

030 007719

PROFFERS

LONGHILL GROVE

THESE PROFFERS are made this 26th day of December, 2002, by and among:

EAGLE CONSTRUCTION OF VIRGINIA, INC., a Virginia corporation ("Eagle")

(to be indexed as grantor) and

UCP, L.L.C., a Virginia limited liability company (successor in interest and/or title to Heritage Builders, Inc., a Virginia corporation) ("UCP") (to be indexed as grantor) and

DAVID WALKER ("Walker") (to be indexed as grantor) and

BRYAN KORNBLAU ("Kornblau") (to be indexed as grantor) and

SAMUEL I. WHITE, P.C., a Virginia professional corporation ("White") (to be indexed as grantor) and

THE COUNTY OF JAMES CITY, VIRGINIA ("County") (to be indexed as grantee), provides as follows:

RECITALS:

R-1. UCP is the owner of certain real property located in the County of James City, Virginia, containing 8.34± acres, more or less, more particularly described on **Exhibit A** attached hereto and made a part hereof (the "UCP Property").

R-2. White is the owner as Substitute Trustee of certain real property located in the County of James City, Virginia, pursuant to a foreclosure under certain deeds of trust existing on thereon, consisting of 7.48± acres, more or less, more particularly described on **Exhibit B** attached hereto and made a part hereof (the "Foreclosure Property").

R-3. The real property described on Exhibits A and B inclusive shall be referred to collectively herein as the "Property."

R-4. Eagle is the contract purchaser of the UCP Property, and Walker and Kornblau are the contract purchasers of the Foreclosure Property

R-5. Eagle, UCP, Walker, Kornblau and White, and their collective successors and assigns who own record title to all of the Property are referred to collectively herein as the "Owners".

R-6. UCP and White, prior to conveyance of the Property, joined in the filing of an Amended Application for rezoning (the "Application") of the Property. The Application has been designated by the County as Case No. Z-5-02.

R-7. Owners have requested in the Application that the Property be rezoned to R-5 – Multifamily Residential District with proffers as described by Section 24-304 *et seq.* of the County's zoning ordinance in effect on the date hereof ("Zoning Ordinance") in order to permit the construction of apartment housing ("Apartments").

R-8. The provisions of the Zoning Ordinance, Section 24-1, *et seq.* may possibly be deemed inadequate for protecting and enhancing orderly development of the Property in accordance with the County Comprehensive Plan. The Owners, in furtherance of the Application, desire to proffer certain conditions which, among other things, provide for some of the types of benefits specified in the residential provisions of the comprehensive plan and in density bonus provisions of the Zoning Ordinance applicable to R-5 districts. These conditions are specifically limited solely to those set forth herein in addition to the regulations provided for by the Zoning Ordinance for the protection and enhancement of the development of the Property,

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in accordance with the provisions of Section 15.2-2296 *et seq.* of the Code of Virginia (1950), as amended (the "Virginia Code"), and Section 24-16 of the Zoning Ordinance.

R-10. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

R-11. A Phase I Archaeological Study (the "Archaeological Study") recommending no treatment or further study has been performed on the UCP Property and the study has been submitted to the County Director of Planning for review by the County in connection with the Application. A copy of the Archaeological Study is on file in the office of the County Director of Planning. No archaeological study is required for the Foreclosure Property.

R-12. A Community Impact Statement (the "Community Impact Statement") has been submitted to the County Director of Planning for review by the County in connection with the Application. The Community Impact Statement is on file in the office of the County Director of Planning.

R-13. A traffic analysis dated September 20, 2002, entitled: "Traffic Analysis for Williamsburg Apartments at Centerville/Longhill Road" prepared by DRW Consultants, Inc. (the "Traffic Study") has been submitted to the County Director of Planning and the Virginia Department of Transportation ("VDOT") for review in connection with the Application. The Traffic Study is on file in the office of the County Director of Planning.

R-14. A Master Plan of Development entitled "Master Plan of Longhill Grove" made by AES Consulting Engineers, dated September 23, 2002, and revised December 2, 2002, (the "Master Plan") has been submitted to the County Director of Planning for review by the County in connection with the Application. The Master Plan is on file in the office of the County Director of Planning.

