

011724

PROFFER AGREEMENT

These Proffers are made as of the 22nd day of March, 1995, by J. R. CHISMAN DEVELOPMENT CO., a Virginia corporation ("the Owner"), together with its successors and assigns, which owns certain real property shown on the James City County Tax Map 46-1 as a portion of Parcel 1-2C.

RECITALS

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

All those certain parcels of land, with all improvements thereon and appurtenances thereto belonging, lying and being in the Berkeley Magisterial District of James City County, Virginia, containing three parcels of land and shown on that certain map dated June 21, 1993, prepared by AES Consulting Engineers, and entitled "Composite Map of Various Portions of Lands formerly owned by David M. Murray, Sr., prepared for Eastern OREO, Inc." (the "Map"), a copy of the Map being recorded in Plat Book 57, Page 78, on which the aforesaid three parcels of land are described as follows:

PARCEL III - Approximately 76 acres, more or less, as shown as Parcel III on the Map.

PARCEL IV-B - Approximately 60.61 acres, more or less, as shown as Parcel IV-B on the Map.

PARCEL VII - Approximately 5.16 acres, more or less, as shown as Parcel VII on the Map as being divided into three parcels, one containing approximately 4.26 acres, more or less, one containing 0.4057 acre, more or less, and one containing 0.4955 acres, more or less.

Being the same real estate conveyed to the Owner by Deed dated June 28, 1993 from Eastern Oreo, Inc., a Virginia corporation, recorded in James City County Deed Book 627, Page 251, et seq. on July 1, 1993. The aforesaid real estate is herein referred to as "the Property".

B. The Owner has previously or is presently developing a portion of the Property, which portion is more particularly described as follows:

All those certain parcels of land, with all improvements thereon and appurtenances thereto belonging, lying and being in the Berkeley Magisterial District of James City County, Virginia, comprising phases 1 and 2 of Section 5 of St. George's Hundred Subdivision as shown on the Map, and also including approximately 30.68 acres of Parcel III now or to be developed as phases 3 and 4 of Section 5 and all of Section 6 of St. George's Hundred (not shown on the Map).

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

C. That portion of the Property not included within the Developed Property is herein referred to as "the Undeveloped Property".

D. The Owner is desirous of continuing to develop the Undeveloped Property but in accordance with General Residential Zoning District, R-2, of the James City County Code.

E. The Undeveloped Property together with other surrounding properties is currently subject to certain proffered conditions pursuant to Case No. Z-21-86 ("the Existing Proffers") approved by James City County ("the County").

F. The Existing Proffers applicable to the Undeveloped Property may no longer be appropriate given the proffered conditions and/or special use permit conditions applicable to other properties in the vicinity, the prior satisfaction of some of the proffered conditions applicable to the Undeveloped Property, and the subsequent establishment by the County of the Route 5 Transportation Improvement District.

G. The Owner has applied for a rezoning of the Undeveloped Property with revised proffers. If the rezoning is approved, the Owner must thereafter submit for approval by the County a plan of development ("the Plan of Development").

H. The County's Comprehensive Plan Land Use Map specifically designates the Undeveloped 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.

I. The provisions of the County Zoning Ordinance and Existing Proffers may be deemed inadequate for the orderly development of the Undeveloped Property.

J. In lieu of the Existing Proffers, the Owner desires to offer to the County certain proffers for the development of the Undeveloped Property not generally applicable to land similarly zoned for the protection and enhancement of the community and to provide for the high quality and orderly development of the Undeveloped Property.

NOW, THEREFORE, for and in consideration of the approval by the County of the rezoning of the Undeveloped Property and the acceptance of the proffers hereinafter set forth in lieu of the Existing Proffers, and pursuant to §15.1-491.1, et seq., of the Code of Virginia, 1950, as amended, and §20-16 et seq. of the County Code, the Owner agrees that it will meet and comply with all of the following proffers in developing the Undeveloped Property. In the event the requested rezoning is not approved and these proffers are not accepted by the County in lieu of the Existing Proffers, these proffers shall become null and void.

PROFFERS

1. Uses.

The uses of the Undeveloped Property shall be limited to the following:

- Accessory buildings or structures as defined.
- Community recreation facilities, including parks, playgrounds, clubhouses, boating facilities, swimming pools, ball fields, tennis courts, and other similar recreation facilities.
- Single-family detached dwellings.
- Water impoundments, new or expansion of, less than 50 acres and with dam heights of less than 25 feet.

