

3. S 69° 50' 13" W, a distance of 28.30 feet to a point at the southeasterly property corner of Parcel "B", Estate of Audrey C. Niebert as described and recorded in Deed Book 11544 at Page 1372 among the aforementioned Land Records;

Thence, departing said northerly right-of-way line of Lee Highway, Route #29 and running with the said easterly property line of Parcel "B", Estate of Audrey C. Niebert and the same line extended with the easterly property lines of Parcel "A", Estate of Audrey C. Niebert and Parcel "I", Section III, Willow Ponds, the easterly terminus of Willow Drive and the easterly property line of Parcel "H", Section III, Willow Ponds as platted and recorded in Deed Book 8957 at Page 1869, N 19° 53' 33" W, a distance of 1480.69 feet to a point in the southwesterly property line of Lot R-7, Section II, Marshall Farms as platted and recorded in Deed Book 1256 at Page 120, all as being recorded among the aforementioned Land Records;

Thence, departing said easterly property line of said Parcel "H" and running with the southwesterly and southeasterly (respectively) property lines of said Lot R-7 the following two (2) courses:

1. S 33° 42' 53" E, a distance of 256.00 feet;
2. N 57° 54' 11" E, a distance of 330.24 feet to a point at a westerly property corner of Parcel "A", Foulger and Boldog Property as platted and recorded in Deed Book 9733 at Page 100 among the aforementioned Land Records;

Thence, departing said southeasterly property line of Lot R-7 and running with the westerly and southerly property lines of said Parcel "A", Foulger and Boldog Property the following four (4) courses:

1. S 32° 06' 49" E, a distance of 111.59 feet;
2. N 57° 54' 11" E, a distance of 218.68 feet;
3. S 32° 05' 49" E, a distance of 361.03 feet;
4. N 58° 02' 44" E, a distance of 468.23 feet to a point at the southwesterly property corner of Lot 43 of said Foulger and Boldog Property, said point also being at the northwesterly property corner of Parcel 2 of the aforementioned "Lightfoot Division";

Thence, departing said Parcel "A" and Lot 43, Foulger and Boldog Property and running with the westerly property line of said Parcel 2, "Lightfoot Division" and the same line extended with the aforementioned westerly property line of Parcel 1, "Lightfoot Division", S 15° 58' 18" E, a distance of 1081.74 feet to the point of beginning.

**Containing 28.9440 Acres of Land, More or Less**

**(Area taken from Deeds Of Record)**

This description is compiled from record information and is for rezoning purposes only and therefore does not reflect a field run boundary survey.

**PROFFERS**

**EQUITY HOMES, LLC**

**RZ 2002-SP-004**

**February 3, 2003**

Pursuant to Section 15.2-2303(A), Code of Virginia, 1950 as amended, the undersigned Applicant and Owners, for themselves and their successors and assigns (hereinafter referred to as the "Applicant"), filed for a rezoning for property identified on Fairfax County Tax Map as 55-4 ((1)) Parcels 1, 2, 3, 4A, 5 and 6 (hereinafter referred to as the "Application Property"), hereby agree to the following Proffers, provided that the Fairfax County Board of Supervisors (hereinafter referred to as the "Board") approves a rezoning of the Application Property to the R-2 (Cluster) Zoning District, as proffered herein.

**1. GENERALIZED DEVELOPMENT PLAN (GDP)**

- a. Subject to the provisions of Section 18-204 of the Fairfax County Zoning Ordinance (hereinafter referred to as the "Ordinance"), development of the Application Property shall be in substantial conformance with the Generalized Development Plan (GDP), prepared by Christopher Consultants dated October 22, 2002.
- b. Building Permits shall not be issued on Lots 1, 2, 37, 38, 39, 40 and 41 until such time as the commercial nursery use on a portion of the Application Property ceases. In no case shall the plant nursery be in operation past December 31, 2005.
- c. Pursuant to Section 18-204 of the Zoning Ordinance, minor modifications from the approved Generalized Development Plan may be permitted as determined by the Zoning Administrator. The layout shown on the Development Plan may be modified provided such changes are in substantial conformance with the Development Plan and proffers, and do not increase the total number of units or decrease the minimum amount of open space, tree save area, or peripheral setbacks of units.

