

RZ 2002-HM-009
December 11, 2002

Pursuant to Section 15.2-2303(A), Code of Virginia, 1950 as amended, the undersigned, as the applicant in the above-referenced Rezoning Application, Bradford White & Associates, LC, and the owners of the Property, (hereinafter referred to as Applicant) which is the subject matter thereof, being approximately 7.6996 acres identified as Tax Map 35-2((1))6 and 7 (hereinafter referred to as the Property), hereby proffer for themselves and their successors and assigns that the development of the Property will be subject to the following terms and conditions provided that the Board of Supervisors (BOS) approves the rezoning application from the R-1 Zoning District to the PDH-2 Zoning District.

1. Substantial Conformity. Pursuant to Para. 4 of Sect. 16-403, the Property shall be developed in substantial conformance with the Conceptual/Final Development Plan (CDP/FDP) dated October 5, 2001, revised through December 3, 2002, prepared by *Suburban Development Engineering, Inc.* Pursuant to Para. 4 of Sect. 16-403 of the Zoning Ordinance, minor modifications from the approved 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 provided such changes are in substantial conformance with the CDP/FDP and proffers, and do not increase the total number of units, impact access points or decrease the minimum amount of open space and buffer area.

2. Landscaping and Design Amenities. A landscape plan shall be submitted at the time of submission of the subdivision plan for review and approval by the Urban Forester. Landscaping shall be shown on the plan and provided along West Ox Road to create a four-season buffer to the homes on the subject property from West Ox Road. Said landscape plan shall provide tree coverage and species diversity consistent with the Public Facilities Manual criteria, as determined by the Urban Forester. Actual types and species of vegetation shall be determined pursuant to the landscape plan as approved. Notwithstanding the species of plantings shown on the CDP/FDP, the species of trees and the exact location of the plantings shall be as approved by the Urban Forester. The landscape plantings between the individual proposed subdivision lots shall be deciduous tree variety and shall be planted on the individual lots in such a way so as to provide most of the drip line for the trees on the individual lot where planted. The trees shall be interspersed between the lots instead of in a row as shown on the CDP/FDP.

3. Building Design and Building Materials. The proposed dwellings shall be compatible and similar in design, square footage and materials to each other

and to the homes in the Oak Farms subdivision. The dwellings will be two-story single family detached residences and the exterior of the structures will be brick on the fronts of all units. See Attachment A for an illustrative view of the type home which will be constructed. Notwithstanding the note on the CDP/FDP, the existing dwellings on Tax Map 35-2((1)) 6 and 7 may be moved to a proposed lot within the subdivision if deemed feasible by the applicant. This option will only occur if it can be demonstrated to the satisfaction of DPWES that setbacks and footprints as established on the CDP/FDP will not be exceeded.

4. Stormwater Management. Stormwater management/Best Management Practices shall be provided as determined necessary by DPWES. Unless modified by DPWES, the Applicant shall provide a storm water management facility in accordance with the Public Facilities Manual regulations. Said facility shall be provided as generally shown on the CDP/FDP, but notwithstanding any reference on the CDP/FDP, will not be a rain garden. Any on-site storm water management facilities shall be landscaped to the maximum extent feasible, in coordination with the Urban Forestry Division, pursuant to the policy adopted by the Board of Supervisors, using native species. In the event that the requirement for an on-site stormwater management facility is waived, the area shown as a stormwater management facility will become part of the open space for the subdivision as shown on the CDP/FDP. In order to ensure no additional post-development water flows off the subject property onto the adjacent subdivision properties, the applicant shall comply with Public Facilities Manual requirements, which may include berming, along the property lines adjoining Lots on Tax Map 25-4((20))Lots 14 and 48 and 35-2((19))13, 49, and 50 as determined by the Dept. of Public Works & Environmental Services (DPWES) and depending upon final engineering of the site. If berming is not provided due to engineering constrictions, then inlets or other mechanisms shall be provided, as determined by DPWES to ensure that any additional post-development water flowing off the crest of the slope toward these lots will be directed toward the stormwater management facility.
5. Maximum Density. The maximum density for the subdivision shall be 1.69 dwelling units per acre, or 13 lots.
6. Height Limitation. The proposed dwellings will have a maximum height of thirty-five (35) feet.
7. Garages. The Applicant shall place a covenant on each lot that prohibits the use of the garage for any purpose which precludes motor vehicle storage. 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. There shall be a minimum driveway length for each dwelling of nineteen (19) feet.

