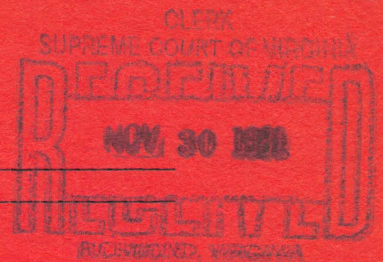


226 VA 218



IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

WASHINGTON & LEE
LAW LIBRARY

RECORD NO. 810475

JAN 26 1984

B. CALVIN BURNS

Appellant

v.

EBY & WALKER, INC.
and
COUNTRYSIDE REALTY, INC.

Appellees

APPENDIX

RICHARD R. NAGEOTTE, Esquire
Nageotte, Borinsky & Zelnick
14908 Jefferson Davis Highway
Woodbridge, Virginia 22191
Telephone: 703/491-4136

Counsel for the Appellant
B. Calvin Burns

JAMES S. G. TURNER, Esquire
Turner & Brice
236 South Fraley Boulevard
Dumfries, Virginia 22026
Telephone: 703/221-1131

Counsel for the Appellees
Eby & Walker, Inc. and
Countryside Realty, Inc.

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CITY OR COUNTY
9250 Lee Avenue, Manassas, Virginia

STREET ADDRESS OF COURT

TO ANY AUTHORIZED OFFICER:

March 27
~~February 28~~, 1980 at 9:30 a.m. before this Court to answer the complaint of
 DATE AND TIME

the Plaintiff(s) upon a claim of nonpayment of a debt in the sum of

\$ 1,885.04, and \$ attorney's fees, costs, and interest as follows:

8% from November 8, 1979
 INTEREST RATE(S) AND DATE(S) FROM WHICH INTEREST IS DUE

said to be due on the basis of the following:

☒ Contract ☐ Note ☐ Other [EXPLAIN] failure to pay real estate commission
 see affidavit attached

☒ Homestead Exemption waived ☐ yes ☐ no

2/10/80
 DATE ISSUED

Mr. J. M. [Signature]
 CLERK

☐ MAGISTRATE

WARNING TO DEFENDANT: if you fail to appear in court, judgment may be entered against you.

JUDGMENT

☐ JUDGMENT FOR DEFENDANT☐ DISMISSED ☐ NON-SUIT

JUDGMENT that Plaintiff(s) recover of Defendant(s) B. Calvin Burns the sum of

☐ \$ 1,885.04 with interest; 8% from 11/8/79 until paid,
 INTEREST RATE AND DATE FROM WHICH INTEREST IS DUE

 \$ 6.00 costs, and \$ attorney's fees.
 COSTS ATTY. FEE
Homestead exemption waived ☐ yes ☐ no ☐ cannot be demandedDefendant(s) present? Yes ☐ No ☐
March 27
 February 28, 1980

 C80-137
 Served on
 BCB at
 Court 3/18/80
Alia

WARRANT IN DEBT

RECEIPT NO.

DATE FEE RECEIVED

Eby & Walker, Inc. and

PLAINTIFF(S)

Countryside Realty, Inc.

V.

B. Calvin Burns

DEFENDANT(S)

13621 Jefferson Davis Highway

Woodbridge, Virginia 22191

ATTORNEY FOR PLAINTIFF(S)

James S. G. Turner

236 S. Fraley Blvd.

Dumfries, Virginia 22026

221-1131

ATTORNEY FOR DEFENDANT(S)

COURT USE ONLY:

☐ Certificate of mailing received

NAME	
ADDRESS	
<input type="checkbox"/> PERSONAL SERVICE	
<input type="checkbox"/> Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> Other recipient authorized to receive service of process and notice under Va. Code §8.01-296 (2) (a) - name, age relation to intended recipient, where served, listed below.	
<input type="checkbox"/> Posted on front door of usual place of abode, address listed above. (Other authorized recipient not found.)	
<input type="checkbox"/> Served on Secretary of the Commonwealth	
<input type="checkbox"/> Served on Clerk of State Corporation Commission	
<input type="checkbox"/> Served on Commissioner of Division of Motor Vehicles	
<input type="checkbox"/> Not found	
DATE	SERVING OFFICER

NAME	
ADDRESS	
<input type="checkbox"/> PERSONAL SERVICE	
<input type="checkbox"/> Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> Other recipient authorized to receive service of process and notice under Va. Code §8.01-296 (2) (a) - name, age relation to intended recipient, where served, listed below.	
<input type="checkbox"/> Posted on front door of usual place of abode, address listed above. (Other authorized recipient not found.)	
<input type="checkbox"/> Served on Secretary of the Commonwealth	
<input type="checkbox"/> Served on Clerk of State Corporation Commission	
<input type="checkbox"/> Served on Commissioner of Division of Motor Vehicles	
<input type="checkbox"/> Not found	
DATE	SERVING OFFICER

NAME	
ADDRESS	
<input type="checkbox"/> PERSONAL SERVICE	
<input type="checkbox"/> Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> Other recipient authorized to receive service of process and notice under Va. Code §8.01-296 (2) (a) - name, age relation to intended recipient, where served, listed below.	
<input type="checkbox"/> Posted on front door of usual place of abode, address listed above. (Other authorized recipient not found.)	
<input type="checkbox"/> Served on Secretary of the Commonwealth	
<input type="checkbox"/> Served on Clerk of State Corporation Commission	
<input type="checkbox"/> Served on Commissioner of Division of Motor Vehicles	
<input type="checkbox"/> Not found	
DATE	SERVING OFFICER

NAME	
ADDRESS	
<input type="checkbox"/> PERSONAL SERVICE	
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<input type="checkbox"/> Other recipient authorized to receive service of process and notice under Va. Code §8.01-296 (2) (a) - name, age relation to intended recipient, where served, listed below.	
<input type="checkbox"/> Posted on front door of usual place of abode, address listed above. (Other authorized recipient not found.)	
<input type="checkbox"/> Served on Secretary of the Commonwealth	
<input type="checkbox"/> Served on Clerk of State Corporation Commission	
<input type="checkbox"/> Served on Commissioner of Division of Motor Vehicles	
<input type="checkbox"/> Not found	
DATE	SERVING OFFICER

Virginia:

IN THE GENERAL DISTRICT COURT OF PRINCE WILLIAM COUNTY

EBY & WALKER, INC.
and
COUNTRYSIDE REALTY, INC.

Plaintiff

V.

CIVIL DOCKET NO. _____

B. CALVIN BURNS

Defendant

A F F I D A V I T

STATE OF VIRGINIA
COUNTY OF PRINCE WILLIAM, to-wit:

THIS DAY personally appeared before me, the undersigned Notary Public, in and for the State and County aforesaid, James S. G. Turner

who, upon being duly sworn, deposes and says that he is the ~~Plaintiff~~ duly authorized Agent of the Plaintiff) in the above styled cause, and having personal knowledge of the facts hereinafter set forth, states: B. Calvin Burns

the said Defendant _____ is (~~was~~) justly indebted to the said Plaintiff in the amount of \$1,885.04 with interest thereon from the 8th day of November, 1979, which sum is due by virtue of failure to pay portion of 10% real estate commission due on \$56,366.89 payment received under contract dated January 11, 1978.

that the whole of said amount is now due and owing; that the said Plaintiff has (have) a just right to recover the said amount from the said Defendant, exclusive of all set-offs and just grounds of defense.

