

**Proffers for Proposed PDH-3 Rezoning**

**RZ 2007-LE-009**

**Sharon Chapel, LLC**

**May 2, 2007**

Pursuant to Section 15.2-2303(A), Code of Virginia, 1950 as amended, the undersigned Applicant and Owner, in this rezoning proffer that the development of the parcel under consideration and shown on the Fairfax County Tax Map as Tax Map Reference 82-4((1))34 (hereinafter referred to as the "Property") will be in accordance with the following conditions (the "Proffered Conditions"), if and only if, said rezoning request for the PDH-3 Zoning District is granted. In the event said rezoning request is denied, these Proffered Conditions shall be null and void. The Owner and Applicant, for themselves, their successors and assigns hereby agree that these Proffered Conditions shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board of Supervisors of Fairfax County, Virginia, in accordance with applicable County and State statutory procedures. These Proffered Conditions supersede those adopted in conjunction with the approval of RZ 2005-LE-032. The Proffered Conditions are:

**I. GENERAL**

1. Substantial Conformance. Subject to the provisions of Article 16 of the Fairfax County Zoning Ordinance (hereinafter referred to as the "Zoning Ordinance"), development of the Property shall be in substantial conformance with the Conceptual Development Plan/Final Development Plan (CDP/FDP), prepared by christopher consultants, consisting of 8 sheets, dated July 21, 2005, revised through May 2, 2007.

2. Maximum Lot Yield. The development shall consist of a maximum of 12 single family detached units, including the existing dwelling. The existing dwelling may be modified, internally or externally. Except as may be further qualified by these proffered conditions, minor modifications to the building envelopes including house location and sizes may be permitted in accordance with Section 16-403 of the Zoning Ordinance.
  
3. Establishment of HOA. Prior to subdivision plan approval, the Applicant shall demonstrate that the Property will be governed by a Homeowners Association (HOA) and be subject to a Declaration of Covenants, Conditions and Restrictions consistent with the requirements of Article 2 of the Zoning Ordinance.
  
4. Dedication to HOA. In conjunction with the appropriate subdivision plan review process, open space, common areas, private street and amenities not otherwise conveyed or dedicated to the County shall be dedicated to the HOA and maintained by the same.
  
5. Disclosure. Prior to entering into a contract of sale, prospective purchasers shall be notified in writing by the Applicants of the maintenance responsibility for the private street, sidewalks, stormwater management facilities, retaining wall, cemetery fence, common area landscaping and any other open space amenities and shall acknowledge receipt of this information in writing. The prospective purchaser of the existing house on the Property shall be notified of the obligations as outlined in Proffer I.13 with respect to architectural elements and demolition of the dwelling and shall acknowledge receipt of

this information in writing. The deeds of conveyance shall expressly contain these disclosures.

6. Garages. A minimum of two parking spaces shall be provided within the garage of each new dwelling unit. 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 the Board of Supervisors and the HOA and this restriction shall be included in the HOA documents.

7. Retaining Wall.

- a. The retaining wall shall be constructed of stone. Anticipated height of the retaining wall is shown on the CDP/FDP. Retaining wall size and location may be subject to change upon final engineering; however, the retaining wall shall not exceed a height of 10 feet. Note that additional walls may be needed per proffer IV.1.
- b. The Applicant shall have a geotechnical engineer present during the construction/installation of the retaining wall. The geotechnical engineer shall monitor the construction/installation for compliance with approved specifications and shall prepare a certification of compliance to be submitted to DPWES.
- c. On or before bond release for the proposed development, and as a condition thereto, the Applicant shall deposit \$15,000 into an escrow account established

for the benefit of the HOA for future maintenance, repair and upkeep of the common area retaining wall within the development.

8. Cemetery. The applicant shall install a wrought iron or aluminum fence which has the appearance of wrought iron, four (4) feet in height, along the two sides of the family cemetery (Lot 43) which abut the application property. The applicant shall continue the described fence along the lot line between Lot 43 and Section One of Governor's Hill provided consent for the installation is received from either the property owners of Lot 43 or the Governor's Hill HOA and along the right-of-way of Telegraph Road provided consent for the installation is received from the property owners of Lot 43. A gate shall be installed on the northwestern side of the fence. The Applicant shall diligently pursue this consent and if such is not obtained, shall demonstrate the failed attempt to DPWES. The Applicant shall also place a plaque at the cemetery at the time the fence is installed, the location and wording to be determined by the Applicant together with the cemetery owners.
9. Energy Conservation. All newly constructed dwellings on the Property shall meet the thermal guidelines of the CABO Model Energy Program for energy efficient homes, or its equivalent as determined by DPWES for either gas or electric energy systems, as may be applicable.
10. Signs. No temporary signs (including "popsicle" style paper or cardboard signs), which are prohibited by Article 12 of the Zoning Ordinance and Chapter 7 of Title 33.1, and

