

**PROFFERS**  
**Christopher Management, Inc. – Old Telegraph Road**  
**RZ 2005-LE-017**

**March 27, 2006**

Pursuant to Section 15.2-2303(a) of the Code of Virginia, 1950, as amended, the property owners and Applicant in this rezoning proffer that the development of the parcel under consideration and shown on the Fairfax County Tax Maps as Tax Map Reference No. 91-3-((1))-66, 67 and 68 (hereinafter referred to as the "Property") will be in accordance with the following conditions if, and only if, said Rezoning request for the PDH-3 District is granted. In the event said application request is denied, these proffers shall be null and void. The Owners and the Applicant ("Applicant"), for themselves, their successors and assigns, agree that these proffers shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board of Supervisors of Fairfax County, Virginia, in accordance with applicable County and State statutory procedures.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 proffers and the provisions of Article 16 of the Zoning Ordinance, under which minor modifications per section Par. 4 of Sect.16-403 of the Zoning Ordinance to an approved final development plan are permitted, the development shall be in substantial conformance with the Conceptual Development Plan / Final Development Plan (CDP/FDP), containing ten (10) sheets prepared by Urban Engineering & Associates, Inc. dated March 25, 2005 as revised through March 1, 2006.

2. Maximum Density. The development shall consist of a maximum of eight (8) single family detached residential units. Except as may be further qualified by these proffered conditions, minor modifications to the house locations and sizes may be permitted in accordance

with Section 16-403 of the Zoning Ordinance. Regarding side yards, HVAC units for directly adjacent dwelling units shall be prohibited from being located on their abutting side yards.

3. 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 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 certain maintenance obligations of these proffer conditions and other provisions noted below in these proffers.

4. Length of Driveways. All driveways serving the approved residential units shall extend outward a minimum of eighteen feet (18') in length from the face of the garage door to the edge of sidewalk or face of curb (if no sidewalk is provided) whichever is applicable.

5. Garage Conversion. Any conversion of garages that will preclude the parking of vehicles within the garage is prohibited. A covenant setting forth this restriction shall be incorporated into the Homeowners Association (HOA) Documents and 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 HOA, and to the Fairfax County Board of Supervisors. Prospective purchasers shall be advised of this use restriction, in writing, prior to entering into a contract of sale.

6. Architecture. The architecture will be in substantial conformance with the elevations depicted on the CDP/FDP. The sides of Lots 1 and 8 which are visible from Old Telegraph Road will be architecturally designed so that the façade will have a type and proportion of materials that are consistent the fronts of the units. At a minimum, the sides of the units on Lots 1 and 8 shall be faced with sixty five percent (65%) brick or similar masonry

material. The fence or wall for Lots 1 and 8 shall be a maximum of six feet (6') high with landscaping along the side fronting Old Telegraph Road. The fence or wall materials may consist of vinyl, wood, stone, brick or similar masonry material or any combination of these listed low maintenance materials.

## II. TRANSPORTATION

7. Old Telegraph Road Frontage Improvements. Concurrent with the development of the site, the Applicant shall improve Old Telegraph Road twenty feet (20') from the centerline to the proposed face of curb along the roadway, as generally shown on the CDP/FDP. The final design and configuration of such improvements shall be subject to approval by the Virginia Department of Transportation (VDOT) and the Department of Public Works and Environmental Services (DPWES) and the Fairfax County Department of Transportation (FCDOT). These improvements shall be completed prior issuance of the final Residential Use Permit (RUP). For the purpose of this proffer, completed shall mean open to traffic but not accepted into the State road system.

8. Public Access Easement. A public access easement in a form approved by the County Attorney shall be placed on the private streets and sidewalks within the approved development.

9. Right-of-Way Dedication. At the time of record plat recording, the Applicant shall dedicate at no cost to the County in fee simple to the Board of Supervisors of Fairfax County, the right-of-way along Old Telegraph Road equal to thirty feet (30') from the centerline to the right-of-way line, as generally shown on the CDP/FDP. This dedication area shall be conveyed to the Board of Supervisors in fee simple subject to the provisions of Paragraph 5 of Section 2-308 of the Zoning Ordinance.

10. Private Street Maintenance. The private street shall be constructed pursuant to the Public Facilities Manual (PFM) pavement design standards applicable to public subdivision streets based on level of vehicular traffic consistent with the development shown on the CDP/FDP as determined by DPWES. The HOA documents shall include provisions for monthly/annual assessments for private street maintenance. All prospective purchasers shall be advised of the existence of the private street, the associated public access easement and all other associated maintenance obligations required by these Proffered Conditions prior to entering into a contract of sale and such information shall be included in the HOA Documents. 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 pay the HOA the sum of two thousand dollars (\$2,000) for the purpose of private street maintenance.

