

PROFFERS

RZ 1998-LE-039

February 11, 1999

Pursuant to Section 15.1-2303(A) of the Code of Virginia (1950 as amended) Carr-Skyline, LLC, (hereinafter referred to as the "Applicant"), for the owners, themselves, successors and assigns in RZ 1998-LE-039, filed for property identified as tax map 91-2 ((1)) 17 and 18 and 91-4 ((1)) 9 (hereinafter referred to as the "Application Property"), proffers the following, provided the Fairfax County Board of Supervisors approves a rezoning of the Application Property to the PDH-4 District, in accordance with a Conceptual Development Plan/Final Development Plan ("CDP/FDP") for residential development. In the event that this application is approved, any previous proffers for the Application Property are hereby deemed null and void and hereafter shall have no effect on the Application Property.

1. Development of the Application Property shall be in substantial conformance with the CDP/FDP prepared by Charles P. Johnson and Associates, dated June 1998 and revised through December 29, 1998. Pursuant to Paragraph 4 of Section 16-403 of the Fairfax County Zoning Ordinance, minor modifications from the CDP/FDP may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layout shown on the CDP/FDP without requiring approval of an amended CDP/FDP provided such changes are in substantial conformance with the CDP/FDP as determined by the Zoning Administrator, agents or assigns and neither increase the total number of units nor decreases the following: amount of open space, the amount of parking, the amount of tree preservation, the location of common open space areas, or distances to peripheral lot lines.
2. Parcel A as shown on the CDP/FDP shall be conveyed to a homeowners association established for the Application Property to be maintained as open space and utilized for a stormwater management facility as provided herein. Easements shall be provided to Fairfax County for access to the stormwater management facility for maintenance purposes, as determined by the Department of Public Works and Environmental Services (DPWES).
3. Stormwater management shall be provided in accordance with the requirements of the Public Facilities Manual, unless a waiver is granted by the Director of DPWES, in which case the designated detention pond area will remain as open space. Stormwater detention facilities, if constructed, shall be designated to provide BMP storage unless waived or modified by the Director of DPWES. Any reforestation of disturbed open space may be used as open space credit for BMP purposes and placed in a conservation easement subject to the approvals of DPWES and shall be in a form approved by the County Attorney. Any other undisturbed open space may also be

placed in a conservation easement for BMP purposes. Stormwater management shall be provided that will include additional peak shaving to reduce off-site flooding downstream as approved by DPWES. The amount of additional peak shaving shall be determined by DPWES and shall not exceed what can be reasonably achieved by the pond located on the CDP/FDP without reducing the size or number of lots. The stormwater detention facility shall be constructed in a manner consistent with slope stability as required by the approved Geotechnical Report and stormwater shall be contained outside of any tree preservation or landscaped buffer area. Prior to commencement of construction of the stormwater management facility, the Applicant shall post a bond with Fairfax County in an amount, and with a corporate surety, approved by the Director of DPWES and the County Attorney, to provide a fund for any corrective actions deemed necessary by the Director of DPWES, because of malfunctions of said Stormwater Management Facility provided herein. Said corrective actions shall include rectification of damage to off-site properties proximately caused by said malfunctions. Said bond shall be released at such time as Fairfax County accepts said stormwater management pond for maintenance by Fairfax County.

4. The Applicant shall grade the area along the rear property lines of proposed Lots 10, 11 and 12 to divert stormwater runoff from these lots away from existing off-site contiguous lots and to the stormwater management pond shown on Parcel A of the CDP/FDP.
5. Pursuant to Paragraph 2 of Section 6-110 and Paragraph 2 of Section 16-404 of the Zoning Ordinance regarding developed recreation facilities, the Applicant shall make a cash contribution to Fairfax County, the Fairfax County Park Authority or an adjacent homeowners' association as may be approved by the Board of Supervisors in the amount of nine hundred fifty-five dollars (\$955.00) per approved lot for recreation facilities in the vicinity of the Application Property. Said contribution shall be made at time of subdivision plat approval for the Application Property.
6. In building location sites where soil testing indicates marginal or poor soils for basements, design details and construction procedures will be used which shall preclude wet basements, as approved by DPWES.
7. To meet energy conservation concerns, the Applicant shall meet the "basic requirements" as determined by DPWES, required by one of the approved energy efficient programs recognized by the Federal Home Loan Mortgage Corporation (Freddie Mac). These approved programs are:

