

**PROFFERS**

THESE PROFFERS are made this 15<sup>th</sup> day of May, 2007, by Crumpler Properties Two, LLC, together with its successors and assigns (“Owner”), and Jay E. Epstein and/or assigns (“Developer”).

**RECITALS**

WHEREAS, Owner is the record title owner of land located in James City County, Virginia, with an address of 104 Wisteria Garden Drive, Williamsburg, Virginia, and being Tax Parcel 5910100024 (the “Property”);

WHEREAS, Developer has contracted to purchase the Property conditioned upon rezoning;

WHEREAS, Owner and Developer have applied to rezone the Property from LB and R-8 to R-5, Multifamily Residential District, with Proffers;

WHEREAS, Developer has submitted to the County a Master Plan entitled “Master Plan of Chestnut Grove” prepared by AES Consulting Engineers, dated the 16th day of March, 2007 (Revised on the 20<sup>th</sup> day of April, 2007) (the “Master Plan”), for the Property in accordance with the County Zoning Ordinance; and

WHEREAS, the Owner and Developer desire to offer to the County certain conditions on the development of the Property, not generally required under the current Zoning Ordinance.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2297 of the Code of Virginia, 1950, as amended, and the James City County Zoning Ordinance, Owner agrees that it shall meet and

comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

### CONDITIONS

1. **Master Plan.** The Property shall be subdivided and developed generally as shown on the Master Plan prepared by AES Consulting Engineers, identified as Project Number 9428, and dated April 20, 2007. Only minor deviations from this Master Plan, which do not change the basic concept or character of the development, shall be permitted, and must receive prior approval from the Development Review Committee.

2. **Owners Association.** There shall be organized an owner's association (the "Association") in accordance with Virginia law in which all property owners in the development, by virtue of their property ownership, shall 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 for consistency with the conditions and application. The Governing Documents shall require that the Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management, BMPs, recreation areas, private road and parking areas ("Reserve"), and shall require that the Association (i) assess all members for the maintenance of all properties owned or maintained by the Association and (ii) file liens on members' properties for non-payment of such assessments. The Governing Documents shall grant the Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing Documents. Developer shall maintain all common areas on the Property until 90% of the lots/units on the Property have been sold to minimize

Association dues during that period so as to not adversely affect purchaser's ability to qualify for a home mortgage.

At the time Developer's maintenance obligation under this Section ends, there shall be at least \$5,400.00 in the Reserve and Developer shall supply evidence of the mechanism to secure the same to the Director of Planning. In addition to said funds, at each closing prior to HOA conveyance, each new homeowner shall pay \$150.00 per unit to be deposited in said reserve account.

3. **Water Conservation.** Water conservation standards shall be submitted to and approved by the James City Service Authority and Developer and/or the Association shall be responsible for enforcing these standards. The standards shall address such water conservation measures as prohibitions on the 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. The standards shall be approved by the James City Service Authority prior to final site plan approval, and shall be installed by owner.

4. **Affordable Housing (Proposition 20/20).** A minimum of 20% (8 townhouses) of the townhouse dwelling units shall be reserved and offered for sale at a net sales price to buyer at or below \$135,000.00 subject to adjustment as set forth herein. A second deed of trust shall be assigned unto the James City County Office of Housing and Community Development for the difference of the appraised value of the townhouse and the net sales price paid by the purchaser of the townhouse, which shall be reflected on a settlement statement for review prior to closing. This deed of trust shall, subject to the request of James City County Office of Housing and Community Development, be assigned to James City County at the time of closing, utilizing appropriate approved

procedures and identifying the net sales price paid by the purchaser of the townhouse for the 8 townhouses sold through James City County for \$135,000.00 or less ("Affordable Units"). The second deed of trust will be prepared so as to provide the Purchaser a 15 year loan, forgivable during the 15 year term, in such form as approved by the Office of Housing and Community Development, the County Attorney, and the Virginia Housing Development Authority.