2. Plan of Development.

The Undeveloped Property shall be developed in accordance with a Plan of Development to be approved by the County with the number of dwelling units limited to 106.

3. Access to the Undeveloped Property.

The access to the Undeveloped Property shall be within a portion of the area shown as "90' Easement Area, 5.70 AC" shown on the Map. In addition, left and right turn lanes on Route 5 shall be provided as deemed necessary by the Virginia Department of Transportation ("VDOT"). If not previously constructed by others, said access and turn lanes shall be designed and constructed or guaranteed with corporate surety or cash bond in accordance with applicable standards of the County and VDOT prior to the final subdivision approval for dwelling units of any portion of the Undeveloped Property on Parcel IVB as shown on the Map.

4. Cash payments for each dwelling unit lot developed within the Undeveloped Property.

The Owner shall contribute to the County the sum of one percent (1%) of the verified initial sales price for each dwelling unit lot developed within Parcel IVB as shown on the Map and the County shall make these monies available to the Route 5 Transportation Improvement District for construction of alternate Route 5 or for any other project included in the County's Capitol Improvement Plan, the need for which in whole or in part is generated by the development of the Undeveloped Property. Said contributions shall be payable only when, as and if the Owner conveys a lot within said area on which lot is located, a dwelling unit for which an initial certificate of occupancy has been issued by the County. Notice that such sum is due shall be recorded on all plats of subdivision approved after the date hereof. Said notice shall further provide that in the event that the amount due per lot is not paid as aforesaid, a 25% collection fee plus interest at the legal rate shall be assessed.

5. Conservation Area.

At the written request of the County Administrator and prior to the recordation of a subdivision plat pursuant to the Plan of Development, the Owner shall dedicate to the County, subject to the rights herein reserved, a fee simple interest in and to all or any portion of the Undeveloped Property along the southern boundaries of the Undeveloped Property, and Sections 5 and 6 of St. George's Hundred and along Powhatan Creek adjacent to the eastern boundary of St. George's Hundred (approximately 46.4 acres) owned by the Owner consisting of stream beds, areas subject to flooding, marsh, areas with slopes exceeding 25% gradient and wetlands for use by the County for conservation, recreational and storm water management purposes. Existing trees, shrubbery and vegetation within said area shall remain "as is" provided, however, the Owner and/or the County shall have the right to install and construct over, under, across and through such areas such new roads, trails, drainage structures, storm water management facilities, utilities and entrance signs as may be necessary, in accordance with the terms of these proffers and as approved by the Development Review Committee of the County's Planning Commission.

6. Community Name.

The Undeveloped Property shall not be named St. George's Hundred.

7. 35' Wooded Buffer Between Undeveloped Property and St. George's Hundred.

The Plan of Development shall provide for the preservation of the existing buffer 35' in width between the Undeveloped Property and Section 3 of St. George's Hundred. No portion of said buffer shall be located within any lot on which a dwelling unit is proposed for construction.

8. No Internal Streets Between Undeveloped Property and St. George's Hundred.

Subject to the provisions of paragraph 9 hereof, no internal street connections shall be permitted between the Undeveloped Property and Sections 3 and 6 of St. George's Hundred which would otherwise allow for motorized vehicular traffic between said areas.

9. Pedestrian and Bikeway Path/Utility Lines Between Undeveloped Property and St. George's Hundred.

The Plan of Development shall provide on the Undeveloped Property adjacent to that portion of Sabre Drive (extended) between 127 Arena Street (Route 1441) and 236 Robertson Street (Route 1439) a strip of land fifty feet in width for use as a public pedestrian and bicycle path and for utility easements between the public streets of Section 3 of St. George's Hundred and those of the Undeveloped Property.

The Owner shall construct a concrete pathway eight feet in width within the aforesaid area between said public streets and construct pipe bollards or other obstacles at each end of the path to prevent motorized vehicular access between the Undeveloped Property and St. George's Hundred.

