

PROFFERS

JCE, Inc.

RZ 2004-LE-026

April 22, 2005

Pursuant to Section 15.2-2303(a) Code of Virginia, 1950, as amended, the owners and JCE, Inc., (hereinafter referred to as the "Applicant"), for themselves, their successors and assigns in RZ 2004-LE-026, filed for property identified as Tax Map 82-2 ((1)) 37 (hereinafter referred to as the "Application Property") hereby proffers the following, provided that the Board of Supervisors approves a rezoning of the Application Property to the PDH-3 District in conjunction with a Conceptual/Final Development Plan (CDP/FDP) for residential development. If accepted, these proffers shall replace and supersede any previous proffers approved on the Application Property.

I. CONCEPTUAL/FINAL DEVELOPMENT PLAN –

- a. Subject to the provisions of Section 16-204 of the Fairfax County Zoning Ordinance (hereinafter referred to as the "Zoning Ordinance"), development of the Application Property shall be in substantial conformance with the CDP/FDP, consisting of seven sheets prepared by Dewberry & Davis, LLC dated June 2, 2004, and revised through April 5, 2005.
- b. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the CDP/FDP may be permitted as determined by the Zoning Administrator. The Applicant reserves the right to make minor adjustments to the layout, internal lot lines, and lot sizes of the proposed subdivision at time of subdivision plan submission based on final building footprints, utility locations and final engineering design, provided that such do not materially decrease the amount and location of open space, tree save areas, distance to peripheral lot lines, or typical lot setbacks as shown on the CDP/FDP.
- c. Notwithstanding that the CDP/FDP is presented on seven sheets and said CDP/FDP is the subject of Proffer 1.a. above, it shall be understood that the CDP shall be limited to the points of access, location and amount of open space, limits of clearing and grading, and the total number and general location of units and type of units. The Applicant has the option to request Final Development Plan Amendments ("FDPAs") for elements other than CDP elements from the Planning Commission for all of, or a portion of, the FDP in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance.

2. TRANSPORTATION

- a. Subject to Virginia Department of Transportation (VDOT) and Department of Public Works and Environmental Services (DPWES) approval, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors right-of-way up to a width of thirty (30) feet from the centerline along the Application Property's Burgundy Road frontage as shown on the CDP/FDP. Dedication shall be made at time of subdivision or upon demand of either Fairfax County or VDOT, whichever should first occur.
- b. Subject to VDOT and DPWES approval, and prior to the issuance of the first Residential Use Permit (RUP) for the Application Property, the Applicant shall construct frontage improvements along Burgundy Road measuring approximately seventeen (17) feet from centerline to face of curb within the dedicated right-of-way as shown on the CDP/FDP. Frontage improvements shall consist of curb, gutter, sidewalk and pavement required to tie into existing pavement in accordance with VDOT standards.
- c. Prior to the issuance of the first RUP for the Application Property, the Applicant shall construct a five (5) foot wide concrete sidewalk along the Application Property's Burgundy Road frontage as shown on the CDP/FDP. The Applicant shall construct a five (5) foot wide concrete sidewalk within the residential development as shown on the CDP/FDP. Said sidewalk shall be constructed on each proposed residential lot prior to the issuance of a RUP on that lot.
- d. Prior to the issuance of the fifteenth (15) RUP for the Application Property, the Applicant shall construct an eight (8) foot wide gravel trail through the community as shown on the CDP/FDP. The gravel trail shall be field located in coordination with the Urban Forest Management Branch prior to first submission of the subdivision plan to minimize disruption of existing vegetation. Once the trail is located in the field, as generally shown on the CDP/FDP, it shall be shown on the subdivision plan with the limits of clearing and grading reflecting the minimum amount required for access and construction. Tree protection fences, as described herein, shall be used to protect trees in the area during construction.
- e. The Applicant shall record a public access easement, in a form reviewed and approved by the Fairfax County Attorney's Office, over any sidewalks and trails as shown on the CDP/FDP. The easement shall be recorded among the Fairfax County land records at time of subdivision plat recordation.
- f. The Applicant shall dedicate and construct to VDOT standards public street extensions of Hatcher Street and Tennessee Drive as shown on the CDP/FDP. Said dedication shall be in fee simple and made at time of subdivision plat recordation.

