PROFFERS

TYSON'S VILLAGE

RZ 96-H-022

December 19, 1996

Pursuant to Section 15.1-491(a), Code of Virginia, 1950 as amended, Pulte Home Corporation and Eakin/Youngentob Associates, Inc., the applicants in RZ 96-H-022, filed for property identified as Tax Map 29-1 ((1)) 10C part and 29-3 ((1)) 1A (hereinafter referred to as the "Application Property"), proffers the following, provided that the Board of Supervisors approve a rezoning of the Application Property to the PDH-12/H-C District.

1. Prior Proffered Conditions. In the event that this application is approved, any previous proffers for the Property are hereby deemed null and void for the Property and hereafter shall have no effect on the Property.

2. Development Plan. Development of the Application Property shall be in substantial conformance with the Conceptual Development Plan/Final Development Plan ("CDP/FDP") prepared by Dewberry & Davis consisting of 7 sheets dated May 15, 1996, and revised through December 2, 1996.

3. Final Development Plan Amendment. Notwithstanding that the CDP/FDP is presented on 7 sheets and said CDP/FDP is the subject of Proffer No. 1 above, it shall be understood that the CDP shall be the entire plan shown on Sheets 2 and 3 relative to the points of access, the total number and types of units and general location of units, amount of open space, the general location of the recreational facilities, location of common open space areas and buffers, and limits of clearing and grading. The Applicant has the option to request a Final Development Plan Amendment ("FDPA") for elements other than CDP elements from the Planning Commission for all of or a portion of the CDP/FDP in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance, if in conformance with the approved CDP and proffers.

4. Minor Deviations. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the 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 without requiring approval of an amended FDP provided such changes are in substantial conformance with the FDP as determined by the Zoning Administrator, agents or assigns and neither increase the total number of units nor decrease the following: amount of open space; the amount of parking; the amount of tree preservation; the location of common open space areas; or distances to peripheral lot lines. Such changes may include, revising the

width of the units, shifting the number of single-family attached units from one group of units to another and providing garage or non-garage units.

5. Private Streets.

A. Spine Road. The spine road as shown on the CDP/FDP shall be a private street with a public ingress-egress easement to allow public vehicular access to the Ash Grove house. The spine road shall be constructed in conformance with Public Facilities Manual standard 7-0502 with a minimum 32-foot easement and a minimum 24-foot pavement width as shown on the CDP/FDP. The Fairfax County Park Authority (FCPA) shall not be responsible for the maintenance of the spine road.

B. Other Private Streets. The private streets, excluding the spine road, shall be constructed in conformance with Public Facilities Manual standard TS-5A with a minimum 30-foot easement and a minimum 24-foot pavement width. Said private streets shall be constructed of materials and depth of pavement consistent with Section 7-502 of the Public Facilities Manual. Sidewalks shall be provided on one side of the private streets. For the purpose of this proffer, the parking courts are not to be deemed private streets and shall not be constructed to the above-referenced standards. The parking courts are the rear loaded alleys located off the private streets which provide access to the garage of the townhouse mews units.

C. Disclosure. Purchasers shall be advised prior to entering into a contract of sale that the homeowners association shall be responsible for the maintenance of all the private streets including the spine road in the development. The homeowners association documents shall specify that the homeowners association is responsible for the maintenance of the private streets.

6. Recreational Facilities. Pursuant to Paragraph 2 of Section 6-110 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall provide the following facilities as shown on the CDP/FDP.

a. One (1) swimming pool with clubhouse. The clubhouse shall have an exercise room with a minimum of four (4) different types of exercise equipment such as, but not limited to, treadmill, weight training, step machine, exercise bike, etc.

The swimming pool with clubhouse shall be constructed and open for use no later than at the time of the issuance of the 174th RUP.

The Applicant proffers that the minimum expenditure for the recreational facilities shall be $500.00 per residential unit excluding ADUs. In the event the costs for the above facilities do not satisfy this commitment, additional recreational facilities shall be provided in the

clubhouse. Memberships to recreational facilities shall be available on the same basis to all residents of the proposed community.

