

PROFFERS

Rezoning #RZ/FDP1998-PR-026

February 3, 2000

Pursuant to Section 15 2-2303(a) of the Code of Virginia, 1950, as amended, and Section 18-203 of the Zoning Ordinance of Fairfax County (1978 amended), the property owners and Applicant in this rezoning application proffer that the development of the parcel under consideration and shown on the Fairfax County Tax Maps as Tax Map Reference Nos. 39-4-((1))-154, 155, 156, 157, 158, 123-A pt. (hereinafter referred to as the "Property") will be in accordance with the following conditions if, and only if, said Rezoning request for the PDH-4 District is granted. In the event said application request is denied, these proffers shall be null and void. The Owners and 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agree that these proffers shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board of Supervisors of Fairfax County, Virginia in accordance with applicable County and State statutory procedures.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:

GENERAL

1 Subject to the proffers and the provisions of Section 16-403 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 ("CDP") and Final Development Plan ("FDP"), prepared by Urban Engineering dated January 1998 and revised through January 31, 2000. Notwithstanding the submission for processing of any applications, plans, or plats in furtherance of the development of the application property, the Applicant acknowledges that no such application plan or plat shall be approved by Fairfax

PARCEL 'D':

Beginning at a point being the intersection of the southerly line of North Railroad Street, width varies and the westerly right-of-way line of Arden Street; thence running with said line of Arden Street

South 23° 45' 00" West, 41.29 feet to a point; thence running with the northerly line of South Railroad Street, 40 feet wide

North 80° 36' 00" West, 278.49 feet to a point on an easterly line of Railroad Tree Corporation; thence running with said Railroad Tree Corporation

North 09° 24' 00" East, 40.00 feet to a point; thence running with the southerly line of North Railroad Street

South 80° 36' 00" East, 288.72 feet to the point of beginning, containing 11,344 square feet or 0.26042 acres, more or less.

County until or unless the vacation of the right-of-way proposed as part of the application property is approved by the Board of Supervisors and is final. In the event that such vacation is not approved by the Board of Supervisors, or in the event Board approval is overturned by a court of competent jurisdiction, any development of the application property under the PDH-4 District shall require a proffered condition amendment and the Applicant acknowledges that such amendment may result in a loss of density. The Applicant hereby waives any right to claim or assert a taking or any other cause of action that otherwise may have arisen out of a Board decision to deny in whole or in part the right-of-way vacation request.

2. The development shall consist of a maximum of 36 single family detached residential units. The size, width, and location of the building footprints shown on the CDP/FDP are conceptual and, except as provided for by these proffers, may be modified. That and other modifications to the CDP/FDP shall be permitted in accordance with the requirements of Section 16-403 of the Zoning Ordinance. Proposed Lots 17-36 shall have a minimum side yard of four feet. Proposed Lots 1-16 shall have a minimum of 14 feet between units and a minimum distance from the rear of the dwelling to the lot line of 16 feet.

3. The architecture of the approved units and streetscaping (to include fencing and landscaping) along Morgan Lane (Lots 1-16) shall be in substantial conformance with the renderings contained as Sheet 10 of the CDP/FDP package, including window types, architectural detailing and roof lines. Any lighting on the subdivision's identification sign shall be external with bulbs that are shielded in order to prohibit glare on adjoining properties. All street lights shall be shielded to prevent extraneous glare in accordance with the design shown on the CDP/FDP.

4. The Applicant shall establish a homeowners association for the purpose of maintaining common areas and any private streets within the development. In conjunction with the appropriate subdivision review processes, private streets and common areas shall be dedicated to the homeowners association.