Chapter 8 of Title 46.2 of the Code of Virginia, shall be placed on or offsite by the Applicant or at the Applicant's direction. The Applicant shall direct its agents and employees involved with the Property to adhere to this proffer.

11. Construction Access. There shall be no construction access directly off of Telegraph Road. Construction access shall only be off of Sharon Chapel Road. There shall be no staging or parking of construction vehicles, construction equipment, or construction workers vehicles on Sharon Chapel Road associated with the construction of the proposed houses.
  
12. Construction Hours. Construction shall only occur between the hours of 7:00 a.m. until 7:00 p.m. Monday through Friday, 8:00 a.m. until 6:00 p.m. on Saturday and 9:00 a.m. until 6:00 p.m. on Sunday. Construction activities shall not occur on the holidays of Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving, Christmas, Easter, and New Years Day. The construction hours shall be posted on the property. The allowable hours of construction as specified in this proffer shall be listed within any contract with future sub-contractors associated with construction on the site.
  
13. Architecture. The new dwelling units will be designed with brick, stone and/or beaded siding or similar materials or a combination of these exclusive of windows, doors, shutters and trim. Exterior alterations of the existing house on the Property shall be subject to review and approval by the Fairfax County Architectural Review Board (ARB). Prior to the issuance of any building permits for changes to the existing

dwelling, written confirmation of review and approval by the ARB shall be provided to the County. Any window replacement of double-hung windows on the existing dwelling will match the existing in window style, type, muntin, mullion, and light configuration. Any replacement of metal casement windows with wood windows will match the existing window in muntin, mullion and light configuration. Any replacement windows will be: a) true divided light, b) of material comparable in quality to the existing windows, and c) within the existing window opening in the façade. At no time can the existing dwelling be demolished without prior review and approval of the ARB, unless the dwelling is deemed structurally unsound by an unbiased structural engineer.

14. Historical Assessment. A study, conducted in accordance with the Fairfax County History Commission's (FCHC) guidelines, shall be conducted on the existing house and the newly created lot for this house. The study shall be submitted to the FCHC for consideration of listing on the Fairfax County Inventory of Historic Sites within 6 months of the approved rezoning and prior to subdivision plan approval. If the FCHC determines that the house meets the criteria for listing and acts to list the house, then the listing would include the house and newly created lot for this house. The applicant shall provide or fund an interpretive marker(s) for the site, if the site is deemed to be of historical significance as determined by the FCHC.
  
15. Photographic Inventory. The existing conditions on the Property to include at a minimum, the house, landscape and cultural landscape features, topographic features, and all accessory structures proposed for demolition shall be photographed and documented

prior to any demolition of the accessory structures. The photographic recordation shall be shown on an aerial site map indicating the location, angle and number of each photograph, along with an existing conditions boundary and topographic survey map and shall be completed prior to subdivision plan approval. All photographs shall be captioned for identification. All photographs and maps shall be submitted to the Virginia Room of the Fairfax County Public Library and to the Fairfax County Department of Planning and Zoning (DPZ). The applicant shall provide written documentation to DPZ that the required documentation has been submitted to the Virginia Room.

16. Escalation. All monetary contributions required by these proffers shall be adjusted upward or downward based on the percentage change in the annual rate of inflation as calculated by referring to the Consumer Price Index for all urban customers (CPI-U), 1982-1984 = 100 (not seasonally adjusted) as reported by the United States Department of Labor, Bureau of Labor Statistics occurring subsequent to the date of rezoning approval and up to the date of payment. In no event shall an adjustment increase exceed the annual rate of inflation as calculated by the CPI-U.
  
17. Lot Typical. The minimum front, side and rear yards shall be consistent with that shown on the typical lot layout on the CDP/FDP. Decks, bays, windows, patios, chimneys, areaways, mechanical equipment and other similar appurtenances may encroach into minimum yards as established on the "lot typical" generally described on the CDP/FDP, as permitted by Section 2-412 and/or Article 10 of the Zoning Ordinance.

