PROFFERS

SHAWNEE ROAD, L.L.C.

RZ/FDP 1998-MV-059

April 6, 2000

Pursuant to Section 15.2-2303(A), of the Code of Virginia, 1950 as amended, and Section 18-204 of the Zoning Ordinance of Fairfax County, the property owner and applicants, for themselves and their successors or assigns (hereinafter collectively referred to as the "Applicant") in this rezoning, proffer that the development of the parcel under consideration and shown on the Fairfax County Tax Map as 108-1 ((1)) 47 and 47A (hereinafter the "Property") will be in accordance with the following conditions, subject to approval of this rezoning application. If accepted, these proffers shall replace and supersede those proffers previously approved with RZ 86-V-092 which shall become null and void. The proffered conditions are:

1. **DEVELOPMENT PLAN -**

   a. The Property shall be developed in substantial conformance with the Conceptual/Final Development Plan (CDP/FDP) dated June 24, 1999 (11 sheets) prepared by Dewberry & Davis; provided, however, that minor modifications may be permitted when necessitated by sound engineering or which may become necessary as part of final engineering, as determined by the Department of Public Works and Environmental Services (DPWES). The Applicant shall have the flexibility to modify the layout shown on the CDP/FDP without requiring approval of an amended FDPA provided such changes are in substantial conformance with the FDP as determined by the Department of Planning and Zoning (DPZ) and do not change access to the site, increase the total number of units, decrease the amount of open space, tree preservation or the landscaped areas or the location of common open space areas. Such changes may include, increasing the width of the single-family attached units; shifting the number of single-family attached units from one group of units to another; and adjusting the internal lot lines of the single-family detached dwelling units.

   b. Notwithstanding that the CDP/FDP is the subject of Proffer of 1.a. above, the Applicant, its successors and assigns shall have the option to request Final Development Plan Amendments (FDPA) from the Planning Commission for the entire plan or portions thereof in accordance with the provisions set forth in Section 16-402 of Zoning Ordinance without the need for the approval of a proffered condition amendment.

   c. Applicant shall develop no more than 256 units on the Property, consisting of a mix of single-family detached units and single-family attached units consistent with Note 20 on the CDP/FDP.

d. Some or all of the single-family detached units may be zero lot line or patio styled dwellings. House locations and building footprints may shift or be modified as a result of final engineering in the location of utilities as well as to accommodate a zero lot line or a patio or single-family detached dwelling consistent with Note 20 on the CDP/FDP. The minimum lot size for the single-family detached dwellings shall be 2,500 square feet. All single-family detached units shall be provided with a minimum of two parking spaces per unit and the single-family attached units shall be provided with a minimum of 2.3 parking spaces per unit including those single-family detached units converted to single-family attached units. The minimum distance between buildings in the single family detached sections as shown on the CDP/FDP shall be 6 feet.

e. Pursuant to Part 8 of Article 2, the Applicant shall provide affordable dwelling units (ADUs) on the Property subject to such modifications and/or amendments which may occur to the Zoning Ordinance. Applicant shall ensure that the ADUs are distributed in various locations of the single-family attached section of the proposed community.

f. No development, other than grading and utility installation shall occur on the "Lake Parcel" (9.469 acres), "Preserve Parcel" (4.687 acres) or the "Pohick Parcel" (3.65 acres). The Applicant shall dedicate and convey in fee simple the Lake, Preserve and Pohick Parcels, at time of subdivision plan approval, to the Fairfax Foundation or its designee for its use and enjoyment as open space. Any subsequent subdivision of the Property must include as part of any subdivision and/or site plan the following note which provides that the entire area of RZ 1998-MV-059 will be considered as a single unit for purposes of application of the Zoning Ordinance:

> The entire land area of 60.55 acres as shown on the plat entitled _____ and recorded in Deed Book _____ at Page _____ is to be considered a single lot for the purposes of application of the Fairfax County Zoning Ordinance. Any future subdivision plat and/or site plan which may be filed on a portion of the original 60.55-acre site shall include this notation and reference the most recently approved site plan and most recently recorded record plat of subdivision. Such future subdivision plat and/or plan must include a running tabulation as an indication of compliance with the applicable Zoning District requirements with regard to density.

g. No development shall be permitted in that portion of the property located within the Pohick Church Historic Overlay District, the "Pohick Parcel" (3.65 acres) other than roads, trails (and associated benches and passive recreation areas), and the development of necessary utility connections and extensions as determined by the Applicant, as approved by DPWES.