10. Homeowner's Association.

The Owner shall organize a homeowner's association ("the Association") in accordance with Virginia law whereby all property owners within the Undeveloped 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 final subdivision approval for dwelling units on any portion of the Undeveloped Property. The Governing Documents shall require that the Association adopt an annual maintenance budget and shall require the Association to: (i) assess all members owning property within the Undeveloped Property for the maintenance of all properties owned or maintained by the Association including all Best Management Practice facilities; and, (ii) file liens on said members' properties for nonpayment of such assessments and for the cost of remedying violations of, or otherwise enforcing, the Governing Documents.

11. 150' Buffer Along Route 5. Except for the entrance road described in proffer numbered 3 above, that portion of the Undeveloped Property within 150' of Route 5 shall be left in its existing natural wooded state, except for utility crossings, construction road

entrances, signs and storm water management facilities, each of which must be approved by the Development Review Committee of the County's Planning Commission. 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.

GENERAL PROFFERS

1. **Existing Proffers No Longer Applicable to Undeveloped Property.**

Upon the acceptance of these Proffers by the County, the Existing Proffers shall no longer be applicable to the Undeveloped Property.

2. **Headings.**

All section and subsection headings of this Agreement are for convenience only and are not part of these proffers.

3. **Conflict with Vested Rights.**

These Proffers are subject and inferior to the Owner's vested rights pursuant to subdivision plans and plans of development previously approved by the County. Any conflict between the terms of these Proffers and the Owner's vested rights shall be resolved in accordance with the Owner's vested rights.

4. **Severability of Provisions.**

If any clause, sentence, paragraph, section 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.

WITNESS the following signature and seal:

**J. R. CHISMAN DEVELOPMENT CO.,
a Virginia corporation**

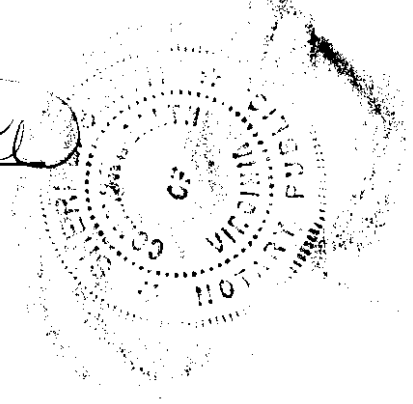
By:  _____
President

STATE OF VIRGINIA

COUNTY OF JAMES CITY, to-wit:

The foregoing instrument was acknowledged before me this 24th day of March, 1995 by J. R. Chisman, President of J. R. CHISMAN DEVELOPMENT CO., a Virginia corporation, its officer in its behalf first duly authorized.

Cherish Small
NOTARY PUBLIC



My commission expires: 9-30-97

VIRGINIA: City of Williamsburg and County of James City, to-wit:

In the Clerk's Office of the Court of the City of Williamsburg and County of James City the

30 day of Aug. 1995. This Deed was presented with copies annexed and admitted to record at 1:18 o'clock

Teste: Helene S. Ward, Clerk
by Helene S. Ward
Deputy Clerk

Block
- 09/30/95

COMMONWEALTH OF VIRGINIA



Deputy Clerk

PLEASE RETURN TO:
COUNTY ATTORNEY
JCC - BLDG. C

OFFICIAL RECEIPT
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT
DEED RECEIPT

DATE: 09/30/95 TIME: 13:18:13 ACCOUNT: 0950195001724 RECEIPT: 95000620089
CASHIER: CHB REG: W204 TYPE: OTHER PAYMENT: FULL PAYMENT
INSTRUMENT: 950011724 BOOK: 0 PAGE: 0 RECORDED: 09/30/95 AT 13:18
GRANTOR NAME: J R CHISMAN DEVELOPMENT CO EX: N LOCALITY: CO
GRANTEE NAME: J R CHISMAN DEVELOPMENT CO EX: N PERCENT: 100%
AND ADDRESS:

RECEIVED BY: JCCO DATE OF DEED: 09/22/95
CHECK: \$16.00

DESCRIPTION 1: 3 PARCELS OF LAND DAVID M MURRAY SR
2: PROFFERS

CONSIDERATION: .00 ASSUME/VAL: .00 MAP: PAID 1.00
CODE DESCRIPTION: 301 DEEDS 15.00 145 4SLF 16.00
CHANGE AMT: .00

TENDERED: 16.00
AMOUNT PAID: 15.00
CHANGE AMT: .00

CLERK OF COURT: HELENE S. WARD