

6408

PROFFER AGREEMENT

Whereas, Carter Hill, Inc., a Virginia Corporation ("the Owner"), owns certain real property in James City County, Virginia, more particularly described as follows:

All that certain lot, piece or parcels of land, situate, lying and being in Jamestown District, James City County, Virginia, and designated "Parcel A - Ollie Rosseau" and containing 88.52 acres, more or less, as shown on that certain plat entitled "PLAT SHOWING LAND ACQUISITION OF THE CARTER HILL, INC., LYING IN JAMESTOWN DIST., JAMES CITY CO., VA.", dated March 24, 1970, a copy of which plat is recorded in James City County Plat Book 27, Page 58.

Being the same property conveyed to Carter Hill, Incorporated by Deed dated May 14, 1970, recorded in James City County Deed Book 126, Page 544.

All that certain lot, piece or parcel of land, situate, lying and being in Jamestown District, James City County, Virginia, containing 1.21 acres set out and shown as "PARCEL E" on that certain plat entitled "PLAT SHOWING LAND ACQUISITION OF THE CARTER HILL, INC., LYING IN JAMESTOWN DDIST., JAMES CITY CO., VA.", dated March 24, 1970, made by L.V. Woodson & Associates, recorded in James City County Plat Book 27, Page 58, to which plat reference is here made for a more accurate description of the premises herein conveyed.

Being the same property conveyed to Carter Hill, Incorporated by Deed dated April 20, 1970, recorded in James City County Deed Book 127, Page 176, et seq.

All that certain piece or parcel of land, situate, lying and being in Jamestown Magisterial District, James City County, Virginia, containing approximately 9.76 acres, more or less, being more particularly shown on a map or plat entitled "PLAT SHOWING LAND ACQUISITION OF CARTER HILL, INC., LYING IN JAMESTOWN DIST., JAMES CITY CO., VA.", dated March 24, 1970 and made by L.V. Woodson & Associates, Engineers & Surveyors, Williamsburg, Virginia, which said map or plat is recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and James City County, Virginia, in Plat Book 27, Page 58, to which specific reference is here made.

Being the same property conveyed to Carter Hill, Inc. by Deed dated May 5, 1970, recorded in James City County Deed Book 127, Page 181, et seq.

All those certain lots, pieces or parcels of land, situate,

lying and being in Jamestown District, James City County, Virginia, containing a total of 34.97 acres, and shown and designated as "PARCEL C" as shown on that certain plat entitled "PLAT SHOWING LAND ACQUISITION OF CARTER HILL, INC., LYING IN JAMESTOWN DIST., JAMES CITY CO., VA", dated March 24, 1970 and made by L.V. Woodson & Associates, Engineers & Surveyors, and to which reference is here made for a more particular description of the property therein conveyed, which said plat is recorded in the Clerk's Office in Plat Book 27, Page 58.

Being the same property conveyed to Carter Hill, Incorporated by Deed dated April 22, 1970, recorded in James City County Deed Book 128, Page 11.

Whereas, the Owner has applied for a rezoning of the above described property ("the Property") from the Limited Agricultural District, A-2 (the Existing Zoning) to the General Residential District, R-3, of the James City County Code, ("the Proposed Zoning"); and

Whereas, James City County, Virginia ("the County") may be unwilling to rezone the Property, because the Proposed Zoning regulations may be deemed inadequate for the orderly development of the Property, because competing and incompatible uses may conflict; and

Whereas, more flexible and adaptable zoning methods are deemed advisable to permit the use of the Property; and

Whereas, the Owner is desirous of offering certain conditions for the protection of the community that are not applicable to land similarly zoned in addition to the regulations provided for in the Proposed Zoning regulations.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that for and in consideration of the County rezoning the Property from the Existing Zoning to the Proposed Zoning and pursuant to Section 15.1-491.1 of the Code of Virginia, 1950, as amended, and Section 20-18 of the Zoning

Ordinance of James City County, Virginia, the Owner agrees that in addition to the regulations provided in the Proposed Zoning, it shall meet and comply with all of the following conditions in the development of the Property:

USES

The use of the Property shall be limited to:

- a. One hundred fourteen (114) single-family detached dwellings.
- b. Community recreation facilities including parks, playgrounds, clubhouses, boating facilities, swimming pools, ball fields, tennis courts and other similar recreation facilities.
- c. Off-street parking as required.
- d. Accessory buildings or structures.