- a. National Association of Home Builders Thermal Performance Guidelines;
 - b. Virginia Home Builders, E-7 Program;
 - c. Owens Corning Fiberglass Energy Performance Design System; and
 - d. VEPCO Energy Saver Program.
8. With reference to traffic noise emanating from Telegraph Road (Route 611), the Applicant shall provide the following noise attenuation measures as determined by DPWES:
- a. The Applicant proffers that all residential units within 380 feet of the centerline of Telegraph Road (Route 611), having highway noise levels between 65 and 70 dBA Ldn, as determined by an acoustical study submitted by the Applicant and approved by DPWES, shall have the following acoustical attributes to achieve a maximum interior noise level of 45 dBA Ldn:
 - (1) Exterior walls will be constructed of materials and techniques known to have physical properties or characteristics suitable to achieve a laboratory Sound Transmission Class (STC) of at least 39.
 - (2) Doors and windows will be constructed of materials known to have a laboratory Sound Transmission Class (STC) of at least 28. If windows constitute more than 20% of any facade, they shall have the same laboratory STC rating as walls. All units designed to have skylight windows, shall utilize 3/8 inch insulated laminated glazing with a storm protection system estimated to have a laboratory Sound Transmission Class (STC) of at least 35.
 - (3) Adequate measures to seal and caulk between surfaces will be provided.
 - b. The Applicant proffers that all residential units within 150 feet of the centerline of Telegraph Road (Route 611) impacted by highway noise, having levels between 70 and 75 dBA Ldn, as determined by an acoustical study submitted by the Applicant and approved by DPWES, shall have the following acoustical attributes in order to achieve a maximum interior noise level of 45 dBA Ldn:

- (1) Exterior walls will be constructed of materials and techniques known to have physical properties or characteristics suitable to achieve a laboratory Sound Transmission Class (STC) of at least 45.
 - (2) Doors and windows will be constructed of materials known to have a laboratory Sound Transmission Class (STC) of at least 37. If windows constitute more than twenty percent (20%) of any facade, they shall have the same laboratory STC rating as walls. All units designed to have skylight windows, shall utilize 5/8 inch insulated laminated glazing with a storm protection system estimated to have a laboratory Sound Transmission Class (STC) of at least 35.
 - c. As a modification of a or b above, the Applicant may elect to have a refined acoustical analysis performed, subject to approval of Department of Planning and Zoning (DPZ) and DPWES, to determine which units/buildings may have sufficient shielding to permit a reduction in the mitigation measures prescribed above.
 - d. Noise attenuation measures shall be provided to achieve a maximum exterior noise level of 65 dBA Ldn in rear yards of proposed Lots 1-4, 29 and 30 which are unshielded by topography or built structures, as determined by DPWES. Noise attenuation measures such as acoustical (architecturally solid, no gaps, except to allow for drainage) fencing, walls, earthen berms, or combinations thereof, shall be provided for said rear yard areas.
9. The Applicant shall dedicate and convey in fee simple for public street purposes to the Board of Supervisors right-of-way to fifty-one and one-half feet (51½') from design centerline as shown as of the date of this application on VDOT project #0611-029-303-C502. The Applicant shall provide funding for the construction of a curb and gutter section, as determined by DPWES and VDOT at the time of subdivision plat approval. An additional twelve foot (12') width right-of-way shall be dedicated in the area shown on the CDP/FDP for a future right turn deceleration lane. The Applicant shall construct the deceleration lane as shown on the CDP/FDP but may make minor modifications to the length of the deceleration lane or taper to avoid the need to acquire any off-site easements or relocation an existing thirty inch (30") waterline. A five foot (5') utility easement shall be provided adjacent to said frontage. A fifteen foot (15') grading and construction easement shall be provided adjacent to said frontage and shall overlap the five foot (5') utility easement. The Applicant reserves density credit in accordance with the provisions of Article 2-308 of the Zoning

Ordinance as it may apply to all street dedicating described herein or as may be reasonably required by Fairfax County or VDOT at subdivision plan approval. Dedication and conveyance shall be made at the time of subdivision plat approval or upon DPWES and of the Board of Supervisors, whichever event first occurs. No driveway access from Lots 29 and 30 to Telegraph Road shall be provided.