8. Open Space. At the time of recordation of the subdivision plan, the Applicant shall convey all open space parcels and all open space areas outside private lot lines to the Homeowner's Association for ownership and maintenance. The HOA documents shall expressly state that the HOA shall be responsible for the maintenance of the open space serving the development.

The Homeowner's Association covenants shall require that no structures or fences shall be erected in HOA open space or tree save areas, except for the noise attenuation fence, and that trees in HOA open space areas and tree save areas will not be disturbed except for (i) the removal of diseased, dead, dying, or hazardous trees or parts thereof; and/or (ii) selective maintenance to remove noxious and poisonous weeds.

9. Ingress/Egress. Ingress/egress for the subdivision shall be via Netherleigh Place and Amber Oak Court.

10. Tree Preservation: The applicant shall submit a tree preservation plan as part of the first and all subsequent subdivision plan submissions. 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.

As part of the tree preservation plan, the existing trees within five (5) feet to either side of the lot line between existing Lot 6 and existing Lot 7 (Tax Map 35_2((1)) north of proposed Netherleigh Place shall be preserved as determined by the Urban Forestry Division. In addition, the clump of trees located near the existing shed shown on Proposed Lot 3 shall be preserved. Notwithstanding that shown on the CDP/FDP, trees within a 15 foot wide area along the northern lot line of existing Lots 6 and 7 and the western lot line of existing Lot 6 (Tax Map 35-2((1))), shall be preserved and supplemented with a mix of native plant material to provide an effective visual buffer as determined by the Urban Forestry Division between the lots in the subject subdivision and the lots in the adjacent subdivision. This 15 foot area may be expanded to preserve additional trees or to accommodate plantings, where determined feasible by the County Urban Forestry Division in conjunction with the developers Project Arborist. The preservation described above shall not preclude the construction of the homes on the affected lots but may necessitate the shifting of the homes and/or lot lines on the Proposed Lots 7 and 8 and

1,2,3 and 4. If the Urban Forestry Division determines that there are other trees on the proposed lots or in the stormwater management facility, which are worthy of saving, those trees shall be transplanted to other areas of the site where the likelihood of survival exists, provided the trees to be transplanted are no greater than six (6) inches in diameter.. On the western portion of proposed Outlot A, the stand of 7 or 8 trees shall be preserved provided their location does not interfere with the stormwater management facility and if determined worthy of preservation by the Urban Forestry Division. On Outlot B, the trees shall be preserved, as determined by the Urban Forestry Division.

Subject to final engineering as determined by DPWES, if the stormwater management area can be shifted to the east, lot lines for Proposed Lots 7 and 8 along the southern boundary of West Ox Road can be shifted in kind to facilitate preserving the maximum number of trees possible along the western lot line of existing Lot 6 (Tax Map 35-2((1)).

The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees 10" or greater in diameter, ten feet to either side of the limits of clearing and grading shown on the CDP/FDP for the application property. The tree survey shall also include areas of clearing and grading not shown on the CDP/FDP resulting from engineering requirements, such as off-site clearing and grading for utilities or stormwater outfall. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture. Specific tree preservation activities that will maximize the survivability of trees identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, may be included in the plan.

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.

All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fencing. Tree protection fencing as specified on the tree preservation plan shall be erected at the limits of clearing and grading line. 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.