SUBDIVISION PLAN

1. The Subdivision Plan shall provide for the following improvements to be constructed at the Owner's expense:

a. Realignment of the existing entrance to the Property from Virginia State Route 31 (Jamestown Road) such that the realigned entrance is approximately at a right angle with Virginia State Route 31 and directly across from London Company Way.

b. A left turn lane from Virginia State Route 31 to the Property with a minimum of one hundred feet (100') storage area and a one hundred foot (100') taper, twelve feet (12') wide.

c. A right turn taper from Virginia State Route 31 to the Property, one hundred fifty feet (150') in length, twelve feet (12') in width.

2. The Subdivision Plan shall provide for a single entrance to

the Property along Virginia State Route 31.

3. The Subdivision Plan shall provide a one hundred fifty foot (150') landscape buffer adjacent to and parallel with the right of way line of Virginia State Route 31, within which the Owner shall have an evergreen landscape buffer, fifty feet (50') in width, utilizing existing, transplanted or new evergreen trees, as needed, to effect a permanent evergreen landscape screen between the Property and Virginia State Route 31, which landscaping plan shall be approved by the Development Review Committee of the County Planning Commission.

4. The Subdivision Plan shall provide a buffer area on that portion of the Property designated on the Subdivision Plan as being below elevation 3.5 feet, around all tidal wetlands, perennial streams and non tidal wetlands currently protected by Federal rules and regulations. The buffer shall also include all slopes exceeding twenty-five percent (25%) gradient and in no case shall be less than fifty feet (50') wide as measured from the limit of said wetlands and/or the normal water level of perennial streams respectively. All of the buffer area shall be shown on a topographic map of the Property prepared pursuant to a field survey. The buffer area shall be preserved in its natural state, except that roads and utilities interconnecting the easterly and westerly portions and the northerly and southerly portions of the Property, footpaths, related structures, shoreline erosion control projects and water dependent facilities shall be permitted. In that portion of the Property below elevation 3.5 feet, footpaths and related structures and water dependent facilities shall be constructed on open piles as necessary, to minimize the impact on tidal flows. The

Owner shall leave intact, repair, replace or restore as necessary, the natural erosion retarding vegetative cover within the buffer to protect or stabilize the buffer but the Owner may perform general woodlot management and selectively remove dead trees and prune the overstory of existing trees to create sight lines in said area. In no case shall such action result in the removal of tree stumps, root mat or understory vegetation. The location of all of said activities shall be subject to the approval of the Development Review Committee of the County Planning Commission. The use of herbicides and pesticides shall be prohibited in all of areas of the buffer. "Water-dependent facility" means a facility that cannot exist outside of the buffer and must be located on the shoreline by reason of the intrinsic nature of its operation.

5. The Subdivision Plan shall provide land and structures for a community swimming pool or a community recreation building or other similar recreation facilities such as a tennis court. The location of the recreation facilities and the timetable for the construction of the same shall be approved by the Development Review Committee of the County Planning Commission.

6. The Subdivision Plan shall not permit any structure to be erected on the Property within the one hundred (100) year flood plain area, except as may be permitted by the James City County Planning Commission.

7. Prior to the submittal of the preliminary Subdivision Plan, the Owner, at its expense, shall cause to be prepared a Phase I Archaeological Study of the Property according to the guidelines

provided by the Virginia Historic Landmarks Commission. Upon approval by the County of the Archaeological Study of the Property, the Owner, if necessary, shall follow generally accepted cultural resource management and preservation practices of permitting the recovery of archaeological data through testing, excavation and analysis of site findings before beginning construction on the affected portion of the Property. A Phase I study shall include reconnaissance, systematic surface collection and shovel test pits every 90-150 feet.

8. Before final approval of the Subdivision Plan the Owner, subject to the provisions of condition numbered nine (9) hereof, shall be required to furnish a surety bond, letter of credit, cash escrow, or other form of guarantee, for completion of any public improvements specified therein or otherwise herein required.