James S. G. Turner
~~Plaintiff~~ Authorized Agent
of Plaintiff

James S. G. Turner, Counsel for Plaintiff
Title (if Agent or Plaintiff)

Subscribed and sworn to before me in my jurisdiction aforesaid this 8th day of February, 1980. My Commission expires 10/23/83.

Notary Public

APPLICATION FOR REMOVAL

COMES NOW the Defendant, by counsel, and applies for removal of this cause to the Circuit Court of Prince William County and in support thereof states as follows:

1. That the amount in controversy exceeds \$1,000.00, exclusive of interest, attorney's fees and costs.
2. That the Defendant has filed an Affidavit of Substantial Defense setting forth his grounds of defense.
3. That the Defendant has refunded to the Plaintiff its costs heretofore accrued in this proceeding in the sum of \$6.00.
4. That the writ tax and Clerk's fee and costs as fixed by law are tendered herewith.

WHEREFORE, your Defendant requests the above styled matter be removed to the Circuit Court of Prince William County, Virginia, in accordance with Section 16.1-92 of the Code of Virginia 1950, as amended.

B. CALVIN BURNS

B. Calvin Burns
BY COUNSEL

Richard R. Nageotte

RICHARD R. NAGEOTTE
Nageotte, Borinsky & Zelnick
14908 Jefferson Davis Highway
Woodbridge, Virginia 22191
Counsel for Defendant

CERTIFICATE OF SERVICE

Delivered This is to certify that I have this 26th day of March, 1980, *hand* ~~mailed~~, ~~postage prepaid~~, a copy of the foregoing Application for Removal to James S. G. Turner, Esq., 2365 S. Fraley Boulevard, Dumfries, Virginia 22026, Counsel for Plaintiffs.

Richard R. Nageotte
RICHARD R. NAGEOTTE

AFFIDAVIT OF SUBSTANTIAL DEFENSE

STATE OF VIRGINIA

COUNTY OF PRINCE WILLIAM, to-wit:

This day personally appeared before me, DANIEL BORINSKY,
a Notary Public in and for the State and County aforesaid, Richard R. Nageotte,
who after being duly sworn did depose and say that he is the attorney and
authorized agent for the Defendant, B. Calvin Burns, in the above styled matter;
that the Defendant has a substantial defense to Plaintiffs' claim, the grounds
of which are that he is not now and was not at the time of the filing of the
said Civil Warrant, indebted to the Plaintiffs in the amount sued for, or in
any amount in that the contract between the parties does not require or contem-
plate the payment of the amount sued for.

Richard R. Nageotte
RICHARD R. NAGEOTTE

Subscribed and sworn to before me this 28th day of March, 1980.

Daniel A. Borinsky
NOTARY PUBLIC

My commission expires:

9/28/82

CERTIFICATE OF SERVICE

This is to certify that I have this 27th day of March, 1980, hand
delivered a copy of the foregoing to James S. G. Turner, Esq., 236 S. Fraley
Boulevard, Dumfries, Virginia 22026, counsel for Plaintiffs.

Richard R. Nageotte
RICHARD R. NAGEOTTE
Counsel for Defendant

NAGEOTTE
LAW, LTD.
NAGEOTTE
BORINSKY
ZELNICK
SON DAVIS
AY
VIRGINIA

ORDER

THIS MATTER came to be heard upon the motion of the Defendant, by counsel, that this cause be removed to the Circuit Court of Prince William County, Virginia, and it appearing to the Court that all requirements of law have been complied with and that this motion should be granted, it is

ADJUDGED, ORDERED AND DECREED that the above styled case be, and the same hereby is, removed to the Circuit Court of Prince William County, Virginia.

ENTERED this 25th day of March, 1980.

W. F. A. [Signature]
JUDGE, GENERAL DISTRICT COURT OF PRINCE
WILLIAM COUNTY

I ASK FOR THIS:

Richard R. Nageotte

RICHARD R. NAGEOTTE
Nageotte, Borinsky & Zelnick
14908 Jefferson Davis Highway
Woodbridge, Virginia 22191
Counsel for Defendant

SEEN:

Attest:
A True Copy
[Signature]
[Signature]

JAMES S. G. TURNER
236 S. Fraley Boulevard
Dumfries, Virginia 22026
Counsel for Plaintiffs

RICHARD R. NAGEOTTE
ATTORNEY AT LAW, LTD.
RICHARD R. NAGEOTTE
BORINSKY
& ZELNICK
JEFFERSON DAVIS
HIGHWAY
WOODBRIDGE,
VIRGINIA
22191

SALES CONTRACT

THIS CONTRACT, made effective the 11th day of Janaury, 1978, by and between B. CALVIN BURNS, hereinafter referred to as the "Seller", and WESTON ENTERPRISES, LTD., hereinafter referred to as the "Buyer", and COUNTRYSIDE REALTY, INC. AND EBY & WALKER, INC., hereinafter referred to as the "Realtor".

WITNESSETH:

That the Buyer and Seller, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth and the mutual performance thereof at the time and in the manner hereinafter provided, do hereby covenant, promise and agree by and between themselves and their respective heirs, executors, administrators, successors, as the case may be, as follows:

1. Seller shall sell, grant and convey unto Buyer, and Buyer shall purchase and accept of and from Seller, under the terms and conditions hereinafter set forth, all of that certain parcel of real estate, hereinafter described, together with any improvements located thereon, the Premises being:

133.805 acres more or less now owned by B. Calvin Burns and acquired from Gordon B. Gay recorded in DB 232-123 on 1st day of November, 1972, Aquia Mag. District previous recording Plat Book 4, Pg. 123, Deed Book 199-256 also known as Par. 119 and part of Par. 119A of Tax Section Map No. 20.

as shown on the plat attached hereto, indentified as Exhibit "A" and made a part hereof.

2. The full and entire purchase price for the Premises, which Buyer agrees to pay to Seller and which Seller agrees to accept of Buyer for the Premises, shall be Two Thousand Six Hundred Fifty Dollars (\$2,650.00) multiplied by the total number of acres actually conveyed, as determined as hereinafter provided. The purchase price shall be payable as follows:

BTB RGC

(a) Five Thousand Dollars (\$5,000.00) in cash or certified check, as a deposit and credit toward said purchase price, which is acknowledged by Seller as evidenced by Seller's execution of this contract, said cash sum to be held in deposit and credit toward the purchase price in escrow for settlement and on the terms and conditions hereinafter set forth, such deposit to be held by Daniel H. Borinsky, Esquire.

BTB RGC

(b) One Hundred Sixty-Seven Thousand Dollars (\$167,000.00) in cash or certified check at the date of settlement, of which sum the deposit referred to in paragraph 2(a) shall be a part.

(c) Buyer agrees to place a recorded first Deed of Trust secured by the Premises in favor of Seller for the balance of the purchase price. The note is to be due at the end of five (5) years from the date of settlement and shall bear interest at the rate of 9% per annum and be payable as follows:

(1) a. Twenty percent (20%) of the principal balance, plus all accrued interest, shall be due and payable one year from the date of settlement.

b. Twenty-five percent (25%) of the remaining principal balance plus all accrued interest, shall be due and payable two years from the date of settlement.

c. One-third (33.3%) of the remaining principal balance, plus all accrued interest, shall be due and payable three years from the date of settlement.

d. Fifty percent (50%) of the remaining principal balance, plus all accrued interest, shall be due and payable four years from the date of settlement.

e. The entire principal balance, plus all accrued interest, shall be due and payable five years from the date of settlement.

