

PROFFERS
RZ 2000-SU-024
June 6, 2001

Pursuant to Section 15.2-2303(A), Code of Virginia (1950), as amended, ALD Group, Inc., as the owner of Tax Map No. 56-2((1))-44 ("Subject Property") and as the Applicant, for itself and its successors and assigns, hereby proffers to develop the Subject Property in accordance with the following conditions, provided the Board of Supervisors rezones the Subject Property to the PHD-12, WS Zoning Districts, for twelve (12) multi-family dwelling units. For the purpose of these Proffers, the term "Developer" refers to the Applicant, its successors and assigns.

1. Development of the Subject Property shall be in substantial conformance with the plan entitled "CDP/FDP on the Property of ALD Group, Inc.", consisting of two sheets, prepared by R.C. Fields, Jr. and Associates, dated February 2000 and revised through January 2001 (the "Plan").

2. The Applicant reserves the right to make minor modifications to the Plan, pursuant to paragraph 4 of Section 16-403 of the Fairfax County Zoning Ordinance (the "Ordinance"), as determined by the Zoning Administrator.

3. (A) As part of site plan review, Applicant shall prepare and submit a landscape plan for review and approval by the Urban Forestry Division and the Department of Public Works and Environmental Services ("DPWES"). This landscape plan shall include the plantings indicated on sheet 2 of the Plan and each planting shall be of the minimum size specified on Sheet 2. Notwithstanding anything to the contrary on the Plan, all deciduous trees to be planted pursuant to the Plan shall be a minimum of 2.5 inch caliper.

(B) Landscaping, brick accents for sidewalks, benches, gazebo, and building elevations and materials shall be substantially as shown on Sheet 2 of the Plan. The building shall utilize substantially the same materials and facade treatments on all sides as those on the existing buildings in Westbrook Court Condominium, located adjacent to the Subject Property. Photographs of buildings within Westbrook Court Condominium shall be provided to DPWES, prior to building permit approval, so that the Director of DPWES may make a determination that the proposed facades are compatible with existing facades in Westbrook Court Condominium.

(C) Exterior lighting for the buildings and enclosures for trash receptacles shall be equivalent in design and quality as such features presently exist in the Westbrook Court Condominium and as illustrated by photographs attached as Exhibit A to these Proffers, as determined by DPWES. Any lights shall be shielded with full cut-off to prevent extraneous glare.

(D) Subject to Proffer 12(C) and the Board of Supervisors approval, Applicant shall install a six-foot tall board on board wood fence along the southern boundary of

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the Subject Property. In the alternative, Applicant may provide this fence, subject to permission and approval by the Westbrook Court Condominium, by relocating the existing fence on the Westbrook Court Condominium presently located near the eastern boundary of the Subject Property, to a location along the southern boundary of the Subject Property, as indicated on the Plan. The fence shall include a gate to provide unobstructed access to the proposed trail along Lee Highway.

(E) If the Subject Property is not added to the Westbrook Court Condominium by the time of issuance of the first building permit, then the Developer may construct a small monument style entrance feature near the driveway as it enters the Subject Property from the east. This entrance feature shall be of design and character substantially as illustrated on sheet 2 of the Plan.

4. The Applicant intends to request a waiver of on-site stormwater management quantity and quality control requirements. If on-site facilities are required by DPWES at the time of final site plan approval, in lieu of the requested waiver, said facilities will be located on-site substantially as shown on the Plan. If a stormwater management/BMP ("SWM/BMP") facility is not required to be provided on-site, the area depicted on the CDP/FDP as possible SWM/BMP facility shall remain as open space and shall be vegetated in a manner similar (in number, size and type) to the plantings along the western boundary of the Subject Property and shall be shown on the landscape plan. If an on-site SWM/BMP facility is required, the landscape plan shall show extensive landscaping in all possible planting areas of the pond, in keeping with the planting policies of DPWES.

5. All residential units on the Subject Property shall meet the thermal guidelines 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, as applicable.

6. As part of the landscape plan, the Applicant, in consultation with the Urban Forestry Division, shall identify any existing vegetation that is desirable for preservation, consistent with the clearing and grading required by the Plan, and incorporate techniques in the landscape plan for such preservation.

7. If DPWES, in coordination with the Air Pollution Control Division of the Health Department and with the Soil Science Office, determines that a potential health risk exists caused by the presence of rock containing asbestos on the Subject Property, the Applicant will:

(A) Take appropriate measures as determined by the Health Department to alert all construction personnel of this potential health risk.

(B) Commit to appropriate construction techniques, in coordination with DPWES, with the Air Pollution Control Division, and with the Soil Science office, to minimize such risk. Such techniques may include, but are not necessarily limited to, dust suppression



measures during all blasting and drilling activities, transportation of removed material presenting this risk, and appropriate disposal of removed materials presenting this risk.

8. The Developer shall dedicate and convey in fee simple to the Board of Supervisors right-of-way along the Lee Highway frontage of the Subject Property, as shown on the Plan, together with any ancillary easements requested by the Virginia Department of Transportation ("VDOT") that do not prevent development of the Subject Property as proffered. Such dedication and conveyance shall be made upon demand by Fairfax County or VDOT, or at the time of site plan approval, whichever occurs first. All density related to such dedication is hereby reserved pursuant to paragraph 4 of Section 2-308 of the Ordinance.