9. Nothing herein shall prevent the Owner from processing the Subdivision Plan in stages or sections as permitted by the Proposed Zoning.

MAINTENANCE

1. The Owner shall provide guarantees and assurances acceptable to the County Attorney that a Homeowners' Association ("the Association") has been legally established with authority to impose, raise and collect assessments against the Owners of lots according to law. The Association shall have a lien on every lot within the Property for unpaid assessments levied against that lot. All assessments shall be used for the maintenance of that portion of the Property outside of individual lots, including, but not limited to, the maintenance of open space, recreation areas, private roads, if any,

parking lots, etc.

2. The Association shall contract with a private refuse collector to collect and dispose of all garbage and refuse from the Property until such time as the County provides a public refuse collection service.

ROADS/PARKING

The Owner shall construct all roads and parking areas within the Property utilizing the materials meeting the specifications of the Virginia Department of Transportation (VDOT) and the County, thereby providing an all weather hard surface. Certifications in accordance with VDOT and County requirements shall be provided to VDOT and the County that all such construction meets the foregoing standards. Any deterioration of the pavement that results in base course or sub-grade exposure shall be promptly repaired. By rezoning the Property, the County is making no agreement, express or implied, that it will grant any application for a waiver to allow roads and parking areas within the Property to be privately owned and maintained.

MISCELLANEOUS

All terms of this Agreement shall have the same meaning as set forth in Section 20-2 of the Code of the County.

CARTER HILL, INC.

By: James A. Carter Hill
President

STATE OF VIRGINIA

COUNTY OF JAMES CITY, to-wit:

The foregoing instrument was acknowledged before me this 29th day of June, 1989, by James D. Carter, III, President, on behalf of Carter Hill, Inc.

Alison H. Stey
NOTARY PUBLIC

My commission expires: 12/7/92

VIRGINIA: City of Williamsburg and County of James City, to Wit:

In the Clerk's office of the Circuit Court of the City of Williamsburg and County of James City the 13th day of July, 1989. This Proffer Agreement was presented with certificate annexed and admitted to record at 3:14 o'clock

Test: Melene S. Ward, Clerk
[Signature]
Deputy Clerk

01
SEARCHED
SERIALIZED
INDEXED
FILED
JUL 13 1989
FBI - WILLIAMSBURG

COMMONWEALTH OF VIRGINIA



(114-8-022 7/88)

OFFICIAL RECEIPT
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT
DEED RECEIPT

DATE: 07/13/89 TIME: 15:20:53 ACCOUNT: 095CLR890006408 RECEIPT: 89000011579
 CASHIER: DRM REG: W004 TYPE: AGREE PAYMENT: FULL PAYMENT
 INSTRUMENT : 690006408 BOOK: C PAGE: 0 RECORDED: 07/13/89 AT 15:19
 GRANOR NAME : CARTER HILL INC LOCALITY: 00
 GRANTEE NAME : JAMES CITY COUNTY OF PERCENT: 1.00
 AND ADDRESS :
 RECEIVED OF : JAMES CITY COUNTY
 CHECK : \$14.00
 DESCRIPTION : PROFFER AGREEMENT
 CONSIDERATION: .00 ASSUMPTION: .00 MAP: PAID
 CODE DESCRIPTION PAID CODE DESCRIPTION PAID
 301 DEEDS 14.00
 TOTAL TENDERED : 14.00
 TOTAL AMOUNT PAID: 14.00
 TOTAL CHANGE AMT : .00

CLERK OF COURT: HELENE S. WARD

DC-19 5/86

July 13th 19 89
 Received at 3:19 o'clock in the Clerk's Office
 of the City of Williamsburg, and County of
 James City, Va.
 039 St. Tax _____
 213 County Tax _____
 262 City Tax _____
 272 Trans. Fee (City) _____
 212 Trans. Fee (County) _____
 301 Record. Fee 14.00
 301 Plats _____
 038 St. Tax _____
 220 Local Tax (County) _____
 263 Local Tax (City) _____
 Misc. Fee _____
 Total 14.00
 Helelene S. Ward, Clerk