

**Proffers for Proposed PDH-5 Rezoning**

**RZ 2009-LE-001**

**Tavares Family Limited Partnership**

**November 13, 2009**

Pursuant to Section 15.2-2303(A), Code of Virginia, 1950 as amended, the undersigned Owner/Applicant, in this rezoning proffer that the development of the parcel under consideration and shown on the Fairfax County Tax Map as Tax Map Reference 99-2((1))17 part, 18, 19 part (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-5 Zoning District is granted. In the event said rezoning request is denied, these Proffered Conditions shall be null and void. The Owner/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that these Proffered Conditions shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board of Supervisors of Fairfax County, Virginia, in accordance with applicable County and State statutory procedures. 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 Dewberry & Davis LLC, consisting of 8 sheets, dated December 18, 2008, revised through September 11, 2009.

2. Minor Modifications. Minor modifications from what is shown on the CDP/FDP and these Proffers, which may become occasioned as a part of final architectural and/or engineering design, may be permitted as determined by the Zoning Administrator in accordance with the provisions set forth in Section 16-403 of the Zoning Ordinance. Additionally, 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 as long as such changes do not decrease the amount of open space, peripheral setbacks, access or parking spaces or the setbacks as further proffered in this document.
  
3. Maximum Lot Yield. The development shall consist of a maximum of 11 single family attached units.
  
4. Establishment of HOA. The Owner/Applicant shall file and pursue an application for incorporation of the subject Property into Hawthorne, so that the subject Property can be governed by the bylaws and covenants of Hawthorne, including, without limitation, the provisions of pro rata maintenance contributions for the common facilities (including private streets) of Hawthorne and the subject Property. In the event that the Owner/Applicant's application for incorporation into Hawthorne is not accepted, the Owner/Applicant shall establish a Homeowners' Association for the proposed development to own, manage and maintain the open space areas all other community owned land and improvements.

5. Dedication to HOA. In conjunction with the appropriate site 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.
  
6. 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, common area landscaping and any other open space amenities and shall acknowledge receipt of this information in writing. The deeds of conveyance shall expressly contain these disclosures.
  
7. Garages/Driveways. A minimum of one (1) parking space 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. The minimum driveway length shall be 18 feet, measured from the front of the structure to the inside edge of the sidewalk, to permit the parking of vehicles without overhanging into the sidewalk.
  
8. 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. The appliances utilized, including dishwashers, refrigerators and freezers, and clothes washers, shall be Energy Star Certified or an equivalent rating.

9. 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.
  
10. Construction Access. There shall be no construction access through the Hawthorne subdivision. Construction access shall only be off of Cinder Bed Road, but shall not be via the existing emergency access between Lot 21A, 22A, 23 and Lot 26. For the purposes of this proffer, "construction" shall be deemed to mean construction of the initial approved dwellings and associated infrastructure. Construction contracts with all contractors and subcontractors associated with the initial construction of the project shall stipulate the restrictions of this proffer and copies of such contracts shall be made available to the DPZ upon request.
  
11. 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. Prior to any construction activity on the property, a contact name and number for questions/issues regarding construction shall be provided to the Lee District Supervisor's office, the Hawthorne Community Association and the Island Creek Homeowners Association .

12. Architecture. Prior to site plan approval, the Applicant shall demonstrate with the submission of photographs and elevations to the satisfaction of the Zoning Evaluation Division of the Department of Planning and Zoning that the new dwelling units are designed to be compatible with the existing homes in the Hawthorne subdivision in terms of general architectural style, type and proportion of building materials and architectural elements as shown in the photograph on Sheet 3 of the CDP/FDP.
13. Street Lights. Street lights, a maximum of thirteen (13) feet in height, shall be provided in the parking lot areas and along the private drives in accordance with the provisions of Article 14 of the Zoning Ordinance.
14. Parking. Irrespective of whether the 11 dwellings are incorporated into the Hawthorne subdivision, the surface parking shown on the CDP/FDP shall be shared with the Hawthorne subdivision, the number and terms to be subject to an agreement with the Hawthorne Community Association. The shared parking arrangement shall be disclosed

to all future purchasers prior to the sale and shall be documented in the homeowners association documents for the new subdivision.