A minimum of 20% (8 townhouses) of the townhouse dwelling units shall be reserved and offered for a net sale price to buyer at or below \$165,000.00, subject to adjustment as set forth herein ("Restricted Units"). A second deed of trust will be prepared so as to provide the Purchaser a 5-year forgivable loan over the 5-year term, in such a form as approved by the Office of Housing and Community Development and the County Attorney. The second deed of trust may be held by the County or a third party nonprofit agency at the discretion of the developer. If the second deed of trust is held by a party other than the County, the deed of trust shall include such terms as to permit the County to monitor and administer the enforcement of the terms of the note. Such terms shall be approved in advance by the Office of Housing and Community Development and the County Attorney. The maximum prices set forth herein shall be adjusted semi-annually, on January 1st and July 1<sup>st</sup> of each year, by increasing such prices by the cumulative rate of inflation as measured by the Marshall and Swift Build Costs Index annual average change for the period from January 1, 2008, until July 1st or January 1<sup>st</sup> to reflect any increase or decrease for the preceding period in the Marshall and Swift Build Costs Index. In no event shall the prices be adjusted to a sum less than the initial "Affordable" or "Restricted" prices. The Director of Planning shall be provided with a copy of the settlement statement for each sale at a price at or below the maximum prices

set forth above. Developer shall consult with and accept referrals of, and sell to, potential qualified buyers from the James City County Office of Housing and Community Development on a non-commission basis.

5. **Archaeology.** A Phase I Archaeological Study for the entire Property shall be submitted to the Director of Planning for review and approval prior to or with the initial Site Plan submission for this property. A treatment plan shall be submitted 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 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 III 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 Resources' Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standards 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 Property and the clearing, grading or construction activities thereon.

6. **Landscape Buffers and Requirements.**

a.) ***Route 60 Landscape Buffer:*** There shall be a 50 foot landscape buffer along the Route 60 frontage of the Property measured from the edge of the right-of-way and extending from the southern property boundary to the entrance median. There shall also be a 150 foot landscape buffer along the Route 60 frontage of the Property measured from the edge of the right-of-way and extending from the entrance median to the northwestern property boundary. Prior to the County being obligated to grant final site plan approval for the Property, a landscaping plan for the 50 foot and 150 foot landscape buffers along the Route 60 frontage of the Property consistent with this Condition shall be prepared and submitted for review and approval by the Director of Planning. The landscaping plan shall include additional trees and shrubs at the quantity and mixture required by Section 24-04 of the James City County Zoning Ordinance, and that are sized at 125% of what is required in the Ordinance, to supplement the existing trees and shrubs in the buffer.

b.) ***Preservation of Existing Trees and Shrubs; Installation of Landscaping:*** Prior to the submission of a site plan for review by the County, the Developer shall meet onsite with the Landscape Planner of the Planning Division to identify existing trees and groups of trees that shall be protected and preserved in the setback, perimeter buffer, and open space areas of the property during clearing and construction, and included on the landscaping plan submitted as permanent trees for the property. The trees, shrubs, and other plants shown in the approved landscaping plan shall be either (i) planted on the Property or (ii) bonded in a form satisfactory to the

County Attorney prior to issuance of any building permits for the project. The buffers, setbacks, and open space areas shall be exclusive of any lots or units and shall be undisturbed, except for the landscaping proffered herein and, with the approval of the Director of Planning, utilities, the entrance as shown generally on the Master Plan, the pedestrian trail proffered hereby, sidewalk connections, recreation amenities, lighting, entrance features and signs.

c.) ***Perimeter Landscape Buffer:*** Wherever the 35' Perimeter Landscape Buffer abuts an LB zoned property, it shall be planted at the quantity and mixture required by Section 24-94 of the James City County Zoning Ordinance, with trees and shrubs that are sized at 125% of what is required in the Ordinance, to supplement the existing trees and shrubs in the buffer.

d.) ***Adjacent to Building Landscape Requirements:*** The landscaping plan shall reflect that 50% of the Adjacent-to-Building Landscaping is comprised of evergreen plantings.

7. **Entrance and Emergency Ingress and Egress.** There shall be only one entrance into the Property from Pocahontas Trail (Route 60). This entrance shall have one exiting lane and one entering lane. In addition thereto, there shall be a 14 foot gravel base, grass covered, emergency ingress and egress, with a knock down barrier (bollards) such as to prevent regular traffic use thereof. Said emergency access to be constructed in accordance with the Master plan prepared by AES dated April 20, 2007, and with the approval of James City County Fire Department.