9. (A) Prior to site plan approval, the Applicant will make a contribution in accordance with the Fairfax Center Area Roadway contribution formula adopted by the Board of Supervisors on November 22, 1982, as amended, subject to credits for all creditable expenses as determined by the Office of Transportation and DPWES. This contribution sum is currently specified to be nine hundred six dollars (\$906.00) per dwelling unit.

(B) Provided that the Board of Supervisors by a separate resolution waives the roadway and frontage improvement requirements for Lee Highway, then Developer shall contribute, at the time of final site plan approval, \$25,000.00 for the purpose of roadway and frontage improvements for Lee Highway, which sum shall be in addition to the contribution specified in Proffer 9 (A).

10. (A) The Developer shall, prior to final site plan approval, provide an independent environmental site investigation of the Subject Property conducted by a qualified consultant or firm for the review by DPWES in coordination with the following County agencies ("the reviewing agencies"): The Department of Health; the Fire and Rescue Department; the Soil Science Office; and other appropriate agencies as determined by DPWES. This investigation will consist of the following:

(i) A "Phase I" investigation of the Subject Property that is generally consistent with procedures described within the American Society for Testing and Materials document entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process"; and

(ii) If warranted by the results of the Phase I investigation, a Phase II monitoring program shall be conducted. This program shall be sufficient to determine if soil, surface-water, and/or groundwater contaminants such as hazardous substances and petroleum products, as referenced within the aforementioned American Society for Testing and Materials document, are present on the Subject Property and/or have migrated from the Subject Property onto one of more nearby properties. Monitoring parameters (e.g. locations of monitoring sites, number of monitoring sites, media to be sampled (soil, groundwater), substances to be tested for, number of samples to be taken, duration of sampling, depth of sampling) shall be subject to the review and approval of DPWES in coordination with the reviewing agencies.

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If as a result of the Phase II investigation, it is determined that contamination levels of soil or water require remedial action, then a remediation program shall be performed in accordance with all applicable Federal, State and County requirements. Sufficient documentation of completion of the remediation program (with the possible exception of long-term follow-up monitoring efforts) or of an appropriate corrective action plan consistent with the proposed development, in consultation with DPWES and in coordination with the reviewing agencies, shall be provided to DPWES prior to final site plan approval.

(B) At time of site plan submission, the applicant shall submit a geo-technical investigation of the site and implement such measures as determined by the investigation that will address the fill soils/material to the satisfaction of DPWES.

11. Garages will be utilized only for those uses that will not interfere with intended purposes of the garages, namely, the parking of vehicles. A restrictive covenant to that effect, approved by the County Attorney, and running to the homeowners association and Fairfax County, shall be recorded among the land records of Fairfax County in conjunction site plan approval and in conjunction with Homeowners Association documents.

12. (A) In order to achieve a maximum interior noise level of approximately 45 dBA Ldn within a noise contour between 65dBA Ldn and 70dBA Ldn, which contour is an area within approximately 370 feet measured from the centerline of Lee Highway, such residential units within this contour shall have the following acoustical attributes:

(i) Exterior walls shall have a laboratory sound transmission class ("STC") rating of at least 39.

(ii) Doors (excluding garage doors) and windows shall have an STC rating of at least 28. If glazing (excluding any glazing in a garage door) constitutes more than twenty percent (20%) of any facade, then such windows shall have the same STC rating as that facade.

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

(iv) As an alternative to the above, the Developer may elect to have a refined acoustical analysis performed, subject to approval by DPWES to determine the appropriate noise attenuation measures necessary to meet established county standards and/or to determine which buildings may have sufficient shielding to permit reduction in the mitigation measures described above. The Applicant shall implement said mitigation measures subject to whatever reductions are permitted pursuant to this paragraph.

(B) In order to achieve a maximum interior noise level of approximately 45 dBA Ldn, any residential units located within a noise contour between 70dBA Ldn and 75dBA Ldn, as measured from of the centerline of Lee Highway, shall have the following acoustical attributes:



(i) Exterior walls shall have an STC rating of at least 45.

(ii) Doors (excluding garage doors) and windows shall have an STC rating of at least 37. If glazing (excluding any glazing in a garage door) constitutes more than twenty percent (20%) of any facade, then such windows shall have the same STC rating as that facade.

(iii) Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmissions.

(iv) As an alternative to the above, the Developer may elect to have a refined acoustical analysis performed, subject to approval of DPWES, to determine the appropriate noise attenuation measures necessary to meet established County standards and/or to determine which buildings may have sufficient shielding to permit reduction in the mitigation measures described above. The Applicant shall implement said mitigation procedures subject to whatever reductions are permitted pursuant to this paragraph.