Construction of the improvements shall be concurrent with development of the Application Property.

- g. To the extent reasonably possible, the Applicant shall avoid the staging of construction vehicles on adjacent rights of way, and construction personnel shall be directed to park on the Application Property. In all events, a travelway shall remain open to ensure safe passage of vehicles. All deliveries to the Application Property shall be conducted on-site.
- h. The Applicant shall direct construction traffic, using maps and temporary directional signs to the Application Property, to primarily enter and exit at Hatcher Street or Burgundy Road.
- i. During land development and house construction, construction vehicles, including trucks and vans, shall not be permitted to arrive at the Application Property earlier than 7:30 a.m., Monday through Friday, and 8:30 a.m. on Saturdays and Federal holidays. There shall be no work on the Application Property on Sundays.
- j. The Applicant shall prepare an inventory consisting of written descriptions and a photographic record of existing road and adjacent property conditions, including the foundations of all Burgundy Woods Homcowners' Association (the "BWHA") homes and the trees located on Burgundy Woods' "Parcel A" before commencing construction on the Application Property. A copy of said inventory shall be submitted to BWHA, the Burgundy Citizens' Association, and DPWES before construction begins. After commencement of site development, any curb, apron, driveway, road or private property damage that can be attributed to the Applicant shall be repaired by the Applicant, at its sole expense, within thirty (30) days following written notification, weather permitting. If necessary due to inclement weather, temporary repairs of road damage, which may include the filling of pot holes with stone, shall occur within ten (10) days to be followed by pavement patching within thirty (30) days, weather permitting. Repairs to private property shall consist of filling any ruts with topsoil and reseeding. Foundations shall be restored to their condition prior to construction upon the Application Property, except for normal wear and tear, by a company reasonably acceptable to BWHA, and damaged trees replaced with a tree of the same species, as recommended by Urban Forest Management. Replacement trees shall generally have the following heights: eight feet to replace an eight foot high tree; ten (10) to twelve (12) feet in height to replace trees eight (8) to twenty-five (25) feet in height; and twelve (12) to fifteen (15) feet in height to replace trees twenty-five (25) feet and taller. Deciduous trees shall be two (2) to two and one-half (2½) inches in caliper to replace trees up to twenty-five (25) feet in height; two and one-half (2½) to three (3) inches in caliper to replace trees taller than twenty-five (25) feet in height. The final species and height of replacement trees within the above ranges shall be selected in coordination with the

Urban Forest Management Branch to maximize survivability. The cost of replacement trees shall be subject to a cap of Seven Thousand Five Hundred Dollars (\$7,500.00). Repairs to private property and foundations, and replacement of trees, shall be subject to the receipt of the necessary permission from the property owner, which shall be diligently requested by the Applicant as determined by DPWES. Repairs of curb, apron and driveway damage shall consist of replacement of improvements to Fairfax County and VDOT standards, and subject to the receipt of the necessary permission from the property owner, which shall be requested by the Applicant. Upon completion of construction, Applicant shall resurface and/or repair Hatcher Street, Tremont Drive, Palin Place, Tennessee Drive and Burgundy Road, as necessary, as determined by DPWES, should damage occur as a result of construction on the Application Property.

- k. Wash racks shall be installed at each access point to the Application Property to clean construction vehicles of dirt and debris prior to exiting the Application Property. Applicant shall clean up this area at the end of each work day. Applicant shall clean the streets at each access point on a weekly basis, or more frequently if reasonably required, to remove accumulated airborne dust.
- l. Rights of way adjacent to the Application Property shall not be used for the storage of construction materials. Any vehicles or construction equipment temporarily parked on rights of way adjacent to the Application Property shall be delineated with traffic cones or other similar safety measures.
- m. The Applicant shall notify construction vehicle drivers of the speed limits and stop signs within the surrounding community. In addition, vehicles shall not be permitted to turn around in or block residential driveways. These requirements shall be incorporated in the contract executed between the Applicant and development general contractor.
- n. The Applicant shall provide written and verbal notification, in their native language, to all vehicle drivers under contract to perform construction work on the Application Property that states: "Children often play on or near neighborhood streets. This is their home. Drive slowly and stay alert to protect playing children."
- o. Applicant shall instruct construction personnel not to conduct personal hygiene activities within public rights-of-way.
- p. The Applicant shall escrow the sum of Seven Hundred Fifty Dollars (\$750.00) per approved lot (excluding proposed Lot 7 upon which the existing house is retained) with Fairfax County for the installation of traffic calming measures to be installed by others subject to VDOT approval on Burgundy Road, and possibly Hatcher Street, Norton Road, and/or Tremont Drive. Said escrow shall be submitted prior to the

