

PROFFERS
EVERGREENE COMPANIES, LLC
RZ/FDP 2013-BR-003

August 28, 2013

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 – 069-1-((01))-0039B, 0039C, 0040A, and 0040B (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 by the Board of Supervisors of Fairfax County, Virginia (the "Board"). In the event said application request is denied or the Board’s approval is overturned by a court of competent jurisdiction, 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agree that these proffers shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board, in accordance with applicable County and State statutory procedures. The proffered conditions are:

General

1. Conceptual/ Final Development Plan. The Property shall be developed in substantial conformance with the Conceptual Development Plan ("CDP ") and Final Development Plan ("FDP ") entitled “Penn Property”, prepared by Land Design Consultants dated October, 2012 and revised through June 24, 2013, consisting of ten (10) sheets.

2. Elements of CDP. Notwithstanding the fact that the CDP and FDP are presented on the same plan, it shall be understood that the CDP shall be only those elements of the plans that depict the number and the general location of points of access, peripheral setbacks, limits of clearing and grading, building heights, the total number, type, uses and the general location of buildings and roads (the “CDP Elements”). The Applicant reserves the right to request a Final Development Plan Amendment (FDPA) for elements other than CDP Elements from the Planning Commission for all or a portion of the FDP in

accordance with Section 16-402 of the Zoning Ordinance if such an amendment is in accordance with these Proffers as determined by the Zoning Administrator.

3. Minor Modifications. Minor modifications from what is shown on the CDP/FDP and these Proffers, which may become occasioned as a part of final architectural and engineering design, may be permitted as determined by the Zoning Administrator in accordance with the provisions set forth in Section 16-403 of the Zoning Ordinance.
4. Lot Yield and Uses. The development shall consist of a maximum of ten (10) single-family detached units.
5. Architecture. The architectural design of the dwellings shall be in substantial conformance with the bulk, mass, proportion and type and quality of materials and elevations shown on the illustrative examples included in the CDP/FDP. The primary building material exclusive of trim shall be limited to brick, stone, cementitious siding (HardiePlank®), shingles or other similar masonry materials. Minor modifications may be made with the final architectural designs provided such modifications are in substantial conformance with the CDP/FDP.
6. Establishment of HOA. Prior to record plat approval, the Applicant shall establish a Homeowners Association (HOA) in accordance with Sect. 2-700 of the Zoning Ordinance for the purpose of, among other things, establishing the necessary residential covenants governing the use and operation of common open space and other facilities of the approved development, maintenance of SWM/BMP facilities, and to provide a mechanism for ensuring the ability to complete the maintenance obligations and other provisions noted in these proffer conditions, including an estimated budget for such common maintenance items.

The HOA declaration shall list tax map parcels 69-1-((01))-29, 31A, and 31B as potential additional property that may become part of the HOA. However, this provision shall not

obligate the HOA or future homeowners to include all or part of those properties in the HOA.

7. Dedication to HOA. At the time of record plat recordation, open space, common areas, private roadways, and amenities not otherwise conveyed or dedicated to the County shall be dedicated to the HOA and be maintained by the same.
8. Disclosure. Prior to entering into a contract of sale, initial and subsequent purchasers shall be notified in writing by the Applicants of maintenance responsibility for the stormwater management facilities, common area landscaping, tree preservation areas, and any other open space amenities and of the possible extension of Banting Drive to serve as an interparcel access and shall acknowledge receipt of this information in writing. The initial deeds of conveyance and HOA governing documents shall expressly contain these disclosures.
9. Garage Conversion. Any conversion of garages or use of garages that precludes the parking of vehicles within the garage is prohibited. A covenant setting forth this restriction shall 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 the HOA and the Board of Supervisors. This restriction shall also be disclosed in the HOA documents. Prospective purchasers shall be advised of this use restriction, in writing, prior to entering into a contract of sale.
10. Driveways. All driveways shall be a minimum of twenty feet (20') in length as measured outward from the face of the garage door to the face of curb.
11. Decks and Similar Appurtenances. Bay windows, patios, chimneys, areaways, stairs and stoops, mechanical equipment and other similar appurtenances may encroach into minimum yards as depicted on the "lot typical" as shown on the CDP/FDP and as permitted by Section 2-412 and Article 10 of the Zoning Ordinance. Decks, porches (including screened in porches) or sunrooms may be permitted in the rear yard in the area

identified as “Deck, Addition or Accessory Feature Area” on the lot typical included on Sheet 1 of the CDP/FDP. Deck modifications including but not limited to lattice work, pergolas, trelliss, and overhang planter boxes may also be constructed within this area. The restrictions and limitations of this proffer shall be disclosed to purchasers prior to contract ratification and further disclosed in the homeowners association documents.