(d) The deferred purchase money first Deed of Trust and Note shall contain the following provisions:

(1) Seller agrees to accept prepayment without penalty at any time and any prepayment shall be applied to the next succeeding payments due.

(2) Trustees on the Deed of Trust are to be named by the Seller.

(3) The Note and Deed of Trust shall be in form and content subject to the approval of counsel for the Seller.

(4) The Note shall provide for a 5% late payment charge for any payment not received within 15 days of its due date.

(5) The Note and Trust shall provide that they are not assumable without the prior written consent of the Seller.

(6) The Note and Trust shall provide that the trustees are permitted to join in the execution of subdivision

plats without cost to the purchaser so long as the said subdivision meets the requirements of Stafford County.

(7) The Note and Trust shall provide that so long as the Note is otherwise in good standing, the trustees are authorized to release three (3) acre parcels from the lien of the trust upon evidence that the noteholder has been paid a sum equal to \$4,500.00 per acre of parcel released; provided further that the parcel to be released does not landlock the parcels remaining subject to the Deed of Trust. Parcels to be released shall be contiguous to a parcel previously released. In addition, Buyer shall be entitled to have released subdivided lots at the same per acre rate, said lots to be released to be contiguous to parcels or lots previously released and to appear upon a plat of subdivision which is recorded in the Clerk's Office of the Circuit Court of Stafford County, Virginia.

(8) In consideration of the downpayment, the parties agree that the parcel identified as Exhibit "B" of 40% of the acreage conveyed, attached hereto and made a part hereof, shall not be subject to the lien of the purchase money Deed of Trust. In the event Exhibit "B" is not available at this time, the precise parcel to be released shall be as is mutually agreeable between the parties.

(9) No lien or encumbrance shall be permitted on the property secured by the note without the prior written consent of the noteholder.

(10) Buyer shall have the right, at any time after settlement hereunder, to cut, fill, grade, erect improvements and do all other things as he believes are necessary in the development of the said property, subject only to the condition that the Buyer shall take no action that would in any way devalue the property.

3. Seller hereby agrees to release land required for road dedications and utility and telephone easements at no expense to the Buyer. Buyer agrees not to remove trees, sod or minerals except as necessary for the building of required roads.

4. Notwithstanding anything to the contrary herein, if settlement is effected and the full purchase price hereunder is paid to Seller within thirty (30) days following settlement, the purchase price shall be calculated as above, less a Twenty-Five Thousand Dollar (\$25,000.00) discount.

5. The property is sold free of encumbrance except as aforesaid; is to be conveyed by general warranty deed, title to be good of record and in fact, fully insurable by a title company of Buyer's selection, and merchantable; the property covered by this contract shall be subject to no easements, covenants, conditions or restrictions, recorded or unrecorded, as could, in Buyer's judgement, in any manner whatsoever affect or interfere with the development and/or use of the same under residential zoning and applicable building regulations; otherwise the deposit is to be returned and the sale declared off at the option of the Buyer, unless the defects are of such character that they may be remedied by legal action, but the Seller and Realtor are hereby expressly released from all liability for damages by reason of any defect in title. In case legal steps are necessary to perfect the title,

such action must be taken promptly by the Seller at his own expense, whereupon the time herein specified for full settlement by the Buyer will be extended for the period necessary for such prompt action, but not to exceed ninety (90) days, unless Buyer consents to such extension. Buyer shall cause a title examination to be made of the said property, to be completed not later than seventy-five (75) days from the date hereof. Buyer shall have fifteen (15) days thereafter to notify Seller of any objections to the title, after which period, any objections not so noted shall be waived.

6. The property is to be conveyed in "as is" condition.

7. Time is of the essence in this contract, and within two hundred (200) days from the date of the execution hereof, the Seller and Buyer are required to make full settlement in accordance with the terms hereof. If the Buyer shall fail to do so, the deposit herein provided shall be forfeited and the Buyer shall thereby be relieved from further liability hereunder. The settlement attorney shall be chosen by the Buyer.

8. Property is to be conveyed in the name of WESTON ENTERPRISES LTD. Buyer agrees to pay all costs of settlement except the cost of the deed, vendor's tax and Seller's attorney's fees.*

9. Seller assumes the risk of loss or damage to the Premises, until the executed deed of conveyance is recorded, unless such damage is caused by Buyer.

10. Taxes, general and special, are to be pro-rated to date of settlement, based on the certificate of taxes issued by the Collector of Taxes of said county, except that assessments for improvements completed prior to the date hereof, whether assessments

* Buyer to furnish seller with title insurance policy at buyer's expense.

If, for any reason, this sale is not consummated, buyer shall deliver to seller free of charge, all Engineering, Surveying or any other data relating to or affecting the property, as are now or hereafter comes within the possession and/or control of buyer.

thereof has been levied or not, shall be paid by the Seller or allowance made thereof at the time of settlement.

11. It is anticipated by Buyer and Seller that the parcel being conveyed is to contain approximately 133.805 acres. Buyer may elect to accept Seller's existing survey, which Seller agrees to provide to Buyer at no cost to Buyer, or to have a survey prepared by a registered surveyor at the Buyer's expense. If the survey shows more or less than 133.805 acres of land, then the sales price shall be adjusted. Under no circumstances will Buyer be required to purchase more than 140 acres. Buyer shall have the right, at his expense, to perform engineering and soil borings and other studies on and in respect of the subject land. This contract is contingent upon such tests proving satisfactory in the sole discretion of the Buyer, provided that disapproval of the purchase must be communicated in writing to Seller not later than ninety (90) days from the date hereof, or it shall be conclusively presumed that such test results were satisfactory to the Buyer.

12. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or mailed, registered or certified mail, first class, postage prepaid (i) if to the Seller, to B. Calvin Burns, c/o Daniel Borinsky, 14908 Jefferson Davis Highway, Woodbridge, Virginia 22191, or (ii) if to Buyer, to Weston Enterprises, Ltd., c/o Robert G. Culin, Jr., P.O. Box 183, Fairfax, Virginia 22030. The date at which any notice hereunder shall be deemed to have been given, shall be the date of the postmark on the envelope involved.

13. Seller and Buyer acknowledge Realtor as having brought the parties together and is thereby due a commission of TEN PERCENT (10%) from Seller, payable by Seller in the event of settlement hereunder. The amount of this commission shall be equal to 10% of the proceeds hereunder, actually received by Seller. The said

commission is not payable on any deferred obligation received by Seller, unless and until such obligation is paid.

14. Seller and Buyer acknowledge that Seller has interests in property adjacent to and near the property conveyed hereunder. Seller and Buyer further acknowledge that Seller is apprehensive that the consummation of this contract will land lock or otherwise impair Seller's ability to properly develop the said property not being conveyed hereunder. Accordingly, Seller and Buyer agree hereby to promptly enter into joint Deeds of Dedication so as to provide State access road and/or utility easements and rights of way (1) to adjacent properties in which the Seller has an interest. Such easements and rights of way, etc. shall in no way interfere with Buyer's development of the parcel conveyed hereunder. In the event of a dispute in the implementation of this paragraph, the parties agree to submit to binding arbitration in accordance with the rules of the American Arbitration Association.

