units as described herein, and other features depicted on the CDP can be made at the time of site or subdivision plan approval.
- 1.2. Residential development on the Property shall not exceed the following number of units in the locations generally depicted on the CDP or as otherwise stated herein:

- 1.2.1 There shall be 176 single-family detached dwelling units, of which no more than 17 units shall be located within the area zoned to the RR-2 zoning designation, in the areas depicted on the CDP. The lot layout shown in the RR-2 area may be adjusted due to final engineering constraints, such as utility and trail easement locations. At the Applicant's sole discretion, a maximum of twenty percent (20%) of the total number of single-family attached dwelling units approved by the Board in this REZ NO5-LE-001 may be constructed as single-family detached dwelling units, thereby increasing the maximum allowable number of single-family detached dwelling units. The rate of conversion shall be two single-family attached units for every one single-family ~~attached~~detached unit.
- 1.2.2 There shall be no more than 182 single-family attached dwelling units. However, as provided above, at the Applicant's sole discretion, a maximum of twenty percent (20%) of the total number of single-family attached dwelling units approved by the Board for REZ NO5-LE-001 may be constructed as single-family detached dwelling units. The rate of conversion shall be two single-family attached units for every one single-family ~~attached~~detached unit.
- 1.2.3 Ten percent (10%) of the total number of dwelling units shown on the recorded final subdivision plat(s) shall be designated as workforce housing units as further defined herein. All such units shall be constructed as 16-foot wide single-family attached dwelling units with a one-car garage.
- 1.3. The Property shall be developed in substantial conformance with the (i) Fauquier County Zoning Ordinance applicable to the PRD and RR-2 classifications (the "Zoning Ordinance"), (ii) the "Freedom Place Design Guidelines and PRD Modifications," prepared by Bowman Consulting, set forth as Exhibit A hereto and incorporated herein by reference, pages 1 through 21 of which contain the Design Guidelines (the "Design Guidelines"), and pages 22 through 52 of which contain the PRD Modifications ~~A~~(the "Modification Booklet"), and the modification attached hereto as Appendix A.
  - 1.3.1. The Design Guidelines shall include design standards for the project. The County may condition approval of plans and permits on compliance with the applicable Design Guidelines.
  - 1.3.2. Modifications to the Zoning and Subdivision Ordinances and to the Design Standards Manual are set forth in the Modification Booklet. The County shall condition approval of plans and permits on compliance with

the aforesaid Ordinances and applicable waivers and modifications set forth in Modification Booklet.

- 1.4. All development on the Property shall comply with the Zoning and Subdivision Ordinances and the requirements of the Design Standards Manual, as those Ordinances may be waived or modified as set forth in the Modification Booklet, and the Design Guidelines, or as may be approved by the Department of Community Development.
- 1.5. In order to assure architectural variety within the development, the Applicant shall not construct any two homes adjacent to each other with the same façade, nor shall it construct any homes immediately across any street from another home with the same façade.
- 1.6. At the time of preliminary plan, the Applicant will, in agreement with the Director of Community Development, determine which lots are high visibility lots, not to exceed 10% of the total lot count, and provide additional exterior treatment for the units on those lots.
- 1.7. Front Porches, Side Porches and/or covered entries are required for a minimum of sixty percent (60%) of all single family detached homes. Front or side porches are to be at least 5' in depth.
- 1.8. ~~1.5.~~ Single-family detached lots in the RR-2 zoned area shall be developed in accordance with the regulations set forth at the time of development in the Fauquier County Zoning Ordinance for RR-2 zoning districts, except that the following uses shall be prohibited:
  - a. Auto repair garage
  - b. Horse farm
  - c. Dairy farm
  - d. Cattle feed lot
  - e. Swine farm
  - f. Poultry farm
  - g. Truck farm
  - h. Telecommunication facility

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1.9. ~~1.6.~~ The area depicted for future commercial development in the Neighborhood Commercial Center on the CDP shall be developed in accordance with the regulations set forth at the time of development in the Zoning Ordinance for the PRD, C-1 zoning districts, the Modification Booklet and Design Guidelines, except that the following uses shall be prohibited.

- a. Single-family detached dwelling units
- b. Recycling Center
- c. Building Materials and Sales
- d. Mobile Home Sales, Rental and Service
- e. Auction Establishment
- f. Auto service station
- g. Automobile sales, rental and service
- h. Motor Vehicle Impoundment
- i. Recreational Vehicle Storage Area
- j. Car wash
- k. Farm Equipment Sales, Rental and Service
- l. Frozen Food Lockers
- m. Forestry

1.10. ~~1.7.~~ The Property shall be developed as a single, unified development.

1.11. ~~1.8.~~ The Applicant shall dedicate approximately four and one-half (4.5) acres of land in the location shown on the CDP to the Board or its designee, for the construction of a fire and rescue facility or other use to be determined solely at the Board's discretion. In addition, the Applicant agrees to provide a stormwater management facility for the fire and rescue facility.