11. Construction Access and Parking. Subject to the approval from the Virginia Department of Transportation access to the Property by construction vehicles and workers shall be from West Ox Road. The Applicant shall include a provision in its agreement with contractors and specialty trades working on the Property that such contractors shall not use any street in the adjacent residential subdivision as construction access to the property. In addition, the Applicant will provide on-site parking for construction workers and their vehicles. Barriers shall be utilized at the existing terminus of Netherleigh Place and of Amber Oaks Court and shall remain in place until the Residential Use Permit for the first dwelling is issued.
12. Demolition of Existing Houses. If the existing houses are to be removed instead of retained and moved onto a lot within the subdivision, they shall be removed prior to the issuance of any Residential Use Permit for any new home on Lots 2 through 5, 10 or 11. The accessory buildings, (barn/garage, shed/chicken coop, pool) shall be removed prior to the issuance of any Residential Use Permit for any new home on Lots 2 through 5, 10 or 11.
13. Right of Way Dedication. Fifty-six (56) feet of right-of-way along the West Ox Road frontage of the site as shown on the CDP/FDP, shall be dedicated and conveyed in fee simple to the Board of Supervisors upon demand by the Virginia Department of Transportation (VDOT) or Fairfax County at the time of subdivision approval whichever occurs first. Ancillary construction easements, ten (10) feet in width shall be provided along the dedicated right-of-way of West Ox Road. Right-of-way for the internal streets shall be as shown on the CDP/FDP and shall be dedicated in fee simple to the Board of Supervisors upon demand by the Virginia

Department of Transportation (VDOT) or Fairfax County at the time of subdivision plan approval, whichever comes first.

14. **Trail.** Notwithstanding the note on the CDP/FDP, the Applicant shall, at the time of subdivision plan approval, escrow an amount not to exceed two thousand dollars (\$2,000.00) for the future construction (by others) of an bicycle trail as recommended by the Comprehensive Plan, either on the adjacent Columbia Transcontinental Pipeline, 35-2((1))30, or a trail in the immediate area.

15. **Recreation Facilities:** A diligent effort shall be made to join this property with the adjacent Oak Farms subdivision. If Oak Farms accepts this property as part of its homeowners association, then prior to subdivision plan approval, a contribution of \$955.00 per unit shall be made to the Oak Farms Homeowners Association for specific recreational amenities within that subdivision. Prior to the time of subdivision approval, if the Oak Farms subdivision accepts this subdivision into its Homeowners Association and designates a specific recreational improvement that is desired by that subdivision in a designated location, then the developer may choose to construct the recreational amenity instead of making the above contribution provided the total cost of developing the amenity equals or exceeds \$955.00 per unit. If this does not occur, a Homeowners Association shall be formed for this subdivision and a contribution of \$955.00 per unit shall be made to the Fairfax County Park Authority for the purpose of contributing to enhancements or improvements to public parks or the contribution to funds to acquire additional park land in the general vicinity of the Property.

16. **Hours of Operation for Construction of Subdivision:** During the initial development of the property, no outdoor work shall be conducted on the Property before 7:00 a.m. or after 7:00 p.m. weekdays, before 8:00 a.m. or after 6:00 p.m. on Saturday, and before 10:00 a.m. or after 6:00 p.m. on Sundays.

17. **Signs:** No temporary signs (included "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. Furthermore, the developer shall direct its agents and employees involved in marketing and/or home sales for the property to adhere to this Proffer.