**2. ASBESTOS**

If the Department of Public Works and Environmental Services (DPWES) determines that a potential health risk exists due to the presence of asbestos-containing rock on the Application Property, the Applicant shall:

- a. Take appropriate measures as determined by the Health Department to alert all construction personnel as to the potential health risks.
- b. Commit to appropriate construction techniques as determined by DPWES in coordination with the Health Department to minimize this risk. Such techniques

may include, but are not limited to, dust suppression measures during all blasting and drilling activities and covered transportation of removed material presenting this risk, and appropriate disposal.

**3. PARK DEDICATION**

- a. At time of subdivision plan approval, the Applicant shall dedicate and convey in fee simple to the Fairfax County Park Authority (FCPA) for park purposes, all of the open space area identified as Parcel A on the Application Property. Prior to dedication, the Applicant shall remove the existing house and dispose of visible debris that has been discarded in Parcel A.
- b. Prior to the issuance of the 1st Residential use Permit (RUP), the Applicant shall contribute the sum of \$26,855 to the FCPA for park improvements. The value of the stream crossing referenced in paragraph 4.b shall be credited toward this construction.

**4. TRAIL CONNECTIONS**

- a. Prior to the issuance of the 1st RUP, the Applicant shall construct trail connections as shown on the GDP. The trail location shall be field located to minimize tree disturbance as approved by the DPWES, Urban Forestry Branch, and FCPA.
- b. Prior to the issuance of the 1st RUP, the Applicant shall construct a low water crossing or Pedestrian bridge over Rocky Run within the dedicated EQC, subject to FCPA approval.

**5. NOISE ATTENUATION**

- a. In order to reduce interior noise to a level of approximately 45 dBA Ldn, units within a highway noise impact zone of 65-70 dBA Ldn (approximately 365 feet from center line of Route 29), the Applicant shall employ the following acoustical treatment measures:
  - Units within the noise impact area shall be indicated on the subdivision plan. Exterior walls shall have a laboratory Sound Transmission Class (STC) rating of at least 39. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any exposed facade exposed to noise levels of 45 dBA Ldn or above. If glazing constitutes more than 20% of any exposed facade, then the glazing shall have a laboratory STC rating of at least 39.

- All surfaces shall be sealed and caulked in accordance with the methods approved by the American Society of Testing and Materials (ASTM) to minimize sound transmission.
  - As an alternative a refined acoustical analysis may be performed prior to subdivision plan approval, subject to approval of DPWES, to verify or amend the noise levels and impact areas set forth above and/or to determine which units may have sufficient shielding from topography or structures to permit a reduction in the mitigation measures prescribed above; or to determine minimum STS ratings for exterior walls, windows, and doors.
- b. In order to reduce exterior noise levels below 65 dBA Ldn in rear yards of Lots within the 65 to 70 noise impact zone, a 6- to 8-foot high acoustical earthen berm, and 4-foot high fence shall be provided as referenced in paragraph 6.a. below and as depicted on the GDP to adequately shield the impact area from the source of the noise.

#### 6. LANDSCAPING AND OPEN SPACE

- a. A 6- to 8-foot high berm (that is landscaped subject to Urban Forestry approval) with a 4-foot high solid wooden fence shall be provided along the Application Property's Lee Highway frontage as shown on the GDP.
- b. Street trees a minimum of 3 inches in caliper at the time of plantings shall be provided within the front yards of all Lots as shown on the GDP, subject to the Urban Forester approval.
- c. The front yard of each lot shall be planted in general conformance with the typical lot landscaping as depicted on Sheet 8 of the GDP.
- d. At the time of planting, the minimum caliper for deciduous trees shall be three (3) inches and the minimum height for evergreen trees shall be seven (7) to eight (8) feet. Actual types and species of vegetation shall be pursuant to more detailed landscape plans approved by the Urban Forester and the Fairfax County Department of Public Works and Environmental Services (DPWES) at the time of final subdivision plan approval. Such landscape plans shall provide tree coverage and species diversity consistent with the Public Facilities Manual criteria, as determined by the Urban Forester and DPWES.

#### 7. TRANSPORTATION

- a. At time of 1<sup>st</sup> subdivision plan approval, or upon demand, whichever occurs first, the Applicant shall dedicate and convey to the Board of Supervisors, in fee simple a right-of-way along the Application Property's Lee Highway frontage and the

northern tip of Parcel 1 for the extension of Autumn Willow Drive, as shown on the GDP. Ancillary and temporary construction easements necessary for the construction of the roads shall be provided at no cost to the County.

