

**CORRECTION
PROFFERS**

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These Proffers are made as of the 19th day of December, 1996, by THELMA V. ALTIZER ("the Owner"), together with her successors and assigns, who owns certain real property shown on the James City County tax map 47-1 as Parcel 1-29.

RECITALS

A. The Owner is owner of certain real property in James City County, Virginia ("the County"), more particular described as follows:

All that certain tract of land containing 49.33 acres, more or less, now or formerly situate in Jamestown District, James City County, Virginia, as shown and set forth on a plat entitled "JAMESTOWN DIST., JAMES CITY COUNTY, VIRGINIA, PLAT SHOWING BOUNDARY OF SECTION NO. 3 OF JAMES B. VAIDEN ESTATE PROPERTY, PREPARED FOR THELMA VAIDEN ALTIZER" dated November 3, 1964 made by Vincent D. McManus, C.E., a copy of which plat is recorded in James City County Deed Book 99 at page 609.

The aforesaid real estate is herein referred to as "the Property".

B. The County's Comprehensive Plan Land Use Map specifically designates the Property as "Low Density Residential" expressly providing for conventional residential development patterns at densities of two dwelling units per acre or less and at densities greater than two dwelling units per acre, cluster development patterns are encouraged with such developments being considered for densities of up to four dwelling units per acre.

C. The Owner has requested that the Property be rezoned from the Rural Residential District, R-8 to the Limited Residential District, R-1 with a Special Use Permit to permit the construction of single family dwellings in a residential cluster development as a condominium.

D. The provisions of the County Zoning Ordinance may be deemed inadequate for the orderly development of the Property.

E. The Owner desires to offer to the County certain Proffers on the development of

the Property not generally applicable to land zoned Limited Residential District, R-1 for the protection and enhancement of the community and to provide for the high quality and orderly development of the Property.

F. NOW, THEREFORE, for and in consideration of the approval by the County of the rezoning of the Property and the issuance of the requested special use permit, and pursuant to Section 15.1-491.1 et seq. of the Code of Virginia, 1950, as amended, ("the Virginia Code"), and Section 20-16 of the County Code ("the County Code"), the Owner agrees that it will meet and comply with all of the following Proffers in developing the Property. In the event that both the requested rezoning and special use permit are not approved and these Proffers are not accepted by the County, these Proffers shall thereupon become null and void.

PROFFERS

1. USES: The uses of the Property shall be limited to the following:

- Accessory buildings or structures as defined in the County's Zoning Ordinance;
- Community recreation facilities associated with the proposed residential development, including parks, playgrounds, tennis courts, and other similar recreation facilities;
- Single family dwellings not exceeding 110 in number; and
- Water impoundments, new or expansion of, less than 50 acres and with dam heights of less than 25 feet.

2. PRELIMINARY MASTER PLAN OF DEVELOPMENT: The Property shall be developed in accordance with a Master Plan of Development pursuant to Section 20-552 of the County Code. In addition, the Master Plan of Development shall provide for the location of proposed public streets, the location of proposed areas of open space and the location of proposed areas for buildings all as approximately shown on a plan entitled "Site Development

Plan; A cluster Development, Woodbury, Prepared For Brookstone Ventures, L.L.C., James City County, Virginia” dated October 17, 1996 prepared by Langley and McDonald, P.C. attached hereto and made a part hereof marked as Exhibit “A” (“the Preliminary Master Plan of Development”). The County’s Planning Director may permit amendment of the Preliminary Master Plan of Development only if such amendments do not: (1) conflict with the other requirements of these Proffers, the Virginia Code and the County Code; or (2) change the general character or content of the Preliminary Master Plan of Development; or (3) result in any substantial change of major external access points; or (4) increase the approved number of dwelling units on the Property as a whole.