## II. TRANSPORTATION

1. Right-of-Way Dedication. At the time of recordation of the first record plat or upon demand, whichever occurs first, right-of-way along the site's Telegraph Road frontage as shown on the CDP/FDP shall be dedicated and conveyed to the Board of Supervisors in fee simple with density reserved subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance.
  
2. Private Street. The private street shall be constructed by the Applicant with materials and to the pavement thickness standard of public streets as set forth in the Public Facilities Manual (PFM), subject to DPWES approval. Prior to entering into a contract of sale, prospective purchasers shall be notified of the existence of the private street and the associated maintenance obligations required by these Proffered Conditions and such information shall be included in the HOA documents. At the time of subdivision plan approval, a reserve fund in the amount of \$5,000 shall be established by the Applicant for future private street maintenance.
  
3. Length of Driveways. All driveways serving the approved residential units shall be a minimum of 18 ft. in length starting at the entrance to the garage.
  
4. Frontage Improvements. Prior to the issuance of the first Residential Use Permit, the Applicant shall construct a right turn taper along the site's frontage on Telegraph Road and construct improvements on Sharon Chapel Road to a 14 foot wide half section with

curb and gutter and a 5 foot wide sidewalk, as approved by DPWES. As part of the improvements, the culvert at the intersection of Sharon Chapel Road and Telegraph Road will be replaced, subject to VDOT approval.

5. Sidewalks/Open Space Amenities. Sidewalks shall be constructed as shown on the CDP/FDP in accordance with the PFM standards. Prior to entering into a contract of sale, prospective purchasers shall be notified of the existence of the sidewalks and any amenities constructed with the open space areas such as gazebos and the associated maintenance obligations required by these Proffered Conditions and such information shall be included in the HOA documents.
  
6. Public Access Easements. A public access easement in a form approved by the County Attorney shall be placed on the private street and sidewalks within the approved development. A public access easement in a form approved by the County Attorney, the exact location and width to be determined at the time of subdivision plan review, shall be placed between the trail along Telegraph Road shown on the CDP/FDP and the future cemetery gate.

### III. HOUSING TRUST FUND

1. At the time of the first building permit issuance, the Applicant shall contribute a sum equal to one-half of one percent (0.5%) of the projected sales price for each new dwelling

unit on the Property to the Fairfax County Housing Trust Fund, as determined by the Department of Housing and Community Development in consultation with the Applicant to assist the County in its goal to provide affordable dwellings elsewhere in the County.

#### IV. ENVIRONMENTAL

1. Stormwater Management Facilities and Best Management Practices Techniques.

Stormwater Management and Best Management Practices (BMP's) shall be provided through the use of a rainstore system, as approved by DPWES, in the area shown on the CDP/FDP. This stormwater management facility shall also include the use of a sand filter system as shown on the CDP/FDP. If this type of stormwater management/BMP facility is not approved by DPWES, a conventional type of facility, such as a dry pond, shall be provided in the same general area shown on the CDP/FDP and shall be landscaped to the maximum extent possible as determined by DPWES. If a conventional type of facility is required, and retaining walls are required to construct the pond, such walls may be installed; however, any such retaining wall in this area shall be no higher than 12 feet with the acknowledgement that terracing of walls may occur.

If approved by DPWES, the rainstore facility and sand filter shall be maintained by the applicant, its successors and assigns, in accordance with the regulations of Fairfax County. Said maintenance responsibility shall be incorporated in an agreement to be reviewed and approved by the Fairfax County Attorney's Office and recorded among the Fairfax County land records. The obligation specified in this agreement shall be

incorporated in the HOA documents. Prospective purchasers shall be informed of this requirement prior to entering into a contract for the purchase of a unit. Said agreement shall address the following:

- a. Future replacements of facilities when warranted.
  - b. County inspection and all other issues as may be necessary to ensure the facilities are maintained in good working order acceptable to the County.
  - c. Liability and insurance in an amount acceptable to the applicant and Fairfax County.
  - d. A restriction that the applicant, their successors and assigns, shall not petition DPWES for future maintenance.
  - e. The establishment of an initial reserve fund by the applicant to the benefit of any future HOA to be formed with respect to the subject site for future maintenance and/or replacement in an amount to be determined by DPWES in coordination with the applicant. Said reserve fund shall be established prior to the conveyance of the first residential unit on the site.
2. Limits of Clearing and Grading. 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. 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 disrupting manner possible as determined by Urban Forest Management, DPWES. A replanting plan shall be

developed and implemented, subject to approval by the Urban Forest Management, DPWES, for any areas outside the limits of clearing and grading that must be disturbed.