10. Until such time as Telegraph Road is reconstructed, an interim left turn lane shall be provided at the entrance to the Application Property, as shown on the CDP/FDP, subject to the approval of VDOT and DPWES.
11. The area identified as "undisturbed buffer," as shown on the CDP/FDP, shall be preserved in an undisturbed natural state subject only to additional plantings by the Applicant. Applicant shall plant a total of thirty (30), six-foot (6') high evergreen trees in areas of the natural buffer. The location and species of trees shall be coordinated with the Urban Forestry Division of DPWES. At the time of recordation of the record plat for the subdivision of the Application Property, the Applicant shall record a conservation easement on that area identified as undisturbed buffer. Said conservation easement shall run to the benefit of the Board of Supervisors of Fairfax County in a form approved by the County Attorney. The conservation easement will require that the natural buffer area be preserved in its natural state, as supplemented by the plantings referenced hereinabove, by the homeowners association created to maintain the open space areas on the Application Property. The easement shall also provide that any trees destroyed in violation of the conservation easement, after full release of any posted bonds with DPWES, shall be replaced by the homeowners association. The association shall provide appropriate replacement in terms of species size and quantity as determined by the Urban Forestry Branch of DPWES.
12. Applicant shall use best efforts to preserve an existing 48-inch oak located on proposed Lot 30 as shown on the CDP/FDP. In addition, during development and construction on the Application Property, the Applicant shall protect the tree preservation area and limits of clearing shown on the CDP/FDP, as well as any other areas deemed suitable, to the maximum extent feasible, for preservation after final engineering. Prior to any clearing and grading on-site, representatives of the Applicant, the Urban Forestry Division of DPWES, and a representative of the Roxann Road residents' association in coordination with DPZ and DPWES, shall hold a preconstruction conference on-site to (a) identify and confirm field surveyed limits of clearing and grading, the limits of tree preservation areas and the limits of selective clearing and grading as may be dictated by field conditions; (b) coordinate placement of any drilled piers or retaining walls with tree preservation areas with final location

of walls to be approved by DPZ and the Director of DPWES, such placement to be in conformance with the CDP/FDP; and (c) identify diseased and/or dying trees located in the tree preservation area in need of repair or removal. The final tree preservation areas so established shall be delineated by the placement of tree save fences to prevent any disturbance within these areas. If any tree designated to be preserved is destroyed as a result of the Applicant's construction activities, the Applicant will provide an appropriate replacement in terms of species, size and quantity as determined by the Urban Forestry Division of DPWES. The Applicant shall provide a minimum of two (2) deciduous trees on each lot, said trees shall be three inches (3") in diameter at breast height. The Applicant shall provide a minimum of one street tree, a minimum caliper of two and one-half inches (2½") in diameter at breast height, on each lot fronting the internal street. The Applicant shall also provide foundation plantings consisting of evergreens and flowering shrubs around the homes constructed on each lot. The types and species of these trees shall be coordinated and approved by the Urban Forestry Division of DPWES at the time of subdivision plan approval.

13. Applicant shall install a board-on-board fence as permitted by the Fairfax County Zoning Ordinance and landscaping along the Application Property's Telegraph Road frontage as conceptually shown on the CDP/FDP. The final location and design of the fence and landscaping shall be determined by the Applicant at the time of final subdivision plat approval. Applicant reserves the right to install landscaping between the proposed stormwater management pond and Telegraph Road at time of final subdivision plat approval subject to the approval of DPWES.
14. During development and construction, the Applicant will provide soil erosion control measures located outside of any tree save or buffer areas shown on the CDP/FDP. These measures shall include design and construction of a sediment basin(s) in the location of the BMP pond during construction, as approved by the Director of DPWES in consultation with the Northern Virginia Soil and Water Conservation District. Prior to commencement of any clearing or grading, the Applicant will post a bond with Fairfax County in an amount, and with a Corporate Surety, approved by the Director of DPWES, to provide a fund for any corrective actions deemed necessary by the Director of DPWES and the Office of the County Attorney because of the failure of the erosion control measures referenced herein. Said corrective actions shall include rectification of damage to off-site properties proximately caused by said failures. Said bond shall be released at such time as there is no longer a need for temporary soil erosion control measures, and Fairfax County accepts the

stormwater management pond for maintenance by Fairfax County all as determined by DPWES.

