

PROFFERS
Equity Homes Rezoning
RZ/FDP 2001-LE-024

September 23, 2002

Pursuant to Section 15.2-2303(a) of the Code of Virginia, 1950, as amended, the property owners and Applicant in this rezoning proffer that the development of the parcel under consideration and shown on the Fairfax County Tax Maps as Tax Map Reference Nos. 100-1((9))-A, -1, -2; 100-1((4))-1; 100-1((2))-1, -2, -3 (hereinafter referred to as the "Property") will be in accordance with the following conditions if, and only if, said Rezoning request for the PDH-3 District is granted. In the event said application request is denied, these proffers shall be null and void. The Owners and the 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agree that these proffers shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board of Supervisors of Fairfax County, Virginia, in accordance with applicable County and State statutory procedures.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:

I. GENERAL

1. Subject to the proffers and the provisions of Article 16 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/Final Development Plan (CDP/FDP), containing 6 sheets prepared by Christopher Consultants, dated March 30, 2001, and revised through April 23, 2002.

2. The development shall consist of a maximum of eighteen (18) single family detached residential units. None of the approved units shall have direct driveway access to Telegraph Road.

3. In conjunction with the appropriate subdivision review processes, private streets, shared driveways and common areas shall be dedicated to the homeowners association established for the approved development.

4. Any conversion of garages that will preclude the parking of vehicles within the garage is prohibited. A covenant setting forth this restriction shall be incorporated in the HOA documents and be recorded among the land records of Fairfax County in a form approved by the County Attorney prior to the sale of any lots and shall run to the benefit of homeowners' association (HOA), which shall be established, and the Board of Supervisors. Prospective purchasers shall be advised of this use restriction at the time of entering into a contract of sale.

5. The Applicant shall record, among the land records, a covenant prohibiting the storage and/or parking of recreational vehicles (boats, trailers, and mobile homes) on the private street system within the Property. The same shall also be incorporated in the HOA documents. Each Deed of Conveyance to the purchasers of lots shall expressly contain this disclosure and prospective purchasers shall be advised of this restriction prior to entering into any contracts of sale.

6. The covenants referenced the Proffer numbers 5 and 6 above shall be clearly disclosed in the HOA documents, shall run to the benefit of the HOA and shall be approved by the County Attorney prior to the recordation of the Deed of Subdivision.

7. A public access easement in a form approved by the County Attorney shall be placed over the trail system located along Telegraph Road, Old Telegraph Road and immediately north of the stormwater management pond. Such trail shall be maintained by the HOA.

II. ARCHITECTURAL DESIGN

1. The general design and architecture of the approved units shall be in substantial conformance with the illustrative renderings attached as sheet 6 of the CDP/FDP. For the purpose of administering this proffer, it shall be understood that the renderings attached to the CDP/FDP are illustrative in nature and that "substantial conformance" shall not preclude reasonable product design choices that honor the general unit style and the type and proportion of elements and materials generally reflected on the CDP/FDP as further qualified by the items enumerated below.

A. The front façade of the approved units shall incorporate the following elements:

1. brick or stone steps and stoops;
2. the use of brick or stone on the water table (finished grade to the point where the installation of the selected siding material begins);
3. landscaping consistent with the "lot typical" shown on the CDP/FDP.
4. The incorporation of at least one (1) of the following elements:
 - brick or stone on all or a portion of the front façade,
 - the incorporation of reverse gables,

- standing seam metal accents (as an example, in areas generally above front bay windows or porches),
- the use of palladian or similar decorative windows;

B. The rear of the approved units visible from Telegraph Road and the rear of those units located directly along Old Telegraph Road shall incorporate the following:

1. the use of shutters, decorative trim and related accent materials on windows and portions of the rear façade that are not visually screened by the noise attenuation wall required by these Proffers along Telegraph Road, (generally the second story and above). Such shutters, trim or other accent materials shall be complementary, in terms of type and color, to those items or materials used on other portions of the façade.

III. TRANSPORTATION

1. All private streets shall be constructed pursuant to PFM pavement section standards as to the thickness for public subdivision streets. All prospective purchasers shall be advised in writing at time of contract of sale of the existence of private streets and all other associated maintenance obligations required by these Proffers prior to entering into a contract of sale. The existence and maintenance responsibility of the private streets shall be disclosed in the HOA documents.

2. At the time of subdivision plan review, or on demand of VDOT or Fairfax County, which ever one first occurs, the Applicant shall dedicate at no cost and in fee simple to the Board of Supervisors, the right-of-way located generally parallel to

Telegraph Road and Old Telegraph Road and identified as "to be dedicated" on the CDP/FDP. This shall include a dedication of right-of-way to: 60 feet from centerline along Telegraph Road, 72 feet from centerline along Telegraph Road in the area of the right turn lane shown along the site frontage and 35 feet from centerline along Old Telegraph Road. The Applicant shall, along Old Telegraph Road, construct a ½ section of Old Telegraph Road to provide 19 feet of pavement, with appropriate curb and gutter, from centerline. Similarly, the Applicant shall construct the right turn lane into the site entrance as shown on the CDP/FDP. The design and configuration of this improvement shall be subject to review and approval by DPWES and/or VDOT. The Applicant shall be entitled to density credit for these and any other dedication of land in accordance with the provisions of Article 2 of the Ordinance.