3. Tree Preservation. The applicant shall submit a tree preservation plan as part of first and all subsequent subdivision plan submissions. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and reviewed and approved by the Urban Forest Management (UFM), 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 10 inches in diameter and greater 20 feet to either side of the limits of clearing and grading shown on the CDP/FDP for the entire site. The tree survey shall also include areas of clearing and grading not shown on the CDP/FDP resulting from engineering requirements, such as off-site clearing and grading for utilities or stormwater outfall. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture. Specific tree preservation activities that will maximize the survivability of trees identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

4. Tree Value Determination. The Applicant shall retain a professional arborist with experience in plant evaluation, to determine the replacement value of all trees 10 inches (10") in diameter or greater and located within twenty feet (20') of the outer edge of the

limits of clearing and grading (i.e. outside the limits of clearing and grading) as shown on the CDP/FDP. These trees and their value shall be identified on the Tree Preservation Plan at the time of the first submission of the Subdivision Plan. The replacement value shall take into consideration the age, size and condition of these trees and shall be determined by the "Trunk Value Method" contained in the latest edition of the Guide of Plan Appraisal published by the International Society of Arboriculture, subject to review and approval by UFM, DPWES.

5. Tree Bonds. In order to provide a remedy for any unintended disruption to trees required to be preserved under these proffers, at the time of bond approval, the Applicant shall both post a cash bond and a letter of credit or similar corporate surety bond payable to the County of Fairfax to ensure preservation and/or replacement of the trees for which a tree value has been determined in accordance with the previous proffer (hereinafter the "bonded trees") that die or are dying due solely to unauthorized construction activities. The Applicant shall have no obligation for trees that die or are dying for reasons unrelated to unauthorized construction activities, or for no apparent reason. The letter of credit or corporate surety bond shall be equal to fifty percent (50%) of the replacement value of the bonded trees. The cash bond shall consist of thirty three percent (33%) of the amount of the letter of credit or corporate surety bond.

During the time period in which the Tree Bond is required to be held, should unauthorized construction activity cause any bonded trees to die, or be removed, the Applicant shall replace such trees at its expense. As stated above, the Applicant shall have no obligation to replace trees that die or are dying for causes unrelated to

unauthorized activities, or no apparent reason. The replacement trees shall be of equivalent size, species, and/or canopy cover as approved by UFM and shall incorporate native plant species. In addition to this replacement obligation, the Applicant shall also make a payment equal to the value of any Bonded Tree that is dead or dying or improperly removed due to unauthorized activity. This payment shall be determined based on the valuation methodology described in Proffer V.4 above and paid to a fund established by the County for furtherance of tree preservation objectives. Upon release of the site performance bond, any amount remaining in the tree bonds required by this proffer shall be returned/released to the Applicant. At the time of approval of the final RUP, the Applicant may request a release of any monies remaining in the cash bond and a reduction in the letter of credit or corporate surety bond to an amount up to twenty percent (20%) of the total amounts originally committed provided they are in good standing with the tree proffer commitments.

Any funds remaining in the letter of credit or cash bond will be released concurrently with the site performance bond release, or sooner, if approved by UFM.

6. Protection of Existing Understory Vegetation and Soil Conditions in Tree Preservation Areas. 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 in the lower canopy environment, and to the existing top soil and leaf litter layers that provide nourishment and protection to that vegetation with the exception of the attempt to remove the ivy discussed in Proffer IV. 12. 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 UFM.

7. Use of Equipment. Except as qualified herein, the use of motorized equipment in tree preservation areas will be limited to hand-operated equipment such as chainsaws, wheel barrows, rake 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 UFM.