issuance of the first RUP for the Application Property. Should traffic calming measures not be implemented within five years of the date of the approval of the subdivision plan for the Application Property, the escrowed funds shall be allocated to a sign at the Telegraph Road entrance to the Burgundy Woods community following the rebuilding of the Telegraph Road interchange. The Applicant shall support the community's efforts to obtain traffic calming measures in writing.

- q. The Applicant shall grant ingress/egress easements for the benefit of proposed Lots 8 through 10 over the common driveways shown on the CDP/FDP. Said easements shall be the subject of a private maintenance agreement to be recorded at time of subdivision plat approval for the Application Property. Purchasers shall execute a disclosure memorandum at time of contract acknowledging the ingress/egress easement. The homeowners' association documents shall include a disclosure of said easement.
- r. The Applicant reserves density credit as may be permitted by the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance for all dedications as may be reasonably required by Fairfax County or VDOT whether such dedications occur prior to or at time of subdivision plan approval.

3. LANDSCAPING AND OPEN SPACE –

- a. The Applicant shall provide landscaping on the Application Property as generally shown on Sheet 3 of the CDP/FDP, pursuant to the approval of Urban Forest Management. Deciduous trees shall be a minimum of two (2) to two and one-half (2-1/2) inches in caliper and evergreen trees a minimum of six (6) to eight (8) feet in height at time of planting. Those areas designated for replanting as shown on the CDP/FDP, and not on individual lots, shall be returned to a natural forested condition to the extent possible.
- b. 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 shall be subject to the review and approval of the Urban Forest Management, DPWES.

- 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 that are ten (10) inches in diameter or greater, and twenty (20) feet to either side of the limits of clearing and grading shown on the CDP/FDP for the entire site. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the CDP/FDP, and those additional areas in which trees can be preserved as a result of

final engineering. 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, shall be included in the plan.

- c. All tree preservation-related work occurring in or adjacent to tree preservation areas shall be accomplished in a manner that minimizes damage to vegetation to be preserved, including any woody, herbaceous or vine plant species that occurs in the lower canopy environment, and to the existing top soil and leaf litter layers that provide nourishment and protection to that vegetation. Any removal of any vegetation or soil disturbance in tree preservation areas, including the removal of plant species that may be perceived as noxious or invasive, such as poison ivy, greenbrier, multi-floral rose, etc., shall be subject to the review and approval of Urban Forest Management, DPWES.

The use of motorized equipment in tree preservation areas will be limited to hand-operated equipment such as chainsaws, wheel barrows, rakes and shovels. Any work that requires the use of motorized equipment, such as tree transplanting spades, skid loaders, tractors, trucks, stump-grinders, etc., or any accessory or attachment connected to this type of equipment shall not occur unless pre-approved by Urban Forest Management, DPWES.

- d. The Applicant shall root prune and provide 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 place no further than ten (10) feet apart, or other forms of tree protection fencing approved by Urban Forest Management, DPWES for all tree preservation areas. 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 Urban Forest Management, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, 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.
 - An Urban Forest Management, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.
- e. 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 Forest Management, 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 such adjustments shall be implemented. Trees that are identified specifically by the Urban Forest Management, DPWES, representative in writing 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 the adjacent trees and associated understory vegetation and soil conditions.
- f. 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 a four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts drive 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 phase I and II erosion and sediment control sheets.

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 fence types 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 days prior to the commencement of any clearing, grading, or demolition activities, but subsequent to the installation of the tree protection devices, Urban Forest Management, DPWES, and the District Supervisor 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 Urban Forest Management, DPWES.