R-15. Owners are seeking verification from the County Zoning Administrator of the lawful status of and continued utilization of some of the existing pad sites on the Foreclosure Property for the construction of new buildings on said pad sites on the Property. Said pad sites are shown on that certain plan titled "CURRENT BUILDING LOCATION & CONFIGURATION, LONGHILL GROVE (FORMERLY BURTON WOODS)" prepared by AES Consulting Engineers, dated December 18, 2002, submitted to the County Director of Planning and on file in his office. Said existing pad sites are nonconforming by virtue of current setback requirements. Owners may also seek a variance from the County Board of Zoning Appeals to allow utilization of said existing pad sites.

NOW, THEREFORE, for and in consideration of the approval by the County of the rezoning of the Property, and pursuant to Section 15.2-2296 of the Virginia Code and Section 24-16 of the Zoning Ordinance, the Owners agree that they shall meet and comply with the following conditions and proffers as indicated in developing the Property.

PROFFERS:

SECTION I. Proffers Applicable to the Property.

1. Binding Master Plan. The Property shall be developed generally in accordance with the Master Plan pursuant to Section 24-515(b) of the Zoning Ordinance. The Master Plan provides only for the general location of buildings, proposed streets, drainage facilities, areas of open space, buffer areas and recreation facilities. Development plans may deviate from the Master Plan if the Planning Commission concludes after reviewing written comments from the Planning Director that the deviation does not significantly alter the character of land uses or

other features or conflict with any conditions placed on the approval of the Application. The Master Plan will be followed to the extent legally possible but is subject to certain verifications and/or variances as described in Recital 15 (R-15).

2. Private Driveways. All driveways (as hereinafter defined) within the Property shall be private. The term “driveway” is defined as any interior roadway or lane designed for automobile travel and connecting the Property’s various parking lots with Centerville Road and/or Longhill Road.

3. Water Conservation. Eagle shall be responsible for developing for the Property water conservation standards to be submitted to and approved by James City Service Authority (the “JCSA”). The standards shall address such water conservation measures as limitations on installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. Landscape design features, including the use of native species and drought tolerant grasses and plantings, and a water conservation plan shall be implemented to reduce the total irrigated area of the Property in order to accomplish the limitation on use of municipal water and groundwater. The standards shall be approved by JCSA prior to approval of the first site plan for development of the Property or any portion thereof.

4. Number of Apartments. The maximum number of Apartments constructed on the Property shall not exceed one hundred seventy (170) dwelling units, as defined in the Zoning Ordinance; however, said maximum density is conditioned upon approval of the requisite density bonuses during the site plan review and approval process.

5. Affordable Housing. For a period of fifteen (15) years after the first occupancy of an apartment on the Property, all apartments constructed on the Property will be occupied by

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individuals and families whose incomes do not exceed sixty percent (60%) of the area median gross income. For the purposes hereof, the incomes of the individuals and families and area median gross income, shall be determined in a manner consistent with the determinations of area median gross income under Section 8 of the United States Housing Act of 1937, as amended, and such determinations shall include adjustments for family size. If the income of an occupant(s) of an apartment on the Property does not exceed the applicable income limit under this provision upon commencement of occupancy of the apartment, then the requirements of this proffer shall be deemed satisfied for the duration of occupancy of any apartment by such occupant(s), regardless of subsequent changes in income.

6. Construction Entrance. The construction entrance for development of the Property shall be located along Longhill Road at the existing Burton Woods Drive entrance; however, construction vehicles and/or construction materials shall not impede vehicular and/or pedestrian access to the adjacent Powhatan Apartments.

7. Pump Station. The Owners agree to offer for exchange with the James City Service Authority ("JCSA") certain real property on which JCSA Lift Station 7-2 is located in exchange for certain real property shown on that certain plat entitled "PLAT FOR CONVEYANCE OF LIFT STATION SITE 7-2 FROM: BURTON WOODS ASSOCIATES TO: JAMES CITY SERVICE AUTHORITY" dated May 14, 1986 and recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City at Deed Book 311, page 77. In addition, the Owners shall offer for exchange with JCSA certain service line easements reasonably necessary for the operation of said Lift Station 7-2 in exchange for abandonment and vacation of existing unnecessary easements on the Property.

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8. Water Mains. The 8 inch water main existing within the Burton Woods Drive right of way and the 12 inch water main existing within the Centerville Road right of way will be indirectly connected through the construction and development of the internal water supply system for Longhill Grove.

9. Lighting. All exterior lighting for the Property shall be in substantial conformity with the cutsheets entitled "Area Lighting - GE Lighting Systems, Inc." submitted to the County Director of Planning and on file in his office, as determined by the County Director of Planning.