IV. ENVIRONMENTAL

1. Stormwater management shall be provided in accordance with the requirements of the PFM. To provide a natural appearance within the pond, any required stormwater management facility shall be landscaped to the maximum extent possible in accordance with the planting policies of the County.

2. At the time of subdivision plan review and approval, the Applicant shall diligently pursue the approval of the necessary waivers or engineering approvals to allow the applicable stormwater management requirements to be potentially met without the use of a structural detention pond, or with a structural pond of smaller size than that identified on the CDP/FDP. To further this objective, the Applicant reserves the right to employ "rain gardens" or similar alternative measures, as approved by DPWES. In the event a rain garden is employed, it shall be maintained by the HOA in accordance with

Attachment A and such maintenance responsibilities shall be disclosed in the HOA documents. Should DPWES fail to approve the necessary permits and/or waivers, the Applicant reserves the right to provide a structural dry pond in substantial conformance with that shown on the CDP/FDP in accordance with Proffer IV, 1.

3. The location and configuration of the stormwater management facility shall be in substantial conformance with the CDP/FDP. Modifications to the configuration of the pond may be made based on final engineering requirements, so long as such modifications do not encroach into designated tree save areas. In the event that the final design and engineering indicates that the applicable water quality/quantity requirements can be met without the use of a structural dry pond or if the required stormwater management pond requires less land area than that shown on the CDP/FDP, those areas not required in connection with the stormwater pond or its associated grading shall be examined jointly by the Applicant and the County Urban Forester for feasibility as additional tree preservation areas. If found to be viable for tree preservation purposes, these areas shall be protected in accordance with the requirements of these proffers. If such areas not used for stormwater management are not deemed appropriate for tree preservation by the Applicant and the County Urban Forester, then such areas shall be landscaped with a type and amount of landscaping that is generally consistent with the landscape concepts described on Sheet 5 of the CDP/FDP.

4. Landscaping shall be provided in substantial conformance with the landscaping concepts shown on the CDP/FDP. If, during the process of subdivision plan review, any new landscaping shown on the CDP/FDP cannot be installed, in order to locate utility lines, trails, etc., as determined necessary by the Director, DPWES, then an

area of additional landscaping consisting of trees and/or plant material of a type and size generally consistent with that displaced, shall be substituted at an alternate location on the site. In order to minimize site disturbance, the trails described on the CDP/FDP shall be field located in consultation with the Urban Forestry Division prior to submission of the subdivision plan. If it is determined necessary by DPWES to install utilities or trails outside the limits of clearing and grading shown on the CDP/FDP, they shall be located in the least disruptive manner necessary as determined by the Urban Forestry Division. A replanting plan shall be developed and implemented, subject to approval by the Urban Forestry Division for any areas outside the limits of clearing and grading that must be disturbed for trail or utility purposes. To the extent practical, native species shall be used in all landscaped areas.

5. The limits of clearing and grading shown on the CDP/FDP and required pursuant to these proffers shall be considered maximum limits. It shall be understood that those tree save areas located parallel to Telegraph Road and within the right-of-way to be dedicated pursuant to Proffer III.2. above, shall not preclude the required right-of-way dedication and associated road improvements.

6. A certified arborist shall be retained by the Applicant to prepare a tree preservation plan to be reviewed and approved 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, located within designated tree save areas. 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.

7. Before or during the required pre-construction meeting, the Applicant shall walk the limits of clearing and grading with a representative of both the Urban Forestry Division and the Lee District Land Use Advisory Committee to field locate sidewalk locations and determine where minor adjustments to the clearing limits can be made to increase the survivability of trees at the edge of the limits of clearing and grading. These walks may be conducted independently from one another. Trees that are not likely to survive construction due to their species, condition, and/or their proximity to disturbance shall also be identified at this time and the applicant shall be given the option of removing them as part of the clearing operation. Any tree that is designated for removal at the edge of the limits of clearing and grading or within a tree preservation area shall be removed using a chainsaw to avoid damage to surrounding trees. If a stump

must be removed, this shall be done using a stump grinding machine in a manner causing as little disturbance as possible to the adjacent trees.

8. All homes on the Property shall meet the thermal guidelines of the Cabo Model Energy Program for energy-efficient homes, or its equivalent as determined by DPWES, for either gas or electric energy systems as may be applicable.

9. To the extent determined feasible by the County Urban Forester, new tree plantings within peripheral buffers shall incorporate native species.