- g. Prior to commencement of clearing on the Application Property, the Applicant shall coordinate a meeting on-site with a representative of Urban Forest Management and a representative of the Lee District Land Use and Transportation Advisory Committee to walk the limits of clearing and grading. The limits of clearing and grading may be adjusted as a result of this meeting to preserve as many mature trees in good health as possible. The Applicant shall strictly adhere to the final limits of clearing and grading.
- h. Subsequent to replanting, those areas to be preserved as shown on the CDP/FDP shall be placed within a conservation easement to the benefit of Fairfax County. Said easement shall be in a form approved by the Fairfax County Attorney's Office and recorded among the land records at time of subdivision.
- i. The demolition of existing features and accessory structures shall be conducted in a manner that does not impact on individual trees and/or groups of trees that are to be preserved as reviewed and approved by Urban Forest Management. Methods to preserve the existing trees may include, but not be limited to, the use of super silt fence, welded wire tree protection fence, root pruning, mulching, as approved by Urban Forest Management, DPWES.
- j. During any clearing or tree/vegetation/structure removal on the Application 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 Urban Forest Management, DPWES. The Applicant shall retain the services of a certified arborist or landscape architect to monitor all construction work and tree preservation efforts in order to ensure conformance with all tree preservation proffers, and Urban Forest Management, DPWES, approvals. The monitoring schedule shall be described and detailed in the tree preservation plan, and reviewed and approved by Urban Forest Management, DPWES.
- k. A reforestation plan for those areas disturbed by pile installation as shown on the CDP/FDP, and that area surrounding the stormwater management pond, shall be submitted concurrently with the first and all subsequent subdivision plan submissions for review and approval by Urban Forest Management, DPWES, and shall be implemented as approved. The plan shall propose an appropriate selection of species based on existing and proposed site conditions to restore the area to a native forest cover type. The reforestation plan shall include, but not be limited to, the following:
 - plant list detailing species, sizes and stock type of trees and other vegetation to be planted

- soil treatments, if necessary
 - mulching specifications
 - methods of installation
 - maintenance
 - mortality threshold
 - monitoring
 - replacement schedule
1. The Applicant shall retain a professional arborist with experience in plant appraisal to determine the replacement value of trees 10 inches in caliper or greater located within those areas designated "Existing Vegetation To Be Preserved" as shown on the CDP/FDP. These trees and their value shall be identified on the Tree Preservation Plan at time of first submission of the subdivision plan. The replacement value shall take into consideration the age, size and condition of the trees and shall be determined according to the methods contained in the latest addition of the *Guide for Plant Appraisal* published by the International Society of Arboriculture subject to review and approval by the Urban Forest Management, DPWES.

At time of subdivision plan approval, the Applicant shall post a cash bond or letter of credit payable to the County of Fairfax to ensure preservation and/or replacement of the designated trees that die or are dying due to construction activities permitted on the approved plan. Any trees shown to be preserved on the Tree Preservation Plan that die or are dying due to construction activities NOT permitted on the approved plan shall be replaced with trees of equivalent species and size and the bond monies for said trees shall not be refunded. The terms of the letter of credit shall be subject to approval by the County Attorney. The total amount of the cash bond or letter of credit shall be in the amount of the sum of the assigned replacement values of the designated trees.

If, at the time of final bond release, trees are found to be dead or dying despite adherence to approved construction activities by Urban Forest Management, DPWES, the cash bond or letter of credit shall be used as necessary to plant replacement trees of a size and species appropriate to the site, in consultation with Urban Forest Management, DPWES, and the Applicant's certified arborist. The cash bond or letter of credit shall not be used for the removal of the dead/dying trees normally required by the PFM and the conservation agreement.

Any funds remaining in the letter of credit or cash bond will be released two years from the date of release of the Application Property's conservation escrow, or sooner, if approved by Urban Forest Management, DPWES.

- m. The Applicant shall conform strictly to the limits of clearing and grading as shown on the CDP/FDP subject to the installation of utilities and/or trails as determined necessary by the Director of DPWES and as described herein. If it is determined necessary to install utilities and/or trails outside of 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 Urban Forest Management, DPWES and coordinated with the Director of DPWES. A replanting plan shall be developed and implemented, subject to approval by Urban Forest Management, DPWES, for any areas outside the limits of clearing and grading that must be disturbed.