2. **NOISE ATTENUATION -**

a. In order to achieve a maximum interior noise level of approximately 45 dBA Ldn, all units located between the 65-70 dBA Ldn highway noise impact contours (448 feet from centerline of Route 1) as may be reduced by walls, berms, fencing and/or the location of structures shall have the following acoustical attributes:

1. Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.

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

3. 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 approximately 45 dBA Ldn, all units located between the 70-75 dBA Ldn highway noise impact contours (208 feet from centerline of Route 1) as may be reduced by walls, berms, fencing and/or the location of structures shall have the following acoustical attributes:

1. Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 45.

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

3. 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 reduce exterior noise levels in affected rear/side yards of the proposed units to 65 dBA Ldn or less, one or more noise barriers shall be provided. The barrier(s) shall be of a height sufficient to break all lines of sight between a line eight feet above the centerline of the highway and a plane 6 feet above the ground in the affected outdoor recreational areas. The barrier(s) shall be architecturally solid from the ground up and shall contain no gaps or openings. A berm, architecturally solid

wall, or berm-wall and/or fence combination can be used as a noise barrier. If the Applicant desires, noise barriers can be substituted as rear/side yard privacy fencing.

d. Other methods of mitigating highway noise may be pursued, including the placement of structures and/or dwelling units, if it can be demonstrated, through an independent noise study for review and approval by DPWES, that these methods will be effective in reducing exterior noise levels to 65 dBA Ldn or less and interior noise levels to 45 dBA Ldn or less.

e. All prospective purchasers of units shall be notified in writing at the time of contract execution by the Applicant of the proximity of Davison Airfield and the potential for periodic noise from aircraft. A notation to this effect shall be included in every Deed of Conveyance to ensure proper notification to all future purchasers.

3. **STORMWATER MANAGEMENT/BEST MANAGEMENT PRACTICES -**

a. Stormwater management (SWM) and Best Management Practices (BMP) shall be provided within the proposed and existing ponds shown on the CDP/FDP, as determined by DPWES.

b. The Applicant shall provide landscaping around the facilities and preserve vegetation within the facilities as approved by DPWES and the Urban Forester, in accordance with the policy regarding planting around SWM facilities adopted by the Board on March 8, 1999.

c. The Applicant shall design storm water management pond #1 as shown on the CDP/FDP to accommodate VDOT project 0001-29-F20, PE 101, C501, RW207.

4. **HOMEOWNERS' ASSOCIATION -**

a. Any conversion of garages that will preclude 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 homeowners' association (HOA), which shall be established, and the Board of Supervisors. Prospective purchasers shall be advised of this use restriction at time of entering into a contract of sale.

b. Applicant shall record a covenant prohibiting the storage and/or parking of recreational vehicles and trailers (boats, trailers, and mobile homes) on the private street system within the Property, except in specific areas designated by the HOA. Each Deed of Conveyance to the purchasers of lots shall expressly contain this

disclosure and prospective purchasers shall be advised of this restriction prior to entering into any contracts of sale.

c. The covenants referenced the Proffer numbers 4.a. and 4.b. above shall run to the benefit of the HOA and Fairfax County and will be approved by the County Attorney prior to the recordation of the Deed of Subdivision.

d. All private streets shall be constructed pursuant to PFM pavement section standards as to the thickness for public subdivision streets.

e. Prior to conveying ownership of private streets to the HOA, the Applicant shall establish and fund an initial escrow in the amount of $10,000 as adjusted by increases in the construction cost index as published in the Engineering News Record by McGraw Hill from the date of Board approval of this rezoning application to the date of site plan approval for the purpose of private street maintenance. The HOA dues and budget shall include annual assessments to be deposited into the escrow account for private street maintenance.