10. Longhill Road Entrance. The entrance to the Property along Longhill Road shall be in substantial conformity with that certain plan titled "EXISTING TURN LANES ON LONGHILL ROAD AT LONGHILL GROVE" prepared by AES Consulting Engineers, submitted to the County Director of Planning and on file in his office.

SECTION II. Miscellaneous Provisions

1. Headings. All section and subheadings of these Proffers are for convenience only and shall not be read as a part of these Proffers or utilized in interpretation thereof.

2. Severability. In the event that any clause, sentence, paragraph, section or subsection of these Proffers shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States, or if the application thereof to any owner of any portion of the Property or to any government agency 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 provision hereof.

3. Conflicts. In the event that there is any conflict between these Proffers and the Zoning Ordinance, the conflict shall be resolved by the County's Zoning Administrator subject to the appeal process to the Board of Supervisors and the Courts as otherwise provided by law.

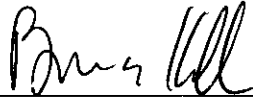
4. Successors and Assigns. This Proffer Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors and/or assigns.

5. Void if Rezoning not Approved. In the event that the rezoning sought by the Application is not approved by the County, these Proffers shall be null and void.

6. Signature by County. The County's Director of Planning has executed these Proffers solely for purpose of confirming the filings, submissions and acceptance of same described in the Recitals section above, and confirming approval by the County Board of Supervisors of the rezoning of the Property with these Proffers by a resolution dated February 11, 2003.

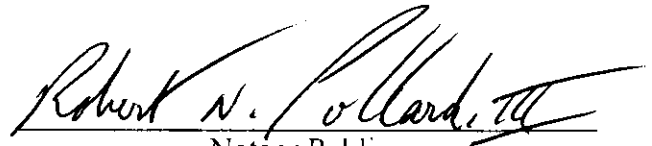
MAR 13 2003 0090

EAGLE CONSTRUCTION OF VIRGINIA, INC., a
Virginia corporation

By: 
Bryan Kornblau, CEO

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me this 27th day of JANUARY,
2003, by Bryan Kornblau, CEO of Eagle Construction of Virginia, Inc., a Virginia corporation,
in its behalf.


Notary Public

My commission expires: 6/30/03



MAR 13 2003

UCP, L.L.C., a Virginia limited liability company

By: *Carter C. Chinnici*

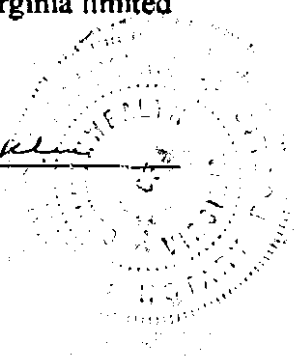
Name: *Carter C. Chinnici*

Title: *General Mgr.*

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me this 27th day of January
2003, by *Carter C. Chinnici*, _____ of UCP, L.L.C., a Virginia limited
liability company, in its behalf.

Lyn D. Shanklin
Notary Public



My commission expires: *12-31-06*

MAR 13 2003 0092

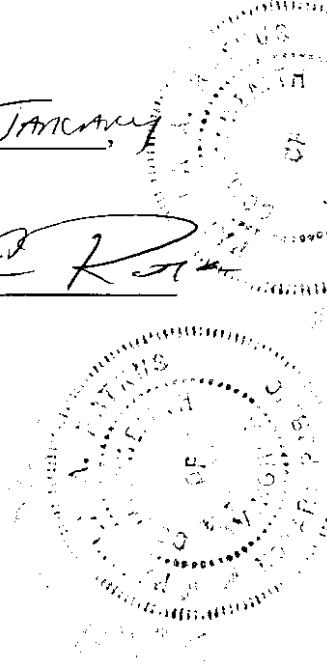
David Walker
David Walker

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me this 24 day of January,
2003, by David Walker.

Paul A. R...
Notary Public

My commission expires: 7-31-05



MAR 13 2003 09 33

Bryan Kornblau

Bryan Kornblau

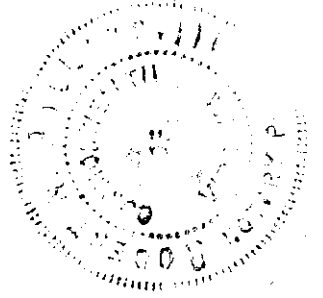
COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me this 27th day of JANUARY,
2003, by Bryan Kornblau.