5. The Applicant shall include language in its Declaration of Covenants, Conditions and Restrictions which: (a) prohibits the conversion of garages into any use other than the parking of vehicles; (b) discloses that the Capital Beltway, which forms the eastern boundary of the site, is the subject of an ongoing study as to its potential widening, that travel lanes could be located closer to the application property than currently exist and that, as a result, additional means of sound attenuation may be installed in the future by others, and that there may be changing noise impacts from the Capital Beltway; and (c) discloses the existence of private streets throughout the community. All private streets on the Application Property shall be constructed with a pavement section, thickness and material which conforms with Public Facilities Manual (PFM) standards as determined by the Department of Public Works and Environmental Services (DPW&ES). Purchasers shall be advised prior to entering into a contract of sale that the homeowners association shall be responsible for the cost associated with the maintenance of the private streets in the development. The appropriate homeowners association documents shall specify that the homeowners association is responsible for the maintenance of any private streets. Prior to site plan approval, the language of the Declaration of Covenants, Conditions and Restrictions shall be subject to review and approval by the County Attorney. As part of this required disclosure, the Applicant shall provide each purchaser with a copy of the then most current VDOT plan for the widening of the Capital Beltway. Prior to subdivision plan approval, the Plan used as part of the initial disclosure shall be approved by the Fairfax County

Department of Transportation and/or the Zoning Administrator or her designee. In the event that prior to the sale of any dwelling, the plan for the widening of the Capital Beltway is amended subsequent to subdivision plan approval, the disclosure requirements within the Declaration of Covenants, Conditions and Restrictions shall be amended to reflect the most current plan. Any proposed amendment to the disclosure requirement subsequent to subdivision plan approval shall be first reviewed and approved by the Zoning Administrator or her Designee in accordance with the requirements of these proffers.

6. To assist the homeowners association in providing for the maintenance of private streets, prior to bond release, the Applicant shall provide the homeowners association with funds in the amount of \$8,000 which shall be placed in a street reserve fund. This required contribution shall be subject to inflationary adjustments from the date of rezoning approval to the date the money is placed in the required street reserve fund based on the Construction Cost Index contained in the Engineering News Record.

7. Consistent with the design and geometry shown on the CDP/FDP, it is the Applicant's intention to construct the principal street extending south from Railroad Street to the alleyway serving Lots 17-21 as a public street. The Applicant's first subdivision plan submission shall reflect this public street configuration and the applicant shall be responsible for requesting all approvals needed from Fairfax County and/or VDOT to construct the proposed public street. In the event the requirements of VDOT and/or Fairfax County require reasonable modifications to the general street configuration shown on the CDP/FDP, the Applicant shall be obligated to make such modifications provided the number of approved lots is not decreased and the resultant development remains in substantial conformance with the CDP/FDP as determined by the Department of Planning and Zoning. In the event VDOT and Fairfax County determine that it is

not possible to design a public street configuration in a way that is in substantial conformance with the CDP/FDP and available options for waivers or modifications of street design standards are deemed exhausted, then and only then may the Applicant develop the principal street as a private street in accordance with the standards prescribed by Proffer 5 above.

TRANSPORTATION

8. At the time of subdivision plan review, or on demand, which first occurs, the Applicant shall dedicate at no cost in fee simple to the Board of Supervisors and/or VDOT, the right-of-way located generally parallel to I-495 as shown on the CDP/FDP as "dedication for right-of-way." The Applicant hereby reserves advance density credit pursuant to Paragraph 5 of Section 2-308 of the Ordinance for all eligible dedication required herein.

9. The Applicant shall dedicate to the Fairfax County Board of Supervisors, in fee simple, on demand, or at the time of subdivision plan approval, whichever first occurs, that 10' wide area located on the north side of Parcel 123A as shown on the CDP/FDP.

10. The Applicant shall reconstruct the intersection of Oak Street and Morgan Lane so as to improve the vertical alignment of the intersection; toward this end, funds escrowed through proffered conditions made by previous developers and earmarked for the improvement of this intersection or the improvement of Oak Street may be made available to the Applicant. The final design of any such intersection improvement shall be subject to review and approval by VDOT and DPWES. The improvements required by this proffer shall be located entirely within the existing right-of-way. In the event that: (1) DPWES and/or VDOT conclude that the improvement to the vertical alignment of the intersection cannot be performed within the existing right-of-way; or (2) it is demonstrated that the construction cost of the intersection improvement exceeds the cost associated with providing frontage improvements to Morgan Lane

consistent with the recommendations of the Comprehensive Plan, the requirements of the Zoning Ordinance or subdivision Ordinance and to a standard required by the PFM along the unimproved portion of the application property's frontage to Morgan Lane (approximately 410 linear feet from the terminus of Morgan Lane to the southern property line), hereinafter referred to as the "construction costs"; the Applicant's proffer obligation may be fulfilled, as determined by DPWES at final site plan approval, by placing the construction costs in escrow so as to provide funds for VDOT, or others, to complete improvements to the intersection. If applicable, the amount of the construction costs shall be determined by DPWES at site plan review in accordance with the County's current bond price estimate.