- b. Prior to the issuance of the 1st RUP, the Applicant shall construct a left turn lane on eastbound Lee Highway at Hampton Forest Way, as shown on the GDP, as approved by VDOT.
- c. Prior to issuance of the 1st RUP approval, the Applicant shall construct a right-turn lane and a third westbound lane along the Application Property and Tax Map 55-4 ((1)) Parcel 4, Lee Highway frontage, as approved by VDOT. In the event that the necessary right-of-way from Parcel 4 is not available prior to Plan submission, the Applicant shall request the County use its powers of eminent domain as described below in Proffer 7.1. In the event the County does not use its powers of eminent domain and the Parcel 4 right-of-way remains unavailable, the Applicant shall only be required to construct a right turn taper and through lane along the property frontage and escrow funds for the remaining segments of the third lane and ultimate right turn lane on Tax Map 55-4 ((1)) 4, as determined by DPWES.
- d. Prior to the issuance of the 1st RUP, the Applicant shall close the existing commercial nursery entrances onto Lee Highway and provide access from the internal public streets to the plant nursery.
- e. At time of subdivision plan approval, the Applicant shall dedicate and convey in fee simple to the Board right-of-way as shown on the GDP for a future public street connection along the western property line.
- f. Prior to the issuance of the 1st RUP, the Applicant shall construct a stub street connection to the western property line within the right-of-way referenced in Paragraph e, as shown on the GDP. The location of the interparcel connection may be moved as shown on Attachment A, subject to review and approval by the County Executive. The Applicant shall notify future home purchasers that the street will be for interparcel access and install signage notifying the public that there will be a future public street interparcel connection. The HOA documents shall indicate that the interparcel access will be provided to the west.
- g. Prior to the issuance of the 1st RUP, the Applicant shall construct the off-site public street connection to Willowmeade Drive as shown on the GDP.
- h. The Applicant shall provide an ingress/egress easement as approved by Fairfax County to provide access to Tax Map parcel 55-4 ((1)) parcel 4 for access to the proposed public street system as shown on the GDP. Notice of this future ingress/egress easement connection shall be provided in writing to prospective

purchasers and contained within homeowner association (HOA) documents.

- i. At time of subdivision plan approval, the Applicant shall provide signal modifications to the signal on Lee Highway as determined by VDOT and DPWES.
- j. A contribution shall be made to the Fairfax Center Area Road Fund in accordance with and at such times as are specified in the "Procedural Guidelines" adopted by the Board on November 22, 1982, as amended.
- k. Prior to the issuance of the 1st RUP, the Applicant shall construct and thereafter maintain a bus shelter along the Application Property's Route 29 frontage in a location as approved by Department of Transportation. Maintenance responsibilities for the bus shelter shall be provided in the HOA documents.
- l. The Applicant shall diligently pursue acquisition of any necessary off-site right-of-way and/or temporary or permanent easements, to construct any improvements, and/or turn lanes required as part of the transportation improvements reflected on the GDP and/or as outlined in these proffers. If the right-of-way and/or temporary or permanent easements are unavailable, the Applicant shall request Fairfax County to acquire the necessary right-of-way and/or temporary or permanent easements, through its powers of eminent domain, at the Applicant's expense. The Applicant's request will not be considered until it is forwarded, in writing, to the Director of Property Management accompanied by:
  - Plans and profiles showing the necessary right-of-way and/or temporary or permanent easements;
  - An independent appraisal, by an appraiser who is not employed by the County, of the value of the land taken and damages, if any, to the residue of the affected property;
  - A sixty (60) year title search certificate of the right-of-way and/or temporary or permanent easements to be acquired; and
  - A Letter of Credit in an amount equal to the appraised value of the property to be acquired and of all damages to the residue which can be drawn upon by Fairfax County. It is also understood that in the event the property owner of the right-of-way and/or temporary or permanent easements to be acquired for the ultimate right turn land only is awarded more than the appraised value of the property and of the damages to the residue in a condemnation suit, the amount of the award shall be paid to Fairfax County by the Applicant within five (5) days after said award has

become final. It is further understood that all other costs incurred by Fairfax County in acquiring the right-of-way and/or temporary or permanent easements for the ultimate right turn lane only shall be paid to Fairfax County by the Applicant upon demand.