1.11.1. ~~1.8.1.~~ Such dedication shall be made as soon as it may be done, but not later than recordation of the first subdivision plat for the Property.

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1.11.2. ~~1.8.2.~~—The Applicant shall grade the site, provide stormwater management, and extend utilities to the property line upon written request of the County.

1.11.3. The Applicant shall contribute the sum of \$1,750.00 per market rate residential unit, and the sum of \$4,500.00 per 1,000 square feet of commercial development, toward the construction of such facility, to be paid upon the issuance of a building permit for each such unit or commercial space.

1.12. ~~1.9.~~—The restrictions contained in §§ 4-106 (b), (c), (d) and (g) of the County Zoning Ordinance shall not be applicable to the commercial portion of the Property, provided that not more than 97,000 square feet of commercial uses may be developed on that commercial portion, for uses authorized in the C-1 District.

2. PHASING

2.1. The Applicant shall construct no more than the following number of single-family detached and attached residential dwelling units in any given year; provided that any units not constructed in a given year may be constructed in subsequent years, so long as no more than 100 market rate dwelling units are constructed in any one year. The first year of development as referenced herein, shall begin on the last day of the 12<sup>th</sup> month following the date of the Board's approval of the rezoning (“Year 1”).

2.1.1. Year 1 - issuance of building permits for 50 market rate units

2.1.2. Year 2 - issuance of building permits for 50 market rate units

2.1.3. Year 3 - issuance of building permits for 37 market rate units

2.1.4. Year 4 - issuance of building permits for 37 market rate units

2.1.5. Year 5 - issuance of building permits for 37 market rate units

2.1.6. Year 6 – issuance of building permits for 37 market rate units

2.1.7. Year 7 - issuance of building permits for 37 market rate units

2.1.8. Year 8 – - issuance of building permits for 37 market rate units

2.1.9. A minimum of two (2) workforce housing units shall be constructed in each of years 2-8, however, all workforce housing shall be constructed

prior to issuance of the building permit for the last market rate unit.

- 2.2. The Neighborhood Community Center clubhouse and pool shall be designed and under construction prior to or upon issuance of the 130<sup>th</sup> building permit.

3. ARCHITECTURE AND LANDSCAPING

- 3.1. Architecture and landscaping shall be developed in substantial conformance with the Design Guidelines, the Modification Booklet, and the Zoning Ordinance, or as otherwise may be approved by the Department of Community Development.
- 3.2. The Applicant shall create an Architectural Review Board for the residential portion of the PRD district, which shall have the responsibility for assuring compliance with the Design Guidelines, in addition to provisions for the review and approval of development that may be set forth within the Design Guidelines for Freedom Place.

4. WATER AND SEWER

- 4.1. The portion of the Property zoned to the PRD district shall be connected to public water and sewer systems constructed at the Applicant's expense.
- 4.2. In the event that the Board should elect to modify its Comprehensive Plan to permit the extension of public sewer and water services to those portions of the Property zoned RR-2 or otherwise determine that such extension is consistent with the County's land use policies, prior to the development thereof on well and septic systems, the Applicant shall extend public water and sewer services to boundary of the 36-acre park area to be dedicated as otherwise provided herein, at no cost to the County. In no event may the RR-2 lots be further subdivided.

5. CREATION OF OWNERS' ASSOCIATION:

- 5.1. Homeowners' Association.
  - 5.1.1. One or more homeowners' association (the "Association") shall be created and shall be made responsible for the maintenance and repair of common areas, including any common open space which may be established in accordance with the requirements of the Zoning Ordinance and these proffers. The Association 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 Association is created. Such Association shall also be granted sufficient powers as may be necessary, by regular or special dues or assessment, to raise revenues sufficient to perform the duties assigned hereby, or by the

documents creating the Association.

5.1.2. In addition to any other duties and responsibilities as may be assigned to it, the Association 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. It shall also have (iii) responsibility for the perpetual maintenance of any entrance feature (subdivision) signs, street, alleys and perimeter or road buffers for those purposes to be granted to the Association; (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.

5.1.3. The Association documents shall prohibit (i) parking in shared driveways; (ii) conversion of garages to living area or conversion to any other use that prohibits the storage of vehicles and (iii) parking of recreational vehicles within the residential area of the PRD. Recreational vehicles shall include but not be limited to boats, trailers, and campers.

5.2. Property Owners Association:

5.2.1. The Neighborhood Commercial Center shall be made subject to one or more property owners' association ("POA") that shall be responsible for the ownership, maintenance and repair of all common areas within the Neighborhood Commercial Center and shall be provided such other responsibilities, duties and powers as are customary for such associations or as may be required for such POA herein.