Transportation

12. **Extension of Banting Drive.** The Applicant shall dedicate and convey in fee simple to the Board right-of-way for public street purposes in the general location shown on Sheet 2 of the CDP/FDP as “BANTING DRIVE EXTENDED 50’ R/W”. Subject to VDOT approval, the Applicant shall construct a public road in the dedicated right-of-way. Construction of the Banting Drive extension shall be substantially completed prior to issuance of the first Residential Use Permit (RUP) for the Property. For purposes of this proffer, the term “substantially completed” is defined as constructed and available for use by the public but not necessarily accepted for maintenance by the Virginia Department of Transportation (VDOT).

13. **Future Interparcel Access.** In the event the property to the north (Tax Maps 69-1 ((1))-31B, hereinafter the “Adjacent Property”) is subdivided, rezoned, or otherwise developed, the Applicant (or successor HOA) shall permit an extension of Banting Drive in the location shown on Sheet 2 of the CDP/FDP as “ROW DEDICATION FOR FUTURE BANTING DRIVE EXTENSION” (the “Future Road Extension Area”). However, extension of Banting Drive shall be contingent upon removal of the Adjacent Property’s vehicular access to Braddock Road. If development of the Adjacent Property includes a public street, then upon demand by the Board the Applicant (or successor HOA) shall dedicate and convey in fee simple, and for no additional consideration, to the Board right-of-way for public street purposes in the general location of the Future Road Extension Area. However, the owner of the Adjacent Property, and not the Applicant, shall be responsible for vacating or relocating the existing 30’ outlet road easement shown on Sheet 3 of the CDP/FDP. The Applicant (or successor HOA) shall consent to the vacation and relocation of the existing 30’ outlet road easement. If a private street is

proposed on the Adjacent Property, then the Applicant (or successor HOA) shall grant all easements necessary for inter-parcel access to the Adjacent Property. Whether a public or private street extension is proposed, the Applicant (or successor HOA) shall not be responsible for construction of the street extension, shall have no maintenance obligations for the same, and shall not be responsible for any costs associated with the maintenance of the extension. Prior to site plan approval, the Applicant shall escrow funds equivalent to that required for construction of the Banting Drive extension and removal of the hammerhead based on Fairfax County's Unit Price Schedule then in effect.

Construction

14. **Construction Access and Hours.** The staging and parking of construction vehicles shall occur on the Property, including personal vehicles utilized by construction workers. No parking shall occur on adjacent roadways. The hours of construction shall be posted in English and in Spanish and shall be limited to the hours between 7:00 a.m. and 9:00 p.m. Monday through Friday and 8:00 a.m. to 9:00 p.m. on Saturdays. No construction shall occur on Sundays or Federal Holidays.

Environment

15. **Stormwater Management Facilities and Best Management Practices.**
 - A. The Applicant shall implement stormwater management techniques to control the quantity and quality of stormwater runoff from the Property in accordance with the Fairfax County Public Facilities Manual as reviewed and approved by DPWES. The stormwater management techniques may include but are not limited to the following: rain gardens, filtera systems, infiltration ditches, bay filters, storm tech chamber and drainage swales. Stormwater management facilities/Best Management Practices ("BMPs") shall be provided as generally depicted on the CDP/FDP. The Applicant reserves the right to pursue additional or alternative stormwater management measures provided the same are in substantial conformance with the CDP/FDP.