**8. ARCHITECTURE**

- a. The building elevations for the proposed dwelling units shall be generally in character with the illustrative elevation as shown on Sheet 8 of the GDP, as determined by DPWES. The side of Lots 30 and 31 visible from Lee Highway shall be constructed of similar material as the front of the units.
- b. The Applicant shall install streetlights within the right-of-way of the public street system in general character with the illustrative elevation shown on Sheet 8 of the GDP. All public street lighting shall be provided by use of full cut off luminary fixtures or similar fixtures as approved by Virginia Power.
- c. The Applicant shall request a waiver of street light requirements along the off-site public street segment which will connect the Application Property via Knight Arch Road to Willowmeade Drive.

**9. TREE PRESERVATION**

- a. The Applicant shall submit a tree preservation plan as part of the first and all subsequent subdivision plan submissions in conformance with the tree save areas shown on the GDP. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and reviewed and approved by the Urban Forestry Division.
- b. The Applicant agrees to 1) root prune, 2) mulch, and 3) provide tree protection fencing along the limits of clearing and grading adjacent to the EQC/RPA area. All three treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets and demolition plan sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by the Urban Forestry Division, and may include, but not be limited to the following:
  - Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
  - Root pruning shall take place prior to any clearing and grading, or demolition of structures.
  - Root pruning shall be conducted with the supervision of a certified arborist.

- Tree protection fence shall be installed immediately after root pruning, and shall be positioned directly in the root-pruning trench and backfilled for stability, or just outside the trench within the disturbed area.
  - Immediately after the phase II E&S activities are complete, mulch shall be applied at a depth of 4 inches extending 10 feet inside the undisturbed area without the use of motorized equipment.
  - An Urban Forestry Division representative shall be informed when all root pruning and tree protection fence installation is complete.
- c. The Applicant shall retain the services of a certified arborist or landscape architect, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the pre-construction meeting. Before or during the pre-construction meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with an Urban Forestry Division representative to 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. Trees that are not likely to survive construction due to their species and/or their proximity to disturbance will 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 chain saw 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.
- d. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing using four foot high, 14-gauge welded wire attached to 6-foot steel posts driven 18 inches into the ground and placed no further than 10-feet apart, shall be erected at the limits of clearing and grading as shown on the GDP.
- All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing, except super silt fence, shall be performed under the supervision of a certified arborist. Three days prior to the commencement of any clearing, grading, or demolition activities, the Urban Forestry Division shall be notified and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed.
- e. The Applicant shall conform to the limits of clearing and grading as shown on the GDP subject to the installation of utilities and/or trails as determined necessary by the Director of DPWES. If it is determined necessary to install utilities and/or

trails outside the limits of clearing and grading as shown on the GDP, 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.

**10. CONSERVATION EASEMENT**

At the time of subdivision plan approval, the Applicant shall place a conservation easement on the northern portion of Lots 4 through 10 and other open space areas identified during the subdivision plan process, to satisfy required Best Management Practices (BMP) Standards as determined by DPWES. A conservation easement shall also be placed on the Tree Preservation Area within the rear yards of Lots 21 through 25 as shown on the GDP. Prospective purchasers of the homes and lots shall be advised in writing and within HOA documents of the conservation easement prior to settlement.

**11. HOUSING TRUST FUND**

At the time of subdivision plan approval, the Applicant shall contribute a sum equal to one-half of one percent (1/2 of 1%) of the projected sales price of new homes to be built on the site to the Fairfax County Housing Trust Fund, as determined by the Department of Housing and Community Development (and DPWES) in consultation with the Applicant to assist the County in its goal to provide affordable dwelling elsewhere in the County.

**12. HOMEOWNERS ASSOCIATION**

The Applicant shall establish a homeowners association for the proposed development to own, manage and maintain the open space areas and all other community owned land and improvements.

**13. SIGNS**

No temporary signs (including "Popsicle" style paper or cardboard signs), which are prohibited by Article 12 of the Zoning Ordinance or Chapter 7 of Title 33.1, or Chapter 8 of Title 46.2 of the Code of Virginia, 1950 as amended, 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 Application Property. The Applicant shall direct its agents and employees involved in marketing and/or home sales for the Application Property to adhere to this proffer.