The public road on the Preliminary Master Plan of Development shall be constructed to a width that allows parking and in accordance with the **SUBDIVISION STREET REQUIREMENTS MANUAL** issued in January 1996 by the Virginia Department of Transportation (“VDOT”), as it may be amended at the time of construction. All private streets and driveways that serve more than one dwelling unit shall be designed and constructed in accordance with the construction (but not geometric) standards of the County’s private street guidelines; however, the horizontal and vertical geometry of all private streets shall be subject to the County’s approval.

The Cluster Concept and the Unit Concept shall be developed on the Property as generally shown on Exhibit “B”, the Typical Residential Area Plan. Site constraints including, but not limited to, topography, finished grade, wetlands, steep slopes, utility and drainage easements, archaeological sites, rights-of-way and soils, may warrant deviations from the Typical Residential Area Plan. Such deviations caused by these above-referenced limitations shall be reviewed and approved for general consistency with the Typical Residential Area Plan by the Development

Review Committee prior to final site plan approval.

3. **TRAFFIC STUDY; ACCESS TO THE PROPERTY:** The access to the Property shall be in the approximate location shown on the Preliminary Master Plan of Development and shall be limited to one access on Route 5 and one access on Route 615. The Owner shall commission, at its expense, and provide to each of the County and VDOT, a traffic study for both of the entrances to the Property on Route 5 and Route 615 prior to final site plan approval. The traffic study shall address the requirements, if any, of a turn lane(s) at either or both of said entrances based on the traffic generated by the total permitted number of dwelling units on the Property and the anticipated background traffic on each of Route 5 and Route 615 at the full build out stage. After review and approval of the traffic study by both the County and VDOT, the Owner shall, if not previously constructed by others, construct said turn lane(s) or guarantee the construction of the same with corporate surety or cash bond in accordance with the applicable standards of the County and VDOT all prior to the issuance of building permits for the prescribed number of dwelling units on the Property warranting such turn lane(s); however, at any time prior to the construction of the required turn lane(s), the Owner, VDOT or the County may request an updated analysis of turn lane warrants, based on the then current traffic volumes and standards, to determine the continued necessity of constructing the turn lane(s). If such subsequent analysis is approved and indicates that any of said turn lane(s) are no longer necessary, the Owner shall be under no obligation to construct the unnecessary turn lane(s) and the appropriate portion of any corporate surety or cash bond previously posted by the Owner for the same shall be returned.

4. **CASH PAYMENTS FOR EACH DWELLING UNIT DEVELOPED ON THE PROPERTY:** The Owner shall contribute to the County the sum of one percent (1%) of the estimated initial sales price, as hereinafter determined, for each dwelling unit developed on the

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Property and the County shall make these monies available to the Route 5 Transportation Improvement District for the construction of alternate Route 5 or for any other project included in the County's Capital Improvement Plan, the need for which in whole or in part is generated by the development of the Property. The estimated initial sales price for each dwelling unit developed on the Property shall be determined by agreement between the Owner and the County's Director of Real Estate Assessment and, in the absence of such agreement, by the County's Board of Supervisors. Said contributions shall be payable for the number of units to be constructed within each residential pod of the Property as shown on the Preliminary Master Plan of Development but only when, as and if a final site plan is approved by the County for the construction of said units within said residential pod of the Property. Notice that such sum is due shall be recorded on all plats of the Property approved after the date hereof.

5. DEDICATION OF AND PAYMENT TOWARDS REGIONAL STORMWATER MANAGEMENT FACILITY: At the written request of the County Administrator and prior to the approval of any development plans of the Property, the Owner shall dedicate to the County, subject to the rights and easements herein reserved, all or any portion of the Property shown within the area on the Preliminary Master Plan of Development as the approximate location of the "Regional BMP" for non-exclusive use by the County for stormwater management purposes. The Owner shall have the right and easement to utilize said area as a part of its required open space and to install and construct over, under, across, and through such area such trails, drainage structures, stormwater management facilities, and utilities as may be necessary for the development of the Property, in accordance with the terms of these Proffers and as approved by the Development Review Committee of the County's Planning Commission.