11. At the time of subdivision plat approval, the Applicant shall either agree to install and bond or escrow funds in an amount not to exceed \$3,000.00 for traffic calming device(s) as approved by VDOT for installation at or near the intersection of Oak Street and Morgan Lane.

ENVIRONMENTAL

12. Stormwater management shall be provided for the property in accordance with Fairfax County requirements or as otherwise may be waived, modified or approved by DPW&ES. In order to assist in addressing any off-site stormwater management deficiencies, subject to approval by the Board of Supervisors and/or DPWES, the pro-rata funds required to be contributed in connection with the subdivision review and approval process shall be targeted for potential upstream or downstream areas serving improvements in the watershed of the application property to potentially include, but not be limited to, installation of new ponds or detention facilities or making upgrades to existing facilities.

13. In order to restore a natural appearance to the proposed stormwater pond in the southeastern corner of the site, a landscape plan shall be submitted as part of the first submission

of the subdivision plan showing extensive landscaping in all possible planting areas of the pond, in keeping with the planting policies of DPWES.

14. In order to provide additional tree cover and screening, a landscape plan shall be submitted as part of the first submission of the subdivision plan showing a mix of evergreen and deciduous trees to be planted in the tree save area along the eastern property line. The existing vegetation and supplemental landscape trees shall provide the equivalent of Transitional Screening 1 in this tree save area. The landscaping shall be designed and field located in consultation with the Urban Forestry Branch to ensure that existing trees and their root systems are not damaged by the supplemental plantings.

15. Prior to final subdivision plan approval, the Applicant shall demonstrate to DPWES and DPZ that exterior noise levels within the yards and outdoor recreational areas of the approved lots are reduced to a level of 65 dBA or less based on final site grades and final topographic conditions. In order to mitigate outdoor noise to a level of 65dBA, prior to the issuance of the first Residential Use Permit (RUP), the Applicant shall construct a noise attenuation wall in the location generally shown on the CDP/FDP. The design and materials used in this wall shall conform to standards established by VDOT as needed to mitigate exterior noise, as generated by traffic at the time of subdivision plan approval, to a level of 65dBA or less in consideration of final site grades and topography, and shall be of a design that permits the later relocation of the wall by Fairfax County and/or VDOT, if so desired. The Applicant further agrees that upon its completion, this sound wall and the property on which it is constructed shall be dedicated to Fairfax County and/or VDOT, at no cost, and on demand. In the event Fairfax County and/or VDOT do not indicate a desire to receive the dedication, the wall shall remain on private property. As to lot 16, the Applicant shall provide exterior noise attenuation through a

method acceptable to the neighboring off-site property owner and DPWES. As to lots 34, 35 and 36, the Applicant shall either provide a noise study that demonstrates compliance with the exterior noise standard, provide individual or separate mitigation at the lots or extend the noise wall as required to satisfy the standard, subject to the review and approval of DPWES.

16. In order to reduce the a maximum interior noise to a level of approximately 45 dBA Ldn, all units located between 65-70 dBA Ldn highway noise impact contours shall employ the following measures:

- (a) Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39;
- (b) Doors and windows shall have a laboratory STC rating of at least 28. If windows constitute more than 20% of any facade, they shall have the same laboratory STC rating as walls;
- (c) Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission; and

In order to reduce the maximum interior noise to a level of approximately 45 dBA Ldn, all units located between the 70-75 dBA Ldn highway noise impact contours shall employ the following measures:

- (a) Exterior walls should have a laboratory sound transmission class (STC) rating of at least 45.
- (b) Doors and windows should have a laboratory STC rating of at least 37. If windows constitute more than 20% of any façade, they should have the same laboratory STC rating as walls.