### III. ENVIRONMENTAL

11. Stormwater Management Facilities and Best Management Practices. Stormwater management (SWM) and Best Management Practices (BMP) shall be provided as approved by DPWES. Concurrent with this rezoning application, the Applicant is seeking a waiver from the requirement to construct an on-site dry stormwater detention pond. The Applicant understands a final determination on this waiver request cannot be made until after the rezoning is approved. Should this waiver be approved, CDP/FDP-Alternative A as shown on the CDP/FDP shall be implemented. If such waiver is not approved, the Applicant shall implement CDP/FDP-Alternative B and construct a dry pond north of Lot 7 in substantial conformance with that shown on CDP/FDP-Alternative B. In addition, subject to review and approval by DPWES, the Applicant reserves the right to utilize "Low Impact Development" (LID) measures to fulfill

all or part of the of the stormwater management plan requirement(s). Such LID measures may include but are not limited to: a rain garden and/or other similar bio-retention facilities, grass swales and forestation or reforestation of open space areas as generally depicted on the CDP/FDP. The Applicant shall enter into a maintenance agreement for any such facilities as required by the PFM at the time of final subdivision plan approval. Any private maintenance responsibilities for any stormwater management facilities shall be disclosed in the HOA documents and disclosed in the sales contract for each dwelling. If a rain garden is used on site, at a minimum, the specifications shall be generally consistent with those detailed in Attachment A or as amended and required by DPWES.

12. Resource Protection Area (RPA) Conservation Easement The area of the RPA as identified on the CDP/FDP (redelineation of RPA approved by DPWES on November 11, 2005) 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 dead, diseased, noxious or hazardous. The homeowners' association covenants shall contain clear language delineating the RPA, the restrictions in that area including the prohibition of any structures, fences, etc. and the responsibilities of individual homeowners. The area of disturbance within the RPA for removal of noxious plants (i.e. bamboo) and existing structures is shown on the CDP/FDP. Other than this exception, the limits of clearing and grading shall be strictly enforced.

13. RPA Vegetation Removal and Replanting. As shown on the limits of clearing on the CDP/FDP, the Applicant shall remove the bamboo located in the RPA and remove debris and existing outbuilding(s) or structures as permitted by Chapter 118 of the Fairfax County Code of Ordinances and restore the RPA by planting native plant species in the

disturbed areas using machinery as reasonably necessary. The use of equipment and methods employed within the RPA for demolition, restoration and bamboo removal must be reviewed and approved by Urban Forest Management (UFM) prior to any equipment entering the RPA.

As a component of the required landscape plan submitted to UFM and as part of subdivision plan review, the Applicant shall submit and implement a restoration plan for the disturbed limits of the RPA as required in Chapter 12, Paragraph 0704.4 and Table 12.14 of the Public Facilities Manual. Such restoration plan shall include the planting of supplemental native plant species including tall grasses and or shrubs along the water's edge within the RPA for a minimum distance of fifteen feet (15') in order to create a landscaped riparian buffer area as reviewed and permitted by DPWES.

14. Landscaping. The Applicant shall submit a landscape plan in substantial conformance with the landscape plan depicted on the CDP/FDP as part of the first and all subsequent subdivision plan submissions. This plan shall be subject to the review and approval of Urban Forest Management, DPWES (UFM). If it is determined that it is necessary to install utilities within the landscaped areas, then an area of alternative landscaping consistent with that displaced, shall be substituted at an alternate location on the site, as approved by the UFM. In accordance with PFM, native or recommended species shall be used in all landscaped areas as approved by the UFM.

15. Geotechnical Report. Prior to subdivision approval, the Applicant shall submit a geotechnical report to DPWES and implement the recommendations outlined in the approved report. There shall be no retaining walls over four feet (4') in height located on the subject property.

16. Removal of Fill. If encountered on any house pad site, any existing fill and debris shall be removed and replaced with fill acceptable to DPWES. Prior to the issuance of each Residential Use Permit (RUP), any foundation or soil problem identified during inspections shall be resolved to the satisfaction of DPWES.

17. Supplemental Drainage Measures. The Applicant shall incorporate design methods to prevent wet basements and standing water in yards per DPWES. If warranted by soil conditions, final engineering and final site grading, interior and exterior drain pipes, sump pumps, slopes away from the dwellings and/or similar measures shall be utilized as approved by DPWES.

18. Limits of Clearing and Grading. The Applicant shall abide by the limits of clearing and grading as shown on the CDP/FDP.

#### IV TREE PRESERVATION

19. Tree Preservation Plan: The Applicant shall submit a tree preservation plan as part of the 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 shall be subject to the review and approval of the UFM. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown radius and condition rating percentage of all trees 10 inches (10") in diameter and greater, and 20 feet to either side of the limits of clearing and grading shown on the CDP/FDP for the entire site. Trees 10 inches in diameter and greater within 20 feet of the outside of any temporary limits of clearing established within the RPA for purposes of demolition of structures and removal of bamboo shall also be included in the tree survey. The Tree Preservation Plan shall provide for the preservation of those areas shown on the tree preservation plan. The

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condition ratings shall be prepared using methods outlined in the 9th 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.

20. 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 and as established for purposes of demolition of structures and removal of bamboo within the RPA. 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 ten year canopy calculations as a basis for determining replacement value in conjunction with methods outlined in the 9<sup>th</sup> edition of the Guide for Plant Appraisal using the Cost of Cure Method.