7. Swimming Pool Discharge. All waste water resulting from the cleaning and draining of the pool located on the site shall contain a minimum dissolved oxygen concentration of 4.0 milligrams per liter prior to discharge. The Applicant shall neutralize pool waters to a PH from 6.0 to 9.0 prior to discharge. Sufficient amounts of lime or soda ash shall be added to achieve a PH of approximate equal to that of the receiving stream.

   If the water being discharged from the pool is discolored or contains a high level of suspended solids that could effect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle prior to being discharged.

8. Stormwater Management. The Applicant has applied for a waiver of on-site stormwater management (SWM) with the Department of Environmental Management ("DEM"). In the event the waiver is granted by DEM, the Applicant shall contribute $264,000.00 to Fairfax County to be utilized for improvements in the Difficult Run watershed. Using the Board of Supervisors' approval date of the rezoning application as the base date, this amount shall be adjusted according to the Construction Cost Index as published in the *Engineering News Record* by McGraw-Hill. This contribution shall be made on a pro-rata share basis at the time of each site plan approval. The prorata share is to be based on the number of units approved on each site plan.

   In addition, in the event the SWM waiver is approved, the Applicant shall provide adequate drainage improvements to the existing culvert crossing of the existing 50-foot outlet road located on Tax Map 28-2((1)) 26 immediately downstream of the Dulles Airport Access Road (DAAR) so long as all necessary easements and agreements are granted by the property owner of Tax Map 28-2((1)) 26 at no cost to the Applicant. The Applicant shall request all necessary easements and agreements from the property owner of Tax Map 28-2 ((1)) 26 within 180 days from the Board of Supervisors' approval of this rezoning application. In the event the Applicant is unable to obtain all necessary easements/agreements for this improvement, the Applicant shall be relieved from the responsibility to improve the culvert. The Applicant shall provide documentation to DEM to demonstrate their coordination efforts to attempt to construct the culvert improvement. It is to be understood that the obligation to construct this improvement shall in no way delay the site plan and/or permit approval process for the Application property.

   - Best Management Practices (BMPs) for the Application Property shall be provided in accordance with the requirements of the Public Facilities Manual (PFM) and Chesapeake Bay Preservation Ordinance. A conservation easement shall be placed on some or all of the open space if necessary to meet the BMP requirements of the PFM. The Applicant shall analyze and implement, where appropriate, and subject to DEM approval, design alternatives to lessen

the impact of stormwater run-off into the Old Courthouse Spring Branch. Such design alternatives may include, but not be limited to, bioretention areas, french drains and/or rain gardens or other recognized methods to improve both water quality and run-off velocity.

9. Limits of Clearing and Grading. The Applicant shall generally conform to the limits of clearing and grading shown on the CDP/FDP subject to the installation of trails and utility lines, if necessary, as approved by DEM. The trails and utility lines located within areas protected by the limits of clearing and grading shall be located and installed in the least disruptive manner possible considering cost and engineering, as determined by DEM. A replanting plan shall be developed and implemented, as approved by DEM, for any areas within the areas protected by the limits of clearing and grading that must be disturbed.

10. Noise.

For the purposes of this proffer, the Dulles Airport Access Road ("DAAR") is deemed to be the DAAR and Toll Road. The eastbound ramp from DAAR to Route 7 is not included in this commitment.

a. In order to achieve a maximum interior noise level of 45 dBA Ldn within that area impacted by highway noise from the DAAR having levels between 70 and 75 dBA Ldn noise contours which is estimated to be within 350 feet of the existing centerline of the DAAR as delineated on the CDP/FDP, the Applicant shall construct the proposed dwelling units with the following acoustical measures to mitigate the impact of highway noise:

Construction materials and techniques known to have physical properties or characteristics suitable to achieve an STC of at least 45 for exterior walls;

Doors and windows shall have a laboratory STC rating of at least 37. If windows constitute more than twenty percent (20%) of any facade, they should have the same laboratory STC as walls.

Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

b. In order to achieve a maximum interior noise level of 45 dBA Ldn within that area impacted by highway noise from the DAAR between 65 and 70 dBA Ldn noise contours which is estimated to be within 410 feet of the existing centerline of the DAAR as delineated on the CDP/FDP, the Applicant shall construct the proposed dwelling units with the following acoustical measures to mitigate the impact of highway noise:

Construction materials and techniques known to have physical properties or characteristics suitable to achieve an STC of at least 39 for exterior walls;

Doors and windows shall have a laboratory STC rating of at least 28. If windows constitute more than twenty percent (20%) of any facade, they should have the same laboratory STC as walls.

Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

c. In order to achieve a maximum exterior noise level of 65 dBA Ldn in rear yard areas, an acoustically solid fence/wall and a possible berm between the DAAR and any unshielded rear yards of dwelling units as generally shown on the CDP/FDP shall be constructed for those units which have rear yards located within the 65 dBA Ldn noise contour. The wall/berm shall have no gaps or openings (except where necessary to provide for a gate, drainage or utilities, as determined by DEM) and shall be of sufficient height, estimated to be, but not limited to, between 14-16 feet high to achieve the performance standards specified in this Proffer. The wall/berm shall be consistent in design and materials to the noise attenuation walls constructed by VDOT along this area of the DAAR.

d. As determined by an acoustical engineer, in no case shall the exterior walls of the habitable interior space be located within an area where the noise level has not been mitigated to below 75 dBA Ldn.

e. As an alternative, the Applicant may, at its sole discretion, have a refined acoustical analysis performed in coordination with the County planning staff to determine which units/buildings may have sufficient shielding to permit a reduction in the mitigation measures prescribed above, subject to approval by the Department of Environmental Management.

11. Architecture/Building Landscaping. The building elevations and typical landscaping for the proposed single-family attached units and multiple family units shall be generally in character with the conceptual elevations and typical landscaping details for each type of unit as shown on Sheets 4, 6, and 7 of the CDP/FDP, or of a comparable quality as determined by DEM.

12. Affordable Dwelling Units (ADUs). The Applicant shall comply with the Affordable Dwelling Unit (ADU) program as set forth in Part 8 of Article 2 of the Zoning Ordinance. The number of ADUs to be provided may be reduced based on the adoption of a future amendment to the provisions of the ADU ordinance.

13. Homeowners Association. The Applicant shall establish a homeowners association for the proposed development to own, manage and maintain the open space including the tree save

areas, the private streets, the recreational facilities and all other community owned land and improvements.

14. Use of Garages. 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, which shall be established, and the Fairfax County Board of Supervisors. Purchasers shall be advised of the use restriction prior to entering into contract of sale.

15. Energy Conservation. Homes on the property shall meet thermal guidelines of the Virginia Power Energy Saver Program for energy-efficient homes or its equivalent, as determined by DEM, for either electrical or gas energy systems.

16. Design Detail. The design details shown on Sheets 4, 5 , and 7 submitted with the CDP/FDP are provided to illustrate the design intent and overall community organization of the proposed development. Landscaping and on-site amenities shall be generally consistent in terms of character and quantity with the illustrations and details presented on these sheets. Specific features such as exact locations of plantings, pedestrian lighting, driveways, sidewalks to individual units etc. are subject to modification with final engineering and architectural design. Landscaping and on-site amenities shall include:

    a. Landscaped entry features shall be provided at the site's entrance to include entrance monumentation and/or signage, ornamental trees and shrubs.

    b. Landscaping shall be provided around the swimming pool/clubhouse as shown on Sheet 5.

    c. Streetscaping along the spine road shall be provided as generally shown on the CDP/FDP and Sheet 5.

    d. Three (3) pocket parks as shown on the CDP/FDP shall be provided for passive recreation areas including formal seating/benches and landscaping.

    e. Pedestrian lighting shall be provided within the parking areas and along major travelways.

17. Landscape Plan. A landscape plan shall be submitted as part of the site plan(s) and shall be coordinated with and approved by DEM. This plan shall provide for:

    (a) the preservation of the trees shown on the CDP/FDP;

(b) the preservation of additional specific quality trees from those shown on the CDP/FDP which can be preserved to the maximum extent feasible without precluding the development of the dwelling units as shown on the CDP/FDP; and

(c) The Applicant shall use best efforts to transplant some of the existing quality vegetation elsewhere on the Application Property.