4. PARKS AND RECREATION –

- a. Pursuant to Paragraph 2 of Section 6-110 and Paragraph 2 of Section 16-404 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall expend a minimum of Nine Hundred Fifty-five Dollars (\$955.00) per approved lot on recreation facilities. On-site recreation facilities shall include trails as shown on the CDP/FDP. The balance of any funds not expended on-site shall be contributed to the Fairfax County Park Authority for the provision of recreation facilities located in proximity to the Application Property at time of subdivision plan approval.
- b. In addition, at time of subdivision plan approval, the Applicant shall contribute Two Thousand Three Hundred and Eighty-five Dollars (\$2,385.00) to the Fairfax County Park Authority for recreation facilities located in the vicinity of the Application Property.

5. STORMWATER MANAGEMENT –

- a. The Applicant shall provide a stormwater management (SWM) extended detention dry pond with forebay and Best Management Practices (BMPs) on the Application Property in the general location shown on the CDP/FDP and in accordance with the requirements of the Public Facilities Manual and the Chesapeake Bay Preservation Ordinance, unless waived or modified by DPWES. In the event that on-site stormwater management is modified or waived by DPWES, modification or removal of the SWM dry pond shown on the CDP/FDP shall not require approval of a proffered condition amendment or an amendment to the CDP/FDP. That area not utilized as a SWM pond shall remain as open space owned by the homeowners' association established for the community.

- b. In order to restore a natural appearance to the proposed SWM extended detention dry pond on the Application Property, the landscape plan shall show the restrictive planting easement for the pond, and landscaping in all areas outside of that restrictive planting easement shall be provided to the maximum extent reasonably feasible in accordance with the planting policies of Fairfax County. The landscaping plan for the SWM facility shall be submitted with the first subdivision plan for review and approval by Urban Forest Management.
- c. The Applicant shall install a forty-two inch (42") high tubular black metal rail fence, with pickets no more than six inches (6") on center, around the SWM extended detention dry pond, as approved by DPWES.
- d. During the first phase of site development, as approved by DPWES, the Applicant shall construct a temporary drainage/siltation control pond in the general location of the SWM extended detention dry pond as shown on the CDP/FDP, which shall be used as a detention pond and sediment trap during construction. Said erosion and sedimentation control facility shall be designed in accordance with Fairfax County standards, and approved by DPWES.
- c. Concurrent with development of the Application Property, and subject to the approval of VDOT, the Applicant shall use its best efforts to improve existing drainage problems in proximity to the Application Property by performing the following actions:
 - i. Remove debris from the existing drainage swale on the southeast side of the Burgundy Road and Norton Road intersection to improve the flow of stormwater drainage;
 - ii. Remove debris from the existing inlet structure on the southeast side of the intersection of Burgundy Road and Tremont Drive; and
 - iii. Extend curb and gutter along the Application Property's Burgundy Road frontage to tie into the existing curb and gutter on the western side of the Application Property.

6. AFFORDABLE HOUSING –

At the time of the first building permit approval, a contribution shall be made to the Fairfax County Housing Trust Fund of 0.5% of the sales price of all single family dwelling actually constructed on the Application Property to assist Fairfax County's low and moderate income housing goals.