f. The Applicant shall make the following disclosures to all purchasers of units as a part of the contract execution process and within HOA documents:

1. That on-site private streets are to be privately owned and maintained by the HOA;

2. Pursuant to an agreement between the Applicant and Marriott Continuing Care, Inc., the HOA shall be responsible for 50% of the annual maintenance cost of the existing 9.5-acre lake to include, but not be limited to, the cost of liability insurance; grounds keeping; slope maintenance; periodic dredging of the lake; dam and outlet structure repairs and repairs, if required, to the access road to the lake;

3. The potential for noise emanating from the use of Davison Airfield as noted in paragraph 2e above.

5. **TREE PRESERVATION -**

a. The Applicant shall contract a certified arborist to prepare a tree preservation plan to be submitted as part of the first site or subdivision plan submission, whichever comes first.

The plan shall be reviewed and approved by the Urban Forestry Branch. The certified arborist responsible for preparation of the tree preservation plan shall be referred to

as the Project Arborist. The tree preservation plan shall specifically include the Route 1 buffer, the "Pohick Parcel" and the tree save area between the SFA units and SFD units near the northernmost site entrance and shall consist of a tree survey for areas within the limits of clearing and grading as shown on the CDP/FDP, which includes the location, species, size, crown spread and condition rating percent of all trees 12 inches or greater in diameter within 20 feet on either side of all limits of clearing and grading. A tree survey shall not be necessary for other portions of the Property, based upon concurrence of the Urban Forester; such areas may include but are not limited to the far eastern property line adjacent to Davison Airfield, and the northern property line. The condition analysis shall be prepared using methods outlined in the eighth edition of The Guide for Plant Appraisal. Specific tree preservation activities designed to maximize the survivability of trees designated for preservation shall be incorporated into the tree preservation plan. Activities should include, but are not limited to crown pruning, root pruning, mulching, and fertilization.

b. All trees shown to be preserved on the tree preservation plan shall be protected by fencing. Tree protection fencing shall be erected at the limits of clearing and grading in accordance with the Tree Preservation Plan. Materials and installation of tree protection fencing shall conform to the two following standards:

1. For tree preservation areas along Richmond Highway, a 4-foot wire mesh fence shall be provided on all sides of the preservation area.

2. For all other areas, four foot high, orange plastic fence attached to 6 foot steel posts driven 18 inches into the ground and placed no further than 6 feet apart.

The tree protection fencing shall be made clearly visible to all construction personnel. The fencing shall be installed prior to the performance of any clearing and grading activities on the site. All tree preservation activities, including the installation of tree protection fencing shall be performed under the supervision of the Project Arborist. Prior to the commencement of any clearing or grading activities on the site, the Project Arborist shall verify in writing that the tree protection fence has been properly installed.

c. During the site or subdivision plan review, if it is determined that as a result of final engineering the areas designated to be preserved on the CDP/FDP are modified or cannot be preserved, substitute tree cover shall be provided elsewhere as determined by the Urban Forester.

d. A transplanting plan shall be prepared by the Project Arborist and submitted as part of the tree preservation plan. The type of vegetation and the area where it will be relocated to will be shown on this plan. The transplanting plan should include a) an

assessment of the condition and survival potential of the plants, b) the proposed time of year of transplanting and the timing of transplanting in the development process, c) the transplant methods to be used, including tree spade size if one is used, d) relocation site preparation, e) initial care after transplanting, including mulching and watering specifications, and f) long-term care during the development process, including tree protection fencing and watering schedule.

e. At time of subdivision and/or site plan submission, the Applicant shall notify in writing and allow access to the site to native plant societies so that they may from time of site plans submission to site plan approval remove and relocate native wildflowers, ferns, small trees, and other herbaceous plants that would otherwise be destroyed. The plants that are to be rescued and removed, may be relocated to other appropriate sites within the development or moved to locations off-site. These efforts shall be conducted prior to any construction activities on-site. Further, these societies/organizations shall each indemnify and hold harmless the Applicant and its agents, successors and assigns from any loss, and/or liability of any kind resultant from the entry of such entities or persons upon the Property for any purpose.