- (c) Measures to seal and caulk between surfaces should follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

The Applicant may pursue other methods of mitigating interior noise or provide additional means for mitigating noise in outdoor areas than those described herein if it can be demonstrated, through an independent noise study for review and approval by DPWES, in consultation with DPZ, that these methods will be effective in reducing exterior noise levels to 65 dBA Ldn or less and interior noise levels to 45 dBA Ldn or less. This flexibility shall in no way diminish the Applicant's obligation to provide the sound wall described in Proffer 15.

17. At subdivision plan review, the Applicant shall demonstrate to the satisfaction of DPWES that exterior noise in the yards and open space areas generally associated with or adjacent to Lots 16 and 36 is mitigated to 65dBA or less. If necessary to meet this requirement, the Applicant shall provide additional landscaping or sound attenuation measures beyond that shown on the CDP/FDP to potentially include, but not be limited to:

- (a) Additional fencing or landscaping along the eastern or southern boundary of Lot 16.
- (b) Additional fencing or landscaping along or around the eastern boundary of Lot 36;
- (c) A potential extension of the sound wall to the west toward the terminus of North Railroad Street, subject to receiving any necessary easements and/or related permission.

Any fencing required pursuant to this proffer shall be designed in a manner that compliments the final architecture of the approved units.

LANDSCAPING

18. Landscaping shall be provided in substantial conformance with the overall quality and quantity of plantings identified in the landscaping concepts shown on the CDP/FDP. Landscaping shown along the southern lot line on the CDP/FDP shall be reviewed by the Urban Forester and supplemented as determined necessary by the Urban Forester so as to ensure an effective year-round screen.

19. The specific type, number and placement of plantings and landscaping shall be determined at the time of subdivision plan approval, subject to review and approval of a landscape plan by the Urban Forester, DPW&ES. If, during the process of subdivision plan review, any new landscaping shown on the CDP/FDP cannot be installed or any landscaping shown in tree save areas is removed, in order to locate utility lines, trails, etc., as determined necessary by the Director, DPW&ES, then an area of additional landscaping of equivalent value, as determined by Urban Forester, DPW&ES, shall be substituted at an alternate location on the site.

LIMITS OF CLEARING AND GRADING

20. The approximate limits of clearing and grading shown on the CDP/FDP and required pursuant to these proffers shall be considered maximum limits. Similarly, for the purpose of preparing final grading plans, the rear lot lines of Lots 14-16 shall be considered the limits of clearing and grading in the southwestern corner of the Property.

A certified arborist shall be retained by the Applicant to prepare a tree preservation plan to be reviewed by the Urban Forestry Branch as part of the first subdivision plan submission. The tree preservation plan shall consist of a tree survey which includes the location, species, size, crown spread and condition rating percentage of all trees twelve (12) inches or greater in

diameter, in the twenty (20) feet area adjacent to the proposed limits of clearing and grading for the entire site. The condition analysis shall be prepared using methods outlined in the latest edition of The Guide for Plant Appraisal. Specific tree preservation activities designed to maximize the survivability of trees designated for preservation shall be provided. Activities may include, but are not limited to, crown pruning, root pruning, mulching, and fertilization.

All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fencing. Tree protection fencing consisting of a four (4) foot high, fourteen (14) gauge welded wire fence, attached to six (6) foot steel posts, which are driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart, shall be erected at the limits of clearing and grading as shown on the subdivision plan's Phase I and II erosion and sediment control sheets in all areas

The tree protection fencing shall be made clearly visible to all construction personnel. The fencing shall be installed prior to any clearing and grading activities on the site, including the demolition of any existing structures. The installation of tree protection fencing shall be performed under the supervision of a certified arborist. Prior to the commencement of any clearing, grading, or demolition activities, the project's certified arborist shall verify, in writing, that the tree protection fence has been properly installed. If any tree(s) in the protected areas are accidentally or otherwise removed, the Applicant shall plant replacement tree(s) as directed by the Fairfax County Urban Forester