15. Setbacks. Any improvements including but not limited to decks, bay windows, patios, chimneys, stairs and stoops shall meet the setback regulations of the Zoning Ordinance. The requirement to meet these regulations for future additions to the dwellings shall be disclosed to future purchasers prior to sale and shall be included in the homeowners association documents.

## **II. TRANSPORTATION**

16. Private Street. The private street, as shown on the plan, 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.
17. Sidewalks/Open Space Amenities. Five (5) foot wide concrete 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

benches, gazebos and the associated maintenance obligations required by these Proffered Conditions and such information shall be included in the HOA documents.

18. 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.

### **III. ENVIRONMENTAL**

19. Stormwater Management Facilities and Best Management Practices Techniques.  
Stormwater Management and Best Management Practices (BMP's) shall be provided through the use of an infiltration trench and filterras, as approved by DPWES, in the area shown on the CDP/FDP. An infiltration test shall be performed in the area of the proposed infiltration trench and shall be submitted for approval to DPWES at the time of site plan review. If this type of stormwater management/BMP facility is not approved by DPWES, then alternative means of SWM/BMP such as a bioretention basin with an outlet structure or other innovative low-impact design facility shall be provided and shall be landscaped to the maximum extent possible as determined by DPWES.  
If approved by DPWES, the infiltration trench facility shall be maintained by the applicant, its successors and assigns, in accordance with the regulations of Fairfax County.

20. Limits of Clearing and Grading. The Applicant shall conform strictly to the limits of clearing and grading as shown on the CDP/FDP
  
21. Landscaping. At the time of site plan review, the Applicant shall submit to DPWES, a landscape plan showing landscaping consistent with the quality, quantity and general location shown on the Landscape Plan on Sheet 3 of the CDP/FDP. This plan shall be subject to review and approval of Urban Forestry Management, DPWES. At the time of planting, the minimum caliper for deciduous trees shall be two and one-half (2.5) inches to three (3) inches and the minimum height for evergreen trees shall be 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 site plan approval.
  
22. Geotechnical. Prior to site plan approval, if required by DPWES, and in accordance with the provisions of the Public Facilities Manual, a geotechnical study of the application Property shall be submitted to the Geotechnical Review Board through DPWES and shall incorporate appropriate engineering practices as recommended by the Geotechnical Review Board and DPWES to alleviate potential structural problems, to the satisfaction of DPWES. The recommendations of the Geotechnical Review Board shall be implemented.
  
23. Reforestation. A reforestation plan for the area as shown on the CDP/FDP shall be submitted concurrently with the first and all subsequent site plan submissions for review and approval in writing by the Urban Forest Management Division (UFM), Fairfax

County Department of Public Works and Environmental Services (DPWES), and shall be implemented as approved, and as field verified by UFM. The plan shall contain an appropriate size, quality and selection, of species based on existing and proposed site conditions to restore the area to a native forest cover type. The reforestation areas will have the following densities of plantings per acre: 100 deciduous trees, 200 understory trees, and 1089 shrubs. The reforestation plan shall include, but not be limited to, the following:

- Plant list detailing species, sizes, quantities and stock type of trees and other vegetation to be planted
- Soil treatments and amendment, if necessary
- Mulching specifications
- Methods of installation
- Maintenance
- Mortality threshold
- Monitoring
- Replacement schedule

24. Conservation or Reforestation Easement. The conservation or reforestation easement area shown on the CDP/FDP Plat shall remain as undisturbed open space with the exception of permitted trails, seating areas, and other passive recreational amenities and

shall be subject to a recorded conservation or reforestation easement as shown on the CDP/FDP plat running to the benefit of Fairfax County, in a form approved by the County Attorney, which prohibits the removal of trees except those which are dead, diseased, noxious/invasive or hazardous..