Prior to the issuance of a land disturbing permit for any portion of the Property, the

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Owner shall pay to the County the sum of Sixty-Thousand and No/100 Dollars (\$60,000.00) representing its proportional share of the construction costs associated with the construction of a regional stormwater management facility within the area designated "Regional BMP." If not previously constructed by the County, the County shall upon said payment cause to be constructed said regional stormwater management facility which shall accommodate all uses hereby anticipated.

6. TREE RETENTION AREAS AND CONSERVATION EASEMENT: In the designated areas hereinafter described, the Master Plan of Development shall provide for the preservation of existing trees, to the end that said areas shall be left in their existing natural wooded state:

- An area seventy-five (75) feet in depth between the residential pods within the Property and the Graylin Woods subdivision to the east;
- An area seventy-five (75) feet in depth between the residential pods within the Property and the Foxes subdivision to the north;
- An area seventy-five (75) feet in depth between the residential pods within the Property and the Baron Woods subdivision to the west;
- An area one hundred-fifty (150) feet in depth along the Route 5 frontage of the Property which area shall be measured from the northerly edge of right of way of Route 5 and any required turn lane;
- An area one hundred-fifty (150) feet in depth along the Route 615 frontage of the Property which area shall be measured from the easterly edge of right of way of Route 615 and any required turn lane; and
- An area fifty feet (50) in depth on both sides of the public portion of the main entrance road.

Notwithstanding the aforesaid, dead, diseased or dying trees or trees weakened by age, storm or other injury and dead, diseased or dying shrubbery may be removed. Furthermore, with the approval of the Director of Planning, selective clearing may be performed within all buffers to

allow for an attractive appearance, to remove trees that might become a hazard to residents and to enhance the growth potential of trees to remain. The existing native mulch layer and existing grade around trees in all of said buffers shall be retained. Finally, additional mulch may be added to enhance the survivability of trees to remain. Notwithstanding, the aforesaid, in the case of the buffers along the public portion of the main entrance road and along Route 5 and Route 615, utility crossings, turn lanes, the main public road entrances (without medians within said entrances), the entrances serving each group of dwelling units, signs, lighting and entry features, and stormwater management facilities may be permitted provided they are approved by the Development Review Committee of the County's Planning Commission. In the case of the buffers along Route 5 and Route 615, the Owner shall grant to the County a construction easement, at least twenty (20) feet in width, the location of which shall be approved by the County and the form of which shall be acceptable to the County Attorney, within which area, the County may, at its expense, construct a variable width bikeway and/or trail system. No portion of any residential pod shown on the Preliminary Master Plan of Development shall be located within the buffers along Route 5 or Route 615.

All areas designated for the preservation of trees shall be clearly marked with appropriate colored markings prior to the commencement of any construction on the Property. Additionally, all areas designated for the preservation of trees along the northerly and the easterly perimeter of the Property and trees to be retained within the areas designated for dwelling units shall be protected throughout the construction period by installation of orange mesh fencing.

Following the clearing of those portions of the Property designated for construction of dwelling units, the buffer areas adjacent to the Graylin Woods subdivision to the east, the Foxes subdivision to the north and the Baron Woods subdivision to the west may be inspected by the

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Development Review Committee of the County's Planning Commission or its designee and if said Committee or its designee considers any portion of said buffers to provide inadequate levels of screening, said Committee or its designee may require and approve an enhanced planting plan to the end that these buffers shall be enhanced with a mixture of evergreen and deciduous shrubs and trees to ensure an effective visual screen between the new and existing residential areas.

7. **LANDSCAPING:** The Master Plan of Development shall provide for landscaping for each area of the Property designated for dwelling units as generally illustrated on the plan entitled "Typical Residential Area Plan, A Cluster Development, Woodbury, Prepared For Brookstone Ventures, L.L.C., James City County, Virginia" dated September 13, 1996 prepared by Langley and McDonald, P.C., attached hereto and made a part hereof marked as Exhibit "B". The following minimum number and type of plants shall be provided per dwelling unit:

- Two shade trees, minimum 2 - 2½" caliper;
- Two understory flowering trees, minimum 6 - 8' in height;
- Three understory or canopy evergreen trees, minimum 6 - 8' in height;
- Forty evergreen or deciduous shrubs; and
- Ninety square feet of groundcover plants, ornamental grasses or perennial ground covers.