- B. Should the U.S. Environmental Protection Agency, the Commonwealth of Virginia, Fairfax County, or their designee, issue new or additional stormwater management requirements or regulations affecting the Property, the Applicant shall have the right to accommodate necessary changes to its stormwater management designs without the requirement to amend the CDP/FDP or these proffers or gain approval of an administrative modifications to the CDP/FDP or proffers. Such changes to the stormwater management designs shall not materially impact the limits of clearing and grading, building locations, or road layouts.
16. BMP Maintenance. After establishing the HOA pursuant to these proffers, the Applicant shall provide the HOA with written materials describing proper maintenance of the approved BMPs in accordance with the PFM and County guidelines.
17. Energy Conservation. To promote energy conservation and green building techniques; the Applicant shall select one of the following programs, within its sole discretion at time of site plan submission.
- A. Certification in accordance with the Earthcraft House Program as demonstrated through documentation provided to DPWES and DPZ prior to the issuance of a RUP; or
 - B. Certification in accordance with the 2012 National Green Building Standard (NGBS) using the ENERGY STAR® Qualified Homes path for energy performance, as demonstrated through documentation submitted to DPWES and the Environment and Development Review Branch of DPZ from a home energy rater certified through Home Innovation Research Labs that demonstrates that the dwelling unit has attained the certification prior to the issuance of the RUP for each dwelling unit/building.

- C. Qualification in accordance with ENERGY STAR[®] for Homes as determined by the submission of documentation to the Environment and Development Review Branch of the Department of Planning and Zoning from a home energy rater certified through the Residential Energy Services Network (RESNET) program that demonstrates that the dwelling unit has attained the ENERGY STAR[®] for Homes qualification prior to the issuance of the RUP for each dwelling; or
18. Landscaping. At the time of site plan review, the Applicant shall submit to DPWES a landscape plan showing landscaping consistent with the quality, quantity and general location shown on the Landscape Plan on the CDP/FDP. This plan shall be subject to review and approval of Urban Forestry Management, DPWES. At the time of planting, the minimum caliper for deciduous trees shall be two and one-half (2.5) inches to three (3) inches and the minimum height for evergreen trees shall be six (6) feet. Actual types and species of vegetation shall be determined pursuant to more detailed landscape plans approved by Urban Forest Management at the time of site plan approval. However, all plant material installed on the Property shall be non-invasive

Tree Preservation

19. Tree Preservation. The applicant shall submit a Tree Preservation Plan and Narrative as part of the first and all subsequent site plan submissions. The preservation plan and narrative shall be prepared by a Certified Arborist or a Registered Consulting Arborist, and shall be subject to the review and approval of the Urban Forest Management Division, DPWES. The tree preservation plan shall include a tree inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees located within the tree save area living or dead with trunks 8 inches in diameter and greater (measured at 4 ½ -feet from the base of the trunk or as otherwise allowed in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture) and 25 feet outside of the proposed limits of clearing and grading. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of disturbance shown on the CDP/FDP and those additional areas in which trees can be

preserved as a result of final engineering. The tree preservation plan and narrative shall include all items specified in PFM 12-0507 and 12-0509. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

20. Tree Appraisal. The Applicant shall retain a professional arborist with experience in plant appraisal, to determine the replacement value of all trees 8 inches in diameter or greater located on the Property that are shown to be saved on the Tree Preservation Plan. These trees and their value shall be identified on the Tree Preservation Plan at the time of the first submission of the respective site plan(s). The replacement value shall take into consideration the age, size and condition of these trees and shall be determined by the so-called “Trunk Formula Method” contained in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture, subject to review and approval by UFMD.

At the time of the respective site plan approvals, the Applicant shall post a bond, letter of credit, or cash payable to the County of Fairfax to ensure preservation and/or replacement of the trees for which a tree value has been determined in accordance with the paragraph above (the “Bonded Trees”) that die or are dying due to unauthorized construction activities. The letter of credit or cash deposit shall be equal to 25% of the replacement value of the Bonded Trees. At any time prior to final bond release for the improvements on the Property constructed adjacent to the respective tree save areas, should any Bonded Trees die, be removed, or are determined to be dying by UFMD due to unauthorized construction activities, the Applicant shall replace such trees at its expense. The replacement trees shall be of equivalent size, species and/or canopy cover as approved by UFMD. In addition to this replacement obligation, the Applicant shall also make a payment equal to the value of any Bonded Tree that is dead or dying or improperly removed due to unauthorized construction activity. This payment shall be determined based on the Trunk Formula Method and paid to a fund established by the County for furtherance of tree preservation objectives. Upon release of the bond for the

improvements on the Property constructed adjacent to the respective tree save areas, any amount remaining in the tree bonds required by this proffer shall be returned/released to the Applicant.

21. Tree Preservation Walk-Through. The applicant shall retain the services of a Certified Arborist or Registered Consulting Arborist, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the walk-through meeting. During the tree preservation walk-through meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing a grading with an UFMD, DPWES, representative to determine where adjustments to the clearing limits can be made to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and/or where alternative preservation efforts that remove certain trees from the limits of clearing and grading are more effective, and such adjustment shall be implemented.