21. 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 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 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, but in no instance shall this amount exceed \$25,000.00.

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 20 above and paid to a fund established by the County for furtherance of tree preservation objectives. Upon release of the bond for the site, 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 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.

22. Possible Preservation of Existing Oak Trees. Notwithstanding the limits of clearing shown on the CDP/FDP, at the time of subdivision plan approval, the Applicant, in consultation with UFM, shall use its best and most reasonable efforts to preserve the two trees

identified on the CDP/FDP as “existing 45” oak” and “existing 39” oak”. Each of these two trees shall not be subject to the bonding, valuation and penalty requirements of Proffers 19-21 above.

23. 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 including any woody, herbaceous or vine plant species that occurs in the lower canopy environment, and to the existing top soil and leaf litter layers that provide nourishment and protection to that vegetation. Any removal of any vegetation or soil disturbance in tree preservation areas excluding 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.

24. Use of Equipment. Except as qualified herein including Proffer 13, 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.

25. 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.

26. 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 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. 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.

27. 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.

28. 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 19, 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.

#### V. AFFORDABLE HOUSING

29. Affordable Housing Contribution. At the time of first building permit issuance, the Applicant shall contribute to Habitat of Humanity of Northern Virginia ("Habitat"), 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 to be directed to Habitat projects which may include the Habitat units being constructed within the Glenwood Mews project within the Lee District and/or other Habitat housing construction projects within the Lee District. The projected sales price shall be based upon the aggregate sales price of all of 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).

#### VI. PARKS AND RECREATION

30. Recreational Contributions - On-Site. At the time of subdivision plan approval, the Applicant shall demonstrate to the satisfaction of DPWES that the value of on-site recreational facilities is equal to or exceeds \$955.00 per unit in accordance with Section 16-404 of the Zoning Ordinance. The Applicant reserves the right to be credited for up to \$955.00 per unit for the on-site installation of active or passive recreational facilities to include but not be limited to gazebos, playgrounds, recreational trails and similar facilities, in open space areas

shown on the CDP/FDP. In the event the on-site facilities are not of sufficient value to fulfill the requirements of this proffer, the Applicant shall make a contribution of equivalent value to the Fairfax County Park Authority. If applicable, the required contribution shall be made at the time of subdivision plan approval for the approved development.

## VII. SCHOOL CONTRIBUTION

31. School Contribution. Prior to approval of the subdivision plan for the approved development, the Applicant shall contribute the sum of \$2,813 per dwelling unit, for each dwelling unit approved on the final subdivision plan to the Board of Supervisors for capital improvements to schools serving the Property.

## VIII. OTHER

32. Signage. Temporary signs (including "popsicle" style paper or cardboard signs) shall be prohibited in accordance with Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 or Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on or off-site by the Applicant or at the Applicant's representative. The Applicant shall direct its agents and employees involved in marketing and/or sale of residential units on the subject Property to adhere to this proffer.

33. Energy Efficiency. All homes on the Property shall meet the energy guidelines of the International Building Code for energy-efficient homes for either gas or electric energy systems as may be applicable.

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## ATTACHMENT A

### SPECIFICATIONS FOR MAINTENANCE OF RAIN GARDENS

Description	Method	Frequency	Time of the Year
<b>SOIL</b>			
Inspect and Repair Erosion	Visual	Monthly	Monthly
<b>ORGANIC LAYER</b>			
Remulch any void areas	By hand	Whenever needed	Whenever needed
Remove previous mulch layer before applying new layer (optional)	By hand	Once every two to three years	Spring
Any additional mulch added (optional)	By hand	Once a year	Spring
<b>PLANTS</b>			
Removal and replacement of all dead and diseased vegetation considered beyond treatment	See planting specifications	Twice a year	3/15 to 4/30 and 10/1 to 11/30
Treat all diseased trees and shrubs	Mechanical or by hand	N/A	Varies, depends on insect or disease infestation
Watering of plant material shall take place at the end of each day for fourteen consecutive days after planting has been completed	By hand	Immediately after completion of project	N/A
Remove stakes after one year	By hand	One time	Only remove stakes in the Spring
Replace any deficient stakes or wires	By hand	N/A	Whenever needed
Check for accumulated sediments	Visual	Monthly	Monthly

These proffers may be executed in counterparts and the counterparts shall constitute one and the same proffer statement.

CHRISTOPHER MANAGEMENT, INC.  
(Contract Purchaser of Tax Map Nos.  
91-3-((1))-66, 67, 78)

By:   
Name: JOHN REGAN  
Its: EXECUTIVE VICE PRESIDENT

RUTH E. ODEN  
(Title Owner of Tax Map No. 91-1-((1))-66)

Ruth E. Oden

DEANNA C. CRUMP  
(Title Owner of Tax Map No. 91-1-((1))-67)

A handwritten signature in cursive script, reading "Deanna C. Crump", is written over a solid horizontal line.

HELEN A. HARDIN  
(Title Owners of Tax Map No. 91-3-((1))-68)

Helen A. Hardin

ROBERT E. HARDIN  
(Title Owner of Tax Map No. 91-3-((1))-68)

*Robert E. Hardin*

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