The types and locations of all required plants shall be approved by the County's Planning Director and shall be distributed throughout each individual area of the Property designated for dwelling units. Plant locations may be adjusted as needed to protect existing retained vegetation within the residential areas and to provide plants for maximum enhancement of the overall area.

At least two (2) evergreen, deciduous or ornamental trees shall be provided for each 35 feet of length of road along the main public road with the specific type and location of such trees to be approved by the Director of Planning prior to final site plan approval. Such trees may be

regularly spaced or grouped in areas where the least existing vegetation remains.

8. **DWELLING UNIT DESIGN CRITERIA:** In order to establish consistent materials, style and colors, the Owner shall prepare and submit for approval by the Development Review Committee of the County's Planning Commission a pattern book containing design criteria for all dwelling units to be constructed on the Property prior to the final site plan approval of the first residential pod within the Property which criteria shall specify the following:

- Typical building elevations;
- Community sign standards;
- Mailbox enclosures and other architectural screening;
- Exterior building materials;
- Siding, roof and trim colors;
- Site lighting standards and types;
- Typical orientation of garage doors;
- Decking materials, locations and heights; and
- Fence and wall materials, locations and heights.
- Typical building, driveway and parking layout.
- Entry features.

All dwelling units shall have a maximum height of roof peak from lowest finish floor elevation of 28 feet.

9. **PEDESTRIAN WALK SYSTEM:** When, as and if each portion of the Property is developed, a pedestrian walk system shall be provided along the easterly side of the main public road abutting said portion to be developed and into each area of the Property to be developed for dwelling units in order to provide a dedicated pedestrian access from the front of each unit to the

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adjacent public street system. No portion of the pedestrian walk system shall be blocked by the parking hereinafter required.

10. **SET BACK STANDARDS:** The following set back standards shall apply within each area of the Property designated for dwelling units. The set backs shall apply not only to the dwelling units but also to any associated porches and decks:

- All buildings shall be located a minimum of 15 feet from any other building. Porches and decks shall be located a minimum of 10 feet from any other building, porch or deck; and
- All buildings, porches and decks will be located a minimum of 15 feet from the back of curb of shared drives and a minimum of 10 feet from the pavement edge of driveway shared by a maximum of three units.

11. **PARKING:** Within each area of the Property designated for dwelling units, a minimum of two dedicated parking spaces per dwelling unit shall be provided in addition to garage spaces. No driveways from individual dwelling units shall enter directly onto the public portion of the main entrance road.

12. **NO INTERNAL STREETS BETWEEN THE PROPERTY AND ADJACENT RESIDENTIAL PROPERTY:** No internal street connection shall be permitted between the Property and Graylin Woods subdivision to the east and between the Property and the Foxes subdivision to the north.

13. **HOMEOWNER'S ASSOCIATION:** The Owner shall organize a Homeowner's Association ("the Association") in accordance with Virginia law whereby all property owners within the Property, by virtue of their property ownership, must be members. The Articles of Incorporation, Bylaws and Restrictive Covenants (together, the "Governing Documents") creating and governing the Association shall be submitted to and reviewed by the County Attorney prior to the construction of any dwelling unit on any portion of the Property. The

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Governing Documents shall require that the Association adopt an annual maintenance budget and shall require the Association to: (i) assess all members owning dwelling unit(s) on the Property for the maintenance and/or replacement as appropriate for all properties owned or maintained by the Association including but not limited to all private roads, driveways, buffers and landscaping and Best Management Practice facilities; and (ii) file liens on said member's properties for non-payment of such assessments and for the costs of remedying the violations of or otherwise enforcing, the Governing Documents. The funding plan for the aforesaid maintenance budget for the first five years shall include cash or a bond with corporate security with the Association and the County as dual obligees or a combination of both in the total amount of \$45,000.00 to provide the Homeowner's Association sufficient funds for maintenance.