8. Root Pruning and Mulching. The Applicant shall 1) root prune, 2) mulch, and 3) provide tree protection fencing in the form of four foot (4') high, fourteen (14) gauge welded wire attached to six foot (6') steel posts driven eighteen inches (18") into the ground and placed no further than ten feet (10') apart, or other forms of tree protection fencing approved by UFM, DPWES for all tree preservation relevant areas. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets and demolition plan sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by UFM, 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, vibratory plow to a depth of eighteen inches (18").
- 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.
- Immediately after the Phase II Erosion and Sedimentation activities are complete, mulch shall be applied at a depth of four inches (4") extending ten feet (10') inside the undisturbed area without the use of motorized equipment.
- An UFM, representative shall be informed when all root pruning and tree protection fence installation is complete.

9. Tree Preservation Walk-Through. 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 UFM representative and a representative from the Lee District Land Use Committee to determine where adjustments to the clearing limits can be made to increase the area of tree preservation; increase the survivability of trees at the edge of the limits of clearing and grading; facilitate the removal of trees adjacent to the limits of clearing and grading; facilitate tree preservation activities such as root pruning or fencing; or facilitate the installation of erosion and sediment control devices. Such adjustment shall be implemented. Trees that are identified specifically by UFM in writing as dead or dying may be removed as part of the clearing operation, but it is noted that unless a dead or dying tree presents a safety hazard, attempts will be made to retain the tree. The dead or dying tree may be topped in order to be retained if that eliminates the problem of a safety hazard. 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.

10. Tree Protection Fencing. All trees shown to be preserved on the Tree Preservation Plan shall be protected by tree protection fencing. Tree protection fencing of a type permitted by UFM shall be erected concurrently with the Phase I Erosion and Sedimentation permit activities. Tree fencing shall be installed prior to any clearing and grading activities including the demolition of any existing structures at the limits of clearing and grading as shown on the demolition, and Phase I & II erosion and sediment control sheets, as may be modified during the tree preservation walk through with an UFM representative. All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection 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. Five (5) working days prior to the commencement of any clearing, grading, or demolition activities, but subsequent to the installation of the tree protection devices including fencing, UFM and Lee District Supervisor staff shall be notified and given the opportunity to inspect the site to assure 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 UFM.

11. Site Monitoring. Inspection of the site by a representative of the Applicant during any clearing or tree/vegetation/structure removal on the Applicant Property within the drip line of the trees to be saved as part of the Tree Preservation Plan as described in Proffer V.3, shall occur on a weekly basis to ensure that the activities are conducted as proffered and as approved by UFM. The inspection/monitoring schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by UFM, DPWES. The Lee District Supervisor shall be notified of the name and contact information of the Applicant's representative responsible for site monitoring at the tree preservation walk-through meeting.
  
12. Ivy. The Applicant shall attempt to remove the English ivy within the tree save areas but shall not be responsible for continual removal due to reinvasion from neighboring properties. An invasives control plan shall be submitted with the first and all subsequent subdivision plan submissions detailing how the English ivy will be removed subject to review and approval by UFM. Such plan shall be implemented prior to the issuance of the first residential use permit.
  
13. Landscaping. Landscaping shall be consistent with the quality, quantity and general location shown on the Landscape Plan on Sheet 4 of the CDP/FDP. At the time of planting, the minimum caliper for deciduous trees shall be two and one-half (2.5) inches to three (3) inches and the minimum height for evergreen trees shall be seven (7) feet. Actual types and species of vegetation shall be determined pursuant to more detailed

landscape plans approved by Urban Forest Management at the time of subdivision plan approval. Such landscape plans shall provide tree coverage and species diversity consistent with the Public Facilities Manual (PFM) criteria, as determined by Urban Forest Management.

14. Geotechnical. The Applicant shall construct improvements on the Property in accordance with a final geotechnical report, as approved by DPWES. The geotechnical notes contained within the approved report as may be amended and approved by DPWES shall be incorporated into the plan of implementation required for approval by DPWES.
  - a. 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 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.
  - b. 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.

- c. All slope stabilization features including, but not limited to, piles, retaining walls (if applicable) and subsurface drains, shall be bonded. Construction of private streets shall be completed as set forth in the geotechnical study and constructed in accordance with the design standards of the Public Facilities Manual.
- d. 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.
- e. 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, 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. The

initial home purchaser shall be required to acknowledge in writing the receipt of this information.

- f. 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 Property in which earth moving activities are planned to occur imminently beyond that period.
  
- g. 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 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.
  
- h. Up until the issuance of the final residential use permit for the 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 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.