**14. ENERGY EFFICIENCY**

All homes constructed on the Property shall meet the thermal standards of the CABO Model Energy Program for energy efficient homes, or its equivalent, as determined by DPWES, for either electric or gas energy systems.

**15. GARAGES**

A covenant shall be placed on each unit that prohibits the use of the garage for any use that prohibits the parking of vehicles. This covenant shall be recorded among the land records of Fairfax County prior to the sale of lots and shall run to the benefit of the HOA and to the Board. Prior to recordation, the covenant shall be approved by the Fairfax County Attorney's office. The HOA documents shall expressly state this use restriction.

**16. PUBLIC WATER**

If, prior to final bond release, the well serving 55-4 ((1)) Parcel 4 fails or is showing signs of failure, as determined by the Health Department, then the Applicant shall connect the house on Parcel 4 to the water lines serving the Application Property.

**17. DENSITY CREDIT.**

All intensity of use attributable to land areas dedicated and conveyed to the Board, FCPA, or any other County agency pursuant to these proffers shall be subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance and is hereby reserved to the residue of the Property out of which the dedication has occurred.

**18. AT&T EASEMENT**

The Applicant shall disclose to all prospective homeowners in a disclosure memorandum at time of contract execution and in the homeowners' association documents the location of the existing AT&T easement and the limitations on the individual properties, regarding the location of structures and landscaping located on the lot, directly affected by the easement.

**19. PHASE 1 ENVIRONMENTAL STUDY**

Prior to subdivision approval of the portion of Tax Map 55-4 ((1)) 2 containing the plant nursery, the Applicant shall submit a Phase 1 Environmental investigation of the property to DPWES for review and approval in coordination with all appropriate reviewing agencies. The investigation will be generally consistent with the procedures described by the American Society of Testing and Materials (ASTM). If warranted by the results of the Phase 1 investigation and if determined necessary by DPWES and the State Water Control Board, the applicant shall pursue a Phase II investigation and correction program. Subject to the findings of a Phase II program, if ground water, surface water and soil contaminants are found in sufficient quantities and at such levels to require a longer term monitoring program, a remedial action program and corrective action plan shall be performed in accordance with all applicable Federal, State and County requirements, prior to final plan approval.

**20. SCHOOL CONTRIBUTION**

At the time of 1st subdivision plan approval, the Applicant shall purchase and donate to Willow Springs Elementary School, four (4) teacher desktop computer stations, and four (4) student desktop computer stations. Applicant shall confirm the product specifications with the school's principal prior to purchase. If the computers are no longer required, a comparably priced in-kind donation may be substituted as mutually selected by the Applicant and the school's principal.

**21. SUCCESSORS AND ASSIGNS**

These proffers will bind and inure to the benefit of the Applicant and his or her successors and assigns.

**22. COUNTERPARTS**

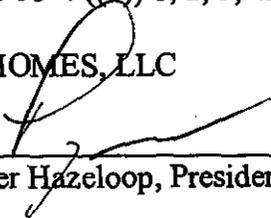
These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but one and the same instrument.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

PROFFERS  
RZ 2002-SP-004

APPLICANT/CONTRACT PURCHASER  
of Tax Map 55-4 ((1)) 1, 2, 3, 4A, 5, 6

EQUITY HOMES, LLC

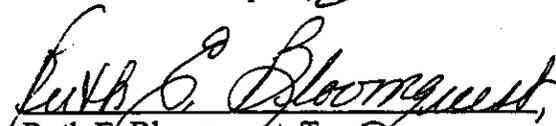
By:   
Peter Hazeloop, President

(SIGNATURES CONTINUE NEXT PAGE)

PROFFERS  
RZ 2002-SP-004

TITLE OWNERS OF  
Tax Map 55-4 ((1)) 1

  
Arthur L. Bloomquest, TRUSTEE  
Arthur L. Bloomquest, Trustee

  
Ruth E. Bloomquest, TRUSTEE  
Ruth E. Bloomquest, Trustee

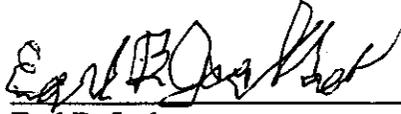
PROFFERS  
RZ 2002-SP-004

TITLE OWNER OF  
Tax Map 55-4 ((1)) 5

Harry W. Mulford, Trustee  
Harry W. Mulford

PROFFERS  
RZ 2002-SP-004

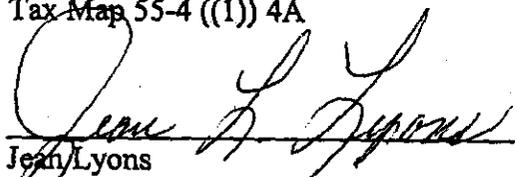
TITLE OWNER OF  
Tax Map 55-4 ((1)) 4A

A handwritten signature in black ink, appearing to read "Earl B. Jackson", written over a horizontal line.