14. **RECREATIONAL AMENITIES:** A neighborhood park of approximately one acre shall be provided at the general location shown on the Preliminary Master Plan of Development. This area shall be dedicated to and maintained by the Association and shall be open to all members of the Association. In addition, a pedestrian walk shall be provided from the main public road to the park, and a bond for \$15,000 shall be posted for the development of facilities within the park, the exact nature of such to be determined by the members of the Association. The neighborhood park, pedestrian walk and facilities within the park shall be constructed prior to preliminary site plan approval of more than 25 units within the Property. The aforesaid bond shall be provided to the County prior to the final approval of the site plan for development of the first residential pod within the Property.

15. **ARCHAEOLOGICAL STUDY:** A Phase I Archaeological Study for the area to be disturbed on the Property shall be submitted to the Director of Planning for his review and approval prior to land disturbance. A treatment plan shall be submitted to and approved by the

Director of Planning for all sites that are, in the Phase I study, recommended for a Phase II evaluation and/or identified as being eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken such a study shall be approved by the Planning Director and a treatment plan for said sites shall be submitted to and approved by the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If, in the Phase II study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study areas. All Phase I, Phase II and Phase III studies shall meet the Virginia Department of Historic Resource's Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standard and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the site and the clearing, grading or construction activities thereon.

16. LEGAL FORM OF OWNERSHIP: The Owner shall develop the Property as a condominium pursuant to the Virginia Code unless otherwise permitted by the County Code.

GENERAL PROFFERS

17. HEADINGS: All section and subsection headings of these Proffers are for convenience only and are not part of these Proffers.

18. SEVERABILITY OF PROVISIONS: If any clause, sentence, paragraph, section

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or subsection of these Proffers shall be adjudged by any Court of competent jurisdiction to be invalid for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth or of the United States, or if the application thereof to the Owner or to any government agency or circumstance is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof or the specific application thereof, directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or subsection hereof, or affect the validity of the application thereof to the Owner or to any other government agency, person or circumstance.

Thelma V. Altizer
THELMA V. ALTIZER

STATE OF VIRGINIA

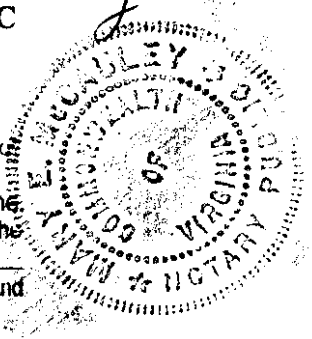
CITY/COUNTY OF Loudoun, to-wit:

The foregoing instrument was acknowledged before me this 24 day of

VIRGINIA, December 1996 by and County of Altizer.
James City, to Wit:

In the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City the Proffer was presented with certificate annexed and admitted to record at 9:21 o'clock
Teste: Helene S. Ward, Clerk
by [Signature]
My Commission expires: 1-31-2000

May E M. Cawley
NOTARY PUBLIC

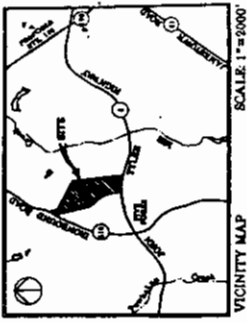


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This document prepared by:
Alvin P. Anderson, Esquire
1200 Old Colony Lane
Williamsburg, VA 23185

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 Proffer was presented with certificate annexed and admitted to record at 1:02 o'clock
Teste: Helene S. Ward, Clerk
by [Signature]
Clerk

EXHIBIT "A"



