

**DRAFT  
PROFFER STATEMENT  
ETHEL'S POND  
RZ 2005-SP-012  
June 30, 2005  
September 13, 2005  
October 14, 2005  
October 24, 2005  
October 26, 2005  
November 9, 2005**

Pursuant to Section 15.2-2303(A) of the Code of Virginia, as amended, and subject to the Board of Supervisors approval of rezoning application RZ 2005-SP-012, as proposed, for rezoning from the R-1 and WSPOD Districts to the R-2 (Cluster) and WSPOD Districts, Bo-Bud Residential, LLC (the "Applicant"), for itself and its successors and assigns, hereby proffers that development of Tax Map Parcel 55-2((3))-000R-3 (the "Property"), containing approximately 5.0519 acres, shall be in accordance with the following proffered conditions. In the event the above-referenced rezoning is not granted as applied for by the Applicant, then these proffers shall be deemed withdrawn and shall be null and void.

The term "Applicant" as referenced herein shall include within its meaning all successors and assigns of the Applicant. The term "Generalized Development Plan" or "GDP" as referenced herein shall include the plan entitled Generalized Development Plan Ethel's Pond, dated 2/21/05, as last revised October 26, 2005 and containing five sheets.

**1. DEVELOPMENT AND USE**

1.1 Substantial Conformity to GDP. Subject to provisions of Section 18-204 of the Zoning Ordinance, the Property shall be developed in substantial conformance with the Generalized Development Plan as further modified by these proffered conditions. There shall be no common or shared driveways on the Property. Applicant may revise the house and driveway footprints shown for lots 3, 5, 6 and 7 at final plan and building permit approvals provided that the limits of clearing shown on the GDP shall not be diminished.

1.2 Minor Modifications to Design. Pursuant to Paragraph 5 of Section 18-204 of the Zoning Ordinance, the Applicant may make minor adjustments which may be required as a result of final engineering to modify the layout, if such changes are in substantial conformance with the GDP and these proffers, and if the changes do not increase the total number of units, decrease the minimum amount of open space, or decrease the effectiveness of landscaping along the Property lines or in common open space areas.

1.3 Maximum Density. A maximum of seven (7) single family detached dwelling units shall be permitted on the Property.

1.4 Architectural Theme. In order to insure a consistent theme and character throughout the Property, Applicant shall utilize a combination of building materials and architectural design features for all building facades (front, side and rear) which are

consistent with the facades shown on Exhibit A hereto; and, Applicant shall incorporate common landscaping features, walkways, signage, lighting and other common design elements. Applicant shall show compliance with this proffer at or prior to final subdivision plan approval by submission of architectural elevations to the DPWES. Applicant shall adopt restrictive covenants applicable to all lots within the Property with the objective to create a coordinated image for the Property.

## 2. TRANSPORTATION

2.1 Fairfax Center Area Roadway Contribution. The Applicant shall contribute to the Fairfax Center Area Road Fund in accordance with the "Procedural Guidelines" adopted by the Board of Supervisors of Fairfax County (the "Board") on November 22, 1982, as amended, subject to a credit for all creditable expenses (as determined by the Fairfax County Office of Transportation and the Fairfax County Department of Public Works and Environmental Services).

2.2 Right-of-Way Dedication. All right-of-way dedicated in conjunction with these proffers and as depicted on the GDP shall be conveyed to the Board in fee simple upon demand by the County or at the time of recordation of the final subdivision plat, whichever occurs first.

2.3 Westbrook Drive Improvements. The Applicant shall dedicate and convey in fee simple to the Board right-of-way up to twenty-eight and one-half (28.5) feet from the presently existing centerline along the Westbrook Drive frontage of the Property as depicted on the GDP. In addition, the Applicant shall (i) construct a one-half section of frontage improvements along the Property's Westbrook Drive frontage as shown on the GDP, and (ii) construct road frontage improvements along the frontage of tax map parcel 55-2((3))-00N-1 ("Parcel N1"). Notwithstanding the edge of pavement transition shown on the GDP, said Parcel N1 road frontage improvements shall include curb and gutter (no sidewalk), with curb face set at up to nineteen (19) feet from the presently existing centerline in order to match existing Westbrook Drive frontage improvements to the west of Parcel N1. Applicant shall not be responsible for actual construction of said frontage improvements for Parcel N1 unless all necessary right-of-way and ancillary easements are available.

## 3. ENVIRONMENT/OPEN SPACE

3.1 Limits of Clearing. The Applicant shall conform to the limits of clearing and grading shown on the GDP, subject to installation of sidewalks, trails, storm drainage facilities and utility lines, as necessary and as approved by DPWES. These sidewalks, trails, storm drainage facilities and utilities shall be installed in the least disruptive manner practicable, as determined by the County Urban Forester, considering reasonable engineering and construction cost constraints. A replanting plan shall be developed and implemented, as approved by the County Urban Forester, for any areas located within the limits of clearing and grading that must be disturbed due to the installation of sidewalks, utility lines, trails and storm drainage facilities.

3.2 Open Space Areas. All common open space depicted on the GDP shall be conveyed to a private homeowners' association ("HOA") at the time of recordation of the final subdivision plat. All common open space areas and any amenities therein shall be owned and maintained by said private HOA.

