

PROFFERS

RZ 1998-PR-023

DATED: June 16, 1999

Pursuant to Section 15.2 - 2303(A) of the Code of Virginia, 1950 as amended, the undersigned Applicant/Owners for both themselves and their successors and assigns (hereinafter "Applicant"), file for a rezoning and final development plan approval for property identified as Tax Map Reference 39-4 ((1)) parcel 127 (hereinafter referred to as the "Application Property") hereby agree to the following proffers, provided the Board of Supervisors approves the rezoning of the Application Property to the PDH-4 zoning district:

1. Conceptual /Final Development Plan. Development of the Application Property shall be in substantial conformance with the CDP/FDP, prepared by Christopher Consultants, Ltd., dated January 7, 1997, revised through April 21, 1999, consisting of five (5) sheets.
2. Final Development Plan Amendment. Notwithstanding that the CDP/FDP is presented on three (3) sheets and said CDP/FDP is the subject of Proffer 1 as set forth above, it shall be understood that the CDP shall be the entire Plan relative to the points of access, the total number and type of units and the general location of residential lots and common open space, and that the Applicant has the option to request a Final Development Plan Amendment ("FDPA") for elements of other than the CDP elements from the Planning Commission for all of, or a portion of, the CDP/FDP in accord with the provisions as set forth in Section 16-402 of the Fairfax County Zoning Ordinance, dated August 14, 1978, as amended ("Ordinance").
3. Minor Modifications. Pursuant to paragraph 4 of Section 16-403 of the Ordinance, minor modifications from the FDP may be permitted as determined by the Zoning Administrator. The Applicant reserves the right to make minor adjustments to the internal lot lines of the proposed subdivision at time of subdivision plan submission based on final house locations and building footprints.
4. Idylwood Road.
 - A. Dedication. Subject to Virginia Department of Transportation ("VDOT") and Department of Public Works and Environmental Services ("DPW&ES") approval, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors right-of-way up to a width of forty-five (45') feet from the existing centerline of Idylwood Road along the Application Property's frontage as shown on the CDP/FDP. Dedication shall be made at time of recordation of the first subdivision plat or upon demand of DPW&ES and/or from Fairfax County, whichever occurs first.
 - B. Access. The Applicant shall provide access to the Application Property with the proposed "Tire Swing Road" which shall connect to Sandburg Street through to the Shreve Hill Subdivision (hereinafter the "Adjacent Property"), as indicated on the CDP/FDP and subject to Proffer Number 16.

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C. Trail. The Applicant shall widen the existing four (4) foot wide asphalt trail along the Application Property's Idylwood Road frontage to eight (8) feet as shown on the CDP/FDP. The trail may meander on the Application Property in order to preserve existing trees along Idylwood Road as determined appropriate by the Urban Forester, DPW&ES. At the request of the Applicant DPW&ES may modify the required minimum distance from Idylwood Road when appropriate to save trees.

Notwithstanding the Note and depiction of the asphalt trail through the Open Space from Lot 4 through Lot 7 on the approved CDP/FDP, no trail shall be constructed at that location. In lieu thereof, a four (4) foot wide concrete sidewalk shall be constructed on each side of Tire Swing Road on the Application Property.