25. Phase I Environmental Assessment. Prior to site plan approval, the Applicant shall complete a Phase I Environmental Assessment, as approved by DPWES in consultation with the Department of Planning and Zoning (DPZ). If DPWES in consultation with DPZ determine that the findings of the Phase I Environmental Site Assessment indicate a need for remediation or further investigation, a Phase II Environmental Site Assessment shall be conducted prior to site plan approval. The notes contained within the approved Phase I and potentially Phase II report(s), as may be amended and approved by DPWES in consultation with DPZ, shall be incorporated into the plan of implementation required for approval by DPWES in consultation with DPZ.

#### **IV. RECREATION FACILITIES**

26. Recreation Contribution. Pursuant to Sect. 6-409 of the Zoning Ordinance, regarding developed recreational facilities, the Applicant shall provide recreational facilities to serve the property. Per Sect. 6-409, recreational facilities such as tot lots, fitness courses, gazebos and sitting areas, recreational trails, walking paths and similar features may be used to fulfill this requirement in addition to the proposed off-site trail connection as

shown on the CDP/FDP. In the event it is demonstrated that the proposed facilities do not have sufficient value, at the time of the issuance of the first Residential Use Permit, the Applicant shall contribute funds in the amount needed to achieve the overall proffered amount of \$1,500.00 per unit to the Fairfax County Park Authority for off-site recreational facilities intended to serve the future residents, as determined by the Fairfax County Park Authority in consultation with the Supervisor for the Lee District.

27. Park Authority Contribution. In addition to Proffer 26 above, the Applicant shall contribute \$26,445 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.
  
28. Trail. Prior to the issuance of the first Residential Use Permit, the Applicant shall construct a six foot wide asphalt trail connecting the proposed development to the existing trail within Island Creek Park in two segments as shown on the CDP/FDP. If the required easements for the construction of the trail are not granted at no cost (excluding associated processing fees) to the Applicant by the Park Authority, within ninety (90) days of a written request, the Applicant shall escrow funds equivalent to that required for construction based on the Unit Price Schedule and as approved by DPWES and shall be relieved of the obligation to construct the trail. Regardless of whether the trail is constructed or the escrow option be utilized, such amount shall be credited to that total amount of contribution referenced in Proffer 26 and 27.

**V. SCHOOLS**

29. Contribution. Prior to the issuance of the first Residential Use Permit, a contribution of a total of \$46,192 shall be made to the Board of Supervisors with 50% to be used for athletic field improvements at the Hayfield High School and 50% to be used for athletic field improvements at Edison High School.

**VI. ESCALATION**

30. 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), (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.

**VII. ADDITIONAL**

31. Housing Trust Fund. The Applicant shall contribute to the Fairfax County Housing Trust Fund (HTF) the sum equal to one half of one percent (1/2%) of the projected sales price of all of the units approved on the property. The percentage shall be based on the aggregate sales price of all of the units subject to the contribution, as if all of those units

were sold at the time of the issuance of the first building permit. The projected sales price shall be proposed by the Applicant in consultation with Fairfax County Department of Housing and Community Development (HCD) and shall be approved by HCD and DPWES. One half (1/2) of this total shall be paid prior to the issuance of the first building permit and the other half shall be paid prior to the issuance of the last Residential Use Permit.

- 32 Universal Design. At the time of initial purchase, the following Universal Design options shall be offered to each purchaser at no additional cost: zero-step entry, flush thresholds at all doorways, 32 " minimum width for doorways, 36" minimum width for hallways, clear knee space under sink in kitchen, floor options that would facilitate easy, efficient navigation by a wheelchair, lever door handles instead of knobs, light switches 44"-48" high and thermostats 48" maximum height, and/or electrical outlets a minimum of 18" in height.

#### **VIII. SUCCESSORS AND ASSIGNS**

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

#### **IX. 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 99-2((1))18,19, part

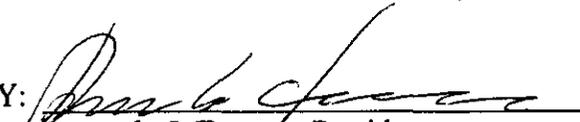
TAVARES FAMILY LIMITED PARTNERSHIP

BY:   
Armando J. Tavares, General Partner

TITLE OWNER OF

TM 99-2((1))17 part

TAVARES CONCRETE COMPANY, INC.

BY:   
Armando J. Tavares, President