15. Seller and Buyer mutually agree that the provisions hereof shall be binding upon them, their and each of their respective heirs, executors, administrators, or other personal representatives, and successors; that this contract contains the entire agreement between the parties hereto, and that neither they nor any other person on whom this contract shall be binding shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained; that this contract is not assignable by Buyer without the written consent of the Seller; that the provisions hereof shall survive the execution and delivery of the deed aforesaid and shall not be merged therein; and that time is of the essence in this contract in all respects.

IN WITNESS WHEREOF, the parties hereto have executed this contract under seal on the day and year indicated opposite their

name. For all purposes of this contract, the date of execution and the effective date of this contract shall be deemed to be the last date on which either the Buyer or Seller hereto execute this contract.

BUYER

WESTON ENTERPRISES, LTD.

By: Charles A. Weston (SEAL)
CHARLES A. WESTON, President
and Authorized Agent

January 5, 1978
DATE

Attest: Robert G. Culin, Jr.
Robert G. Culin, Jr. (SEAL)
Secretary

January 4, 1978
January 5, 1978
DATE

SELLER

B. Calvin Burns (SEAL)
B. CALVIN BURNS

January 11, 1978
DATE

REALTORS

COUNTRYSIDE REALTY, INC.

By: William A. Byrnes, Jr. (SEAL)
Authorized Agent

January 11, 1978
DATE

EBY & WALKER, INC.

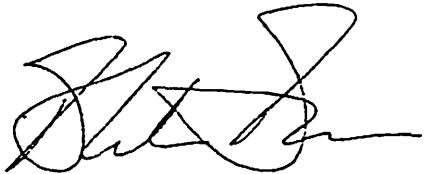
By: Thomas D. Walker (SEAL)
Authorized Agent

Jan. 11, 1978
DATE

ADDENDUM "A"

Buyer has right to construct gravel base road on the property, subject to approval of Seller, which will not be unreasonably withheld.

Seller agrees to contact his bank and get a written agreement from them to release the parcel in question from its present lien, within two (2) weeks after the date on which Buyer accepts the engineering studies on the property.

 Jan 11, 1978

Weston Enterprises, Ltd. Jan 9, 1978
by Robert G. Calin Jr.

A. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT DISCLOSURE/SETTLEMENT STATEMENT		B. TYPE OF LOAN: 1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> FMHA 3. <input type="checkbox"/> CONV. UNINS. 4. <input type="checkbox"/> VA 5. <input type="checkbox"/> CONV. INS. 6. FILE NUMBER 7. LOAN NUMBER 8. MORTG. INS. CASE NO.	
If the Truth-in-Lending Act applies to this transaction, a Truth-in-Lending statement is attached as page 3 of this form.			
C. NOTE: This form is furnished to you prior to settlement to give you information about your settlement costs, and again after settlement to show the actual costs you have paid. The present copy of the form is:			
<input type="checkbox"/> ADVANCE DISCLOSURE OF COSTS. Some items are estimated, and are marked "(e)". Some amounts may change if the settlement is held on a date other than the date estimated below. The preparer of this form is not responsible for errors or changes in amounts furnished by others. The advance disclosure of prorations of taxes and assessments is based upon the assumption that taxes and assessment are not delinquent.			
<input checked="" type="checkbox"/> STATEMENT OF ACTUAL COSTS. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in totals.			
D. NAME OF BORROWER Stafford Knolls Development, Ltd., a Virginia limited partnership		E. SELLER B. Calvin Burns	
		F. LENDER	
G. PROPERTY LOCATION metes & bounds 133.805 acres Stafford County, Virginia		H. SETTLEMENT AGENT Molinari & Quigley	
		I. DATES <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;"> LOAN COMMITMENT SETTLEMENT 5 September 1978 </td> <td style="width:50%;"> ADVANCE DISCLOSURE DATE OF PRORATIONS IF DIFFERENT FROM SETTLEMENT </td> </tr> </table>	
LOAN COMMITMENT SETTLEMENT 5 September 1978	ADVANCE DISCLOSURE DATE OF PRORATIONS IF DIFFERENT FROM SETTLEMENT		
J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract sales price	354,583.25	401. Contract sales price	354,583.25
102. Personal property		402. Personal property	
103. Settlement charges to borrower (from line 1400, Section L)	2,502.00	403. Deferred payment to realtor	18,758.33
104.		404.	
105.		Adjustments for items paid by seller in advance:	
Adjustments for items paid by seller in advance:		405. City/town taxes	to
106. City/town taxes	to	406. County taxes	to
107. County taxes	to	407. Assessments	to
108. Assessments	to	408.	to
109.	to	409.	to
110.	to	410.	to
111.	to	411.	to
112.	to	420. GROSS AMOUNT DUE TO SELLER	373,341.5
120. GROSS AMOUNT DUE FROM BORROWER:	357,085.25	NOTE: The following 500 and 600 series sections are not required to be completed when this form is used for advance disclosure of settlement costs prior to settlement.	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money	8,000.00	501. Payoff of first mortgage loan	*
202. Principal amount of new loan(s)		502. Payoff of second mortgage loan	*
203. Existing loan(s) taken subject to		503. Settlement charges to seller (from line 1400, Section L)	35,813.33
204. First trust to seller	187,583.25	504. Existing loan(s) taken subject to	
205.			

Credits to borrower for items unpaid by seller:			505. Deposit from purchaser	8,000.
206. City/town taxes	to		506. First Trust from purchaser	187,583.
207. County taxes 7/1	to 9/5	240.24	507. Delinquent taxes - second half	
208. Assessments	to		508. 1977 and first half 1978	1,800.0
209.	to		509.	
210.	to		Credits to borrower for items unpaid by seller:	
211.	to		510. City/town taxes	to
212.	to		511. County taxes 7/1	to 9/5 240.24
220. TOTAL AMOUNTS PAID BY OR IN BEHALF OF BORROWER		195,823.49	512. Assessments	to
300. CASH AT SETTLEMENT REQUIRED FROM OR PAYABLE TO BORROWER:			513.	to
301. Gross amount due from borrower (from line 120)		357,085.25	514.	to
302. Less amounts paid by or in behalf of borrower (from line 220)		195,823.49	515.	to
303. CASH <input checked="" type="checkbox"/> REQUIRED FROM) OR (<input type="checkbox"/> PAYABLE TO) BORROWER:		161,261.76	520. TOTAL REDUCTIONS IN AMOUNT DUE TO SELLER:	233,436.8
			600. CASH TO SELLER FROM SETTLEMENT:	
			601. Gross amount due to seller (from line 420)	373,341.58
			602. Less total reductions in amount due to seller (from line 520)	233,436.82
			603. CASH TO SELLER FROM SETTLEMENT *	139,904.76

*Amounts necessary to release first and second trusts to be established and deducted from proceeds

HUD-1 ('

Page

L. SETTLEMENT CHARGES	PAID FROM BORROWER'S FUNDS	PAID FROM SELLER'S FUNDS
700. SALES/BROKER'S COMMISSION based on price \$354,583.25 @ 10 %		
701. Total commission paid by seller Division of commission as follows:		35,458.33
702. \$ 17,729.16 to Countryside Realty, Inc.		
703. \$ 17,729.17 to Eby & Walker		
704.		
800. ITEMS PAYABLE IN CONNECTION WITH LOAN.		
801. Loan Origination fee %		
802. Loan Discount %		
803. Appraisal Fee to		
804. Credit Report to		
805. Lender's inspection fee		
806. Mortgage Insurance application fee to		
807. Assumption/refinancing fee		
808.		
809.		
810.		
811.		

ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE.

Interest from to @ \$ / day

Mortgage insurance premium for mo. to

Hazard insurance premium for yrs. to

yrs. to

RESERVES DEPOSITED WITH LENDER FOR:

Hazard insurance mo. @ \$ / mo.

Mortgage insurance mo. @ \$ / mo.

City property taxes mo. @ \$ / mo.

County property taxes mo. @ \$ / mo.

Annual assessments mo. @ \$ / mo.

mo. @ \$ / mo.

mo. @ \$ / mo.

mo. @ \$ / mo.

mo. @ \$ / mo.

TITLE CHARGES:

Settlement or closing fee to Molinari & Quigley

Abstract or title search to

Title examination to Molinari & Quigley

Title insurance binder to Molinari & Quigley

Document preparation to Molinari & Quigley D-\$ T-\$ Rel-\$

Notary fees to

Attorney's Fees to Molinari and Quigley

(includes above items No.:)

Title insurance to J. P. Title Service Corporation

(includes above items No.:)

Lender's coverage \$ 379.00

Owner's coverage \$ 845.00

550.00

845.00

GOVERNMENT RECORDING AND TRANSFER CHARGES

Recording fees: Deed \$ 11.00 ; Mortgage \$ 10.00 Releases \$

21.00

City/county tax/stamps: Deed \$ 177.50 ; Mortgage \$ 94.00

271.50

State tax/stamps: Deed \$ 532.50 ; Mortgage \$ 282.00

814.50

Grantor tax - State of Virginia

355.00

ADDITIONAL SETTLEMENT CHARGES

Survey to

Pest inspection to

TOTAL SETTLEMENT CHARGES (entered on line's 103 and 503, Sections J and K)

2,502.00

35,813.33

Under certain circumstances the borrower and seller may be permitted to waive the 12-day period which must normally be provided in the regulations of the Department of Housing and Urban Development, shall be attached to and made a part of this form when the form is used as a settlement statement. I have examined the above statement and find it correct, and authorize the above disbursements.

HUD-1 (5-

STIPULATION

EXHIBIT NO. 3
PL (☒) DEF () COM ()
CASE NO. 210697
DATE 12-1 1980
JUDGE: HAW

The contract dated January 11, 1978 and the Settlement Statement dated September 5, 1978 may be admitted into evidence. The contract was later assigned to Stafford Knolls Development, Ltd., but the assignment did not change the provisions on real estate commission.

The two plaintiffs performed services as real estate brokers in connection with this transaction.

These two stipulations shall not limit the right to introduce evidence on the above facts and relationships.

J. Turner, for plaintiffs
V. K. Haggett, for defendant

DEED OF TRUST NOTE

\$ 187,583.25

Prince William County, Virginia

September 5th, 1978

FOR VALUE RECEIVED, the undersigned, STAFFORD KNOLLS DEVELOPMENT,
LTD., A VIRGINIA LIMITED PARTNERSHIP

does hereby promise to pay to the order of B. CALVIN BURNS and CAROLE M. BURNS,
husband and wife, at such place as the holder hereof may from time to time
designate in writing, the principal sum of One hundred eighty seven
thousand, five hundred eighty-three dollars and 25/100.

according to the following schedule:

September 5, 1979: \$ 37,516.65, plus all accrued interest.

September 5, 1980: \$ 37,516.65, plus all accrued interest.

September 5, 1981: \$ 37,516.65, plus all accrued interest.

September 5, 1982: \$ 37,516.65, plus all accrued interest.

September 5, 1983: The entire remaining principal balance,
plus all accrued interest.

Interest shall begin to accrue on the principal hereof on September 5, 1978,
at the rate of nine percent (9%) per annum. The installments of interest and
principal shall be applied first to interest and the balance thereof shall be
applied on account of principal.

The maker hereof reserves the right to prepay any part hereof or the
entire principal amount hereof at any time without penalty. Notwithstanding
anything to the contrary herein, if on or before October 5, 1978, the maker
tenders to the holder hereof the sum of \$ 162,583.25, then upon receipt of
the said \$162,583.25, the holder agrees to accept this reduced amount in full
payment of this note and to cancel this note and mark it paid in full.

It is expressly understood by the parties hereto that any payment which is made later than the time prescribed hereinabove shall constitute a default in the terms of the instrument. Holder, at his sole option, may waive any such default. Holder's waiver of any breach or default in the terms of this instrument shall constitute a waiver only as to such particular breach or default and not a waiver of any future breach or default.

It is hereby expressly agreed that all overdue principal or installments thereof, whether in course or after acceleration of maturity as hereinabove and hereinafter provided, shall bear interest at the rate of nine percent (9%) per annum until paid, anything hereinbefore contained to the contrary notwithstanding. In addition to the foregoing, it is agreed that in the event any installment of interest and/or principal shall remain unpaid for a period in excess of fifteen (15) days after the due date thereof, a "late charge" of five cents (5¢) for each One Dollar (\$1.00) so unpaid may be charged by the holder hereof for the purpose of defraying the expense incidental to such delinquency.

This note is secured by a Deed of Trust of even date herewith, to Daniel H. Borinsky and Richard R. Nageotte, Trustees, conveying the interest of the undersigned in and to that certain real property in the County of Stafford, Virginia, as more fully described in said Deed of Trust, together with the improvements now or hereafter erected thereon.

It is hereby agreed that if a default be made in the payment of any installment of interest and/or principal and interest, as above provided, or if default be made in performance of or compliance with the covenants and conditions of the Deed of Trust securing this note, and if such default is not corrected within fifteen (15) days after written notice, then, in any or all such events, the entire amount of principal of this note with all interest

then accrued shall, at the option of the holder of this note, at once be and become due and payable, time being the essence of this obligation.

The parties of this note, whether principal, surety, guarantor, or endorser, hereby waive presentment for payment, demand, protest, notice of protest and notice of dishonor; further, the parties hereto agree to remain bound for the payment of this note notwithstanding any extension or extensions time of payment of it or any part of it made by agreement with any one or more parties hereto after maturity.

All the terms and conditions of the Deed of Trust secured hereby are hereby incorporated by this reference.

The holder hereof agrees to accept prepayment without penalty at any time and any prepayment shall be applied to the next succeeding payments due.

This note shall be construed by the laws of the Commonwealth of Virginia.

STAFFORD KNOLLS DEVELOPMENT, LTD.

A Virginia Limited Partnership

BY: _____ (SEAL)
Authorized Agent

ATTEST:

(SLAL)

John D.

John D.