3.3 Open Space Improvements. At the time of recordation of the subdivision plat, the Applicant shall convey Outlots A and B, as generally depicted on the GDP, to a HOA for use as a common open space. All common open space areas will be maintained by the HOA. The Applicant shall provide a four (4) foot wide natural surface trail, benches and sitting areas, for use by both HOA members and residents of the surrounding community, within the common open space area located on the Property, as generally depicted on sheet 3 of the GDP. A public trail or access easement shall be established on the subdivision plat for the Property to allow such use by the surrounding community.

3.4 Landscaping, Fencing and Other Design Amenities. Subject to approval by the County Urban Forester, landscaping shall be provided as generally shown on the GDP. Street trees indicated on the GDP shall have a minimum caliper of 3 to 3 ½ inches. The entrance feature, street lighting, split rail wood fencing, wooden board on board privacy fencing, benches and sitting areas shall all be provided as generally shown on sheet 3 of the GDP.

3.5 Stormwater Management. The Applicant shall conform to the waiver of on-site stormwater management requirements issued by DPWES, by utilizing Regional Stormwater Management Pond R-17 ("Pond R-17") for stormwater management and BMP purposes, which will allow the existing wet pond to be restored and remain solely as a community amenity. In the event Pond R-17 is not yet constructed by the County at the time the Property is initially developed, Applicant shall retrofit the wet pond as an interim on-site stormwater management and BMP facility until such time as Pond R-17 is constructed, subject to approval by DPWES. The applicant shall take all reasonable measures to restore the pond as a scenic community amenity, such as aeration and goose proof landscaping.

3.6 Tree Protection. The Applicant shall submit a tree preservation plan and a landscaping plan as part of the final subdivision plan submission, which provide for the identification of individual tree save areas in which existing trees shall be protected to the greatest extent possible during construction activities. These trees shall be protected with fencing that shall be placed prior to grading and clearing activities. Prior to commencement of any clearing or grading on the Property, the Applicant shall confirm to County staff that tree protection fencing has been properly installed to protect these trees. On or before the preconstruction conference, the Applicant shall offer to walk the limits of clearing and grading with the County Urban Forester to determine whether adjustments are required to increase the survivability of said trees shown on the landscaping plan.

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 10 inches in diameter and greater, and 20 feet to either side of the limits of clearing and grading shown on the GDP for the entire site. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the GDP, and those additional areas in which trees can be preserved as a result of final engineering. 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.

All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing shall be erected at the limits of clearing and grading as shown on the demolition, and phase I & II erosion and sediment control sheets and shall consist of four foot high, orange plastic fence attached to 6 foot steel posts driven 18 inches into the ground and placed no further than 6 feet apart.

All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fence types shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three days prior to the commencement of any clearing, grading, or demolition activities, but subsequent to the installation of the tree protection devices, Urban Forest Management, DPWES and the District Supervisor shall be notified and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by Urban Forest Management, DPWES.

The Applicant shall retain a professional with experience in plant appraisal, such as a certified arborist or landscape architect, to determine the replacement value of all healthy trees greater than 14 inches in diameter shown to be saved on said tree preservation plan (the "Designated Trees"). These trees and their value shall be identified on the tree preservation plan at the time of the first submission of the subdivision plan. The replacement value shall take into consideration the age, condition and size of the trees and shall be determined according to the methods contained in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture, subject to review and approval by Urban Forest Management, DPWES.

At the time of subdivision plan approval, the Applicant shall post a cash bond or letter of credit payable to the County of Fairfax to ensure preservation and/or replacement of the Designated Trees that die or are dying due to normal construction activities permitted on the approved plan. The terms of the letter of credit shall be subject to approval by the County Attorney. The total amount of the cash bond or letter of credit shall be in the amount of the sum of the assigned replacement values of the Designated Trees.

If, at the time of final bond release, trees are found to be dead or dying because of construction activity, despite adherence to approved construction activities by Urban Forest Management, DPWES, the cash bond or letter of credit shall be used as necessary to plant similar size and species, or species appropriate to the site, in consultation with Urban Forest Management, DPWES, and the developer's certified arborist. The cash bond or letter of credit shall not be used for the removal of the dead/dying trees normally required by the PFM and the Conservation Agreement.

3.7 Heritage Resources. Prior to any land disturbing activities on the Property, Applicant

shall conduct a Phase I archaeological study of the Property, and provide the results of such studies to the Cultural Resource Management & Protection Section of the Fairfax County Park Authority ("CRMP"). If deemed necessary by CRMP, the Applicant shall conduct a Phase II and/or Phase III archaeological study on only those areas of the Application Property identified for further study by the Phase I study. These studies shall be conducted by a qualified archaeological professional approved by CRMP, and shall be reviewed and approved by CRMP. These studies shall be completed prior to subdivision plat recordation.

#### **4. PARKS AND RECREATION CONTRIBUTION**

The Applicant shall provide a cash contribution of \$6,360 to the Fairfax County Park Authority to be used for maintenance, acquisition, or development of park and/or public recreational facilities serving residents of the Springfield district and this development. This one-time cash contribution shall be made prior to recordation of the record plat.