DEM may require modifications to the landscape plan to the extent said modifications do not alter the number of dwelling units as shown on the plan, reduce the size of the units or require the installation of retaining walls greater than four feet in height.

As a result of final engineering in the event the areas designated as tree save areas on the CDP/FDP are modified or cannot be preserved as determined by DEM, equivalent tree save areas or equivalent landscaped areas shall be substituted on the site as determined by the DEM.

18. Old Courthouse Spring Branch Environmental Quality Corridor (EQC). The Applicant shall convey to the Fairfax County Park Authority for public park purposes, the EQC as depicted on the CDP/FDP at or prior to the time of recordation of the final record plat for each section adjacent to the EQC. The EQC shall not be disturbed except for the trails and utility lines shown on the CDP/FDP. A conservation easement may be placed on some or all of the open space if necessary to meet the BMP requirements of the Public Facilities Manual.

19. Ash Grove House. The Applicant shall convey at the time of first site plan approval to the Fairfax County Park Authority for public park purposes, the Ash Grove House, and two (2) acres of non-EQC property as shown on the CDP/FDP. In the event the Fairfax County Park Authority does not accept the dedication of the Ash Grove House and the two (2) acres of non-EQC property, the Applicant shall preserve the Ash Grove House for another adaptive use which may require a PCA and/or FDPA. The Applicant shall provide an orange construction fence, prior to clearing and grading, to protect the Ashgrove House, and associated two (2) acres from construction.

20. Ashgrove Lane. The Applicant shall restrict/block off the existing private road known as Ashgrove Lane so that public vehicular access is not provided across Old Courthouse Spring Branch. Both emergency access and restricted historic access claimed by certain individuals (i.e. Mr. & Mrs. James F. Teets, owners of Tax Map 28-4 ((1)) Parcel 21) utilizing the existing private road in its current condition may be permitted. It shall be understood that in no event shall the Applicant be responsible for improving this existing private road.

21. Trails. The Applicant shall construct the trail system to provide pedestrian access from the Ash Grove House to the proposed residential development and to the office area to the south as shown on the CDP/FDP.

22. Road Contribution. At the time of site plan approval, the Applicant shall contribute $669.00 per residential unit, excluding ADU's, to the Tysons Corner Area Road Fund. Using 1990 as the base date, this cash contribution shall be adjusted accordingly to the construction cost index as published in the *Engineering News Record* by McGraw-Hill.

23. Future Gosnell Road Connection. The Applicant shall provide necessary easements to connect the onsite travel aisle roadway system to the proposed future collector road which is planned to extend from Ash Grove Lane to Gosnell Road. The Applicant shall disclose to prospective purchasers the potential for this future collector road. The homeowners association documents shall include a declaration advising the homeowners of the future collector road.

24. Heritage Resources. If determined appropriate by the County Archaeologist, the Applicant shall provide $10,000.00 to the Fairfax County Park Authority, at time of site plan approval, for future archeological investigations of the Ashgrove plantation. Using the Board of Supervisors' approval date of the rezoning application as the base date, this amount shall be adjusted according to the Consumer Cost Index as published in the *Engineering News Record* by McGraw-Hill.

25. Existing Hedgerow. Subject to the approval of the Urban Forestor/DEM, the Applicant agrees to perform the following measures relating to the preservation of the existing hedgerow located along the southern property line.

- Perform a pre-construction evaluation of the existing vegetation to determine the condition of the trees.

- A temporary four (4) foot tall welded wire mesh fence on steel t-bar posts driven two (2) feet into the ground shall be installed during the construction of the units adjacent to the tree preservation area. Signage affirming "restricted access" shall be provided on the temporary fence highly visible to construction personnel.

- Prepare and implement a tree preservation action plan to include recommended activities which will improve the condition of the trees and their potential for survival. In addition, where it is determined feasible, adjustments to the proposed grading and location of the proposed units on the application property may be modified at time of final engineering to enhance specific tree preservation in this area.