5.2.2. In addition to such other duties and responsibilities as maybe assigned, a POA shall have title to and responsibility for (i) all common open space areas within the Neighborhood Commercial Center, (ii) common buffer areas located outside of commercial lots; (iii) common solid waste disposal programs to include dumpster and contract carrier services provided by a private refuse collection company, (iv) maintenance of landscaping in common areas and (v) responsibility for the perpetual maintenance of any street, perimeter, or road buffer areas, all of which buffer areas shall be located within easements to be granted to the POA if platted within commercial lots, or otherwise granted to the POA by appropriate instrument.

6. SCHOOLS



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- 6.1. The Applicant shall contribute to the Board for school purposes in the amount of \$21,424.00 per residential single-family detached units, payable upon the issuance of a building permit for each such unit.
- 6.2. The Applicant shall contribute to the Board for school purposes in the amount of \$13,390.00 per residential single-family attached units, payable upon the issuance of a building permit for each such unit, however, the ten single-family attached units designated as workforce housing units shall not be subject to such contribution.

7. PARKS AND RECREATION

- 7.1. The Applicant shall contribute to the Board for park and recreation purposes in the amount of \$2,260.00 per single-family detached and single-family attached units, payable upon the issuance of a building permit for each such unit. However, those units designated as workforce housing units shall not be subject to such contribution.
- 7.2. The Applicant shall construct recreational amenities for the Freedom Place Neighborhood Community Center and Neighborhood Park, as shown on the CDP. The Neighborhood Community Center shall include an approximately 2,500 square foot clubhouse building with outdoor pool, one tot lot and picnic area. The Neighborhood Park shall include a full basketball court and one tot lot.
- 7.3. The Applicant shall dedicate approximately 36 acres of land on the north side of the East-West Connector, as shown on the CDP, to the Board or its designee, for park and recreation purposes. Such dedication shall be made as soon as it may be done, but not later than recordation of the first subdivision plat for the Property.
- 7.4. The Applicant agrees to further make expeditious application for a waiver of the non-common open space requirements for the residual portion of the parcel or parcels of property comprising the land to the north of the East-West Connector otherwise subject to a conservation easement as provided herein.
- 7.5. The Applicant shall dedicate a twenty foot (20') wide trail easement to the Board, or its designee, and construct an eight foot (8') wide asphalt trail in the approximate location as depicted on the CDP with final location to be determined at time of site or construction plan, in consultation with the Fauquier County Parks Department.
- 7.6. ~~7.5. The Applicant shall dedicate a twenty foot (20') wide trail easement to the Board, or its designee,~~ The Applicant shall construct and dedicate a six foot (6') wide asphalt trail parallel to the road, on the south side of the East-West

Connector, to the Board, or its designee, for construction by others of a trail in the location as depicted on the CDP with final location to be determined at time of site plan or construction plan, in consultation with the Fauquier County Parks Department.

7.7. ~~7.6.~~ The Applicant shall construct a four foot (4') wide asphalt trail in the locations shown on the CDP.

7.8. ~~7.7.~~ The Applicant shall contribute the sum of \$50,000.00 to the County within sixty calendar days of the approval of this rezoning application, and acceptance of these proffers, to be used for the development of a potential YMCA facility on property to be dedicated to the County as set forth above. In the event that the Board elects not to use such funds for that purpose, it may apply them to any capital project in its discretion.

8. LIBRARIES

8.1. The Applicant shall contribute to the Board for library purposes in the amount of \$707.00 per single-family detached and single-family attached units, payable upon the issuance of a building permit for each such unit. However, those units designated as workforce housing units shall not be subject to such contribution.

9. EMERGENCY SERVICES

9.1. The Applicant shall contribute to the Board for fire and rescue purposes in the amount of \$3,003.00 per single-family detached and single-family attached units, payable upon the issuance of a building permit for each such unit. However, those units designated as workforce housing units shall not be subject to such contribution.

9.1.1. The Applicant shall receive a credit against the above monetary contribution for dedication of the land to the Board for use as a fire and rescue facility. The credit shall be calculated by applying the tax assessed value, at the time of dedication, to that portion of the land area dedicated for use as the fire and rescue facility, and shall be applied to the monetary contributions for single-family detached and attached units.

10. SHERIFF

10.1. The Applicant shall contribute to the Board for the County Sheriff's department in the amount of \$468.00 per single-family detached and single-family attached units, payable upon the issuance of a building permit for each such unit.

However, those units designated as workforce housing units shall not be subject to such contribution.

## 11. TRANSPORTATION

11.1. The Applicant shall dedicate sufficient right-of-way for and construct:

11.1.1. The East-West Connector Road on the northern portion of the Property, including (i) a southbound right turn lane onto U.S. 17; (ii) a northbound left turn lane onto U.S. 17, and (iii) eastbound and westbound movements on the west side of the U.S. 17 and East-West Connector Road intersection.

11.1.2. Church Street, the main spine road within the development, including the turn lanes to and from Route 28, all as are shown on the CDP. Parking shall be permitted on Church Street until such time as that road is connected through to U.S. 17 at the Liberty High School intersection, at which time parking may be prohibited by VDOT in its discretion. The HOA documents otherwise provided for in these proffers shall contain an explicit statement to all property owners to the effect that VDOT may eliminate parking from all or a portion of Church Street as it may determine.