V. NOISE MITIGATION

1. Prior to final subdivision plan approval, the Applicant shall demonstrate to the satisfaction of DPWES and DPZ, through the submission of a noise study and refined acoustical analysis, that exterior noise levels within those yards located at the rear of those units located parallel to Telegraph Road 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 65 dBA, for those yards specified herein, prior to the issuance of the first Residential Use Permit (RUP), the Applicant shall construct a fence or similar barrier along those lot lines that are parallel to the Telegraph Road right-of-way in the location generally identified on the CDP/FDP. The design and materials of this fence or similar barrier with no gaps or openings shall be in substantial conformance with the illustrative rendering shown on Sheet 6 of the CDP/FDP, and shall generally compliment and be consistent with the design and materials associated with the approved units. The height of this noise barrier may exceed the minimum height requirements for a fence or wall generally imposed by Article 10 of the Zoning Ordinance in accordance with the

provisions of Paragraph 7 of Section 16-401. The noise barrier shall not exceed eight (8') feet in height.

2. In order to reduce the maximum interior noise to a level of approximately 45 dBA Ldn, all units located between 65-70 dBA Ldn highway noise impact contours (generally within 150 feet of the centerline of Telegraph Road) 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 glazing constitutes more than 20% of any façade, they shall have the same laboratory STC rating as walls; and
- (c) Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

In addition to that generally specified in Proffer V 1 and 2 above, the Applicant may elect to have a refined acoustical analysis performed, subject to the approval of DPWES and the Department of Planning and Zoning, to revise interior noise attenuation measures and/or to potentially reduce the height of the noise barrier from that generally shown on the CDP/FDP. In no event shall the noise barrier be less than five (5) feet in height.

VI RECREATION

1. At the time of subdivision plan review, the Applicant shall demonstrate that the proposed recreational amenities have a value equivalent to \$955.00 per unit as

required by Article 6 of the Zoning Ordinance. The Applicant reserves the right to install active or passive recreational facilities, to include but not be limited to tot lots, fitness courses, gazebos, playgrounds and similar facilities, in open space areas shown on the CDP/FDP, provided such facilities shall conform to the provisions of Article 6 and shall not encroach into the limits of clearing prescribed by these proffers. In the event it is demonstrated that the proposed facilities do not equal the \$955 per unit required value, the Applicant shall have the option to: (1) provide additional on-site recreational amenities within the open space areas shown on the CDP/FDP, if it is determined that the location of such amenities would be in substantial conformance with the FDP; or (2) contribute necessary funds to the Fairfax County Park Authority for off-site recreational facilities in the vicinity of the subject site in accordance with Section 16-404 of the Ordinance.

VII. AFFORDABLE HOUSING

1. At the time of subdivision plan approval, the Applicant shall contribute one percent of the projected sales price of the new homes to the Housing Trust Fund. The final amount of such contribution shall be determined by the Applicant in consultation with staff of the Department of Housing and Community Development.

VIII. OTHER

1. All monetary contributions required by these proffers, except that associated with Proffer #1 of the Section entitled "Recreation," shall be adjusted upward or downward, based on changes to the Construction Cost Index published in the Engineering News Record occurring subsequent to the date of rezoning approval.

2. 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 marketing and sale of homes on the subject Property. Furthermore, the Applicant shall direct its agents and employees involved in marketing and/or sale of residential units on the subject Property to adhere to this proffer.

3. A contribution of \$750.00 per unit shall be made to the Board of Supervisors for a specific fund designated for schools impacted by the proposed development. A per unit contribution shall be made at the time of issuance of individual building permits.

4. All driveways shall have a minimum length of 18 feet as measured from the inside of the sidewalk.

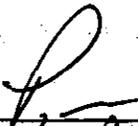
5. The "Lot Typical" shown on the CDP/FDP shall govern the placement of the principal dwelling unit and associated landscaping and shall not prohibit the installation of decks, provided that decks shall not extend closer than ten (10) feet to the rear lot line.

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

Contract Purchaser:

EQUITY HOMES L.P. by
EQUITY HOMES, INC.
its general partner

By: 
Name: Peter Hazeloo
Title: President

Title Owners:

JANET M. BAHR TRUST

By: Janet M. Bahr, Trustee
Janet M. Bahr, Trustee

THE BAHR FAMILY CO., L.L.C.

By: Janet M. Bahr, Managing member
Janet M. Bahr
Its: Managing Member

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PROPOSED FINAL DEVELOPMENT PLAN CONDITIONS

FDP 2001-LE-024

July 3, 2002

If it is the intent of the Planning Commission to approve Final Development Plan Application FDP 2001-LE-024 for Tax Map Parcels 100-1 ((4)) 1; 100-1 ((9)) 1, 2, A; 100-1 ((2)) 1, 2, and 3, staff recommends that the Planning Commission condition the approval by requiring conformance with the following development conditions.

1. All new deciduous trees shall be 2.5 to 3.0 inches in caliper at the time of planting. All new evergreen trees shall be a minimum of six (6) feet in height at the time of planting.