The demolition of existing features and structures shall be conducted in a manner that minimizes the impact on individual trees and groups of trees to be preserved as approved by the Urban Forestry Branch. These methods shall be described in detail on the tree preservation plan. Once final limits of tree preservation/open space areas are established pursuant to these proffers,

there shall be no removal of vegetation in those areas except for the removal of dead or dying trees and the installation of necessary public utilities. Any such utility crossings shall be designed and engineered in the least disruptive manner possible. In the southwest corner of the property, any utilities shall be located adjacent to the southern lot line and be designed and engineered to be sensitive to the existing vegetation using methods which have the potential to reduce the width of the necessary easement, including but not limited to: those methods used and approved by the Fairfax County Park Authority, linear construction, or trench boxes, as determined feasible and appropriate by DPWES.

RECREATION

21. At the time of subdivision plan review, the Applicant shall demonstrate that the proposed on-site recreational amenities generally shown on the CDP/FDP have a value equivalent to \$955.00 per market rate dwelling unit as required, by Article 6 of the Zoning Ordinance. The Applicant may offset the actual cost of the two gazebos up to an amount that provides a payment to the Fairfax County Park Authority (FCPA) of at least Twenty-Five Thousand Dollars (\$25,000)

22. To provide opportunities for passive recreation, the portion of the Tax Map 39-4-((1))-123-A pt. generally located west of Morgan Lane and east of Gallows Road and not dedicated for public right of way under proffer 8, shall be dedicated at no cost and in fee simple to the Fairfax County Board of Supervisors at subdivision plan approval. As part of this dedication, right-of-way needed to provide access to Railroad Street from Fourth Place, shall be dedicated to the Board of Supervisors or its assigns in fee simple.

23. Funds for two (2) interpretive marker signs, with a total cost not to exceed two-thousand (\$2,000) dollars, shall be provided for that portion of Parcel 123.A which is to be



dedicated to the Fairfax County Park Authority at the time of subdivision plan approval. The actual amounts for the required signs shall be determined by the Park Authority prior to subdivision plan approval.

ENERGY EFFICIENCY

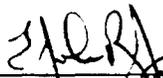
24. All homes on the property shall meet the thermal guidelines of the Virginia Power Energy Saver Program for energy-efficient homes, or its equivalent as determined by DPW&ES, for either gas or electric energy systems as may be applicable.

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

CONTRACT PURCHASER
Tax Map 39-4-((1)), 154, 155,
156, 157, 158

CHRISTOPHER MANAGEMENT, INC.

By:
Its:



President

OWNER OF PORTION OF RAILROAD STREET
TO BE VACATED

FAIRFAX COUNTY BOARD OF SUPERVISORS

By:  _____
Anthony H. Griffin,
County Executive

OWNER, TAX MAP NUMBER 39-4-((1))-156
THE ESTATE of MARY I. ELLER

By: _____
Name: Willard Eller Co. ET.
Its: _____

OWNER, TAX MAP NUMBER 39-4-((1))-156
THE ESTATE of MARY I. ELLER

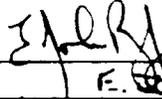
By: _____
Name: Amel Eller & Co - Ex
Its: _____

OWNER, TAX MAP NUMBER 39-4-((1))-154
IRENE H. WHITE

Irene H. White

Name: IRENE H. WHITE

OWNER, TAX MAP NUMBER 39-4-((1))-123.A pt.
MORGAN CHASE ASSOCIATES, LLC

By: 
Name: F. JOHN REGAN JR
Its: MEMBER

OWNER. TAX MAP NUMBER 39-4-((1))-155
ARNOLD ELLER, JR.

A handwritten signature in cursive script, appearing to read "Arnold Eller, Jr.", written over a horizontal line.

Name: ARNOLD ELLER, JR.

OWNER, TAX MAP NUMBER 39-4-((1))-157. 158
DANIEL G. and BERNICE E. ANDERSON

Daniel G. Anderson

Name: DANIEL G. ANDERSON

Bernice E. Anderson

Name: BERNICE E. ANDERSON