#### **5. ENERGY CONSERVATION**

All homes constructed on the Property shall meet the thermal standards of the Virginia Power Energy Saver Program for energy efficient homes or its equivalent, as determined by DPWES, for either electric or gas energy systems.

#### **6. HOUSING TRUST FUND CONTRIBUTION**

Prior to recordation of the final record plat, the Applicant shall contribute to the Fairfax County Housing Trust Fund a sum equal to one-half (1/2) percent of the projected base sales price of each unit to assist Fairfax County's low and moderate income housing goals. The projected sales price shall be determined by the Applicant in consultation with the staff of the Fairfax County Department of Housing and Community Development.

#### **7. CONSTRUCTION ACTIVITY LIMITATIONS**

7.1 Construction Traffic. No construction traffic shall be parked on Westbrook Drive. No motorized heavy construction equipment shall be transported to or from the Property between the hours of 6:45 a.m. and 8:15 a.m. and the hours of 2:00 p.m. and 3:30 p.m. on days when Fairfax County public schools are open to students.

7.2 Blasting. In the event blasting is necessary on the Property, before any blasting occurs, the Applicant shall ensure that the Fairfax County Fire Marshal has reviewed the blasting plans and that the construction contractor will follow all safety recommendations made by the Fire Marshal; including, without limitation, the use of blasting mats if such are recommended. In addition, the applicant or its successors shall:

- (i) Provide an independent qualified consultant (approved by DPWES) to perform a pre-blast survey of any wells within 250 feet of the blast site any residential building

located within 150 feet of the blast site. Written confirmation that this has been done will be given to Fairfax County prior to any blasting on the Property.

- (ii) Require its consultant to request access to houses, buildings, swimming pools or wells that are located within said ranges and, if permitted by their owner, to determine the preblast conditions of these structures. All owners of structures entitled to pre-blast inspections shall be provided with adequate notice of the scheduling of the pre-blast survey, as well as the name, address, and phone number of the blasting contractor's insurance carrier.
- (iii) The consultant shall be required to place seismographic instruments prior to blasting to monitor the shock waves. Seismographic monitoring shall be provided to the County agencies upon their request.
- (iv) Residences within 150 feet of the blast site shall be notified ten days prior to blasting, no blasting shall occur until such notice has been given.
- (v) Upon receipt of a claim of actual damage resulting from said blasting, the consultant shall respond within 5 days by meeting at the site of the alleged damage to confer with the property owner. Any claims determined by the inspector to have been damaged as a result of blasting on the Property shall be expeditiously resolved. The blasting subcontractor or Applicant shall maintain liability insurance to cover the cost of repairing any damages to the structures that are directly attributed to the blasting activity for a period of one year after the blasting ceases.
- (vi) The consultant shall be required to provide an analysis of the potential for gas migration from the site to the Fire Marshall for review and approval prior to blasting. Any appropriate mitigation or notification required by the Fire Marshal shall be implemented.

## 8. PUBLIC SCHOOLS

Applicant shall contribute the sum of \$7,500 to the DPWES for transfer to the Fairfax County School Board to be utilized for school capital improvements or capacity enhancements within the school pyramid then serving the Property. Said contribution shall be made prior to recordation of the final subdivision plat.

## 9. MISCELLANEOUS

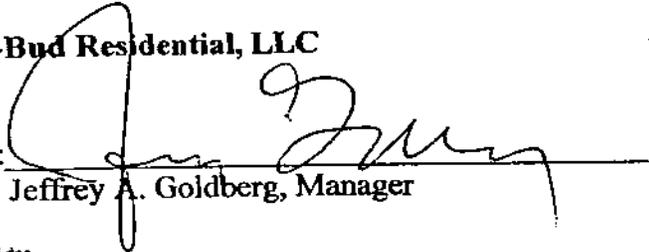
9.1 Density Credit. All intensity of use attributable to land areas dedicated and conveyed to the Board pursuant to these proffers shall be subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance and is hereby reserved to the residue of the Property.

9.2 Demolition. All existing buildings and structures shall be demolished and disposed of in accordance with all federal, state and Fairfax County requirements.

9.3 Pond Maintenance Disclosure. Applicant shall disclose to all potential purchasers before sales contracts are finalized the fact that (i) the homeowners association established for the seven lot subdivision will be solely responsible for the ownership, maintenance and repair of the pond amenity located on the Property; and (ii) an HOA Maintenance Fund in the amount of not less than \$5,000 shall be maintained each year to ensure future maintenance of the pond. Applicant shall provide a one-time contribution of \$5,000 to the HOA to establish said Maintenance Fund prior to bond release.

9.4 Popsicle Signs. 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 the Title 33.1 or Chapter 8 of Title 46.2 of the code of Virginia, shall be placed on or offsite to assist in the initial sale of homes on the Application Property. Furthermore, the agents and employees involved in the marketing and sale of the residential units on the Application Property shall be directed to adhere to this proffer.

**Bo-Bud Residential, LLC**

By: 

Jeffrey A. Goldberg, Manager



Exhibit A

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