f. During site plan processing of land bays containing areas of undisturbed open space, the Applicant shall identify limits of clearing (consistent with the FDP) in conjunction with the Urban Forester and shall protect trees outside the limits of clearing with preconstruction flagging and fencing. The limits of clearing and grading as shown on the CDP/FDP shall be honored, however, if as a result of final engineering and subject to the approval of the Urban Forester, tree save areas on the CDP/FDP are modified or cannot be preserved, equivalent tree save areas or equivalent landscape areas shall be substituted on the site as determined by the Urban Forester.

g. The areas of existing vegetation to be preserved on the site shall be supplemented, as determined by the Urban Forester, with either existing vegetation transplanted from other areas of the site or with under-story supplemental plantings.

6. **LANDSCAPING -**

a. The Applicant shall plant the following vegetation within noted areas as shown on the CDP/FDP as follows, subject to Urban Forestry approval:

1. Street trees planted along all private streets, as shown on the CDP/FDP. The species of the trees and the areas in which they are located shall be in accordance with the provisions of the Public Facilities Manual.

2. Building foundation and internal parking lot landscaping as shown on the illustrative drawings in the CDP/FDP.

3. Entrance feature landscaping as shown on the CDP/FDP.

4. Supplemental plantings in the buffers along the Property's Route 1 frontage shall be provided where the Urban Forester determines existing vegetation is insufficient to provide a buffer that achieves a visual screen equivalent to Transitional Screening I in Article 13 of the Ordinance.

7. **TRANSPORTATION -**

a. At the time of Site Plan/Subdivision Plan approval or upon written request from VDOT or Fairfax County, whichever occurs first, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors the right-of-way and ancillary construction easements along the Property's frontage as shown on the CDP/FDP. This dedication shall be in accordance with VDOT Project 0001-29-F20, PE101, C501, RW207.

b. Along the remainder of the property frontage, north of VDOT Project 0001-29-F20, PE101, C501, RW207, the Applicant shall dedicate the right of way necessary for a six (6) lane divided U.S. Route 1 to include 68 feet of right of way dedication from construction centerline and in addition, the right of way necessary for right and left turn lanes into the project where these turn lanes require right of way above and beyond the 68 foot dedication improvements as shown on the CDP/FDP, . Applicant shall provide ancillary easements along the road frontage if the VDOT road project precedes development of the Application Property, as determined by the specific requirements of the approved and funded VDOT project.

c. Provided that the storm water management for this VDOT project is provided in Cook Inlet storm water management Pond #1, the dedication referenced in paragraph 7.a. shall not include the dedication shown on the VDOT project for storm water management pond associated with the project. In the event VDOT and the Applicant do not reach a SWM agreement and additional right-of-way is required for VDOT SWM purposes, revisions to the CDP/FDP which relocate a maximum of 3 units may be sought through the administrative approval of a minor FDP modification. Major modifications may be subject to approval of an amendment through the public hearing process.

d. The Applicant shall provide for the construction across the entire property's Route 1 frontage for a one-half section of a six (6) lane divided roadway with right and left turn lanes into the property's western and eastern entrances and including provision of a 10 foot asphalt trail.

These improvements shall be provided in the following manner:

1. With respect to the western half of the property and those improvements required for the construction of the western entrance to the site, the Applicant shall escrow sufficient funds as determined by DPWES or construct along the frontage of the subject property curb, gutter and pavement widening on the property side of the ultimate six (6) lane divided U.S. Route 1 as well as a right turn lane serving the western entrance to the site with transitions and pavement striping within the right of way referenced in 7a. and 7b. above and proposed property side widening to provide a temporary left turn lane into the western entrance to the site.