In addition to the foregoing, at the time of subdivision plat review, the Applicant shall submit a plan for the approval of DPWES showing the clearing and grading of the Application Property so as to minimize erosion and sediment runoff. Such plan shall be consistent with slope stability requirements of the approved Geotechnical Report as determined by DPWES and, further, shall include a plan to minimize denuded areas of development at any one time. Once rough grade has been achieved on any portion of the Application Property, that area shall be hydroseeded in accordance with Fairfax County standards for critical slope areas as set forth in the Public Facilities Manual with an appropriate seed mixture and mulched to prevent erosion during storms.

15. The Applicant shall submit a Geotechnical Report as required by DPWES. The Applicant shall submit geotechnical notes outlining the method of plan implementation to DPWES for approval prior to construction on the Application Property. The Director of DPWES may retain a geotechnical engineer to perform the services set forth in the memorandum. In such event, the Applicant shall reimburse Fairfax County for any and all expenses incurred under the monitoring memorandum.
16. The Applicant shall have a soils engineer on site during all phases of construction that are affected by soil stability. The Applicant will have its geotechnical engineer prepare and submit written inspection reports to DPWES regarding on-site compliance with the geotechnical report approved by DPWES. The Applicant will provide a copy of each such written inspection report within five (5) business days to a designated representative of the Roxann Road residents' association. The Roxann Road representative may, upon request, inspect the Application Property in the company of the geotechnical engineer.
17. As specified below, the Applicant shall be obligated to repair and stabilize any portion of the contiguous off-site properties that may be damaged as a proximate result of the Applicant's faulty and negligent grading and construction activity.

Before construction and grading begins, the Applicant shall mail, by certified mail, return receipt requested, a written request to the following specified landowners (e.g., the landowners of the contiguous off-site properties, Tax Map Nos. 91-4 ((3)) Parcels 1, 3, 5, and 7; 91-4 ((1)) Parcel 10; and 91-2 ((6)) Parcels 9, 11, and 13 (hereinafter the "contiguous off-site properties")) to request access to their property for purposes of inspection. The property owners shall be given ten (10) days from the date of the

notice to permit the inspection of the Application Property. Subject to property owner approval, the Applicant will then conduct and document an inspection of the grade conditions of the property and foundations of the foregoing described parcels of property to establish existing house structural conditions and existing off-site property conditions prior to such construction and grading. Said inspection shall be performed by a qualified inspector, independent of the application and acceptable to Fairfax County. A written report with photographs will be used to establish such existing conditions. Upon completion of the inspection, the Applicant will review the results with each landowner and both Applicant and landowner will sign the existing condition report to verify its correctness and each will retain a copy for future reference. A third copy will be provided to the Director of the Fairfax County DPWES for reference. The Applicant will be relieved of its responsibility to conduct such an inspection if the landowner refuses to allow access to the parcel and the house. Prior to being relieved of this responsibility, the Applicant shall mail a letter, by certified mail, return receipt requested, to the landowner stating that the Applicant has not been granted access within the initial ten (10) day period or has been refused access and this letter shall again request access. A copy of such letter request shall also be submitted to the Lee District Supervisor and the Director of DPWES. If the landowner who initially failed to grant access or who refused access again fails to grant the right of access within ten (10) days after the mail of said second written request, then the Applicant shall be relieved of its obligations to inspect said landowner's parcel. Any landowner's failure within ten (10) days of receipt to sign the completed inspection report that accurately reflects existing conditions, shall relieve the Applicant of any requirement to obtain said signature. In addition, any landowner's failure to grant access in a proper and timely manner or to sign the inspection report in a proper and timely manner shall relieve the Applicant of any and all legal obligations which the Applicant may owe to said landowner under these proffers, but shall not relieve the Applicant of any applicable legal liability for any damage to said landowner's property.