11.1.3. In the event that Freedom Way is constructed prior to the time that Church Street intersects with Route 17, then (i) Freedom Way shall be constructed with a thirty-foot (30') section, and (ii) on-street parking shall be prohibited until the Church Street/Route 17 intersection is constructed. If, however, the Church Street/Route 17 intersection is constructed prior to the construction of Freedom Way, Freedom Way is to be constructed as shown on the CDP, as a twenty-eight foot (28') section with on-street parking.

11.1.4. A four-lane divided section along Route 28 from its intersection with Route 17 in a westerly direction past the two project access roads, then tapering to the existing two lanes at the western project boundary, as is shown on the CDP. In the event that the Applicant is unable to acquire sufficient right-of-way on the south side of Route 28 to complete the aforementioned improvements prior to Year 1, the Applicant shall, in consultation with VDOT, provide appropriate lane improvements as allowed within the available right-of-way, or shall escrow with VDOT the reasonably estimated cost of acquisition of such additional right-of-way as may be required. The County or VDOT shall use their best good faith efforts to acquire such additional right-of-way when required for

construction of necessary improvements.

- 11.2. The Applicant shall dedicate sufficient right-of-way for the construction of a cross-over at the future Route 17 main entry to the Property at its intersection with the East-West Connector Road and at Route 28 at its intersection with Church Street, all as are generally depicted on the CDP.

11.2.1. ~~11.3.~~ The Applicant shall construct the following improvements at the intersection of Routes 17 and 28: (i) on northbound Route 17, one additional left turn lane; (ii) on ~~southbound~~eastbound Route ~~17, 28,~~ add one additional ~~left turn~~thru lane; and (iii) ~~on eastbound Route 28, reconfigure the existing eastbound right lane to an eastbound thru/right lane; and~~ (iv), on westbound Route 28, one additional left turn lane and one additional thru lane, all as are shown on the CDP. As agreed by VDOT, the turn lane lengths at this intersection will be determined with the first site plan submission. Applicant's traffic consultant will determine the necessary turn lane lengths based on queuing analysis, and that VDOT would review and approve. In the event that the Applicant is unable to acquire sufficient right-of-way to complete the aforementioned improvements, the Applicant shall, in consultation with VDOT, provide appropriate lane improvements as allowed within the available right-of-way, or shall escrow with VDOT the reasonably estimated cost of acquisition of such additional right-of-way as may be required. The County or VDOT shall use their best good faith efforts to acquire such additional right-of-way when required for construction of necessary improvements.

- 11.3. ~~11.4.~~ Unless provided for by others prior to issuance of an occupancy permit for the 350<sup>th</sup> dwelling unit, and upon VDOT approval, the Applicant shall provide traffic signalization on Route 17 at its intersection with the East-West Connector Road.

- 11.4. ~~11.5.~~ Unless provided for by others prior to issuance of an occupancy permit for the 65<sup>th</sup> dwelling unit, and upon VDOT approval, the Applicant shall provide traffic signalization on Route 17 at its intersection with Independence Avenue.

11.4.1. ~~11.5.1.~~ If the Applicant provides the aforementioned traffic signalization at Route 17 and Independence Avenue, the Applicant shall reconfigure the existing intersection as shown on the CDP to allow for left turns out of Independence Avenue onto southbound Route 17.

11.4.2. ~~11.5.2.~~ If the Applicant provides the aforementioned traffic signalization

at Route 17 and Independence Avenue and such signalization necessitates the relocation of the existing school zone flashing lights, the Applicant shall relocate, or pay the costs to relocate, such lights. The relocation shall include temporary flashing lights as necessary.

- 11.5. ~~11.6.~~ Upon satisfaction of VDOT's signal warrant analysis, the Applicant shall provide traffic signalization with Opticon capabilities on Route 28 at the proposed intersection with Church Street.
- 11.6. ~~11.7.~~ The Applicant shall construct Bowers Run Road with a turn-around with an earthen berm or other physical barrier at its terminus, and interparcel connections for the parcels designated as GPINs 6899-16-6332 and 6899-16-9374, all as shown on the CDP. However, in the event that the adjacent property identified as GPIN 6899-16-6332 is rezoned to a commercial or planned development zoning district, Bowers Run Road may be realigned or vacated in order to coordinate the transportation network between Freedom Place and the rezoned parcel identified above as GPIN 6899-16-6332.
- 11.7. ~~11.8.~~ Upon VDOT approvals, the Applicant shall modify the signalization at the intersection of Routes 17 and 28. Such modifications shall include Opticon capabilities.
- 11.8. ~~11.9.~~ The Applicant shall construct at least two access points prior to issuance of the occupancy permit for the 100<sup>th</sup> dwelling unit.
- 11.9. ~~11.10.~~ The Applicant shall contribute to the Board for (i) the Bealeton Connector or (ii) improvements to Routes 17/28 in the area of the project, in the amount of \$4,500.00 per single-family detached and single-family attached units, payable upon the issuance of a building permit for each such unit. However, the units designated as workforce housing shall not be subject to such contribution.
- 11.10. ~~11.11.~~ The Applicant shall install stamped and stained concrete crosswalks at the intersections on Church Street.
- 11.11. ~~11.12.~~ All internal streets shall be constructed to VDOT standards for neo-traditional developments, except for those streets that may be constructed pursuant to the Design Guidelines or modifications to VDOT standards as set forth in the Modification Booklet.