Ret: Molinari & Quigley
1338 Horner Rd.
Woodbridge, Va.
BOOK 344 PAGE 785
DEFERRED PURCHASE MONEY FIRST 10-5-78

Deed of Trust

THIS DEED made this 5th day of September, 1978, by and between

STAFFORD KNOLLS DEVELOPMENT, LTD., a Virginia limited partnership
hereinafter called GRANTOR, and DANIEL H. BORINSKY, a resident of Fairfax County, and
RICHARD R. NAGEOTTE, a resident of Stafford County,
hereinafter called TRUSTEE (if there be more than one trustee, any or all may act),

WITNESSETH:

THAT IN CONSIDERATION of the sum of FIVE DOLLARS in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and for the express purpose of securing the payment of the hereinafter-described indebtedness, the said GRANTOR does hereby grant and convey with GENERAL WARRANTY of title, unto the said TRUSTEE (if there be more than one Trustee, any or all may act), all of the following real estate, including all improvements thereon and appurtenances thereunto belonging, and also all fixtures now or hereafter attached to or used in connection with the property herein described, and in addition thereto such personal property as may be described below which is and shall be deemed to be fixtures and a part of the realty hereby conveyed and is a part of the security for the indebtedness hereby secured and herein mentioned and shall be covered by this deed of trust, and particularly described as follows:

(SEE ATTACHED EXHIBIT A)

NOTICE - THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.

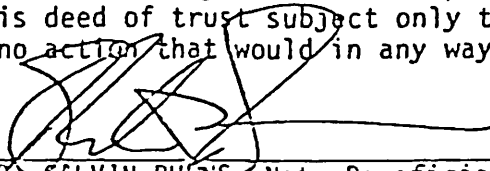
EXEMPTIONS WAIVED
SUBJECT TO ALL UPON DEFAULT
RENEWAL, EXTENSION OR REINSTATEMENT PERMITTED
INSURANCE REQUIRED: \$ 187,583.25
SUBSTITUTION OF TRUSTEE PERMITTED
ANY TRUSTEE MAY ACT

The noteholders affix their signatures to this Deed of Trust for the sole purpose of expressing their consent to the following three conditions:

1. The trustees are permitted to join in the execution of subdivision plats without cost to the Grantor so long as the said subdivision meets the requirements of Stafford County, and so long as the note secured hereby is in good standing.

2. So long as the Note secured hereby is otherwise in good standing, the trustees are authorized to release three (3) acre parcels from the Lien of this trust upon evidence that the noteholder has been paid a sum equal to \$4,500.00 per acre of parcel released; provided further that the parcel to be released does not landlock the parcels remaining subject to this Deed of Trust. Parcels to be released shall be contiguous to a parcel previously released. In addition, Grantor shall be entitled to have released subdivided lots at the same per acre rate, said lots to be released to be contiguous to parcels or lots previously released and to appear upon a plat of subdivision which is recorded in the Clerk's Office of the Circuit Court of Stafford County, Virginia.

3. Grantor shall have the right to cut, fill, grade, erect improvements and do all other things as he believes are necessary in the development of the property subject to the lien of this deed of trust subject only to the condition that the Grantor shall take no action that would in any way devalue the property.


B. CALVIN BURNS, Note Beneficiary
CAROLE M. BURNS, Note Beneficiary

25/100

BOOK 344 PAGE 787

IN TRUST to secure payment of a note or bond for One hundred eighty seven thousand five hundred eighty three dollars (\$187,583.25) dated September 5, 1978

on terms and bearing interest as therein set forth, made by the grantor herein and payable to the order of B. Calvin Burns and Carole M. Burns
in ~~month~~ installments of \$ as stated therein, beginning September 5, 1978.

THIS DEED OF TRUST is made under the provisions of Virginia Code Section 55-59 and 60, as amended, and shall be construed to impose and confer upon the parties hereto and the beneficiary hereunder, all the rights, duties and obligations prescribed by the said Section 55-59 and 60, as amended, and in short form as therein provided, except as hereinbefore or hereinafter otherwise restricted or expanded or changed. Trustee commission in the event of advertisement but payment before sale, 2½% of the face of said note; in the event of sale, 5%. Advertisement required, to publish the time, place and terms of the sale once a week for two successive weeks in a newspaper published or having general circulation in the County-City, with the last insertion, if desired, on the day of sale. Insurance against fire and wind-storm is required in an amount equal to the face of said note or the full insurable value of the improvements, whichever is smaller, and the policy or policies must be placed with the beneficiary hereunder. All exemptions are hereby waived. STAFFORD KNOLLS DEVELOPMENT, LTD., a Virginia Limited partnership

WITNESS THE following signature(s) and seal(s):

James C. Burns, President (SEAL) Carole M. Burns (SEAL)
J. W. Thomas (SEAL) William D. Bagley (SEAL)
Stafford Burns & Co., Inc.

State of VIRGINIA, County of PRINCE WILLIAM, to-wit:

I, MICHAEL L. DUNN, a Notary Public of and for the jurisdiction aforesaid, whose commission expires 14 July 1980, hereby certify that William D. Bagley, John T. Jacoby, Delores C. Barrios, President & John W. Thomas, Sec. for Barrios & Company, Inc., a Virginia Corporation, GENERAL PARTNERS for STAFFORD KNOLLS DEVELOPMENT, LTD., a Limited Partnership whose name(s) is-are signed to the foregoing writing dated 5 September 1978, has-have

acknowledged the same before me in said jurisdiction.

GIVEN UNDER my hand this 5th day of September, 1978

Michael L. Dunn
Notary Public

Prince William Engineering Co.

Civil Engineering

Land Surveying

P. O. Box 254 Woodbridge, Virginia 22191 494-2151

Description of the property of
B. CALVIN BURNS
(Formerly Suburban Forest)
Aquia Magisterial District
Stafford County, Virginia

Beginning at a point No. 15, an iron pipe on the south side of State Route 751, said iron pipe being the point of intersection of the eastern property line of Parcel A and the south right of way of said State Route 751. Point No. 15 is also the property corner of Parcel A, common to Baker on the east as shown on plat of survey. Thence leaving the south right of way of State Route 751 in a southwesterly direction from point No. 15, S. $14^{\circ} 36' 00''$ W. 568.29 feet to a point No. 16 an iron pipe and a cedar stake found, thence with a fence, S. $58^{\circ} 44' 31''$ E. 527.13 feet to a point No. 17, a stone found, thence with a fence, S. $18^{\circ} 44' 31''$ E. 596.00 feet to point No. 18, an iron pipe, thence S. $59^{\circ} 29' 31''$ E. 789.00 feet to point No. 19, an iron pipe, thence S. $52^{\circ} 06' 30''$ W. 1065.90 feet to point No. 20, an iron pipe, thence S. $50^{\circ} 46' 48''$ W. 46.45 feet to point No. 21, a point in the center of Austin Run, a stream, thence along the meanders of Austin Run Stream, 2450 feet, more or less, to point No. 52, an iron pipe in the center of Austin Run stream, the center of said stream being the property line from point No. 21 to point No. 52, thence leaving said Austin Run stream in a northwesterly direction and with a fence, N. $11^{\circ} 48' 22''$ W. 2112.00 feet to point No. 53, an iron pipe, thence with a fence, N. $51^{\circ} 35' 49''$ E. 480.71 feet to point No. 54, an iron pipe found, thence with a fence, S. $61^{\circ} 23' 04''$ E. 123.58 feet to point No. 55, an iron pipe found, thence with a fence, N. $51^{\circ} 52' 31''$ E. 220.70 feet to point No. 9, the point of intersection of the property line of Parcel A with the south right of way of State Route 751, thence with the south right of way of said State Route 751 from point No. 9, along the arc of a curve, 156.59 feet to point No. 10, said curve having a radius of 5312.79 feet, a chord of 156.60 feet; chord bearing S. $81^{\circ} 11' 04''$ E, thence S. $80^{\circ} 20' 24''$ E. 437.80 feet to point No. 11, thence along the arc of a curve 262.45 feet to point No. 12, said curve having a radius of 616.40 feet, a chord bearing N. $82^{\circ} 27' 45''$ E, thence N. $75^{\circ} 15' 54''$ E, 184.40 feet to point No. 13, thence along the arc of a curve 147.48 feet to point No. 14, said curve having a radius of 264.60 feet, a chord of 145.58 feet, chord bearing S. $88^{\circ} 46' 96''$ E. thence S. $72^{\circ} 48' 06''$ E. 159.58 feet to point No. 15, the point of beginning containing 116.391 acres of land, more or less.

