

PROFFERS

RZ 2003-MV-062 EASTWOOD PROPERTIES, INC. (NALLS ROAD)

September 16, 2004

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 parcel under consideration and shown on the Fairfax County Tax Maps as Tax Map Reference 101-4-((1))-60, 61 (hereinafter referred to as the "Property") will be in accordance with the following conditions if, and only if, said Rezoning request for the PDH-2 District is granted. In the event said application request is denied, these proffers shall be null and void. The Owners and the Applicant ("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agree that these proffers shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board of Supervisors of Fairfax County, Virginia, in accordance with applicable County and State statutory procedures. The proffered conditions are:

I. GENERAL

1. Substantial Conformance. Subject to the proffers and the provisions of Article 16 of the Zoning Ordinance, under which minor modifications to an approved development plan are permitted, the development shall be in substantial conformance with the Conceptual Development Plan/Final Development Plan (CDP/FDP), containing three (3) sheets prepared by Charles P. Johnson & Associates, Inc., dated July 9, 2004.

2. Lot Yield. The development shall consist of a maximum of six (6) single family detached units including one existing dwelling unit which is anticipated to be retained. In the event that the Applicant, in the future, elects to demolish the existing

house and replace it, the new structure minimum lot line setbacks will be twenty-eight feet (28') for the rear, twenty-four feet (24') for the side and twenty-five (25') feet to any front lot line. If the existing house is replaced, access to the new dwelling unit will be from the private street. Both Nalls Road and the private street will be considered front lot lines. The building envelopes including house and driveway location and sizes, as shown on the CDP/FDP, are approximate and may be adjusted upon final construction or lot grading plans if in substantial conformance with the CDP/FDP.

3. Establishment of HOA. Prior to record plat approval, the Applicant shall establish a Homeowners Association (HOA) for the purpose of establishing the necessary residential covenants governing the design and operation of the approved development and to provide a mechanism for ensuring the ability to complete certain maintenance obligations of these proffer conditions.

4. Length of Driveways. All driveways serving the approved residential units shall extend outward a minimum of 18 ft. in length from the edge of the entrance to the garage.

5. Garage Conversion. Any conversion of garages that will preclude the parking of vehicles within the garage is prohibited. A covenant setting forth this restriction shall be disclosed in the HOA Documents and recorded among the land records of Fairfax County in a form approved by the County Attorney prior to the sale of any lots and shall run to the benefit of the homeowners association, which shall be established, and to the Fairfax County Board of Supervisors. Prospective purchasers shall be advised of this use restriction, in writing, prior to entering into a contract of sale.

6. Encroachment of Decks and Similar Appurtenance. Notwithstanding the general dwelling unit locations described on the CDP/FDP, decks, bay windows,

chimneys, patios and mechanical equipment may encroach into required minimum yards as permitted by Section 2-412 and/or Article 10 of the Zoning Ordinance.

7. Architecture. The front façade of the new dwelling units and the north side of Lot 2 will be a minimum of 70% brick and/or stone exclusive of windows, doors, shutters and trim. In addition, a minimum of two architectural features from the following list shall be incorporated into each house design: bay window, architectural columns at front entrance, ornamental roof dormer(s), ornamental window shutters, ornamental arches along the front building facade, ornamental window features at the front entrance to include either a fanlight window, sidelight windows or a transom window.

8. Architectural Review. Concurrent with or prior to submission of the subdivision plan to the Department of Public Works and Environmental Services (DPWES), architectural elevations shall be submitted to the Planning Commission for the purpose of administrative review and evaluation to ensure compliance with Proffer 7.