8. **Turf Nutrient Management Plan.** The Association shall be responsible for contacting an agent of the Virginia Cooperative Extension Office ("VCEO") or, if a VCEO agent is unavailable, a soil scientist licensed in the Commonwealth of Virginia, an

agent of the Soil and Water Conservation District or other qualified professional to conduct soils tests and to develop, based upon the results of the soils tests, customized nutrient management plans (the "Plans") for all common areas within the Property and each individual townhouse lot platted within the Property. The Plans shall be submitted to the County's Environmental Director for his review and approval prior to the issuance of the eleventh certificate of occupancy for any townhouse unit on the Property. Upon approval, the Association shall be responsible for ensuring that any nutrients applied to common areas which are controlled by the Association be applied in strict accordance with the Plan. The Developer or Association shall provide a copy of the applicable Plan made for the individual townhouse lots to the initial purchaser thereof. Within twelve months after issuance of the certificate of occupancy for the final townhouse on the Property, and every three years thereafter, a turf nutrient management information seminar shall be provided by the Association and conducted on the site. The seminar shall be designed to acquaint residents with the tools, methods, and procedures necessary to maintain healthy turf and landscape plants.

9. **Sidewalk Connections and Construction.** There shall be two sidewalk connections from the internal sidewalks in the development to the existing sidewalk adjacent to Route 60, generally as shown on the Master Plan. Sidewalks may be installed in phases as residential units are constructed. All sidewalk connections and internal sidewalks associated with a particular building or phase of the development shall be completed or bonded in a form acceptable to the County Attorney prior to the issuance of any building permits for that building or phase.

10. **Sidewalk Design.** The design of all sidewalks shall be subject to the approval of the Director of Planning as part of the final approval of the site plan



submitted for the Property, to ensure adequate sidewalk placement and width to provide for pedestrian circulation.

11. **Pedestrian Trail.** There shall be a paved walking trail at least six feet in width installed on the Property, generally as shown on the Master Plan. The trail shall be located to avoid mature or specimen trees identified on the Landscape Plan (see Proffer #6), and otherwise where reasonably feasible, and the exact location and design of the trail shall be approved by the Director of Planning. (The trail shall be constructed or bonded in a form acceptable to the County Attorney prior to issuance of any building permits for the Property.)

12. **Private Streets.** The private streets and parking areas in the development shall be constructed in accordance with applicable James City County standards for private streets. All streets and parking areas shall be curb-and-gutter construction. All construction plans and cross-sections for streets and parking areas are subject to the review and approval of the County Engineer.

13. **Architectural Elevations.** The architecture and exterior elevations of the dwelling units on the Property shall be generally consistent with the proposed Typical Townhouse Elevations, as submitted in the appendix of the "Community Impact Statement for Chestnut Grove Rezoning Application," prepared for and by Health-E Community Enterprises of Virginia, Inc., as determined by the Director of Planning.

14. **Cash Contributions for Community Impacts.** The project shall consist of no more than forty townhouse units, eight of which will be "Affordable," eight of which will be "Restricted," and twenty-four of which will be sold at market rates. Cash contributions to offset the fiscal community impacts of these units will be as follows:

(a) A contribution of \$650.00 for each Restricted Unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the property, including, without limitation, for school use.

(b) A contribution of \$350.00 for each Restricted Unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including, without limitation, for emergency services, school uses, off-site road improvements, library uses, and public use sites.

(c) The contribution of \$1300.00 for each dwelling unit other than an Affordable Unit or Restricted Unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the property, including, without limitation, for school use.

(d) A contribution of \$700.00 for each dwelling unit other than an Affordable Unit or Restricted Unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical

development and operation of the Property, including, without limitation, for emergency services, school uses, off-site road improvements, future water needs, library uses, and public use sites. No contributions shall be required for the affordable housing units.

(e) The contributions described above, unless otherwise specified, shall be payable prior to final approval of the site plan for each unit.

(f) The per unit contribution(s) paid in each year pursuant to this Section shall be adjusted annually beginning January 1, 2008, to reflect any increase or decrease for the preceding year in the Marshall and Swift Build Costs Index (the "Index"). In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in paragraphs (a) through (d) of this Section. The adjustment shall be made by multiplying the per unit contribution for the preceding year by a fraction, the numerator of which shall be the Index as of December 1st in the year preceding the calendar year most currently expired, and the denominator of which shall be the Index as of December 1st in the year preceding the calendar year most currently expired. In the event a substantial change is made in the method of establishing the Index, then the per unit contribution shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing the Index. In the event that the Index is not available, a reliable government or other independent publication evaluating information heretofore used in determining the Index (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the per unit contribution to approximate the rate of annual inflation in the County.

15. **Energy Efficient Homes.** All the townhouses shall be certified by a HERS rater to meet or exceed the Energy Star Certification. Each ENERGY STAR

qualified new home must achieve a HERS score of at least 86. A copy of the HERS Energy Star Certification for each unit, once available, shall be provided to the Director of Planning.