SITE DEVELOPMENT PLAN

A CLUSTER DEVELOPMENT

WOODBURY

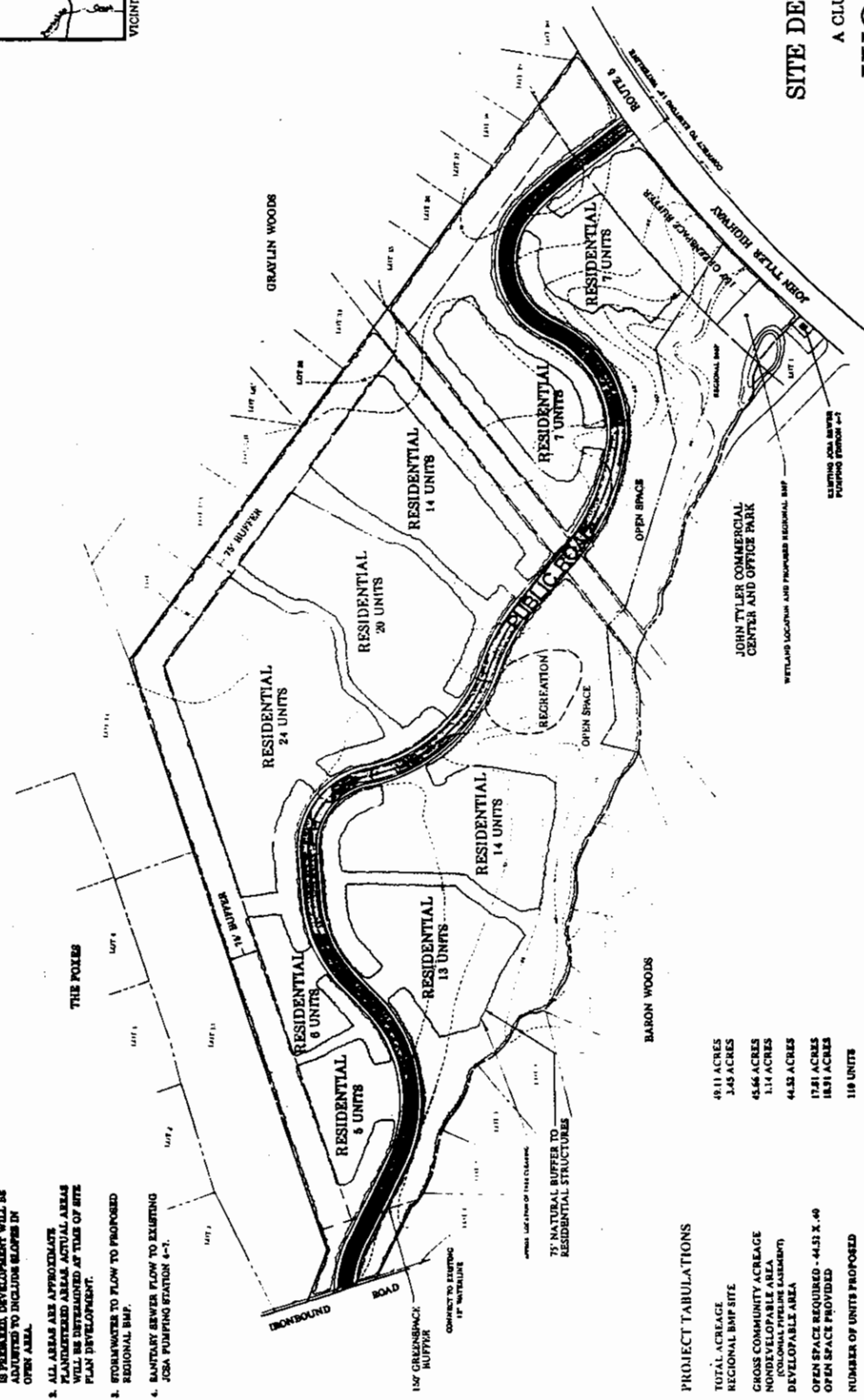
PREPARED FOR

BROOKSTONE VENTURES L.L.C.
 JAMES CITY COUNTY, VIRGINIA
 OCTOBER 17, 1996

Langley and McDonald, P.C.
 Landscape Architects • Environmental Consultants

REVISED DATE 12/4/96 LAM # 9041

- NOTES:**
1. IF AREAS EXCEEDING 2% SLOPE ARE LOCATED WHEN TOPOGRAPHIC SURVEY IS PERFORMED DEVELOPMENT WILL BE ADJUSTED TO INCLUDE SLOPES IN OPEN AREA.
 2. ALL AREAS ARE APPROXIMATE PLANNED AREAS. ACTUAL AREAS WILL BE DETERMINED AT TIME OF SITE PLAN DEVELOPMENT.
 3. STORMWATER TO FLOW TO PROPOSED REGIONAL BMP.
 4. SANITARY SEWER FLOW TO EXISTING JCSA PUMPING STATION 4-7.