- i. A geotechnical engineer shall be retained by the Applicant, and if permitted by the owners, shall conduct pre-construction inspections of the dwellings, and other improvements such as retaining walls and grounds on Tax Map references 82-4((8))21-25 in Wilton Woods subdivision, to assess pre-grading/construction conditions. A written request to the above referenced properties shall be mailed, certified mail, return receipt requested, by the Applicant to request access to these properties for the purpose of inspection. The letter shall explain the reason for the request. If the property owner has not responded within to allow inspection within thirty (30) days of the date of the certified letter, the Applicant shall be relieved of the responsibility of conducting an inspection. Upon receipt of a written claim of damage to properties that were inspected as a proximate result of negligent and faulty grading and construction activity on the Property, the Applicant or their successors or assigns shall meet with the claimant/owner within fourteen (14) days to determine an appropriate course of action for repair unless a

more reasonable amount of time is needed and agreed upon by the Applicant and the claimant/owner. The Applicant or their successors or assigns shall cause commencement of repair and/or stabilization within ninety (90) days of the written claim unless reasonable additional time is needed as agreed upon by the Applicant or their successors or assigns and the claimant/owner. Any repair required by this proffer shall be subject to review and approval by DPWES. If, despite good faith efforts by both parties, an appropriate course of action for repair cannot be agreed upon, then the parties shall submit the matter to arbitration under the rules of the American Arbitration Association before taking any other action. The foregoing responsibility of the Applicant or their successors or assigns shall begin upon the commencement of construction and shall remain effective until the latter of: (i) one year after the completion of land development, or (ii) upon release of all bonds. The Applicant or their successors or assigns shall not be responsible for any repairs as outlined in this proffer on property where a pre-construction inspection was disallowed by the Property Owner.

15. Conservation Easement. The area identified on the CDP/FDP as conservation easement shall remain as undisturbed open space, subject to a conservation easement running to the benefit of Fairfax County, in a form approved by the County Attorney, which prohibits removal of trees except those which are diseased, noxious or hazardous. If a tree is dead but does not pose a safety hazard, attempts will be made to retain the tree. The dead or dying tree may be topped in order to be retained if that eliminates the problem of a safety

hazard. The homeowner's association covenants shall contain clear language delineating this area, the restrictions in that area including the prohibition of any structures, fences, etc. and the responsibilities of individual homeowners.

16. Endangered Species. The Applicant shall coordinate with the Virginia Natural Heritage Program within the Virginia Department of Conservation and Recreation (VDCR) to determine if a state threatened and globally rare plant species occurs on the Property. If present, the Applicant shall take all reasonable measures, as determined by VDCR and UFM, to either avoid, minimize impact to or relocate the plants.

**V. Recreation Facilities**

1. Recreation Contribution. The Applicant shall contribute \$955.00 per new residential unit approved on site in accordance with Section 16-404 to the Fairfax County Park Authority for outdoor recreation facilities to serve the development population. Said per unit contributions shall be made prior to the issuance of a building permit for each new unit. The Applicant further reserves the right to make all or a portion of the contribution to an individual park or recreation facility within Lee District.
2. Park Authority Contribution. In addition to Proffer 1 above, the Applicant shall contribute \$9,805 to the Fairfax County Park Authority prior to the issuance of the first Residential Use Permit for park purposes and/or facilities in the area. The Applicant

further reserves the right to make all or a portion of the contribution to an individual park or recreation facility within Lee District.

**VI. SCHOOLS**

1. A contribution of a total of \$30,000 shall be made to the Board of Supervisors for use at the three public schools serving this future development. A sum of \$10,000 each shall be allocated to Clermont Elementary, Mark Twain Middle School and Edison High School. In the event the school boundaries for the proposed development were to change so that the schools serving the development were not the above three schools, the \$30,000 contribution would be equally divided among the Fairfax County public schools serving the development. The required contribution shall be made at the time of, or prior to, issuance of the first Residential Use Permit for the approved units.

**VII. Successors and Assigns**

These proffers shall bind and inure to the benefit of the Applicant and his/her successors and assigns.

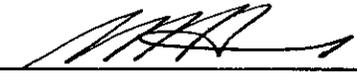
**VIII. Counterparts**

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.

**TITLE OWNERS AND APPLICANTS SIGNATURES TO FOLLOW ON THE NEXT PAGE:**

APPLICANT/TITLE OWNER OF  
TM 082-4((1)) Parcel 34

SHARON CHAPEL, LLC

BY:   
Michael B. Hummel, its Managing Member