16. **Recreation.**

(a) The following recreational facilities shall be provided: (i) approximately .45 acres to include one playground (tot lot) with playground equipment for five to six activities; and (ii) approximately .26 miles of trails/paths. The exact locations of the facilities proffered hereby and the equipment to be provided at such facilities shall be subject to the approval of the Director of Planning.

(b) Developer shall pay a cash contribution of \$2,889 to be adjusted using the Marshall Swift Index yearly, beginning January 1, 2008, and again on the first day of each successive year, until paid in accordance with the Parks and Recreation Master Plan Proffer Guidelines.

(c) The recreational facilities and cash contribution proffered under this Section shall be installed or bonded in a form satisfactory to the County Attorney (or paid, in the case of the cash contributions) prior to the issuance of the 30th building permit for any townhouse unit on the Property.

17. **Bike Lanes.** Developer agrees to preserve the right-of-way area along the Route 60 frontage of the Property for the designation of a four foot wide bike lane, and agrees to not install any new underground or above ground utilities within such areas that may, as determined by the Director of Planning, prevent the construction of a bike lane.

18. **Route 60 Entrance.** At its sole cost and at the direction and approval of VDOT, the Developer shall stripe, delineate and/or mark the Route 60 roadway at the entrance of the Property.

19. **Low Impact Design (“LID”) Features.** The Developer shall install the following LID features as defined in the James City County Special Stormwater Criteria Practices Manual (the “SSCP”) and as generally shown on the Master Plan.

1. LID 1 – Bioretention Basin (SSCP #12) approx. 1500 sq/ft
2. LID 2 – Bioretention Basin (SSCP #12) approx. 2100 sq/ft
3. LID 3 – Infiltration Trench (SSCP # 16) approx. 1000 sq/ft
4. LID 4 – Flat/large swale (SSCP # 21) approx. 3400 sq/ft
5. LID 5 – Flat/large swale (SSCP # 21) approx. 900 sq/ft
6. LID 6 – Flat/large swale (SSCP # 21) approx. 2700 sq/ft

The LID features shall be bonded or installed prior to the issuance of the first building permit in conjunction with the stormwater retention basin sequence of construction as approved by the Director of the Environmental Division.

20. **JCSA Utility Easement.** The Developer shall record a 20-foot JCSA Utility Easement from the location of the proposed sanitary sewer main on the Property to the property located at 8792 Pocahontas Trail. The final location of the JCSA Utility Easement shall be determined by the JCSA and the Developer prior to final site plan approval.

21. **Green Building/Sustainable Materials.** The developer shall incorporate the use of “green” building practices and materials in each unit in the development as follows: paints low in volatile organic compounds (“VOC”), carpets certified by the Carpet and Rug Institute to be free of formaldehyde, low VOC sub-flooring, built-in dehumidifiers, transfer grills in each bedroom for balanced heating and cooling, value engineered framing, engineered lumber, and cellulose insulation. These items shall be shown on the architectural drawings for each unit, and shall be approved as part of the building permit review and inspection process.

WITNESS the following signatures:

CRUMPLER PROPERTIES TWO, LLC

By: *Albert J. Taylor*  
Albert J. Taylor, Manager

By: *Jay E. Epstein*  
Jay E. Epstein, Developer

Commonwealth of Virginia  
CITY/COUNTY OF PORTSMOUTH, to wit:

The foregoing instrument was acknowledged this 14<sup>th</sup> day of MAY, 2007, by Albert J. Taylor, Manager of Crumpler Properties Two, LLC.

*Stacy Hunter*  
Notary Public

My commission expires: November 30, 2010

Commonwealth of Virginia  
CITY/COUNTY OF JAMES CITY, to wit:

The foregoing instrument was acknowledged this 15<sup>th</sup> day of May, 2007, Jay E. Epstein.

*Lisa Howell*  
Notary Public

My commission expires: 3/31/11

Prepared by:  
Michael B. Ware, Esq.  
Jones, Blechman, Woltz & Kelly, P.c.  
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(404545)

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 20 June 2007  
at 3:04 PM. The taxes imposed by Virginia Code  
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

14

STATE TAX LOCAL TAX ADDITIONAL TAX

\$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
TESTE: BETSY B. WOOLRIDGE, CLERK

BY: *Betsy B. Woolridge* Clerk