5. Density Credit. The Applicant hereby reserves Advanced density credit as may be permitted by the provisions of Paragraph 5 of Section 2-308 of the Ordinance for all eligible dedications described herein or as may be reasonably required by Fairfax County or VDOT at time of subdivision plan approval.
6. Stormwater Management. The Applicant shall provide best management practices (BMPs) in accord with the requirements of the Public Facilities Manual and the Chesapeake Bay Preservation Ordinance. The Applicant may provide for stormwater management off-site of the subject property partially in the existing detention pond on the Adjacent Property if approved by DPW&ES. The Applicant can request a waiver for on-site stormwater management for the balance of the site. The Applicant can request for stormwater to be accommodated via an underground pipe through the Elm Place right-of-way to be discharged into Holmes Run. In connection therewith, Applicant at time of Subdivision approval shall make a \$1,000.00 per unit contribution to Fairfax County for use in its discretion in alleviating erosion along Holmes Run downstream from the Shreve Hill stormwater outfall. In the event that the waiver is not successfully obtained, the Applicant shall provide for that portion of the stormwater management required to be on-site as indicated in the CDP/FDP. If the stormwater management facility is constructed on-site, the Applicant shall provide supplemental landscaping along the property line with the Adjacent Property (Shreve Hill) to the maximum extent permitted by DPW&ES.
7. Private Street. The Applicant shall construct a private street in conformance with the Public Facilities Manual standard TS-5A with a minimum thirty (30) foot easement and minimum twenty-four (24) foot pavement width. Said private street shall be constructed with materials and depth of pavement pursuant to the provisions of Section 7-0502 of the Public Facilities Manual. Sidewalks will be provided on one side of the private street as shown on the CDP/FDP.
8. Limits of Clearing and Grading. The Applicant shall conform to the limits of clearing and grading as shown on the CDP/FDP subject to the installation of utilities as determined necessary by the Director of DPW&ES. If it's determined necessary to install utilities outside the limits of clearing and grading, they shall be located in the least disruptive

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manner as determined by the Urban Forester, DPW&ES. If necessary, the utility lines outside the limits of clearing and grading shall be located and installed in the least disruptive manner possible, considering cost and engineering, as determined by the Urban Forester, DPW&ES. A replanting plan shall be developed and implemented, as approved by the Urban Forester, DPW&ES, for any areas outside the limits of clearing and grading that must be disturbed.

9. Landscaping and Open Space.

a) For the purposes of maximizing the preservation of trees on individual lots, the Applicant shall retain a certified landscape architect to consult on the preparation of a tree preservation/landscape plan. The tree preservation/landscape plan shall be submitted prior to any individual house grading plans and as part of the final subdivision plan which shall be reviewed and approved by the Urban Forester. This plan shall provide for the preservation of specific quality trees or stands of trees located on individual lots which can be preserved without precluding the development of a typical home on each of the lots as shown on the CDP/FDP. The Urban Forester and/or DPW&ES may require modifications to the landscape plan to the extent said modifications do not alter the number of dwelling units as shown on the CDP/FDP or reduce the size of the units.

Subject to the approval of the Urban Forester and/or DPW&ES, the Applicant shall perform the following measures relating to tree preservation on the property:

- Perform a pre-construction evaluation of the existing vegetation to determine the condition of the trees designated to be saved. The applicant shall have the limits of clearing flagged prior to construction. Prior to construction the applicant shall walk the limits of clearing with a certified arborist, an Urban Forester representative and the landscape architect to determine where minor adjustments to the line may be made to ensure the preservation of the maximum number of trees in the tree save area.

- The trees designated to be saved shall be marked on the ground at the drip line with 36" high orange fencing or equivalent demarcation prior to clearing and grading and at all times during construction. However, the Urban Forester may allow clearing and grading within the drip line if he/she has determined that appropriate alternative measures will be undertaken to otherwise insure the health of the tree to be saved. Signage affirming restricted access shall be provided on the temporary fence highly visible to construction personnel. The landscape architect contracted by the Applicant shall monitor the construction of the proposed development to ensure consistency with the tree preservation landscape plan.

- In addition, where it is determined feasible by the Director of DPW&ES, adjustments to the proposed grading and location of the proposed units on the application property shall be modified at the time of final engineering to enhance specific tree preservation.