Excluded from Parcel A is a cemetery as shown on Plat of Survey, located as follows:

From point No. 16, an iron pipe and cedar stake found, on the eastern boundary of Parcel A, thence along a traverse line bearing S. $32^{\circ} 40' 38''$ W. 574.45 feet to the point of beginning. Said point of beginning of said cemetery is the northeast corner of the cemetery. Thence from the point of beginning of S. $32^{\circ} 19' 35''$ W 15.00 feet to a point, thence N. $57^{\circ} 40' 25''$ W. 15.00 feet to a point, thence N. $32^{\circ} 19' 35''$ E. 15.00 feet to a point, thence S. $57^{\circ} 40' 25''$ E. 15.00 feet to the point of beginning containing 225 square feet. Said 225 square feet being excluded from the acreage of Parcel A.

Parcel B, being the parcel of land on the north side of State Route 751, is described as follows:

Beginning at point No. 1, an iron pipe found on the west side of State Route 751, said iron pipe being approximately 0.44 miles south of State Route 610, and the said iron pipe being the point of intersection of the northern property line of property corner of Parcel B, common with Heflin, on the South and Moorefield on the North as shown on plat of survey.

Thence from point No. 1, S. $14^{\circ} 36' 00''$ W. 984.92 feet to point No. 2, an iron pipe, thence N. $75^{\circ} 24' 00''$ W. 380.76 feet to point No. 3, an iron pipe, thence S. $14^{\circ} 36' 00''$ W. 516.42 feet to a point No. 4, an iron pipe, said iron pipe being the intersection of the property line of Parcel B and the north right of way of State Route 751, thence along the north right of way of said State Route 751 from point No. 4 S. $75^{\circ} 15' 54''$ W. 109.89 feet to point No. 5, thence along the arc of a curve 249.67 feet to point No. 6 said curve having a radius of 586.40 feet, a chord of 247.79 feet with chord bearing of S. $87^{\circ} 27' 45''$ W. thence N. $80^{\circ} 20' 24''$ W. 437.80 feet to point No. 7, thence along the arc of a curve 128.68 feet to point No. 8, said curve having a radius of 342.79 feet, a chord of 128.68 feet with chord bearing of N. $81^{\circ} 11' 04''$ W, thence with a fence, N. $51^{\circ} 52' 31''$ E. 2109.35 feet to point No. 1, the point of beginning, containing 17.414 acres, more or less.

Parcel A and Parcel B are further described and shown on plat of survey by Stephen Stephens, Certified Land Surveyor, dated February 22, 1969, Revised January, recorded with a deed from Stafford Land Corporation to Suburban Land Investment Company dated January 30, 1970, recorded in the Clerk's Office of the Circuit Court of Stafford County, Virginia, in Deed Book 199.

— Less + Except Exhibit A p. 3 of 3

EXHIBIT "A" p. 2 of 3

Prince William Engineering Co.

Civil Engineering

Land Surveying

P. O. Box 254 Woodbridge, Virginia 22191 494-2161

*Note: The below 53.5 Acres are, not included in the
face of the attached deed of Trust*

Description of Part of the Property of B. Calvin Burns, Parcel "A", Stafford
County, Virginia

Less + Except

Beginning at a point on the southerly line of State Route #751,
point marking a corner to Baker; thence departing from the southerly line
State Route # 751 and with the line of Baker the following:

S. 14° 36' 00" W. 568.29', S 58° 44' 31" E 527.13', S 18° 44' 31" E
00' and S. 59° 29' 31" E 135.00' to a point, thence departing from the line
Baker and through the property of B. Calvin Burns the following:

S. 27° 18' 15" W. 581.00', N. 62° 41' 45" W. 135.00', N. 12° 49'
W. 90.32', N. 73° 39' 07' W. 160.00', S. 16° 20' 53" W. 73.51', N. 73° 39'
W. 215.00', N. 16° 20' 53" E. 179.78', N. 10° 34' 46" W. 109.33',
S. 3° 26' 24" E. 271.13', N. 76° 33' 36" W. 175.00', N. 13° 26' 24" E. 160.00',
S. 6° 58' 29" W. 217.31', N. 79° 00' 52" W. 173.17', N. 70° 46' 58" W. 370.65',
S. 6° 18' 22" W. 217.14', N. 05° 34' 21" E. 701.16', to a point in the
northerly line of State Route # 751; thence with the southerly line of State
Route # 751 S. 80° 20' 24" E. 287.80' to the point of curvature of a curve
to the left having a radius of 616.40'; thence with the arc of said curve to the
point of tangency of said curve; thence N. 75° 15' 54" E.
140' to the point of curvature of a curve to the right having a radius of
50'; thence with the arc of said curve to the right 147.47' to the point
of tangency of said curve; thence S. 72° 48' 06" E. 159.58' to the point and
place of beginning and containing 36.086 acres of ground.

Parcel "B" Beginning at a point in the westerly side of State Route
751, said point marking a common corner to Moorefield and Heflin; thence
with the line of Heflin S. 14° 36' 00" W. 984.92' to a point marking a corner
to Reed; thence with the line of Reed N. 75° 24' 00" W. 380.76' and S. 14°
00' W. 516.42' to a point in the northerly line of State Route # 751; thence
with the northerly line of State Route # 751 S. 75° 15' 54" W. 109.81' to the
point of curvature of a curve to the right having a radius of 586.40'; thence
with the arc of said curve to the right 249.67' to the point of tangency of said
curve; thence N. 80° 20' 24" W. 437.80' to the point of curvature of a curve to
the left having a radius of 5342.79'; thence with the arc of said curve to the
point of tangency of said curve; thence S. 128° 58' 12" W. 128.68' to a point in the line of Moorefield thence departing from the
northerly line of State Route # 751 and with the line of Moorefield N. 51° 52'
W. 2109.35' to the point and place of beginning and containing 17.414 acres
of ground.

Totaling 53.500 acres of ground.

EXHIBIT A p. 3 of 3

J. calvin burns

November 5, 1979

RECEIVED

NOV 8 1979

Eby & Walker
Triangle Plaza S.
Dumfries, Virginia 22026

EXHIBIT NO. 6
PL (✓) DEF () COM ()
CASE NO. L 10697
DATE 12-1 19 80
JUDGE: 477W

Re: Stafford Knolls Limited Partnership

Dear Sir or Madam:

This is to advise you that I have received the 1st Annual principal payment on the above note, in the amount of \$37,516.65. I understand you are entitled to 1/2 of the 10% total commission. Accordingly, enclosed is my check for \$1875.82.