## 12. OFFSITE OPEN SPACE EASEMENT

- 12.1. The Applicant shall grant an offsite, non-common open space easement (the "Deed of Easement") to the Board for a portion of the property identified as

GPIN 6889-89-6214 and as shown on the CDP north of the proposed East-West Connector Road (the "Conservation Area"). The Applicant agrees to further make expeditious application for a waiver of the non common open space requirements for the residual portion of the parcel or parcels of property comprising the land to the north of the East-West Connector otherwise subject to a conservation easement as provided herein. The Conservation Area is not the subject of this rezoning application and such dedication shall be in conformity with the Zoning Ordinance.

- 12.2. The Applicant shall be entitled to subdivide the Conservation Area and remaining portion of the Property north of the East-West Connector Road into no more than two (2) lots with one primary residence on each lot, in conformity with the Zoning Ordinance.
- 12.3. The grant of such easement shall be contingent upon the rezoning of the Property as applied for, and shall be recorded within one (1) year from the Final Rezoning of the Property but in any event prior to the subdivision of the Property as permitted under Section 1.1 above. The Deed of Easement shall be similar in form and content to the draft easement attached hereto as Exhibit C and shall be recorded among the land records of Fauquier County.

13. ASSURANCE OF HOUSING AVAILABILITY FOR CERTAIN PURCHASERS

- 13.1. In support of the County's Affordable Housing Objectives, the Applicant shall insure that 10% of the total number of residential units shown on the recorded subdivision plat(s) for Freedom Place shall be workforce housing.
- 13.2. For the purposes of this proffer "workforce housing" shall mean those 16' wide single-family attached housing units constructed by the Applicant and made available to qualifying resident homebuyers at the "affordable housing price." The "affordable housing price" shall be determined according to a formula to be developed by Fauquier Housing Corporation and the Applicant, and approved by the Director of Community Development. ~~The price for workforce housing shall be established such that the Applicant shall not suffer economic loss as a result of providing the required affordable dwelling units. For purposes of these proffers, "economic loss" for such units shall mean that result when the Applicant fails to recoup the cost of construction and certain allowances as may be determined.~~ Unless otherwise agreed between the Applicant and Fauquier Housing Corporation and approved by the Director of Community Development for such homes, exclusive of the cost of land acquisition and site development costs, upon the sale of an affordable dwelling unit, the "affordable housing price" shall be the housing price which is affordable to a household having an income not greater than 80% of the Fauquier

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County median income (based on the most recent information published by the appropriate agency of the federal government). Except as may be otherwise agreed as above, the aforementioned price shall be affordable if the sum of the monthly principal, interest, taxes and insurance for a standard thirty year mortgage at the then current VHDA rate constitutes no more than 30% of the monthly income for such household. The “total purchase price” of the units shall consist of the affordable housing price plus the amount of the soft second mortgage provided for herein.

- 13.3. Eligibility for workforce housing shall be determined by the Fauquier Housing Corporation or such other entity as may be designated by Fauquier County. The opportunity to purchase these units during an initial six-month marketing period following the issuance of building permits for each such unit shall be reserved for Fauquier County sheriffs’ deputies, Fauquier County public school teachers, and any other Fauquier County or School Division employees who have been so employed for not less than three years and otherwise satisfy the qualifications set forth herein. Following such period any units not sold to qualifying purchasers pursuant to this proffer shall be made available at the affordable housing price for purchase by members of the general public who meet the requirements for purchase of such housing.
- 13.4. Financial arrangements for purchase of these dwelling units shall be made, inter alia, using “soft second” mortgages, held by Fauquier Housing Corporation or other such entity as may be designated by Fauquier Housing Corporation.
  - 13.4.1. Such mortgages shall be in the amount of the difference between the affordable housing price and the total purchase price and shall require no monthly payment, and the call of the said mortgage shall be conditioned upon the occurrence of specified events as determined by the County to be necessary to insure that the dwellings are purchased and retained by persons meeting the requirements for such units, including, without limitation, prohibition of rental of the unit to third parties, or sale to a purchaser who does not meet the requirements of this proffer.
  - 13.4.2. Deeds of trust reflecting such obligations shall be recorded in the Land Records of Fauquier County, in order that they are made a part of the chain of title with respect to each parcel of property so restricted. The deeds of trust shall be made payable to Fauquier Housing Corporation or Fauquier County. The term of such mortgages shall be coextensive with the underlying note and deed of trust for the purchase of the dwelling, after which such units may be sold as other dwellings are sold. Upon the sale of qualifying units to other qualifying purchasers ~~at the affordable housing prices~~ as determined by the above-referenced formula, the

aforesaid term shall commence anew.

