

013357

PROFFER AGREEMENT

These Proffers are made as of the 24th day of July, 1995, by THJ, Limited Liability Company, a Virginia limited liability company ("the Owner"), together with its successors and assigns, which owns certain real property described on the James City County Tax Map as Parcel No. (3-1) on James City County Real Estate Tax Map No. (46-4).

RECITALS

A. The Owner is the owner of certain real property in James City County, Virginia, hereinafter referred to as "the Property" and more particularly described as follows:

PARCEL 1

All that certain lot, piece or parcel of land situate in James City County, Virginia, shown and set forth as Parcel "A" on that certain plat entitled, "Plat Showing 16.51 Acres, Parcel "A", "B", and "C", Formerly the Property of Frances M. White and David M. Murray, Jamestown District, James City County, Virginia," dated August 18, 1976, and made by James K. Alvis, Jr., C.L.S., a copy of which is recorded in James City County Deed Book 171, Page 506.

In the event that access for purposes of ingress and egress from Parcels "A", "B", and "C" to the access road to Route 31 is ever terminated or denied, then in that event the following easement is granted:

Together with an easement for purposes of ingress and egress for the benefit of Parcels "A", "B", and "C", as shown on said plat which easement adjoins and is parallel to Virginia Route No. 31 and Route 680 as shown on said plat and extends fifty feet in width from said State roads and extending from the Easterly line of Parcel "C" to the Westerly line of Parcel "A".

Together with all of the Grantor's right, title and interest in and to a pro rate share of sewer service connections as evidenced by a certain "Contract For Sewer Service Connection: dated August 22, 1973, between the James City Service Authority and the LeMonde Land Trust.

PARCEL 2

All that certain lot, piece or parcel of land situate in James City County, Virginia, shown and set forth as Parcel "B" on that certain plat entitled, "Plat Showing 16.51 Acres, Parcel "A", "B", and "C", Formerly the Property of Frances M. White and David M. Murray, Jamestown District, James City County,

1-5

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Virginia," dated August 18, 1976, and made by James K. Alvis, Jr., C.L.S., a copy of which is recorded in James City County Deed Book 171, Page 506, and on which plat said Parcel "B" is shown to contain 4.876 acres.

In the event that access for purposes of ingress and egress from Parcels "A", "B", and "C" to the access road to Route 31 is ever terminated or denied, then in that event the following easement is granted:

Together with an easement for purposes of ingress and egress for the benefit of Parcels "A", "B", and "C", as shown on said plat which easement adjoins and is parallel to Virginia Route No. 31 and Route 680 as shown on said plat and extends fifty feet in width from said State roads and extending from the Easterly line of Parcel "C" to the Westerly line of Parcel "A".

Together with all and singular the buildings and improvements thereon, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Subject, however, to all easements, conditions, and restrictions of record affecting said property.

This is the same property acquired, as Parcel IV and Parcel V, by Frank L. Fernandez, married, by Deed of Gift dated April 10, 1994, from Frank L. Fernandez, aka F.L. Fernandez, and Mary K. Fernandez, aka Mary Kay Fernandez, husband and wife, of record in the said Clerk's Office in Deed Book 688, Page 843.

B. The Owner has applied to James City County ("the County") for a rezoning of the Property from the R-8, Rural Residential Zoning ("the Existing Zoning") to R-5 Multi-Family Residential ("the Proposed Zoning").

C. The County's Comprehensive Plan Land Use Map specifically designates the Property as "Multi-Family Residential" expressly providing for multi-family residential development patterns at densities of eight dwelling units per acre or less for projects under three stories and comprised of one hundred units or less. The proposed project will contain less than one hundred units.

D. The Owner desires to offer to the County certain proffers on the development of the 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 Property.

NOW, THEREFORE, for and in consideration of the approval by the County of the proffers hereinafter set forth and pursuant to para. 15.1-491.1, et. seq., of the Code of Virginia, 1950, as amended, and para. 20-16 et. seq. of the County Code, the Owner agrees that in developing the Property, it will meet and comply with such of the following proffers accepted by the County in developing the Property. In the event the zoning of the Property is not changed from the Existing Zoning to the Proposed Zoning, these proffers shall be withdrawn and shall become null and void.