Trees that are identified as dead or dying may be removed as part of the clearing operation. Any tree that is so designated shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. 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 adjacent trees and associated understory vegetation and soil conditions.

22. Limits of Clearing and Grading. The Applicant shall conform strictly to the limits of clearing and grading as shown on the CDP/FDP, as modified during the tree preservation walk-through, subject to allowances specified in these development conditions and for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. If it is determined necessary to install utilities and/or trails in areas protected by the limits of clearing and grading as shown on the CDP/FDP, they shall be located in the least disruptive manner necessary as determined by the UFMD, DPWES. A replanting plan shall be developed and implemented, subject to approval by

the UFMD, DPWES, for any area protected by the limits of clearing and grading that must be disturbed for such utilities.

23. Tree Preservation Fencing. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading as shown on the demolition, and Phase I & II erosion and sediment control sheets, as may be modified by the “Root Pruning” proffer below.

All tree protection fencing shall be installed after the tree preservation walk through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by UFMD, DPWES.

24. Root Pruning. The Applicant shall root prune as needed to comply with the tree preservation requirements of these proffered conditions. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by the UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

- a. Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
 - b. Root pruning shall take place prior to any clearing and grading, or demolition of structures.
 - c. Root pruning shall be conducted with the supervision of a certified arborist.
 - d. An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.
25. **Monitoring.** During any clearing or tree/vegetation/structure removal on the Property, a representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted as proffered and as approved by the UFMD. The Applicant shall retain the services of a certified arborist or Registered Consulting Arborist to monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with all tree preservation proffer, development conditions, and UFMD approvals. The monitoring schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by the UFMD, DPWES.
26. **Demolition of Existing Structures.** The demolition of all existing features and structures within areas protected by the limits of clearing and grading areas shown on the CDP shall be done by hand without heavy equipment and conducted in a manner that does not impact individual trees and/or groups of trees that are to be preserved as reviewed and approved by the UFMD, DPWES.

Recreation

27. **Parks and Recreation.** Pursuant to Section 6-110 of the Zoning Ordinance, the Applicant shall provide on-site recreational facilities to serve the Property. Recreational facilities such as recreational trails, walking paths (excluding any trails required by the Comprehensive Plan), playgrounds, pavilions, benches, the interpretive sign proposed in Proffer 29, and similar features may be used to fulfill this requirement. At the time of subdivision plan review, the Applicant shall demonstrate that the value of any proposed recreational amenities is equivalent to a minimum of \$1,700 per dwelling unit. In the

event it is demonstrated that the proposed facilities do not have sufficient value, the Applicant shall contribute funds in the amount needed to achieve the overall proffered amount of \$17,000.00 to the Fairfax County Park Authority ("FCPA") for off-site recreational facilities intended to serve the future residents, as determined by the Supervisor for the Braddock District in consultation with FCPA.

28. Off-Site Recreation. The Applicant shall contribute \$19,646.00 to the Fairfax County Board of Supervisors upon issuance of the first RUP. Up to \$19,646.00 of the contribution may be used for improvements to the existing Briarwood Homes Association tot lot on Fairfax County tax map number 069-1-((09))-A, which improvements may include repairs, upgrades, and additions to the existing equipment, provision of sitting areas and benches, landscaping, drainage and erosion control measures, and other amenities proposed by the Briarwood Homes Association in consultation with the Supervisor for the Braddock District and the Applicant. The use of funds prescribed in the preceding sentence shall be contingent upon execution of a binding agreement between the Briarwood Homes Association and the Applicant that permits Property residents to use the tot lot. Any portion of the contribution not utilized in the preceding manner shall be used for off-site recreational facilities in the Braddock District intended to serve the future residents, as determined by FCPA in consultation with the Supervisor for the Braddock District and the Briarwood Homes Association.
29. Interpretive Sign. Prior to issuance of the first RUP, the applicant shall install an interpretive sign adjacent to the proposed rain garden. The sign shall include a description of the rain garden.
30. Public Access Easements. At the time of subdivision recordation public access easements shall be conveyed to the County over all on-site sidewalks and trails shown on the CDP/FDP.

