

NOV 01 2010

Zoning Evaluation Division

PROFFER STATEMENT**October 28, 2010****RZ 2010-BR-003
Christopher Land, LLC**

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 78-3 ((1)) 9 (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/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that these Proffered Conditions shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board of Supervisors of Fairfax County, Virginia, in accordance with applicable County and State statutory procedures.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) titled "Bryce Estate", prepared by Charles P. Johnson & Associates, Inc. consisting of nine (9) sheets, dated February 19, 2010 as revised through October 15, 2010 and further modified by these proffered conditions.
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 materially decrease the amount of open space, the building setbacks outlined on the CDP/FDP are honored, and the limits of clearing and grading are adhered to. As shown on the typical lot layout in the CDP/FDP, under no circumstances shall the houses be less than 12" apart.

II. RECREATION FACILITIES

3. 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 as shown on the CDP/FDP. Per Sect. 6-409, recreational facilities such as tot lots, gazebos, trails and sitting area, and similar features may be used to fulfill this requirement. The siting and installation of such features shall not interfere with tree save areas. 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 \$1,600 per unit for the eight (8) additional units to be built on the Property. The excess funds shall be used for the construction of park benches at the Pohick Stream Valley Trail in Burke Centre.

III SCHOOLS

4. Contribution. Prior to the issuance of each Residential Use Permit, a contribution of \$3,126 per unit for the eight (8) additional units to be built on the Property shall be made to the public schools serving the Property. Said contribution shall be deposited with DPWES for transfer to Fairfax County School Board.

IV, ESCALATION

5. 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 final site plan 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.

V. CONSTRUCTION HOURS

- 6 Construction Hours. Construction shall 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 4th, 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.

VI. SEPTIC TANK / WELL ABANDONMENT

7. Abandonment. The existing septic tank and well will be properly abandoned as required by the Fairfax County Health Department prior to the approval and issuance of the demolition permit for the existing single family detached residential unit.

VII. ENERGY CONSERVATION

8. Energy Conservation. All new dwelling units shall be designed and constructed as ENERGY STAR qualified homes. The major features of an ENERGY STAR homes include: Effective Insulation, High-Performance Windows, Tight Construction and Ducts, Efficient Heating and Cooling Equipment, Efficient Products, and Third Party Verification (Home Energy Rater.) Within thirty (30) days of issuance of the Residential Use Permit (RUP) for each dwelling unit, documentation shall be submitted to the Environment and Development Review Branch of the Department of Planning and Zoning (DPZ) from a home energy rater certified through the Residential Energy Services network (RESNET) program that demonstrates that the dwelling unit has attained the ENERGY STAR for homes qualification, as described in these conditions.

VIII. PHASE 1 ARCHAEOLOGICAL

9. Phase 1 Archaeological. Prior to any land disturbing activities on the Property, Applicant shall conduct a Phase I archaeological study on the Property and provide the results of such study to the Cultural Resources Management and Protection Section of the Fairfax County Park Authority (CRMPS). The study shall be conducted by a qualified archaeological professional. If the Phase I study concludes that an additional Phase II study of the Property is warranted, the Applicant shall complete said study and provide the results to (CRMPS); however, submission of the Phase II study to (CRMPS) shall not be a pre-condition of Subdivision Plan approval or recordation of the same. If the Phase II study concludes that additional Phase III evaluation and/or recovery is warranted, the Applicant shall also complete said work in consultation and coordination with (CRMPS); however, any such Phase III work shall not be a pre-condition of Subdivision Plan approval or recordation of the same.

VIX. GARAGE CONVERSION

10. Garage Conversion. Any conversion of garages that will preclude the parking of vehicles within the garage shall be prohibited. A covenant setting forth this restriction shall be recorded among the land records of Fairfax County in a form approved the County Attorney prior to the sale of any lots and shall run

to the benefit of the HOA and the Board of Supervisors. This restriction shall also be disclosed in the HOA documents. Prospective purchasers shall be advised of this use restriction, in writing, prior to entering into a contract of sale.

X. HOME OWNERS ASSOCIATION

11. Establishment of HOA. Prior to record plat approval, the Applicant shall establish a Homeowners Association (HOA) in accordance with Sect. 2-700 of the Zoning Ordinance for the purpose of, among other things, establishing the necessary residential covenants governing the design and operation of the approved development and to provide a mechanism for ensuring the ability to complete the maintenance obligations and other provisions noted in these proffer conditions.
12. Dedication to HOA. At the time of subdivision plat recordation, open space, common areas, private streets, fencing, and amenities not otherwise conveyed or dedicated to the County shall be dedicated to the HOA and maintained by the same.
13. BMP Maintenance. After establishing the HOA, the Applicant shall provide the HOA with written materials describing proper maintenance of the approved BMP's.
14. Disclosure. Prior to entering into a contract of sale, prospective purchasers shall be notified in writing by the Applicant of the maintenance responsibility for the streets, storm water management facilities, common area landscaping and any other open space amenities and shall acknowledge receipt of this information in writing. The homeowner association covenants shall contain clear language delineating the tree save areas as shown on the CDP/FDP. The covenants shall prohibit the removal of the trees except those trees which are dead, diseased, noxious or hazardous and shall outline the maintenance responsibility of the homeowners association and individual homeowners. The initial deeds of conveyance and HOA governing documents shall expressly contain these disclosures. The HOA documents shall stipulate that a reserve fund to be held by the HOA be established for the private street maintenance. The Applicant shall be responsible for placing the sum of \$10,000 in such reserve fund prior to the issuance of the first Residential Use Permit (the "RUP") for the proposed single family dwelling units.