Robert N. Pollard, III

Notary Public

My commission expires: 6/30/03



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SAMUEL I. WHITE, P.C., a Virginia professional corporation, Substitute Trustee

By: *Emmanuel D. Voces*

Name: Emmanuel D. Voces, Vice President

Samuel I. White, P.C., attorney-in-
Title: fact for USDA

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:


The foregoing instrument was acknowledged before me this 27th day of January 2003, by Emmanuel D. Voces, Vice President of Samuel I. White, P.C., a Virginia professional corporation, Substitute Trustee, in its behalf.

Clayton Crawford
Notary Public

My commission expires: March 31, 2005

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THE COUNTY OF JAMES CITY, VIRGINIA

By: 
Name: D. Marvin Sowers
Title: Director of Planning

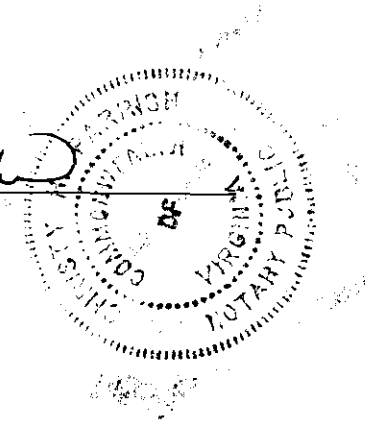
COMMONWEALTH OF VIRGINIA
COUNTY OF JAMES CITY, to-wit:

I, the undersigned, a Notary Public in and for the County and State aforesaid, do certify that D. Marvin Sowers, Director of Planning of the County of James City, Virginia, whose name is signed to the foregoing document, has acknowledged the same before me.

Given under my hand this 10 day of March, 2003.


Notary Public

My commission expires: February 28, 2005



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APPROVED AS TO FORM:

Leo P. Rogers
County Attorney

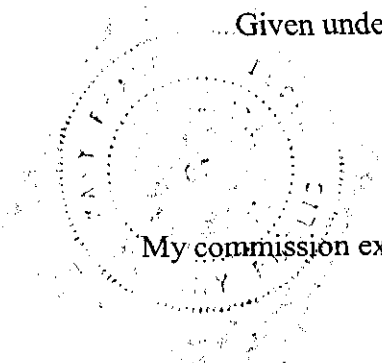
COMMONWEALTH OF VIRGINIA
COUNTY OF JAMES CITY, to-wit:

I, the undersigned, a Notary Public in and for the County and State aforesaid, do certify that Leo P. Rogers, Deputy County Attorney of the County of James City, Virginia, whose name is signed to the foregoing document, has acknowledged the same before me.

Given under my hand this 26th day of February, 2003.

Mary Frances Rieger
Notary Public

My commission expires: October 31, 2005



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EXHIBIT A

THE UCP PROPERTY

THAT certain parcel of land, in Berkley District, James City County, Virginia, shown as Parcel 2 containing 12.8519 acres and Parcel 3 containing .6507 acres on plat of survey by Deward M. Martin & Associates, Inc., dated June 10, 1975, a copy of which is recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City, Virginia, in Deed Book 32, page 81, reference to which is made for a more particular description of such parcel of land.

LESS AND EXCEPT that 3.56 acres conveyed from Heritage Builders, Inc. to Second Burton Woods Associates, dated November 1, 1979, recorded November 13, 1979, in Deed Book 199, page 224

LESS AND EXCEPT that strip conveyed in Deed from Heritage Builders, Inc. to Commonwealth of Virginia, dated February 21, 1989, recorded March 6, 1989, in Deed Book 427, page 624.

LESS AND EXCEPT those parcels conveyed in Deed from Heritage Builders, Inc. to County of James City dated March 8, 1995, recorded August 30, 1995, in Deed Book 752, page 224.

LESS AND EXCEPT that parcel conveyed from Heritage Builders, Inc. to County of James City dated September 11, 1995, recorded October 11, 1995, in Deed Book 758, page 406.

LESS AND EXCEPT that parcel conveyed from UCP, Limited Partnership to Exxon Corporation dated January 6, 1999, recorded March 11, 1999, at Instrument No. 990005207.

BEING a portion of the same real estate conveyed to Heritage Builders, Inc. by deed from William M. Lee and Shirley A. Lee, husband and wife, dated June 13, 1972, recorded July 7, 1972, in the Clerk's Office, Circuit Court, James City County, Virginia, in Deed Book 137, page 645; and by Deed from J. Corry Mulligan and Olive C. Mulligan, his wife, dated June 13, 1972, recorded July 7, 1972, in Deed Book 137, page 647; and by Deed from J. Corry Mulligan and Olive C. Mulligan, his wife, dated June 13, 1972, recorded July 7, 1972, in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City, Virginia, in Deed Book 137, page 650.