II. TRANSPORTATION

9. Nalls Road Improvements. Prior to the issuance of the final Residential Use Permit (“RUP”), the Applicant shall improve Nalls Road as generally depicted on the CDP/FDP. Notwithstanding that shown on the CDP/FDP, these improvements shall include a sidewalk to be installed along the south side of Nalls Road which shall measure five (5) feet in width with the exception of area immediately west and east of the existing twenty four (24) inch drainage culvert located in the north west corner of the site where instead the sidewalk shall taper to a width of four (4) feet in the area impacted by the drainage culvert. Notwithstanding that shown on the CDP/FDP, the Applicant shall provide such sidewalk along the property’s entire frontage on Nalls Road, specifically the sidewalk shall be extended to the eastern property boundary as determined by DPWES.

10. Private Street. The Applicant will request and diligently pursue a modification of the Public Facilities Manual (the “PFM”) at the time of subdivision plan to request a private street to be 18 feet from the edge of the pavement in lieu of a street 24 feet from face of curb to face of curb. If the street width is required to be larger than 18 feet by DPWES, the lot sizes shall be correspondingly reduced. If any adjustment to the configuration of the street is required by DPWES, in no event shall the amount of open space outside the area of the lots be reduced from that shown on the CDP/FDP. If such modification is not granted and cannot be fulfilled in substantial conformance with this proffer, a Proffered Condition Amendment will be necessary. Notwithstanding that shown on the CDP/FDP, the Applicant shall provide a five (5) foot wide sidewalk along the eastern side of the private street.

11. Porous Materials. As shown on the CDP/FDP, grasscrete or a porous surface shall be utilized in the emergency access turnaround and the guest parking area, subject to review and approval by DPWES and the Fire Marshal.

12. Fire Lane Markings. The private street will be designated as a fire lane with yellow marking and/or signage as per Section 9-0202.J(5) of the PFM as required by the Fire Marshal.

13. Public Access Easement. A public access easement in a form approved by the County Attorney shall be placed on the private street and sidewalk within the approved development.

14. Private Street Maintenance. The private street shall be constructed pursuant to the PFM pavement section standards as to the thickness appropriate for public subdivision streets based on level of vehicular traffic consistent with the development shown on the CDP/FDP as determined by DPWES. The HOA Documents shall include

provisions for monthly/annual assessments for private street maintenance. All prospective purchasers shall be advised of the existence of the private street, the associated public access easement and all other associated maintenance obligations required by these Proffered Conditions prior to entering into a contract of sale and such information shall be included in the HOA Documents. The HOA Documents shall stipulate that a reserve fund to be held by the HOA be established for the private street maintenance. The Applicant shall be responsible for placing the sum of \$2,000 in such reserve fund prior to the issuance of the first Residential Use Permit (the "RUP") for the proposed single family dwelling units.

III. ENVIRONMENTAL

15. Stream Buffer. An undisturbed open space buffer, not to be cleared or graded, shall be provided around the on-site stream with the exception for removal of dead or dying vegetation and the outfall from the rain garden as shown on the CDP/FDP. The buffer shall encompass fifty (50) feet from the centerline of the stream on the northern side of the stream and continue to the southern boundary of the subject property.

16. Stormwater Management Facilities and Best Management Practices (BMPs). The Applicant shall provide stormwater management and BMPs in accordance with the Public Facilities Manual and subject to approval from DPWES. The Applicant intends to pursue a stormwater management waiver from the Department of Public Works and Environmental Services (DPWES) to eliminate the need for a stormwater management pond on-site and to use alternative low impact design principles. If approved, the low impact design (LID) principles shall provide for stormwater management quantity controls and treat BMPs. Such waivers shall be diligently pursued as part of the subdivision review process. If the necessary waivers are not granted and

cannot be fulfilled in substantial conformance with these proffers, a Proffered Condition Amendment will be necessary.

17. Low Impact Design Principles. Subject to approval by DPWES, the Applicant shall utilize the following LID approaches or such similar approaches as may be approved by DPWES:

- The elimination of curbing along all or a portion of the public or private roads in favor of a natural edge;
- Using a sidewalk on only one side of a private street;
- A swale running adjacent to the private street on the west side of street;
- The incorporation of one or more “rain garden” facilities;
- The installation of “grasscrete” or similar porous material on turnaround areas of private street and guest parking area;

To the extent any of the items described above impose additional private maintenance obligations on the HOA, the same shall be disclosed to prospective purchasers prior to entering into a contract of sale and shall be incorporated into the HOA covenants.