PROJECT TABULATIONS

TOTAL ACREAGE	49.11 ACRES
REGIONAL BMP SITE	3.45 ACRES
CROSS COMMUNITY ACREAGE	45.66 ACRES
NONDEVELOPABLE AREA (COLONIAL PINE/FOREST REMAINT)	1.14 ACRES
DEVELOPABLE AREA	44.53 ACRES
OPEN SPACE REQUIRED - 44.53 X .40	17.81 ACRES
OPEN SPACE PROVIDED	18.91 ACRES
NUMBER OF UNITS PROPOSED	119 UNITS
NUMBER OF UNITS ALLOWED - 45.66 X 1.5 (WITH APPROVED MASTER PLAN)	114 UNITS
TOTAL UNITS ALLOWED - 45.66 X 3.0 (WITH SENSITIVITY MONITOR AND APPROVED MASTER PLAN)	174 UNITS

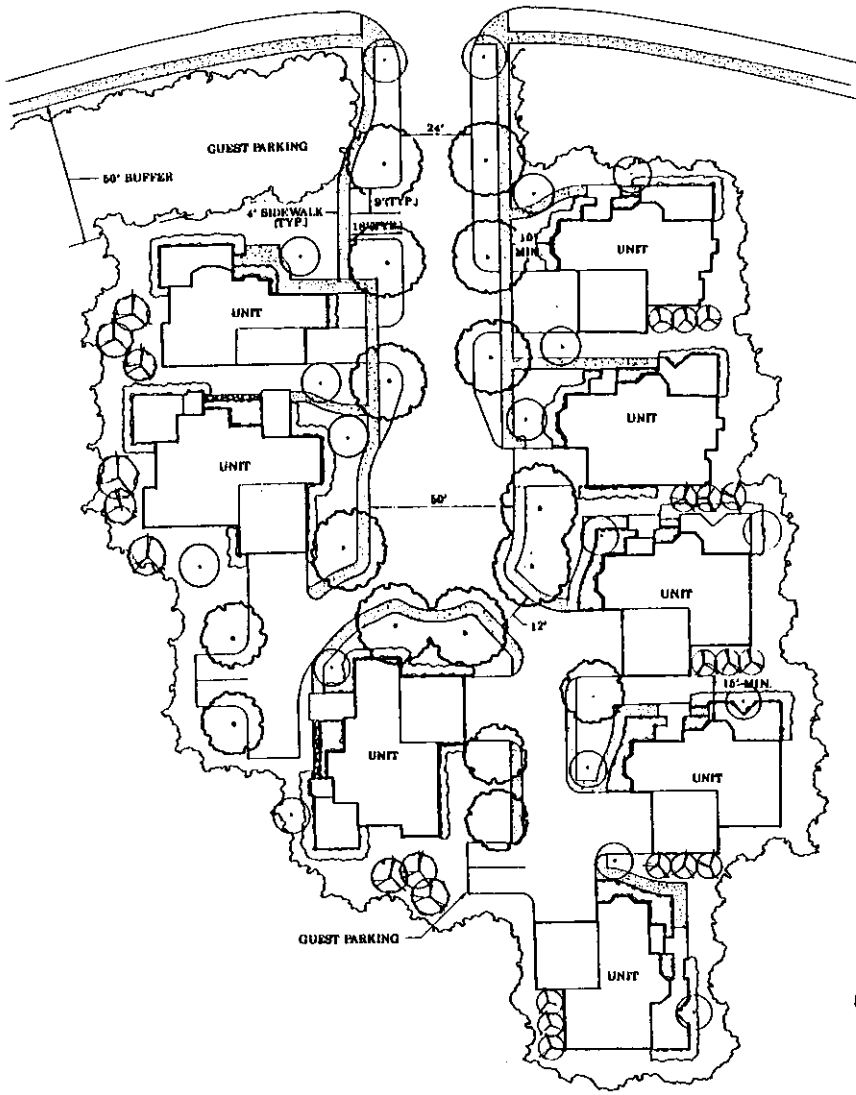
NOTE: COMMUNITY ACREAGE DOES NOT INCLUDE 1.14 ACRES PROTECTED FOR DESIGNATION TO JAMES CITY COUNTY FOR REGIONAL BMP