7. DESIGN –

- a. The Applicant shall retain the existing dwelling unit located on the Application Property. Applicant shall convey the existing dwelling unit in its “as is” condition to an individual(s) as a private residence. Future repairs shall be allowed by the homebuyer so long as such improvements comply with the architectural guidelines of the Burgundy Woods Association, Fairfax County ordinances and applicable building codes and any requirements that may be imposed by registration of the property with the Virginia Landmark Register and the National Register of Historic Places. Prior to sale, the Applicant shall record a covenant that restricts the type of improvements that may be constructed to the home to preserve its character, and the aforementioned restrictions. Said covenant shall be reviewed and approved by the Heritage Resources Branch of the Fairfax County Park Authority and the Fairfax County Attorney’s Office prior to its recordation among the land records of Fairfax County. Prior to the sale of the home, but in any event no later than bond release of the subdivision, the Applicant shall nominate the existing dwelling unit for inclusion on the Fairfax County registry of historic homes, the Virginia Landmark Register and the National Register of Historic Places, so long as such registrations do not result in any requirements for improvements to the existing dwelling unit, preclude use and occupancy of the existing dwelling unit as a residence, or costs to the Applicant in excess of Ten Thousand Dollars (\$10,000.00). The restrictions described herein shall be disclosed in the homeowners’ association documents prepared for the Application Property.
- b. Each new residential dwelling shall have a minimum driveway length of eight (18) feet.
- c. Each new residential dwelling shall have a two-car garage.
- d. Windows of the dwelling units that face interior side yards, and that are no greater than ten (10) feet apart, shall either be offset from those of the adjacent dwelling unit, or shall be designed with special features (e.g. block glass, fenestration above eye level), which promote privacy while simultaneously permitting light into a room.
- e. In all instances where two side walls of dwelling units are within ten (10) feet of each other, the Applicant shall construct one wall with materials sufficient to withstand fire for a minimum of one hour and no more than 25 percent of the wall shall be comprised of openings such as doors and windows with windows offset from those of the adjacent dwelling unit. In the event that adjacent dwelling units have side walls separated by a distance greater than ten (10) feet, this proffer, and proffer 7.d. above, shall not be applicable.

- f. Retaining walls on the Application Property shall be constructed of concrete materials with a brick pattern façade or other architectural surface treatment acceptable to the Applicant and DPWES. The height of the retaining walls shall be as shown on the CDP/FDP, with no portion of the walls being higher than eight feet (8'). The three foot (3') barrier on top of the walls shall be a black tubular metal railing, which is the same material proposed for the fence located around the SWM extended detention dry pond.
- g. All new homes constructed on the Application 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.
- h. The Applicant shall design the new residential dwellings on the Application Property in general conformance with the conceptual elevations shown on Sheet 4 of the CDP/FDP. Residential dwellings shall be constructed with brick front façades, poured concrete foundations and horizontal beaded siding on side and rear façades. Partial brick side and rear façades shall be optional. Aluminum siding shall not be permitted. Final design shall be selected by the Applicant upon the submission of architectural drawings for building permits.
- i. A covenant shall be recorded which provides that garages shall only be used for a purpose that will not interfere with the intended purpose of garages (e.g. parking of vehicles). This covenant 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 homeowners' association and Fairfax County. Initial purchasers shall be advised of the use restriction prior to entering into contract of sale. Said use restriction shall be included in the homeowners' association documents prepared in conjunction with the proposed development.
- j. Project identification signs shall be presented to and discussed with the Burgundy Citizens' Association and BWIJA prior to installation, and shall meet all requirements of Article 12 of the Zoning Ordinance.

8. GEOTECHNICAL –

- a. The Applicant shall construct improvements on the Application Property in accordance with a geotechnical report (project number 9649) prepared by E.C.S., Ltd., dated July 13, 2004, approved by DPWES, as may be modified at time of final engineering and approved by DPWES. The geotechnical notes contained within the approved report dated July 13, 2004, as may be amended and approved by DPWES, shall be incorporated into the plan of implementation required for approval by DPWES.