2. With respect to the eastern entrance, the Applicant shall prepare and submit for approval a Supplemental Road Improvement Plan detailing property side improvements to tie into the VDOT Project 0001-29-F20, PE101, C501, RW207 to widen and provide curb, gutter and trail along the eastern portion of the property frontage at the ultimate location of the six (6) lane divided U.S. Route 1 with permanent left turn lane and right turn lane providing access to the eastern entrance of the site.

   In the event VDOT implements Project 0001-29-F20, PE101, C501, RW207 prior to the final bond release of the Applicant's Cook Inlet Route 1 Public Improvement Plan, the Applicant will bond and implement this Supplemental Road Improvement Plan to tie into the improvements of the VDOT Project.

   In the event that VDOT does not proceed with the above referenced U.S. Route 1 project prior to final bond release of the Applicant's Cook Inlet Route 1 Public Improvement Plan, the Applicant shall construct only interim improvements at the eastern entrance to provide right turn in and right out access only and escrow funds for the Supplemental Road Improvement Plan based upon certified cost estimates prepared by the Applicant's engineer in accordance with the Fairfax County DPWES bond unit prices or costs based upon actual contractor bids for such work as approved by DPWES.

   The escrow shall be reduced by the cost of any interim improvements which serve to reduce the cost of or serve to benefit the completion of the VDOT Route 1 Project 0001-29-F20, PE101, C501, RW207 such as but not limited to:

   - Construction of the 10 foot wide asphalt trail within the right of way in the ultimate location of the trail;

   - The cost of storm water management including the cost of land area shown on the VDOT plan no longer required for acquisition by

VDOT as a result of the construction of Pond #1 by the Applicant on the Cook Inlet property to accommodate the storm water management and BMPs required by the VDOT project;

- Clearing and grading of part or all of the right of way for the VDOT Project; and

- Any stone base and/or pavement widening which may be utilized by VDOT with its ultimate Route 1 construction.

Such escrow shall be posted by the Applicant with Fairfax County prior to the release of the last Subdivision Bond for the property if the VDOT Project remains incomplete/unstarted as of that time.

e. Subject to the Applicant's preparation of a Warrant Study conforming to the MUTCD and its acceptance by Fairfax County and VDOT for installation of a signal, the Applicant shall design and install a traffic signal at the property's east entrance including a simulated timing and offset analysis acceptable to Fairfax County and VDOT where the signal may be inserted into an existing or proposed VDOT signal-coordinated corridor.

f. The Applicant shall reserve land area for future right-of-way dedication or future ingress/egress easement in such amount as will minimally be required to facilitate a private street access between the Applicant's property and The Fairfax existing private entry road, (the "Reservation Area"). Neither the Applicant, nor the owner of the Fairfax Retirement Community (the "Fairfax Owner") or the Army Retirement Residence Foundation - Potomac (the "Foundation") shall have any obligation or requirement to construct any improvements in the Reservation Area or make any road connection in any manner unless and until the following occur:

1. That the Fairfax Owner, the Foundation and any duly constituted organization of residents of the Fairfax Retirement Community ("Residents' Association") by duly authorized written notice to the Applicant, its successors and/or assigns and to the requisite agencies and officials of Fairfax County shall give notice that the Fairfax Owner, the Foundation and the Residents' Association all desire a connection for vehicular ingress/egress between the Applicant's property and the private entry road to The Fairfax;

2. That the Fairfax Owner or the Foundation, as the case may be, shall dedicate right-of-way and/or record the requisite permanent ingress/egress easement from The Fairfax private entry road to the application property to enable such connection;

3. The cost of construction, to include all costs of design, plan submission and approval, engineering and physical construction, of each portion of any private road connection shall be borne by the party upon whose property the private road connection is located.

4. Upon completion of the connection between the application property and The Fairfax private entry road, a free flow of vehicular traffic shall occur over private streets via public ingress/egress easement or right-of-way.

   The homeowner documents and sales materials and Disclosure Memoranda to be signed by each homeowner within the application property shall disclose the possibility of this future connection and payment therefor.