PROFFERS

1. Recognizing that site development will require addressing and resolving significant drainage issues early in the site design process including gravity discharge from a storm water pond, protection of Cardinal Acres and Jamestown 1607 developments, downstream adequacy and appropriate outfall location, a drainage plan shall be submitted to Code Compliance prior to final site plan approval. Recommendations and findings of the drainage study shall be implemented by the applicant.
2. The on site BMP facility shall be no closer than 30' to the exterior boundaries of the property. Landscape buffering shall be placed around the perimeter of the BMP and will be shown on a plan subject to approval by the Director of Planning prior to final site plan approval.
3. There shall be a greenbelt landscape buffer at least 150' in depth provided along the service road frontage of the property. This greenbelt shall include, but not be limited to, a single row of twelve pin oak or similar-type trees equally dispersed and set back 20' from the service road pavement. This greenbelt shall also include an additional 30 seedling trees beyond the Landscape Ordinance minimums of which one third to one half shall be evergreen trees. A landscape plan for this greenbelt shall be subject to approval by the Director of Planning prior to final site plan approval.
4. There shall be one entrance to the property off of the service road that currently serves Cardinal Acres and Jamestown 1607.
5. At least 50' of right-of-way shall be reserved for possible connection to the adjacent Mainland Farm property. The location shall be subject to approval by the Director of Planning prior to final site plan approval.
6. The developers agree to comply fully with the County's Archaeological Condition Policy which states:

"A Phase I Archaeological Study for the entire site 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 in the Phase I study, that are 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 Director of Planning 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 area. 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.

GENERAL PROFFERS

1. Headings:

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

2. Severability of Provisions:

If any clause, sentence, and paragraph, section or subsection of these Proffers shall be adjudged by any County of competent jurisdiction to be invalid for any reason, including a declaration that it is contract 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:

THJ, Limited Liability Company
A Virginia Limited Liability Company

By: [Signature]
Manager

STATE OF VIRGINIA

COUNTY OF JAMES CITY, to-wit:

The foregoing instrument was acknowledged before me this 24th day of July, 1995 by Larry R. McCardle, Manager of THJ Limited Liability Company, a Virginia Limited Liability Company, its officer in its behalf first duly authorized.

[Signature: Marcel W. Moore]
NOTARY PUBLIC

I was commissioned as Marcel Wynne

My commission Expires: 10-31-96

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

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

2nd day of Oct 1995 [Signature]
[Signature] was presented with this instrument annexed and admitted to record at 11:55 o'clock

Teste: Helene S. Ward, Clerk
by [Signature]
Deputy Clerk

COMMONWEALTH OF VIRGINIA



PLEASE RETURN TO:
COUNTY ATTORNEY
JCC - BLDG. C

OFFICIAL RECEIPT
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT
DEED RECEIPT

DATE: 10/02/95 TIME: 11:55:52 ACCOUNT: 095CLR950013357 RECEIPT: 95000022781
 CASHIER: CHD REG: W804 TYPE: A6 PAYMENT: FULL PAYMENT
 INSTRUMENT : 950013357 BOOK: 0 PAGE: 0 RECORDED: 10/02/95 AT 11:55
 GRANTOR NAME : THJ LIMITED LIABILITY COMPANY EX: N LOCALITY: CO
 GRANTEE NAME : JAMES CITY COUNTY EX: N PERCENT: 100X
 AND ADDRESS :
 RECEIVED OF : JCCO DATE OF DEED: 07/24/95
 CHECK : \$14.00
 DESCRIPTION 1: PARCEL 1 FRANCES M WHITE & DAVID M
 DESCRIPTION 2: MURRAY PARCEL 2 PARCEL B FRANCES M WHITE
 CONSIDERATION: .00 ASSUME/VAL: .00 MAP:
 CODE DESCRIPTION PAID CODE DESCRIPTION
 301 DEEDS 13.00 145 VSLF
 PAID 1.00
 TENDERED : 14.00
 AMOUNT PAID: 14.00
 CHANGE AMT : .00

CLERK OF COURT: HELENE S. WARD