Tax Parcel No. (31-3)(01-0-0012)
5500 Centerville Road

Tax Parcel No. (31-3)(01-0-0013)
Burton Woods Drive Roadway

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EXHIBIT B

THE FORECLOSURE PROPERTY

THOSE three parcels of land, in Berkeley Magisterial District, James City County, Virginia, designated as Parcel 1 containing 6.29 acres, Parcel 4 containing 0.0673 of an acre, and Parcel 5 containing 0.0574 of an acres, on plat of survey by Deward M. Martin & Associates, Inc., dated June 10, 1975, entitled "Plat Showing Various Parcels of Land Standing in Berkeley Magisterial District," recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City, Virginia, in Plat Book 32, page 81, reference to which is made for a more particular description of such parcels of land.

LESS AND EXCEPT that certain piece or parcel of land, containing 0.0574 acre, conveyed to the James City Service Authority by deed dated May 16, 1986, recorded in Deed Book 311 at page 75.

BEING a portion of the same property conveyed to Burton Woods Associates, a Virginia limited partnership, by deed from Heritage Builders, Inc., dated March 22, 1976, recorded March 23, 1976, in Deed Book 167, page 271.

BEING a portion of the same property conveyed in trust to Marion V. Baker, Trustee, for the benefit of Farmers Home Administration, United States Department of Agriculture, by deed of trust from Burton Woods Associates, dated March 23, 1976, recorded March 23, 1976, in Deed Book 167, page 273.

BEING a portion of the same property conveyed in trust to Philip H. Stetson, Trustee, for the benefit of the United States of America, by deed of trust from Burton Woods Associates, dated May 22, 1998, recorded May 26, 1998, at Instrument Number 980009644.

BEING a portion of the same property conveyed in trust to Samuel I. White, P.C., a Virginia professional corporation, Substitute Trustee, for the benefit of the United States of America, by the powers of substitution of trustee created under the deeds of trust recorded in Deed Book 167, page 273 and in Instrument No. 980009644, notice of which is recorded at Instrument Numbers 020009414 and 020009415.

BEING a portion of the same property foreclosed upon by Samuel I. White, P.C. as a result of the default by Burton Woods Associates under the deeds of trust recorded at Deed Book 167, page 273 and at Instrument No. 980009644, the foreclosure sale being held on May 20, 2002, at a public auction at the entrance to the Circuit Court for the City of Williamsburg and the County of James City, Virginia, there being a successful bidder as evidenced by contract of purchase executed on May 20, 2002.

Tax Parcel No. (31-3)(01-0-0014)
102 Burton Woods Drive

#6032256 v6

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 13 Nov 03
at 10:06 AM/PM. The taxes imposed by Virginia Code
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.
STATE TAX LOCAL TAX ADDITIONAL TAX

\$ _____ \$ _____ \$ _____
TESTE: BETSY B. WOOLRIDGE, CLERK
BY: Betsy B. Woolridge Clerk

MAR 13 2003

COMMONWEALTH OF VIRGINIA



OFFICIAL RECEIPT
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT
DEED RECEIPT

RECEIPT: 09000018545
RECORDED: 05/12/09 AT 10:02
EX: N LAC: 00
EX: N PCT: 100%

DATE: 05/12/09 TIME: 10:05:44 ACCOUNT: 85668050007719
CASHIER: CHB RES: #104 TYPE: OTHER PAYMENT: FULL PAYMENT
INSTRUMENT: 09000719 BOOK: PAGE:
GRANTOR: EARLE CONSTRUCTION OF VIRGINIA INC
GRANTEE: COUNTY OF JAMES CITY THE

AND ADDRESS :
RECEIVED OF : JCCO \$30.00
CHECK :
DESCRIPTION 1: PROFFERS LONGBILL GROVE
DESCRIPTION 2:
CONSIDERATION:
CODE DESCRIPTION
301 DEEDS

PAGES: 17
NAMES: 0
MAP:

PAID 1.50
TENDERED 50.00
AMOUNT PAID 30.00
CHANGE AMT .00

CLERK OF COURT: BETSY WOODBRIDGE

PLEASE RETURN TO:
COUNTY ATTORNEY
JCC - BLDG. C