(C) In order to reduce the maximum exterior noise, in the open space area near the benches, as shown on the Plan, to a level of approximately 65 dBA Ldn, a noise attenuation barrier shall be provided, if such area is otherwise unshielded by topography or built structures to satisfy this requirement. The Applicant may incorporate acoustical materials in the fence to be located along the southern boundary. It is understood that gates shall be constructed in the fence along the southern boundary, to connect walkways within the Subject Property to the proposed trail, as shown on the Plan. Consequently, the fencing shall be architecturally solid from ground up with no gaps or openings, except as may be necessary for drainage and for gates. Satisfaction of this proffer shall be evaluated during site plan review in light of the requirement for gates in the fence or in any other noise barrier. Any required noise attenuation barrier shall be constructed prior to the issuance of the first RUP for a new dwelling.

13. If the Subject Property is developed as a condominium, the Applicant shall endeavor, on or before final site plan approval, to have the Subject Property to be incorporated as part of the Westbrook Court Condominium Association, or enter into mutually acceptable agreements concerning common areas and recreational facilities, so long as terms are acceptable to the Applicant.

14. The Applicant shall, at the time of final site plan approval, contribute one percent (1%) of the estimated sales price of each new dwelling to Fairfax County for the County's Housing Trust fund for the provision of affordable housing. The Applicant, in consultation with the staff of the Fairfax County Department of Housing and Community Development, shall determine the estimated sales price.

15. (A) At the time of final site plan approval, the Applicant shall contribute \$2,500.00 to the Fairfax County Park Authority for off-site recreational facilities in Arrowhead



Park. The contribution in this Proffer 15(A) shall be in addition to the contribution specified in Proffer 15(B).

(B) The Applicant shall construct recreational improvements (benches, gazebo) on the such Property, as shown on the Plan, equal in value to \$955.00 per unit. In the event the cost of on-site recreational improvements is less than \$955.00 per unit (i.e. a maximum of \$11,460.00) then at the time of the issuance of the first occupancy permit for a residential unit, the Applicant shall contribute the remainder of this recreational contribution, up to the maximum, to the Fairfax County Park Authority for off-site recreational facilities in Arrowhead Park.

16. a. The Applicant shall apply to VDOT for a construction entrance directly from Lee Highway (Route 29) to the Subject Property for use by all construction vehicles during construction. The Applicant shall incorporate such construction entrance into its site plan. The Applicant shall contact the appropriate VDOT office for preliminary written approval of the construction entrance directly from Lee Highway promptly upon the first site plan submission. Westbrook Court Condominium (through its President or its registered agent, as shown of the records of the State Corporation Commission) shall be notified in writing of the filing of the first site plan submission and of such contact with VDOT and shall be invited to any meeting with VDOT concerning the construction entrance. If VDOT does not approve a construction entrance from Lee Highway and construction vehicles must use streets within Westbrook Court Condominium for access to the site, then the developer shall, in accordance with the Fairfax County Public Facilities Manual ("PFM"), include in its bond package coverage for repair of any damage to Westbrook Streets and for cleaning of such streets caused or necessitated by such construction vehicles, in accordance with the provisions and policies of the PFM.

b. Subject to VDOT and DPWES approval, the Applicant will utilize the existing driveway via Lee Highway for construction equipment/vehicle access for the Subject Property during construction activity.

c. Subject to VDOT approval, the Applicant will provide appropriate signage on Lee Highway warning of construction vehicle activity. In the event construction access from Lee Highway is not approved the appropriate signage on Westbrook Court subdivision streets, signage on Stevenson Drive and Lee Highway shall be provided.

d. All construction vehicles shall be parked within the Application Property. The area within the Property to be dedicated pursuant these Proffers may be used for such parking and for the construction entrance. There shall be no construction vehicle parking along any Westbrook Court Condominium subdivision street or Lee Highway.

e. The Applicant shall erect a sign at the construction access point directing all construction traffic to use the access point, as qualified by Proffer 16b.

f. The Applicant shall inspect Lee Highway (and, if the construction entrance is not on Lee Highway, Westbrook Court Condominium streets and Stevenson Street)

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on a regular basis, as required by DPWES and VDOT, and shall remove all mud, rocks, nails and other construction debris and shall wash those roads as required by VDOT and DPWES to remove dirt and debris.

g. The Applicant shall install a construction vehicle dirt rack at the construction entrance to the Subject Property.

17. (A) All construction activity shall be limited to between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday.

(B) Construction activity on Sundays shall be limited to interior work only and to the hours of 7:00 a.m. and 6:00 p.m.

18. 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 sale of homes on the Property.

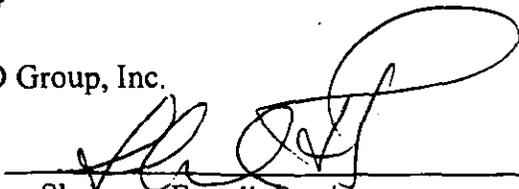
19. These Proffers will bind and inure to the benefit of the Applicant and its successors and assigns.

20. These Proffers may be executed in one or more counterparts, each of one when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but one in same instrument.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

Signature Page to Proffers
RZ 2000-SU-024

ALD Group, Inc.

BY: 

Shahman Foradi, President

Date: June 6, 2001