- 13.4.3. Except to the extent ~~of~~ the terms set forth herein are modified by agreement between Fauquier County and the Fauquier Housing Corporation, the deeds of trust recorded shall further provide that 1) any workforce housing unit offered for sale during the term of a soft second or subsequent soft-second renewal period shall first be offered for sale at the then-applicable “affordable housing price” as determined pursuant to the aforesaid formula to Fauquier Housing Corporation or such other organization as may be designated by Fauquier County and 2) in the event that this right of first refusal is not exercised and the workforce housing unit is sold to a non-qualifying purchaser, all or a portion of the net realized gain upon the sale of the property after deduction for sales expense shall be paid to the holder of the soft second to be used for workforce housing purposes, using the formula set forth hereafter. The term “net realized gain” shall mean the difference between the original total purchase price ~~(i.e., the affordable housing price)~~ and the sales price of the dwelling, after deduction of reasonable sales expenses. The deed of trust shall provide that the trust holder shall receive a pro-rata share of the net realized gain on a monthly basis, calculated using the number of full months remaining on the deed of trust over the total number of months in the deed of trust. As an example thereof, if the owner realizes a net gain of \$100,000 on the dwelling and sells the property in the 30<sup>th</sup> month of a 300-month deed of trust, the housing trust shall be entitled to 270/300ths of the total net realized gain, or \$90,000. Any such sale to a non-qualifying purchaser shall be at fair market value. The deed of trust shall contain terms acceptable to the County to ensure that such sale is at fair market value. Any property sold at fair market value pursuant to this section shall thereafter be unencumbered by these restrictions.
- 13.5. The Fauquier Housing Corporation shall review all applications submitted for workforce housing units to ascertain whether the prospective purchaser(s) of any workforce housing meets the criteria for purchase, and shall thereafter report to the Zoning Administrator to demonstrate each purchaser's compliance with the requirements hereof.
- 13.6. Workforce housing shall be marketed only as owner-occupied principal residences.
- 13.7. Workforce housing units shall be dispersed within the PRD residential, and shall be constructed (i) as 16-foot wide single-family attached units with one-car garage and (ii) so that they will blend in with market rate housing.



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- 13.8. Prior to submitting construction plans for each Phase of the development, the Applicant shall give Fauquier Housing Corporation written notice to the Executive Director at its corporate address of such intent to file. Said written notice shall inform Fauquier Housing Corporation of the intent to file and of how many workforce housing units are in the Phase that is being filed. Fauquier Housing Corporation shall give written notice to Centex Homes within 14 days of receipt of the initial notice whether it has qualified purchasers for said units. In the event that Fauquier Housing Corporation is unable to identify a qualified purchaser for any workforce housing unit made available to it in accordance with these proffers, then the Applicant shall be permitted to convert such unit to a market rate unit, 16 wide or otherwise, and as a condition of issuance of a final occupancy permit for such unit, contribute the sum of \$25,000.00 to Fauquier Housing Corporation. As a condition precedent to the applicability of this section, Applicant shall have delivered designs, floor plans, and such other information as the Applicant has available at least 6 months prior to sending such notice, which will permit Fauquier Housing Corporation to market the affordable housing units

14. REQUIREMENTS FOR CONSTRUCTION OF SUBSURFACE STRUCTURES.

- 14.1. 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 professional engineers to assure a dry basement and to preclude wet yards and recirculation of pumped or collected water, and approved by the County.
- 14.2. Drainage easements, where required, shall be placed on the final plat.
- 14.3. 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 system.

15. ESCALATOR CLAUSE

Any monetary contributions set forth in this Proffer Statement which are paid to the Board after 24 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 published most nearly to and following January 1<sup>st</sup> from that date 24 months after rezoning approval and the date the contributions are paid, subject to a cap of 3% per year, non-compounded.

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**[SIGNATURES ON FOLLOWING PAGES]**

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OWNER:

THE ESTATE OF ROBERT H. HODGSON

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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JAMES F. STEFFEY

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Date: \_\_\_\_\_

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JEAN ELIZABETH CHEATHAM

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

Date: \_\_\_\_\_

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WILLIAM W. GOULDING

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Date: 

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GARY W. WEAVER

\_\_\_\_\_

Date: \_\_\_\_\_



## APPENDIX A

### REQUEST FOR MODIFICATION OF CERTAIN REQUIREMENTS RELATED TO DRAINAGE

#### I. INTRODUCTION

In accordance with § 4-112 of the Fauquier County Zoning Ordinance (“Zoning Ordinance”), Centex Homes (the “Applicant”) requests the following modifications of certain sections of the Zoning Ordinance, the Fauquier County Subdivision Ordinance (“Subdivision Ordinance”) and the Fauquier County Design Standards Manual (“Design Standards Manual” or “DSM”) as a part of this Application. In order for the Applicant to develop Freedom Place pursuant to the Conceptual Development Plan (“CDP”) included as a part of this rezoning, the following modifications are required.