- b. The Applicant shall obtain a separate permit, if required by DPWES, for the slope stabilizing piles as shown on the CDP/FDP, and installation of piles shall be completed prior to the construction of any residential dwelling units. Pile driving shall be limited to between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday. No pile driving shall be permitted on weekends or Federal holidays.
- c. Geotechnical inspection reports certified by a licensed professional engineer (the engineer of record) shall cover all aspects of the slope stabilization structures constructed on the Application Property, engineered fill construction, the foundation of all buildings including floor slabs, roadways, public utilities and private driveways. To ensure that certified construction items are in compliance with the approved plans, the form of such certification shall be as determined by DPWES. If deemed necessary, DPWES may require the recordation of all or some of the certifications in the land records.
- d. A geotechnical engineer shall be retained by the Applicant to be on-site during all phases of construction that are affected by soil stability. During the on-going construction, the geotechnical engineer shall prepare and submit written inspection reports to DPWES regarding on-site compliance with the geotechnical report approved by DPWES. The frequency of the preparation and submission of said inspection reports shall be determined by DPWES.
- e. All slope stabilization features including, but not limited to, piles, retaining walls (if applicable) and subsurface drains, shall be bonded. Construction of private streets, if any, shall be completed as set forth in the geotechnical study and constructed in accordance with the design standards of the Public Facilities Manual.
- f. Prior to the issuance of any building permits, slope stabilization features including, but not limited to, piles, cutoff walls, retaining walls, soil nails, subsurface drains, granular wedges, shall be installed, inspected and certified to DPWES by a geotechnical engineer. An as-built plan for these features shall be submitted prior to the issuance of any building permits for the individual dwelling units. The geotechnical engineer shall state clearly in his or her certifications whether the slope stabilization features were installed in accordance with the design shown on the plans approved by DPWES.
- g. The deed to each dwelling unit shall contain a disclosure that the subject units are built in an area containing marine clay and subject to geotechnical reports prepared by E.C.S. dated July 13, 2004, as reviewed and approved by Fairfax County. The disclosure shall be approved by the County Attorney and may be recorded among the land records of Fairfax County. A similar disclosure shall be provided in writing to each prospective purchaser at time of initial home sales contract execution. The homeowners' association documents shall specifically state that the dwelling units

within the community were constructed in an area known to have marine clay soils subject to geotechnical reports reviewed and approved by Fairfax County. The initial home purchaser shall be required to acknowledge in writing the receipt of this information.

- h. Adequate perimeter erosion and sediment control measures shall be installed prior to the start of any construction or earth moving activity as reviewed and approved by DPWES. No disturbed area shall be left unprotected for more than seven (7) days, except for those portions of the Application Property in which earth moving activities are planned to occur imminently beyond that period.
 - i. Upon conveyance of each dwelling unit, each initial purchaser shall be provided a ten (10) year structural warranty if then offered in the marketplace from HBW (Home Buyer's Warranty), RWC (Residential Warranty Corp.), QBW (Quality Builders Warranty), PWC (Professional Warranty Corporation) or other equivalently rated licensed insurer, licensed by the Commonwealth of Virginia, insuring at reasonably competitive market rates for such coverage, the structural stability for each dwelling unit constructed on the Application Property for the warranty period. Such warranty shall be transferable by the initial purchaser to subsequent purchasers. Said ten (10) year structural warranty may be offered by the builder if said warranty is modeled after those offered by HBW, RWC, QBW or PWC; is transferable; and is acceptable to Fairfax County.
 - j. Up until the issuance of the final residential use permit for the Application Property, general liability insurance coverage, with a limit of Two Million Dollars (\$2,000,000.00) per occurrence with a \$2,000,000.00 aggregate, insuring against on and off-site property damage which results from faulty and/or negligent grading and construction by the Applicant or any subcontractor on the Application Property shall be obtained by the Applicant. Fairfax County shall be included as an additional insured party in the insurance policy required under this proffer, and Fairfax County, as the additional insured, shall be given a forty-five (45) day notice of any proposed changes to the policy. All contractors and subcontractors working on the Application Property shall also be required to obtain and maintain general liability insurance coverage in a commercially reasonable amount.
9. MISCELLANEOUS –
- a. These proffers shall bind and inure to the benefit of the Applicant and his or her successors and assigns.
 - b. 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.