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- As a result of final engineering in the event the areas designated as tree save areas on the CDP/FDP are modified or cannot be preserved, equivalent tree save areas shall be substituted on the site as determined by Urban Forester and/or DPW&ES.
- b) All open space areas shown on the CDP/FDP shall be dedicated and conveyed to a homeowners association and shall remain undisturbed before, during and after development activity, except for necessary crossings for placement of utilities and the Storm Water Management/Best Management Practices (SWM/BMP) pond if any, as approved by DPW&ES. The deed of conveyance for Lot 3 shall contain a covenant that the trees identified in the Northwest corner thereof to be saved will not be removed absent a health or safety reason therefor.
10. **Sight Distance.** Prior to the approval of the subdivision plan, the Applicant shall demonstrate that the sight distance at the entrance for Tire Swing Road at Sandburg Street satisfies VDOT standards.
11. **Retaining Walls.** If in the process of preparation of final engineering plans, retaining walls are required in order to conform to the approved CDP/FDP, these walls shall match the appearance and character of those constructed on the Adjacent Property, as determined by the Director, DPW&ES.
12. **Housing Type.** The Applicant shall construct single family dwelling units on the Application Property which will complement in general character and architecture, those developed on the Adjacent Property, as determined by the Director, DPW&ES.
13. **R-4 Conventional Setbacks.** All homes constructed within the subject development shall meet the R-4 conventional setbacks at the periphery of the development, as determined by the Director, DPW&ES.
14. **Home Owners Association.** The Applicant shall form a Home Owner's Association for the subject property, as approved by the County Attorney. All open space, as shown on the Final Development Plan, shall be conveyed to said Home Owner's Association at time of subdivision.
15. **Off-Site Contributions.** The Home Owner's Association, as set forth in number 14 above ("Association"), shall enter into a legally binding document with Shreve Hill Home Owner's Association (hereinafter "Shreve Hill HOA") prior to subdivision approval to contribute annually an amount not to exceed the amount paid pro rata per dwelling unit in Shreve Hill toward the maintenance and insurance of the recreational facilities located within the Shreve Hill subdivision. The Association shall make such contributions on the understanding that the future owners of the subject property shall be permitted full access and use of said recreational facilities. The Applicant shall submit a written justification for such off-site location and evidence that the future residents of the subject development shall have the right to use the recreational facilities at such off-site location, in accord with Paragraph 2 of Section 16-404 of the Ordinance.

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The Association set forth in Proffer 14 herein shall enter into a legally binding document, which may be part of the aforementioned recreational document, with Shreve Hill HOA prior to subdivision approval for shared use of the mechanical gate(s) established in Proffer 16, providing for a pro rata per dwelling annual contribution for expenses for maintenance, insurance and utility costs of the mechanical gate(s). Said document shall require that the mechanical gate(s) be kept in working order at all times or remain open as long as it or they are in a non-working condition. The document shall further provide that the mechanical gate(s) are the property of Shreve Hill HOA and the code for operation of the mechanical gate(s) shall be set by Shreve Hill HOA, but that the Association members shall have access at all times to the code for use of the mechanical gate(s).

The Applicant shall make a one-time cash contribution to the Shreve Hill HOA of \$955 per dwelling as per paragraph 2, Section 6-110 of the Ordinance as set forth in the Letter of Agreement between Applicant and Shreve Hill HOA dated March 19, 1999, attached hereto. Said contribution shall be made upon execution of the legally binding document(s) contemplated herein or at time of subdivision approval, whichever occurs first. This contribution shall be made notwithstanding the inability of the Association and Shreve Hill HOA to enter into a legally binding document relating to the mechanical gate(s).

16. Traffic Control Measures. The Applicant shall provide traffic control measures along Tire Swing Road. These measures shall be provided at the developer's expense and shall consist of posting signs at the Sandburg Road entrance to Tire Swing Road and the Idylwood Road entrance to Shreve Hill Road stating that there is "No Outlet"; posting signs along Tire Swing Road stating "Slow Children at Play"; and installing a mechanical gate, or gates if necessary, where the section of Tire Swing Road to be constructed connects with existing Tire Swing Road on the Adjacent Property (Shreve Hill). Said mechanical gate(s) shall be sufficient to inhibit the use of Tire Swing Road by the general motoring public, but be of a breakaway nature so as to allow emergency vehicles to travel Tire Swing Road from both directions, if necessary. The mechanical gate(s) will have a "keypad" to be located conveniently on each side of the gate(s) for use by the residents of the Applicant's development and Shreve Hill with a coded entry to control the raising of the mechanical gate(s). The mechanical gate(s) shall: (i) have a separate electric meter; (ii) be the property of the Shreve Hill HOA; and (iii) be controlled by a code set by the Shreve Hill HOA, but shared with the Association as established in Proffer 15, herein. These measures including without limitation the location thereof, or any other similar measures shall be determined by the Director, DPW&ES. Traffic control measures shall not be required to meet this proffer if approval from the Shreve Hill HOA for improvements on their property cannot be obtained. Proof of attempts shall be provided to the Director, DPW&ES to the satisfaction of the Director, DPW&ES.