The limitations for building additions and decks shall be shown on the record plat and on the house location plat for each dwelling unit. This information shall also be included in the sales documents. This information shall be recorded in the County Land Records as part of the record plat to disclose to all subsequent property owners the details of the building limitations. Lots 7-

9 shall include explicit information on the building limitations; no addition or deck shall encroach into the tree save area as shown on the CDP/FDP.

15. Public Access Easement. A public access easement in a form approved by the County Attorney shall be placed on the private streets, sidewalks and trails within the approved development. The requirements of this proffer condition shall be disclosed in the HOA documents.

XI. LANDSCAPING, BUFFERING, FENCING

16. Landscaping, Buffering, Fencing. The Applicant shall install a 6' high board on board fence with an 18" lattice cap substantially similar to that as shown on page 7 of the CDP/FDP as soon as practicable after the start of site development in order to mitigate headlight glare to lots 43, 44 and 45 located to the north of the application property. A gate will be installed to provide access for the maintenance of the area behind the fence and lots 43, 44 and 45. The Applicant shall also provide supplemental landscaping between the fence and lots 43, 44 and 45. The exact location of the supplemental landscaping will be agreed upon by the owners of lots 43, 44 and 45 and the Applicant in consultation with the Urban Forester within 90 days of the installation of the fence. The supplemental landscaping will be subject to the review and final approval of the Urban Forester. However, the amount to be paid by the Applicant for the supplemental landscaping behind lots 43, 44 and 45 shall not exceed \$250 per lot, \$750 total. In the event the owners of lots 43, 44 and 45 have not agreed in writing with the Applicant to establish the location of the supplemental landscaping during the 90 days following the installation of the fencing, the Applicant shall provide written documentation of its attempts to DPWES, and this proffer, as it relates to the supplemental landscaping for lots 43, 44 and 45 shall be considered null and void and of no further effect.

XII. TREE PRESERVATION

17. Tree Preservation Plan. The applicant shall submit a Tree Preservation Plan and Narrative as part of the first and all subsequent site plan submissions. The preservation plan and narrative shall be prepared by a Certified Arborist or a Registered Consulting Arborist, and shall be subject to the review and approval of the Urban Forest Management Division, DPWES.

The tree preservation plan shall include a tree inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees to be preserved, as well as all on and off-site trees, living or dead with trunks 8 inches in diameter and greater (measured at 4 ½ -feet from the base of the trunk or as otherwise allowed in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture, located with 25 feet of either side of

the limits of clearing and grading. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the CDP/FDP and those additional areas in which trees can be preserved as a result of final engineering. The tree preservation plan and narrative shall include all items specified in PFM 12-0506 and 12-0508. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

18. Tree Preservation Walk-Through. The applicant shall retain the services of a Certified Arborist or Registered Consulting Arborist, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the walk-through meeting. During the tree preservation walk-through meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with an UFMD, DPWES, representative to determine where adjustments to the clearing limits can be made to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustment shall be implemented. Trees that are identified as dead or dying may be removed as part of the clearing operation. Any tree that is so designated shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump-grinding machine in a manner causing as little disturbance as possible to adjacent trees and associated understory vegetation and soil conditions.
19. 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 allowances specified in these development conditions and for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. If it is determined necessary to install utilities and/or trails in areas protected by the limits of clearing and grading as shown on the CDP/FDP, they shall be located in the least disruptive manner necessary as determined by the UFMD, DPWES. A replanting plan shall be developed and implemented, subject to approval by the UFMD, DPWES, for any area protected by the limits of clearing and grading that must be disturbed for such utilities.
20. Tree Preservation Fencing. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of

trees shall be erected at the limits of clearing and grading as shown on the demolition, and Phase I & II erosion and sediment control sheets, as may be modified by the "Root Pruning" proffer below.

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 fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. No grading or construction activities shall occur until the fencing is installed correctly, as determined by UFMD, DPWES.

21. Root Pruning. The Applicant shall root prune as needed to comply with the tree preservation requirements of these development conditions. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by the UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not limited to the following:
 - Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
 - Root pruning shall take place prior to any clearing and grading, or demolition of structures.
 - Root pruning shall be conducted with the supervision of a certified arborist.
 - An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.