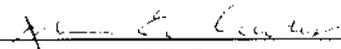
- c. Upon the request of BWHA, the Applicant shall install a fence between the Application Property and BWHA property (including Burgundy Woods' "Parcel A") at a cost not to exceed Twenty Thousand Dollars (\$20,000.00). Should BWHA and the Applicant be unable to agree on an acceptable style of fence within this price range, BWHA may elect to pay the difference, and the fence shall be installed, or direct the Applicant to install signs clearly identifying the property boundaries. Said signs shall prohibit trespassing and shall state that entry is at the trespasser's own risk.
- d. The Applicant shall establish a homeowners' association for the proposed development to own, manage and maintain open space areas as shown on the CDP/FDP and any other community owned land and improvements. Said maintenance obligations shall be disclosed to contract purchasers of residential units within the proposed development prior to entering into a contract of sale, and shall be disclosed in the homeowners' association documents prepared for the Application Property.
- e. The Applicant and/or the homeowners' association shall never request a change in the current boundaries, use, or conservation easement status of Burgundy Woods' "Parcel A." This restriction shall be included in the homeowners' association documents prepared for the Application Property.
- f. The Applicant shall engage ECS, Ltd., or other professional geotechnical consultants, prior to and during the construction upon and development of the Application Property to monitor cut and fill operations, take compaction tests and oversee pile installation. The geotechnical consultant shall determine locations for not less than three water monitoring wells to be installed along the common property line between the BWHA property, including "Parcel A," and the Application Property, prior to commencement of development. Well locations shall be subject to the review and approval of DPWES and/or the Fairfax County Health Department. Readings shall be taken prior to development and submitted to DPWES. Readings shall be taken no less frequently than bi-weekly to monitor water flows on the Application Property as they may flow toward the BWHA property, including "Parcel A." The results of the readings shall be made available to BWHA and DPWES on a monthly basis. The Applicant shall use its best efforts, standard engineering practices, surface and subsurface drainage channelizations to direct surface runoff and subsurface drainage in the Application Property to the pipe storm drainage system on-site and the stormwater management pond, all of which shall be reviewed and approved by the requisite agencies and officials of Fairfax County. The geotechnical consultant of record for the Application Property and DPWES shall determine, if a claim regarding damage to the BWHA property, including "Parcel A," is filed with Fairfax County, by comparing the well monitoring readings prior to development with readings

subsequent to development that damage to the BWA property has occurred as a direct result of subsurface or surface drainage from the Application Property onto the BWA property, including "Parcel A." If determined by DPWES and/or the Fairfax County Health Department that the Applicant is responsible, the Applicant, or its successor, shall repair such damage prior to release of the subdivision bond on the Application Property.

- g. 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 to assist in the initial sale of homes on the Application Property. Furthermore, the agents and employees involved in the marketing and sale of the residential units on the Application Property shall be directed to adhere to this proffer.
- h. Subject to the approval of the Fairfax County Park Authority, the Applicant shall install an historical marker describing the existing house on Application Property that is shown to be retained on the CDP/FDP. The location and content of the marker shall be mutually agreeable to the Applicant and the Fairfax County Park Authority. The marker shall be installed prior to the issuance of the final residential use permit issued for the Application Property.
- i. During development of the Application Property, the telephone number and e-mail address of the site superintendent that will be present on-site during construction shall be provided to the President of the Burgundy Citizens' Association, the Lee District Supervisor's Office, and to BWA.
- j. During development of the Application Property, the Applicant shall provide a schedule of major construction activities to the President of the Burgundy Citizens' Association and a BWIA designee by the 15th of each month. Upon request, the Applicant, or a representative, shall attend the monthly meeting of the Burgundy Citizens' Association. Prior to attendance, the Applicant shall be provided with a meeting agenda and a list of issues that will be discussed.
- k. Except as may be specified in individual proffers, all of the improvements described herein shall be constructed concurrent with development of the Application Property.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

APPLICANT/CONTRACT PURCHASER:
JCE, Inc.

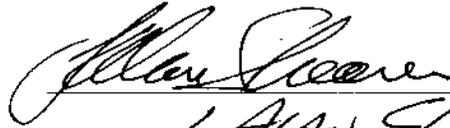


JOHN E. COWLES, President

[SIGNATURES CONTINUED ON NEXT PAGE]

RZ 2004-LE-026

CONTRACT PURCHASER:
NVR, INC. d/b/a RYAN HOMES AND NV HOMES



NAME: L. ALAN SHEARER

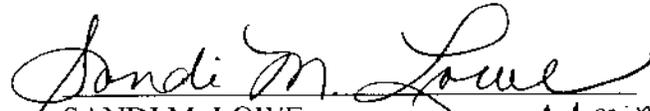
ITS: SENIOR VICE PRESIDENT

[SIGNATURES CONTINUED ON NEXT PAGE]

TITLE OWNERS: 82-2 ((1)) 37


SANDI M. LOWE

ESTATE OF JAMES M. LOWE FOR THE BENEFIT OF
SANDI M. LOWE


SANDI M. LOWE Administrator/
ADMINISTRATOR/EXECUTRIX Executrix

[SIGNATURES END]