18. Subject to the owner's consent and access, the Applicant will repair and stabilize any portion of the contiguous off-site properties that may have shifted and may have caused damage to any structures or property as a proximate result of the negligent and faulty grading of construction activity. Such repairs and stabilization shall be commenced within ninety (90) days of written notification to the Applicant by a landowner specifying the damage done by the Applicant's negligent and faulty grading and construction activity unless reasonable additional time is needed to determine an appropriate course of action for repair. Upon receipt of said written notice, the Applicant and the landowner will meet to inspect the damage claim, to compare the

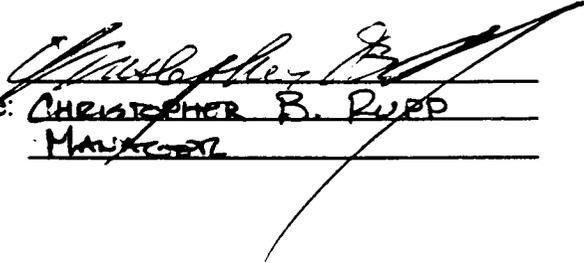
damage claim with the existing condition report and to determine an appropriate course of action for repair. If a repair is warranted under the requirements of this proffer, such repair shall be diligently pursued and completed without unreasonable delay. Any repair required pursuant to the requirement of this proffer shall be subject to review and approval by DPWES. If, despite good faith efforts by both parties, an appropriate course of action for repair cannot be agreed upon, then the parties shall submit the matter to arbitration under the rules of the American Arbitration Association before taking any other action. The foregoing responsibility of the Applicant shall begin upon the commencement of construction and shall remain effective until the later of: (i) one year after the completion of land development as evidenced by release of bond, or (ii) not less than five years from the date of start of construction as determined by the date of issuance of site disturbance permits for the Property.

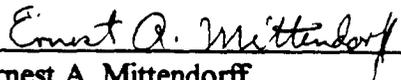
19. Upon conveyance of a dwelling unit, the Applicant shall provide to each initial purchaser a ten (10) year warranty if then offered in the marketplace from HBW (Home Buyer's Warranty), RWC (Residential Warranty Corp.), QBW (Quality Builders Warranty), or other equivalently rated licensed insurer, licensed by the Commonwealth of Virginia, insuring structural stability for each dwelling unit constructed on the Property for the warranty period. Such warranty shall be transferable by the initial purchaser to subsequent purchasers.
20. The Applicant shall, during development, obtain and maintain General Liability insurance coverage with a limit of Two Million Dollars (\$2,000,000.00) per occurrence with a \$2,000,000.00 aggregate, insuring against on and off-site property damage which results from faulty and negligent grading and construction by the developer or any subcontractor on the Application Property. Fairfax County shall be included as an additional insured party in the insurance policy required under this proffer, and Fairfax County, as the additional insured, shall be given a forty-five (45) day notice of any proposed changes to the policy.
21. To further insure the Applicant's ability to protect on-site and contiguous off-site property owners, the Applicant shall require all contractors and subcontractors working on the Application Property to also obtain and maintain general liability insurance coverage in a commercially reasonable amount.
22. The Applicant will provide by covenant approved by the County Attorney and recorded in the land records of Fairfax County with the deed to each dwelling unit for affirmative disclosure that the subject units are built in an area containing marine clay.

The Applicant shall provide a similar disclosure in each new home sales contract specifically stating that the dwelling unit was constructed on marine clay soils.

23. The Applicant, or his agents, shall not use Roxann Road for construction traffic.
24. The Applicant's general liability insurance policy shall be underwritten by a licensed insurance firm, which maintains, at minimum, an A Best's rating. The Applicant shall provide a certificate of insurance to the Director of DPWES prior to site plan approval.

CARR-SKYLINE, LLC

By: 
Name: CHRISTOPHER B. RUPP
Its: MANAGER


Ernest A. Mittendorff


Jean D. Mittendorff