Such rain gardens shall be maintained by the HOA in general conformance with Attachment A. To the extent any of the items described above impose private maintenance obligations on the HOA, the same shall be incorporated into the HOA Documents.

18. Re-vegetation. The Applicant will re-vegetate areas disturbed during the construction of the rain garden outfall with native species in accordance with Section 12 of the PFM as approved by the Urban Forester. The Applicant shall restore the degraded stream banks concurrent with installing adequate outfall measures.

19. Erosion/Sedimentation. The functioning and integrity of all erosion and sedimentation controls (E & S Controls) required by DPWES shall be inspected by the Applicant the next day following each storm event during the period of construction on site. If the E & S Controls have been damaged or breached, the E & S Controls shall be repaired within two business days of the storm event.

20. Landscaping. Landscaping shall be provided in substantial conformance with the landscaping concepts shown on the CDP/FDP. If the existing house is re-developed, it too shall conform with the landscaping shown in the lot typical included in the CDP/FDP. If, during the process of subdivision plan review, any new landscaping shown on the CDP/FDP cannot be installed in order to locate utility lines, trails, etc., as determined necessary by the Urban Forestry Division, then an area of additional landscaping consisting of trees and/or plant material of a type and size generally consistent with that displaced, shall be substituted at an alternate location on the Property, subject to approval by the Urban Forestry Division. If it is necessary to install utilities outside the limits of clearing shown on the CDP/FDP, they shall be located in the least disruptive manner necessary, as determined by the Urban Forestry Division and the applicant shall demonstrate to DPWES that there is no other alternative location for the utility inside the limits of clearing and grading.

21. Tree Preservation Plan. The Applicant shall submit a tree preservation plan as part of the first and all subsequent subdivision plan submissions. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and reviewed and approved by the Urban Forestry Division. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating

percentage of all trees twelve (12") inches in diameter and greater within ten (10') feet of the limits of clearing and grading shown on the CDP/FDP. The tree survey shall also include areas of clearing and grading not shown on the CDP/FDP resulting from engineering requirements, such as off-site clearing and grading for utilities or stormwater outfall. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture. Specific tree preservation activities that will maximize the survivability of trees identified to be preserved, such as: crown, pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

22. Tree Preservation Walk Through. The Applicant shall retain the services of a certified arborist or landscape architect and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the pre-construction meeting. Before or during the pre-construction meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with an Urban Forestry Division representative to determine where minor adjustments to the clearing limits can be made to increase the survivability of trees at the edge of the limits of clearing and grading. Trees not likely to survive construction due to their species and/or proximity of disturbance will also be identified at this time and the Applicant shall also be given the option of removing them as part of the clearing operation. Any tree designated for removal at the edge of the limits of clearing and grading or within tree preservation area shall be removed using a chain saw to avoid damage to surrounding trees. If a stump must be removed, this shall be done using a stump-grinding machine in a manner causing as little disturbance as possible to adjacent trees.

23. Tree Protection Fencing. All trees shown to be preserved on the Tree Preservation Plan shall be protected by tree protection fencing. Tree protection fencing consisting of four foot high, 14 gauge welded wire attached to six foot steel post driven 18 inches into the ground and placed no further than ten feet apart shall be erected at the limits of clearing and grading as shown on the demolition and for phase 1 and 2 erosion and sediment control sheets for the tree save and protection areas generally delineated on the CDP/FDP. All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures within or adjacent to tree save areas. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist. Three days prior to the commencement of any clearing, grading or demolition activities, the Urban Forestry Division shall be notified in writing and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed.