22. Monitoring. During any clearing or tree/vegetation/structure removal on the Applicant Property, a representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted as proffered and as approved by the UFMD. The Applicant shall retain the services of a certified arborist or Registered Consulting Arborist to monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with all tree preservation proffer, development conditions, and UFMD approvals. The monitoring schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by the UFMD, DPWES.

XIII TRANSPORTATION

23. Transportation. The Applicant shall construct extensions to the existing medians on northbound and southbound Burke Lake Rd. and shall install a left turn lane on northbound Burke Lake Rd. as shown on the CDP/FDP, subject to the approval of VDOT. In the event VDOT does not approve an extension of the medians substantially similar to that shown on the CDP/FDP, the Applicant shall have no further obligation to construct the extension to the medians but shall be required to install the left turn lane on northbound Burke Lake Rd. Additionally, if requested by VDOT, the Applicant shall pay for and install a "Do Not Block Intersection" sign on southbound Burke Lake Rd. prior to its intersection with Lincolnwood Drive.

The Applicant, if requested by VDOT, shall install a left turn light on the existing light fixture on northbound Burke Lake Road at its intersection with Shiplett Boulevard, at a cost to the Applicant not to exceed Twenty Thousand Dollars (\$20,000). However, in the event prior to final site plan approval it is determined the cost to the Applicant will exceed Twenty Thousand Dollars (\$20,000), then the Applicant shall contribute Twenty Thousand Dollars (\$20,000) to Fairfax County Department of Transportation for traffic improvements at the intersection of Burke Lake Road and Shiplett Boulevard and the Applicant shall have no further obligation under this proffer.

The Applicant shall construct a 5' concrete walk as shown on the CDP/FDP and shall connect the concrete walk to the existing 5.5' asphalt trail along Burke Lake Rd.

XIV. NOISE MITIGATION

24. The Applicant will use building materials, screening or fencing, which ensure that noise in interior areas of homes on Lots 6, 7, 8 and 9 do not exceed approximately 45 dBA Ldn, and that noise levels in the rear yard do not exceed approximately 65 dBA Ldn. The Applicant may pursue other methods of mitigating transportation generated noise if it can be demonstrated through an independent noise study for review and approval by the Department of Public Works and Environmental Services (DPWES) in consultation with the Department of Planning and Zoning, that these methods will be effective in reducing exterior noise levels to approximately 65 dBA Ldn or less and interior noise levels to 45 dBA Ldn or less.

XV. DESIGN

25. Design. It shall be understood that the various illustrative architectural representations contained on page 9 of the CDP/FDP are not final architectural plans to be used for construction purposes. As a result, the final architectural design of all buildings shall be in substantial conformance with

the general type, quality and proportion of materials as depicted on the illustrative elevations shown on the CDP/FDP.

XVI. AFFORDABLE HOUSING

26. Housing Trust Fund. At the time of issuance of each building permit, the Applicant shall contribute to Habitat for Humanity of Northern Virginia ("Habitat") or to the Fairfax County Trust Fund, the sum equal to one half of one percent (1/2%) of the projected sales price for each new dwelling unit on the subject property. The funds, if contributed to Habitat, will be directed to Habitat projects in Fairfax County. The projected sales price shall be based upon the aggregate sales price of all the units, as if those units were sold at the time of the issuance of the first building permit and is estimated through comparable sales of similar type units. This sales price information shall be provided to and approved by the Fairfax County Department of Housing and Community Development (HCD).

XVII. SIGNS

27. Signs. Any sign installed by the Applicant shall be in conformance with Article 12 of the Zoning Ordinance.

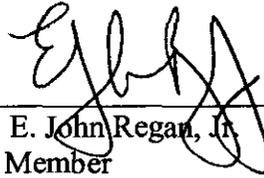
XVIII. SUCCESSORS AND ASSIGNS

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

SIGNATURES BEGIN ON THE FOLLOWING PAGE

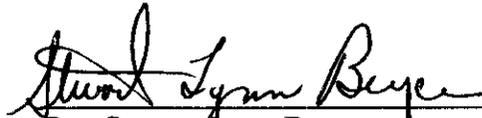
APPLICANT/CONTRACT PURCHASER OF TAX MAP
78-3 ((1)) 9

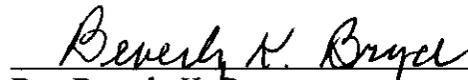
CHRISTOPHER LAND, LLC

A handwritten signature in black ink, appearing to read "E. John Regan, Jr.", written over a horizontal line.

By: E. John Regan, Jr.
Its: Member

TITLE OWNER OF TAX MAP
78-3 ((1)) 9


By: Stewart Lynn Bryce


By: Beverly K. Bryce