Earl B. Jackson

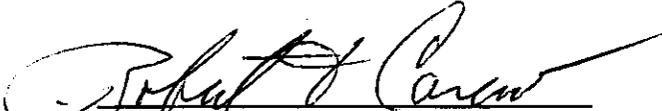
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TITLE OWNER OF  
Tax Map 55-4 ((1)) 4A

  
\_\_\_\_\_  
Jean Lyons

PROFFERS  
RZ 2002-SP-004

TITLE OWNER OF  
Tax Map 55-4 ((1)) 6



Robert T. Carew

PROFFERS  
RZ 2002-SP-004

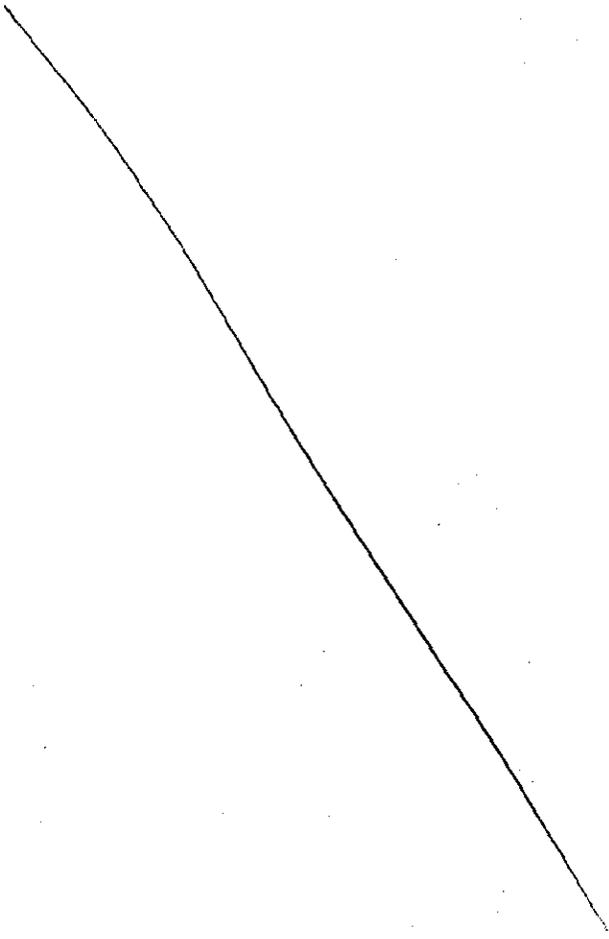
TITLE OWNERS OF  
Tax Map 55-4 ((1)) 1

*Rosella V. Curilla*

Rosella V. Curilla

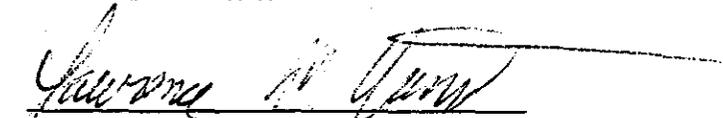
*John G. Curilla*

John G. Curilla



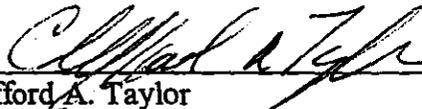
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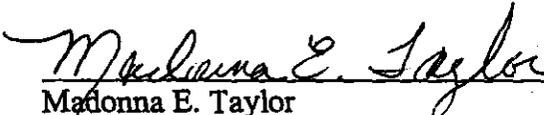
TITLE OWNER OF  
Tax Map 55-4 ((1)) 3

  
Lawrence M. Aanstoos

PROFFERS  
RZ 2002-SP-004

TITLE OWNERS OF  
Tax Map 55-4 ((1)) 2

  
Clifford A. Taylor

  
Madonna E. Taylor