#### II. MODIFICATION REQUEST

Pursuant to Sections 12-609, 12-610, and 12-702(1) of the Zoning Ordinance, all site plans must comply with Chapter 2 of the Design Standards Manual. See Appendix A, attached hereto. In addition, Sections 9-5(A) (16) and (28) of the Subdivision Ordinance require compliance with the Fauquier County Stormwater Management Ordinance, which has recently been incorporated into the new Design Standards Manual. See Appendix A, attached hereto.

In order to meet the Fauquier County Comprehensive Plan’s planning requirements for the Bealeton Service District, which are directly applicable to this Property, the Applicant hereby requests the following modifications to the Design Standards Manual to accommodate the unique conditions that are found on the Freedom Place site. The provisions of these modifications and the justifications provided thereto have been crafted in such a way as to insure that the purpose and intent of the County’s regulations are met and satisfied to an equivalent degree during the development of the Property subject to this rezoning. These modifications are merely providing flexibility in the provision of stormwater management for the subject property in order to accomplish the Comprehensive Plan’s goals and the combined vision for Freedom Place. For the purposes of this Application, and no other, the following modifications are requested and shall be deemed to apply to all future development at Freedom Place:

## Design Standards Manual

### Section 202. Definitions.

“**Channel**” means a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

“**Natural Drainage/Channel**” means any natural or existing channel, stream bed, or watercourse that carries surface or groundwater, but is not wholly dependent for its flow on surface drainage from its immediate area or from outfalls of man-made systems designed to handle stormwater runoff such as culverts, storm drain pipes, roadway drainage ditches or other manmade channels. It further includes nontidal waterways that are part of the natural topography that usually maintains a continuous or seasonal flow during the year, and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural.

“**Watercourse**” except as a natural drainage/channel is otherwise defined above, means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

“**Body of Water**” means any significant natural pool of water with a normal water surface elevation, such as an ocean, a lake, a pond, or a stream.

“**Streambed**” means any natural or man-made channel in which a perennial or intermittent stream flows.

“**Outfall**” means the lower end of a watercourse; the open end of a drain, culvert, etc. where the discharge occurs.

### Section 201.8. General Drainage Requirements

- (2) Natural drainage/channel characteristics and drainage divides shall be preserved to the maximum extent practicable, provided that for purposes of REZNO5-LE-001 natural drainage/channel associated with the site shall be deemed to include only those areas identified on Exhibit A, attached hereto. Drainage analyses shall be considered within each drainage area.

- (9) In subdivisions, all SWM/BMP facilities shall be placed in a common area unless prior approval has been obtained from the program administrator. Further, proposed or natural drainage/channel shall not occur across or upon individual lots unless prior approval has been obtained from the program administrator; and provided further that the Applicant shall be permitted to propose suitable means of accommodating surface and subsurface drainage in order to avoid any requirement that it be required to eliminate or relocate proposed residential lots on the Property subject to this rezoning.

### **III. JUSTIFICATION**

#### **A. Legal Justification**

No Fauquier County Ordinance defines a “natural drainage /channel,” and there are a number of approaches to drainage channels that are acceptable in standard industry practice. The Applicant has based its proposed definition on prevailing definitions used in the industry, and the use of those terms found in the Virginia Administrative Code, specifically 4VAC 50-30-10, which provides definitions applicable to the Virginia Erosion and Sedimentation Control Act. The close relationship of that Act to the issues involved here make the definitions in the state regulations of significant use.

*Sansom v. Board of Supervisors*, 257 Va. 589, 594-95, 514 S.E.2d 345 (1999) provides that “[w]hen . . . a statute contains no express definition of a term, the general rule of statutory construction is to infer the legislature's intent from the plain meaning of the language used.” *Hubbard v. Henrico Ltd. Partnership*, 255 Va. 335, 340, 497 S.E.2d 335, 338 (1998) (citing *City of Virginia Beach v. Flippen*, 251 Va. 358, 362, 467 S.E.2d 471, 473-74 (1996); *Marsh v. City of Richmond*, 234 Va. 4, 11, 360 S.E.2d 163, 167 (1987)). An undefined term must be “given its ordinary meaning, given the context in which it is used.” *Dep't of Taxation v. Orange-Madison Coop. Farm Serv.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980). “The context may be examined by considering the other language used in the statute.” *City of Virginia Beach v. Bd. of Supervisors of Mecklenburg County*, 246 Va. 233, 236 -37, 435 S.E.2d 382, 384 (1993). Although the Appendix to the DSM contains a definition that arguably applies to a natural channel, it does not apply in this case because it is part of Technical Bulletin Number 1 developed by the Virginia Dept of Conservation and Recreation and was designed to address outfalls from a developed site. That definition is insufficiently precise concerning the particulars of this Application because it was not intended to be used for this purpose. Thus, it is prudent in these circumstances to define essential terms clearly, so that there will not be disagreement in the future as to the intent of the language employed.