- In the event the hedgerow is impacted by construction activities onsite, replacement plantings shall be provided as determined by DEM.

26. Offsite Landscaping. The Applicant shall coordinate with the owner(s) of the adjacent Tysons Sheraton Hotel located on Tax Map 29-1 ((1)) 10D to provide additional landscaping in order to provide an effective year-round screen within the existing landscaped area immediately adjacent to the common property line of the Application property, subject to the permission of the property owner(s) of the Tysons Sheraton Hotel.

27. Offsite Sidewalks. The Applicant shall construct a sidewalk from the Application property's eastern property line along the offsite portion of Ashgrove Lane located on Tax Map 29-1 ((1)) 10D subject to the permission of the property owner(s) of the Tysons Sheraton Hotel. In addition, the Applicant shall provide a sidewalk within the existing right-of-way of Sheraton Tysons Drive to connect to Westwood Center Drive. These sidewalks shall be provided at such time as the sidewalks are constructed along the onsite spine road. If permission is not granted from the property owner(s) to construct the sidewalk prior to this time frame, the Applicant shall escrow the funds to DEM for the cost of construction of the sidewalk.

28. Sheraton Tysons Drive. The Applicant shall make best efforts to coordinate with VDOT to have Sheraton Tysons Drive accepted into the state system. The Applicant shall demonstrate to DEM their efforts to coordinate with VDOT through appropriate documentation in the event the road is not accepted into the state system.

29. Traffic Signal. The Applicant shall escrow the funds to DEM for the cost of a traffic signal at the intersection of Westwood Center Drive and Sheraton Tysons Drive to be installed by others if warranted by VDOT within twelve (12) months of the issuance of the final residential use permit (RUP). If the warrants are not met within this time frame, the escrowed funds may be utilized for modifications to the existing traffic signal located at the intersection of Route 7 and Westwood Center Drive or other improvements along Westwood Center Drive if determined necessary by VDOT and/or OT within twelve months of the determination that the traffic signal at Westwood Center Drive and Sheraton Tysons Drive is not warranted. If the modifications described above are not necessary as determined by VDOT/OT, the escrowed funds shall be returned to the Applicant.

30. Bus Shelter. The Applicant shall provide the necessary funds to Fairfax County for a bus shelter to be installed by others at Route 7 and Westwood Center Drive. The funding shall not include costs for necessary easements, bus turn-outs or special lanes. The precise location of the bus shelter shall be determined by OT.

31. Disclosure. The Applicant shall disclose to prospective purchasers that the Application property is located within the Tysons Corner Urban Center which is envisioned in the Fairfax County Comprehensive Plan as an urban environment with high-intensity mixed use development and enhancements to the transportation system.

32. Successors and Assigns. These proffers will bind and inure to the benefit of the applicant and his/her successors and assigns.

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

34. Severability. Any of the single-family attached or the multi-family sections may be subject to a Proffered Condition Amendment without joinder and/or consent of the other sections, if such PCA does not affect any other sections. Previously approved proffered conditions applicable to the section(s) which is not the subject of such a PCA shall otherwise remain in full force and effect.

(SIGNATURES BEGIN ON NEXT PAGE)

TITLE OWNER OF
TAX MAP 29-2 ((1)) 10C

WILSON C. SHERMAN

By: _____
Wilson C. Sherman

(SIGNATURES CONTINUE ON NEXT PAGE)

TITLE OWNER OF
TAX MAP 29-3((1)) 1A

WILSON C. SHERMAN

By: _____
Wilson C. Sherman

LEE C. SHERMAN

By: Lee C Sherman
Lee C. Sherman

(SIGNATURES CONTINUE ON NEXT PAGE)

APPLICANT/CONTRACT PURCHASER

PULTE HOME CORPORATION

By: _____ ATTORNEY IN FACT

Stanley F. Settle, Jr.

Its: Attorney-in-Fact

(SIGNATURES CONTINUE ON NEXT PAGE)

APPLICANT/CONTRACT PURCHASER

EAKIN/YOUNGENTOB ASSOCIATES, INC.

By: Chairman and CEO

LeRoy Eakin, III

Its: Chairman and CEO

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