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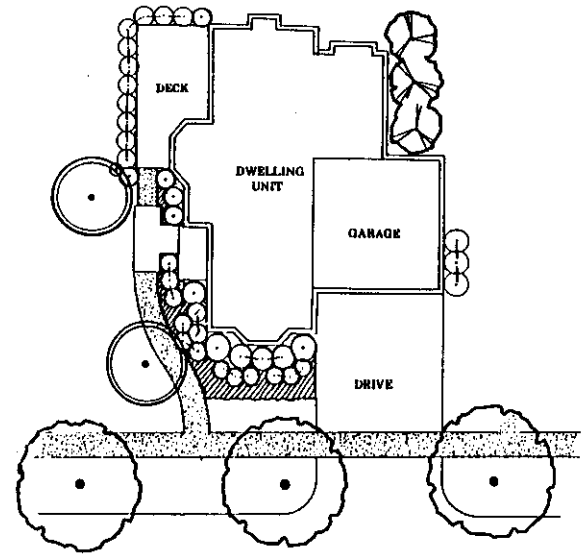
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15 - 15



CLUSTER CONCEPT
SCALE: 1" = 20"

- LEGEND**
- SHADE TREE
 - FLOWERING TREE
 - EVERGREEN TREE
 - SHRUBS
 - GROUND COVER BED



UNIT CONCEPT
SCALE: 1" = 10"

TYPICAL RESIDENTIAL AREA PL
A CLUSTER DEVELOPMENT

WOODBURY

PREPARED FOR
BROOKSTONE VENTURES L.L.C.
JAMES CITY COUNTY, VIRGINIA
SEPTEMBER 13, 1996

Langley and McDonald, P.C.
Engineers • Surveyors • Planners
Landscape Architects • Environmental Consultants

EXHIBT "B"

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COMMONWEALTH OF VIRGINIA



OFFICIAL RECEIPT
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT
DEED RECEIPT

DATE: 02/19/97 TIME: 09:21:38 ACCOUNT: 830CLR970002628 RECEIPT: 97000004321
CASHIER: CHB REG: W804 TYPE: COR PAYMENT: FULL PAYMENT
INSTRUMENT : 970002628 BOOK: PAGE: RECORDED: 02/19/97 AT 09:21
GRANTOR NAME : ALTIZER, THELMA V EX: N LOCALITY: CO
GRANTEE NAME : JAMES CITY COUNTY EX: N PERCENT: 100%
AND ADDRESS :
RECEIVED OF : JCCO DATE OF DEED: 12/19/96

RETURN TO:
ATTORNEY
D.G. C

CHECK : \$24.00
DESCRIPTION 1: CORRECTED PROFFERS 49.33 AC JAMES B VAIDEN
2: ESTATE

24-

CONSIDERATION:	.00	ASSUME/VAL:	.00	MAP:	
CODE DESCRIPTION		PAID	CODE DESCRIPTION		PAID
301 DEEDS		23.00	145 VSLF		1.00

TENDERED : 24.00
AMOUNT PAID: 24.00
CHANGE AMT : .00

CLERK OF COURT: HELENE S. WARD