Miscellaneous

31. Universal Design. At the time of initial purchase, the following Universal Design options shall be offered to each purchaser at no additional cost: clear knee space under sink in kitchen, lever door handles instead of knobs, light switches 44"-48" high, thermostats a maximum of 48" high, and/or electrical outlets a minimum of 18" high.
32. Photographic Documentation of the Existing Property. Prior to any land disturbing activities on the Property, the Applicant shall photographically document the interior and exterior of the existing structures, including but not limited to documentation of landscape features, a sketch plan of the site showing existing features and structures, interior floorplans, and a plan showing the number and angle of photographic views. At minimum such documentation shall include views of each façade, perspective views, exterior detail views (such as the main entrance, stairs, porches, and other character defining features), interior detail views (such as moldings, newel posts, stairways and other character defining features) and general streetscape views. Any photographs or other documentation shall be submitted to the Fairfax County Park Authority's Resource Management Division, Cultural Resource Management and Protection Branch.
33. School Contribution. Prior to the issuance of the first RUP, a contribution of \$41,951 for the ten (10) new dwelling units to be built on the Property shall be made to the public schools serving the Property. Said contribution shall be deposited with DPWES for transfer to the Fairfax County School Board. Notification shall be given to FCPS when construction is anticipated to commence to assist FCPS by allowing for the timely projection of future students as a part of the Capital Improvement Program.
34. Affordable Dwelling Units. Prior to the issuance of the first building permit, the Applicant shall contribute to the Fairfax County Housing Trust Fund the sum equal to one half of one percent (1/2 %) of the value of all the units approved on the property. The one half of one percent (1/2 %) contribution shall be based on the aggregate sales price of all of the units subject to the contribution, as if those units were sold at the time of the issuance of the first building permit. The projected sales price shall be determined by the Applicant through an evaluation of the sales prices of comparable units in the area,

in consultation with the Fairfax County Department of Housing and Community Development (HCD) and DPWES.

35. Escalation. All monetary contributions required by these proffers shall escalate on a yearly basis from the base year of 2013, and change effective each January 1 thereafter, based on the Consumer Price Index as published by the Bureau of Labor Statistics, the U.S. Department of Labor for the Washington-Baltimore, MD-VA-DC-WV Consolidated Metropolitan Statistical Area (the “CPI), as permitted by Virginia State Code Section 15.2-2303.3.

36. Successors and Assigns. Each reference to “Applicant” in this Proffer Statement shall include within its meaning, and shall be binding upon, Applicant’s successor(s) in interest, assigns, and/or developer(s) of the Property or any portion of the Property.

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

Arthur Courtney Penn, Jr.

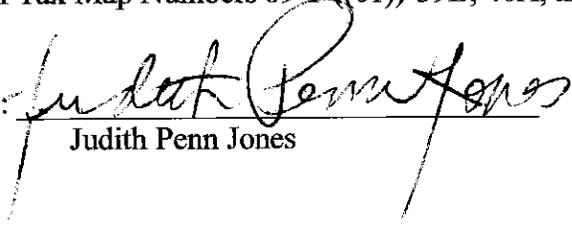
(Owner of Tax Map Numbers 69-1-((01))-39B, 39C, 40A,
and 40B)

Signature: Arthur Courtney Penn Jr.
Arthur Courtney Penn, Jr.

Judith Penn Jones

(Owner of Tax Map Numbers 69-1-((01))-39B, 40A, and 40B)

Signature:

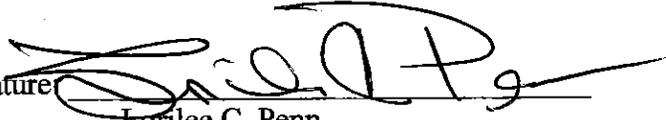
A handwritten signature in cursive script that reads "Judith Penn Jones". The signature is written in black ink and is positioned above a horizontal line.

Judith Penn Jones

Lorilee C. Penn

(Owner of Tax Map Numbers 69-1-((01))-39C, 40A, and 40B)

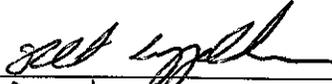
Signature

A handwritten signature in black ink, appearing to read 'Lorilee C. Penn', written over a horizontal line. The signature is stylized with a large initial 'L' and a long horizontal stroke at the end.

Lorilee C. Penn

The Evergreene Companies, LLC

(Applicant/Contract Purchaser of Tax Map Numbers 69-1-
((01))-39B, 39C, 40A, and 40B)

By: 
Name: Robert Cappellini
Title: President

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