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Thus, it is prudent in these circumstances to define essential terms clearly, so that there will not be disagreement in the future as to the intent of the language employed.

In the judgment of the Applicant's engineers, the only natural drainage/channel on site is Bowers Run. Attached hereto and incorporated herein by reference is a depiction of the existing natural drainage/channel, entitled "Natural Drainage/Channel Exhibit" prepared by Bowman Consulting Group and dated March 2006. The Bowers Run watercourse is defined as a special flood hazard area designated Zone A on the effective FIRM, by FEMA. Bowers Run has a defined bed and bank system with a normal water surface elevation and thus qualifies as a channel, streambed and watercourse. It is not wholly dependent on surface flows from the immediate area or the outfall of man-made stormwater runoff collection systems for flows, and as such qualifies as a natural drainage/channel.

As opposed to the conditions described above for Bowers Run, those drainage areas served by an outfall for man-made roadway ditches or culverts, are not natural drainage/channels. Further, a drainage area that has no defined bed and bank system, is not identified as a permanent or intermittent stream and is not a body of water with a normal water surface elevation is neither a channel, streambed or watercourse and, as such, is not a natural drainage/channel. Finally, a drainage area with flows that are wholly dependent on surface flows from the immediate area is not a natural drainage/channel.

**B. Equivalent Alternative Proposed by the Applicant**

The Applicant proposes to address the conveyance of surface water present on the site using standard engineering practices in conformity with Federal, State and Local regulations. The Applicant agrees to implement the following construction measures in order to comply with the County's Ordinances and Regulations to an equivalent degree (the "Engineering Solution"). These measures are designed to ensure public safety and the protection of future homeowners from damage which could be caused by a 100-year storm event.

1. The County's Ordinances require overland relief for the 10-year storm event. The Applicant will provide overland relief onsite such that no habitable structures will be inundated by surface flows generated by the 100-year storm event.
2. Construction within the 100-year floodplain of Bowers Run will be limited to trail and road crossings, and utility installation. All required state and federal permits will be obtained prior to the start of construction. The Applicant reserves the right to plant within the 100-year flood plain of Bowers Run.

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3. Drainage systems are customarily designed for the 10-year storm event, but the Applicant will design its system to handle 25-year storm flows in order to avoid overland flow in the event of such a storm.
4. The Applicant shall provide an enhanced extended detention facility, in lieu of extended detention otherwise required.
5. Residential lots will be located outside the 100-year floodplain for Bowers Run.
6. Stormwater runoff generated offsite that enters the site will be conveyed through the site pursuant to section 4-7 of the subdivision ordinance, with easements placed over any channels or storm drain pipe systems engineered to handle said flows.
7. Single Family Attached homes will be slab-on-grade with no basements.
8. Single Family Detached homes with basements shall be designed with subsurface drainage measures designed and certified by a geotechnical engineer licensed by the state of Virginia. See the proposed additional proffer, below.
9. Stormwater management ponds will be located outside the 100 year floodplain for Bowers Run.

The Engineering Solution described above will be incorporated into all site and subdivision plans to be submitted to the County following the approval of this rezoning. The employment of the Engineering Solution will be a correction of the existing problematic erosive flow present on the site, and a distribution of the stormwater entering onto the Property in compliance with applicable County and State regulations.

Finally, in response to the County's concerns regarding high water tables in areas where homes with basements are proposed on the Applicant's Development Plan, the Applicant is proposing a proffer that directly discusses this issue, similar to that contained in other recently approved rezoning applications.

"The Applicant will construct homes within the PRD district that will include basements, subject to the following conditions:

1. No below grade basements shall be constructed on soils with high water tables, unless the building foundation drainage system of the structure is designed by licensed professional engineers to assure a dry basement and the site is graded so as

to preclude standing water in yards and limit the recirculation of pumped or collected water, and approved by the County.

2. Drainage easements, where required, shall be indicated on the final subdivision plat.
3. The deeds conveying each unit with a basement shall include the following language:

This house has been constructed on property that has been determined to possess a potentially high subsurface water table. A foundation drainage system for this home has been designed and constructed according to standard engineering practices. The property owner is advised that any disturbance or alteration 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 certified 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 system.”

#### **IV. CONCLUSION**

Based on the foregoing, the Applicant hereby requests that the Planning Commission and Board of Supervisors approve the requested modifications to Sections 12-609, 12-610 and 12-702(1) of the Zoning Ordinance, Sections 9-5(A)(16) and (28) of the Subdivision Ordinance and Sections 201.8 and 202 of the Design Standards Manual.