18. **Noise:**
 - A. In order to reduce interior noise to a level of approximately DNL 45 dBA, units within a highway noise impact zone of DNL 65 dBA

at 171 feet from the centerline of West Ox Road shall employ the following acoustical treatment measures:

- i. Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.
 - ii. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20 percent of any facade exposed to noise levels of DNL 65 dBA or above. If glazing constitutes more than 20 percent of an exposed facade, then the glazing shall have an STC rating of at least 39.
 - iii. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society of Testing and Materials (ASTM) to minimize sound transmission.
 - iv. Units affected by this requirement shall be annotated on the subdivision plan.
- B. In order to reduce exterior noise levels below DNL 65 dBA, noise attenuation structures such as acoustical fencing, walls, earthen-berms, or combination thereof shall be provided for unscreened common and private outdoor recreational areas. If acoustical fencing or walls are used, they shall be architecturally solid from the ground up with no gaps or openings. The applicant shall submit a noise study, to include recommended detail and location of mitigation measures at the time of subdivision plan review. If it is determined that a six (6) foot high fence on berm is necessary such will be provided and will match that which exists for the Oak Farms subdivision. If it is determined that a fence of a lesser height will mitigate the exterior noise levels to the satisfaction of DPWES, such will be provided.
- C. Notwithstanding the above, prior to the issuance of any building permits, the Applicant may elect to have a refined acoustical analysis performed subject to the approval by DPWES, in coordination with DPWES to verify or amend the noise levels and impact areas as set forth above, and/or to determine which units may have sufficient shielding to permit a reduction in the mitigation measures prescribed above or which may include alternative measures to mitigate noise impact on the side.
19. Housing Trust. The Applicant shall, at the time of final subdivision plan approval, contribute one (1%) percent 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 projected sales price shall be determined by the applicant in consultation with the staff of the Fairfax County Department of Housing and Community Development and Dept. of Environmental Management & Environmental Services. The timing and amount of such contribution may be modified at the Applicant's sole

discretion based on the adoption of a future amendment to the formula adopted by the Board of Supervisors.

20. 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 gas or electric energy systems.
21. Drainage Project. The Applicant shall, at the time of subdivision plan approval, contribute twelve thousand dollars (\$12,000.00) to Fairfax County for improvement of drainage under West Ox Road for the Horsepen Creek Project #462.
22. Covenants: If this property is not joined with Oak Farms Homeowners Association, the applicant shall include in the covenants for the development to be recorded among the land records of Fairfax County, to the benefit of the Homeowners Association and the Board of Supervisors, a restriction which runs with the land for the lots along the northern and western boundaries of the subdivision, Lots 1 through 7 and 13, which prohibits the removal of any trees and shrubs along the property for a minimum width of 15 feet. Based upon final engineering, an additional distance may be provided, to protect the drip line of the preserved and supplemental plants in that 15 foot area. Removal of dead, dying or poisonous trees or shrubs as determined by a certified Arborist will be permitted.
23. The side yard for the dwelling on Proposed Lot 1 along the western lot line shall be a minimum of 35 feet from Tax Map 35-2((19))Lot 13, and Tax Map 25-4((20))14. The rear yards of the dwellings on all lots along the northern lot lines (Proposed Lots 1 through 5) shall be a minimum of twenty-five feet. The dwelling on Proposed Lot 6 shall be a minimum of 40 feet from the northern property boundary of Tax Map 35-2((19))Lots 51 and 52. The side yard of the dwelling on Proposed Lot 7 shall be a minimum of 30 feet from the lot line of Tax Map 35-2((19))1 and 2. The side yard of Proposed Lot 13 shall be a minimum of 15 feet from Tax Map 35-2((20))Lot 55.

**TITLE OWNERS AND CONTRACT PURCHASER SIGNATURES TO FOLLOW
ON NEXT PAGE**

CONTRACT PURCHASER:

Bradford White & Associates, LC

By:

Title:

Matthew D. White
President

TITLE OWNERS of Tax Map 35-2((1))6:

William C. Ruff
William C. Ruff

Carol S. Ruff
Carol S. Ruff

TITLE OWNERS of Tax Map 35-2((1))7:

Lawrence H. Damico, Trustee
Lawrence H. Damico, Trustee

Linda K. Damico, Trustee
Linda K. Damico, Trustee