24. Energy Conservation. All newly constructed homes on the Property shall meet the thermal guidelines of the CABO Model Energy Program for energy-efficient homes, or its equivalent as determined by DPWES, for either gas or electric energy systems as may be applicable.

25. Lighting. All exterior lighting shall be in conformance with Part 9 of Article 14 of the Zoning Ordinance.

IV. RECREATION

26. Parks and Recreation. The Applicant shall contribute \$955.00 per each residential unit approved on site in accordance with Section 16-404 to the Fairfax County Park Authority for outdoor recreation facilities to serve the development population. At the same time, the Applicant shall make an additional contribution to the Fairfax County

Park Authority of \$574.00 per residential dwelling unit approved on site to offset additional impact caused by the proposed development.

Said per unit contributions shall be made at the time of record plat approval for the existing unit to be retained and prior to the issuance of a building permit for each new unit. The Applicant reserves the right to be credited for up to \$955.00 per unit for the on-site installation of active or passive recreational facilities to include but not be limited to tot lots, fitness courses, gazebos, playgrounds, recreational trails and similar facilities, in open space areas shown on the CDP/FDP, provided that the installation of such facilities shall conform to the requirements of these proffers and to the provisions of Article 6. In the event it is demonstrated that the proposed on-site facilities do not have sufficient value, the Applicant shall have the option to contribute necessary funds to the Fairfax County Park Authority for off-site recreational purposes.

V. OTHER

27. Temporary Signage. No temporary signs (including “popsicle” style paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 or Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on or off-site by the Applicant or at the Applicant’s direction to assist in the initial marketing and sale of homes on the subject Property. Furthermore, the Applicant shall direct its agents and employees involved in marketing and/or sale of residential units on the subject Property to adhere to this proffer.

28. Affordable Dwelling Units. At the time of first building permit issuance, the Applicant shall contribute to the Fairfax County Housing Trust Fund the sum equal to one half of one percent (1/2 %) of the projected sales price for each dwelling unit on the

subject property. The projected sales price shall be determined by the Applicant in consultation with the Fairfax County Department of Housing and Community Development (HCD) and DPWES. The timing and amount of such contribution may be modified at the Applicant's sole discretion based on the adoption of a future amendment to the formula adopted by the Board of Supervisors.

29. Heritage Resources. Prior to any land disturbing activities on the Application Property, Applicant shall conduct a Phase I archaeological study on those areas of the Application Property identified by the Heritage Resources Branch of the Fairfax County Park Authority ("Heritage Resources") and provide the results of such study to Heritage Resources. The study shall be conducted by a qualified archaeological professional approved by Heritage Resources, and shall be reviewed and approved by Heritage Resources. The study shall be completed prior to subdivision plat recordation. If the Phase I study concludes that significant artifacts are present on the Application Property, Heritage Resources shall notify Applicant, in writing within thirty (30) days of the submission of the study results to Heritage Resources, of its desire to conduct additional investigations. Applicant shall provide access to the Application Property so that Heritage Resources may conduct additional investigations for a period of two months from the date of notification provided that said investigations shall not interfere with the proposed construction and development schedule of the Application Property or affect the number of lots or lot layout as shown on the CDP/FDP. Additional time may be permitted to conduct such investigations if mutually agreed to by the Applicant and Heritage Resources.

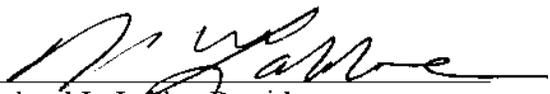
These proffers may be executed in counterparts and the counterparts shall constitute one and the same proffer statement.

Title Owners of Tax Map 101-4-((1))
parcels 60, 61

By: Charles H. Gallahan
Charles H. Gallahan

By: Jean H. Gallahan
Jean H. Gallahan

Eastwood Properties, Inc.
(Contract Purchaser of
Tax Map 101-4-((1)) parcels 60, 61)

By: 
Richard L. Labbe, President