5. To ensure that funding is available for the completion of the portion of the private street tie-in on the application property, at time of plat recordation of the townhouse section in closest proximity to the common boundary with the Fairfax Owner, proximate The Fairfax entry road, the Applicant shall post an escrow for future construction with Fairfax County. Said escrow shall be in the amount of $10,000 to facilitate the private street connection on the application property only. In the event said connection is not requested by the joint request of the Fairfax Owner, the Foundation and the Residents' Association as hereinabove provided, by the date which is five (5) years from the date of release of the last subdivision bond for sections/improvements within the application property, then in such event said escrow funds shall be returned together with accrued interest to the Applicant, its successors and/or assigns.

6. If such a connection is requested, it shall not require a PCA, FDPA, or SEA on the Application Property.

8. **RECREATION -**

a. Applicant shall provide the active and passive recreational facilities as shown on the CDP/FDP which include:

   - Community pool and club/bath house.
   - One (1) tot lot.
   - Trails to be field located prior to the construction generally as shown on the CDP/FDP.
   - One (1) play area.

b. Prior to bond release of proffered recreation facilities, the Applicant shall provide written estimates from its contractor(s) to DPWES that the Applicant has expended,

or will expend, the equivalent of $955.00 per unit (exclusive of ADUs) for recreation facilities within the development. In the event that the recreation facilities provided by the Applicant do not equal $955.00 per unit (exclusive of ADUs) the Applicant shall contribute the balance of the amount in accordance with provisions of Section 2-704 of the Zoning Ordinance to the Fairfax County Park Authority for improvements in a nearby park.

c. The placement of recreational facilities including picnic facilities shall not necessitate land disturbance or the removal of trees 10 inches or greater within the tree preservation areas noted on the CDP/FDP. These areas shall remain completely natural and shall not be seeded or sodded.

9. **ARCHITECTURE -**

a. All single-family detached and attached buildings shall be constructed with architectural features generally conforming to the illustrative elevations shown on the CDP/FDP.

b. Entrance features (stone or masonry entry wall, fence and berm along Route 1, stone or masonry wall at SWM pond and community pavement patterns) shall be constructed generally conforming to the illustrative elevations shown on the CDP/FDP as shown on Sheet 11.

c. Street lighting, generally conforming to the illustrative detail on the CDP/FDP, shall be provided in the locations shown on the CDP/FDP.

d. All homes shall meet the thermal guidelines of the Virginia Power Energy Saver Program for energy efficient homes or its equivalent, as determined by DPWES for either electric or gas energy systems.

10. **GEOTECHNICAL STUDY -**

If required by DPWES and in accordance with the provisions of the PFM, Applicant shall submit a Geotechnical Study of the Application Property to the Geotechnical Review Board and shall incorporate appropriate engineering practices as recommended by the Review Board and DPWES into the design to alleviate potential structural problems.

11. **SEWER PUMP STATION -**

At time of site plan submission, the Applicant shall demonstrate to the satisfaction of DPWES that the existing pump station has adequate capacity to serve both the existing "Fairfax" development and the proposed development. Applicant shall provide necessary improvements

to the pump station to ensure that it has the capacity to accommodate the additional flow, if required, and subject to the approval of DPWES.

12. RESTRICTIVE COVENANT -

If and to the extent that the property covered by the application is not already subject to the operation of those certain reservations and/or restrictive covenants contained in the deed recorded in Deed Book 6382 at page 1930 among the land records of Fairfax County, Virginia, the applicant agrees to grant in favor of the United States Government restrictive covenants in a form identical to those contained in the Quitclaim Deed dated April 23, 1986, recorded in Deed Book 6382 at page 1930 among the land records of Fairfax County, Virginia.

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[SIGNATURE LINES BEGIN ON THE FOLLOWING PAGE]

APPLICANT/TITLE OWNER:
Tax Map 108-1 ((1)) 47

CONTRACT PURCHASER:
Tax Map 108-1 ((1)) 47A

SHAWNEE ROAD, L.L.C.

By: John E Coates
Its: Manager

TITLE OWNER:

Tax Map 108-1 ((1)) 47A and 47B

MARRIOTT CONTINUING CARE, INC.

By: Michael Giacopelli
Its: V. P.