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17. Notification to Prospective Home Buyers. Prospective purchasers of homes within the subject development shall be notified in writing by the Applicant or successors in interest, prior to entering into any contract of sale, of the future Home Owner's Association's obligation for maintenance of the private street and annual contribution for off-site recreational facilities and traffic control gate(s), as set forth herein. Purchasers shall acknowledge receipt of this information in writing. A covenant, setting forth the maintenance responsibility of the private street and annual contributions for the recreational facilities, by the Applicant or successor's in interest shall be recorded among the land records of Fairfax County. Each deed of conveyance shall expressly contain these disclosures.

CONTRACT PURCHASER:
NATIONAL CAPITAL LAND & DEVELOPMENT, INC.

By: *F. Gary Garczynski*
F. GARY GARCZYNSKI, PRESIDENT

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PROPERTY OWNERS

THE HEIRS OF ROBERT JOHN J. SEOANE

CECILIA A. ABBOTT

BY:  *AGENT AND ATTORNEY-IN-FACT*
**THERESA E. JOHNSON, AGENT AND ATTORNEY-
IN-FACT FOR CECILIA A. ABBOTT**

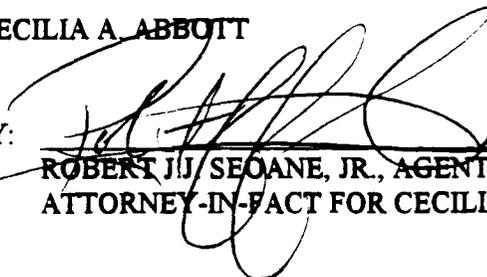
JAMES A. SEOANE

BY:  *AGENT AND ATTORNEY-IN-FACT*
**THERESA E. JOHNSON, AGENT AND ATTORNEY-
IN-FACT FOR JAMES A. SEOANE**

FREDERICK E. SEOANE

BY:  *AGENT AND ATTORNEY-IN-FACT*
**THERESA E. JOHNSON, AGENT AND ATTORNEY-
IN-FACT FOR FREDERICK E. SEOANE**

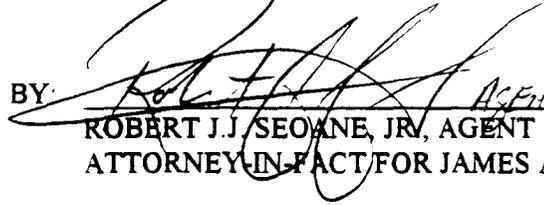
CECILIA A. ABBOTT

BY:  *AGENT & ATTORNEY IN FACT*
**ROBERT J.J. SEOANE, JR., AGENT AND
ATTORNEY-IN-FACT FOR CECILIA A. ABBOTT**

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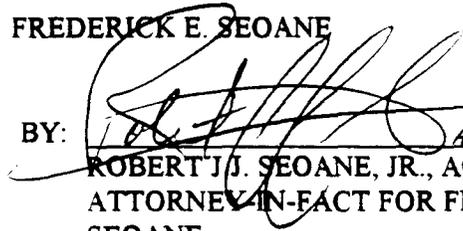
JAMES A. SEOANE

BY:


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ROBERT J.J. SEOANE, JR., AGENT AND
ATTORNEY-IN-FACT FOR JAMES A. SEOANE

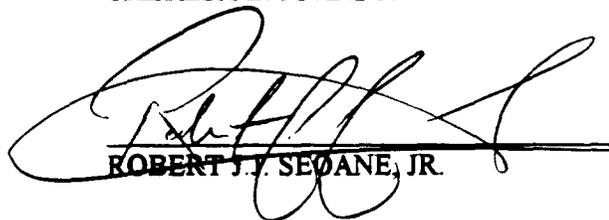
FREDERICK E. SEOANE

BY:


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SEOANE



THERESA E. JOHNSON



ROBERT J.J. SEOANE, JR.