Very truly yours


J. Calvin Burns

Encl.

EBY & WALKER, INC.
138 GRAHAM PARK ROAD SUITE 100
DUMFRIES, VIRGINIA 22026 PH. 221-4126

No 89434

DATE Nov 8 19 79

PAID FROM J. Calvin Burns
One Thousand eight hundred and seventy five and 82/100
576 Cassard Stafford five .82

\$ 1875 82
DOLLARS

AMOUNT OF ACCOUNT		
THIS PAYMENT	<u>1875</u>	<u>82</u>
BALANCE DUE		

☐ CASH
☒ CHECK
☐ M.O.

Thank You

BY Charlotte B. Carter

FINAL JUDGMENT ORDER

On the 1st day of December, 1980, came the parties in person and by counsel, all parties being represented by counsel, and the defendant having heretofore filed his affidavit of substantial defense herein, issue is joined.

Whereupon came a jury, to-wit: Jack Lee Green, Carolyn Fisher, Richard Lutz, Margaret S. Steadman, and Nelson F. Tuxbury, who were sworn to well and truly try the issue joined and a true verdict give according to the evidence and the law.

The evidence of the plaintiffs was presented and at the conclusion thereof the defendant by counsel moved to strike the evidence of the plaintiffs on grounds stated in the record, which motion the Court took under advisement.

Thereupon, the evidence of the defendant was presented and at the conclusion of all of the evidence, the defendant by counsel renewed his motion to strike the plaintiffs' evidence on the same grounds, which motion was overruled and to which ruling of the Court counsel for the defendant excepted.

Thereupon, plaintiffs by counsel moved the Court to take the case from the jury and decide the case without a jury, on grounds that no substantial issue of fact was in controversy and that the case should be decided by the Court interpreting the meaning and effect of the contract between the parties as a matter of law, and the motion was argued by counsel, then was granted by the Court, after which the jury was discharged.

After hearing arguments of counsel for all parties, the Court found for the plaintiffs in the amount sued for and announced its verdict for plaintiffs.

It is therefore ADJUDGED and ORDERED that the plaintiffs recover and have judgment against the defendant in the amount of \$1,885.04, with interest thereon at the rate of 8% per annum from November 8, 1979, until paid and costs.

Whereupon, defendant by counsel indicated to the Court his intention to appeal to the Supreme Court and moved the Court to set an appeal bond, and the Court set an appeal bond of \$2,500.00 in cash or with corporate surety approved by the clerk of this Court conditioned as prescribed in §8.01-676, Code of Virginia, as amended, and it is

ORDERED that upon the posting of such an appeal bond by the defendant on or before ^{30 days from entry of this order} ~~December 31, 1980,~~ the execution of the judgment herein shall thereupon be suspended so long as the defendant timely prosecutes the appeal and thereafter so long as the matter is under consideration by the Supreme Court.

ENTER this 24th day of December, 1980.

(Judge U. M. M. M. M.)

JUDGE

I ask for this:

151
James S. G. Turner
Counsel for Plaintiffs

SEEN AND EXCEPTED TO:

151
Richard R. Nageotte
Counsel for Defendant

NOTICE OF OBJECTION
TO WRITTEN STATEMENT

Notice is hereby given under Rule 5:11 that plaintiffs EBY & WALKER, INC., and COUNTRYSIDE REALTY, INC., do object to the proposed "Written Statement of Facts, Testimony, or Other Incidents of the Case" filed herein by defendant B. CALVIN BURNS, the grounds for such objection being that the proposed Written Statement is both erroneous and incomplete, as set forth below:

OBJECTIONS

1. Undisputed Facts, page 1, first sentence. There was no evidence that the final contract was prepared by plaintiffs. Rather, there was evidence that the final contract version was the result of a negotiation in which defendant's attorney, Daniel Borinsky, took part, after plaintiffs had procured the contract purchaser for defendant. This first sentence would more fairly reflect the undisputed facts if it read "It is undisputed that Plaintiff realtors Countryside Realty, Inc. and Eby & Walker, Inc. obtained for Defendant B. Calvin Burns a purchaser for a tract of 133.805 acres of land; that after negotiations, the contract dated January 11, 1978 (trial exhibit) was formed, and resulted in the sale of Defendant's property."
2. Undisputed Facts, page 2, line 3. This sentence does not correctly set forth the position of Plaintiffs, and should be revised to "It is the position of Plaintiffs that the proper interpretation of the contract is that the Defendant is obli-

gated to pay to Plaintiffs 10% of whatever proceeds are actually received by Defendant from the sale, including both principal and interest, because the contract placed on Plaintiffs part of the risk of loss in the event the deferred purchase money note was not fully paid, and because Defendant contracted to pay Plaintiffs 10% of all proceeds actually received."

3. Undisputed Facts, page 2, line 19. The first sentence of the second paragraph of this section is misleading, since it attempts to state that Plaintiffs agree that only funds required to be paid pursuant to the Deed of Trust were thereafter due. This is a complete misrepresentation of the evidence. The trust did not require any payment to Plaintiffs; it was the contract that required payment to Plaintiffs; and the evidence showed that Defendant refused to secure Plaintiffs by a note under the trust, but assured them they would be paid. Revise this sentence to read "After the settlement conducted on September 5, 1978, 10% of the sale proceeds received by Defendant in cash at the settlement was paid to Plaintiffs as partial payment of real estate commission due under the contract."

4. Undisputed Facts, page 2, line 23. The next two sentences also misrepresent the facts. The payments received by Burns in 1979 were \$30,000.00 on or about October 1, 1979, and \$28,366.85 on or about November 2, 1979; making a total of \$58,366.85 received by Burns on the deferred purchase money note before he made the November 5, 1979, payments to Plaintiffs. In the second

7 sentence, correct the figure \$37,516.65 to read \$58,366.85; and in the third sentence, change "\$18,850.33 interest" to read "\$20,850.20 interest and penalties on the note."

5. Undisputed Facts, page 3, lines 2 and 3. The clause beginning "for 10%" does not properly reflect the object of the suit, and should be changed to read "for failure to pay real estate commission under contract dated January 11, 1978."

6. Undisputed Facts, page 3, line 6. The first sentence of this paragraph is not correct. Defendant did not object to discharge of the jury; rather, counsel for Defendant agreed that no significant facts were in dispute and that the entire case turned on interpretation of the meaning of the contract. Revise to read "After hearing all of the evidence for both Plaintiffs and Defendant, counsel for Plaintiffs moved that the Court discharge the jury because no significant facts were in dispute, and that the Court decide the case as a matter of law by interpreting the meaning of the contract; Counsel for Defendant agreed that no significant facts were in dispute; whereupon the Court discharged the jury and decided the case by interpreting the contract as a matter of law."

6. Testimony of Mauller, page 3. In second line, delete the words "and drew up the contract" for reasons stated above. In fourth line, change the words "at settlement" to "throughout the transaction." In sixth line, delete the words "and the realtors" because there was no evidence that Quigley represented anyone other than the purchaser.

7. Testimony of Bagley, page 4, line 3. Delete the words "prepared by them and" for the reasons set forth in paragraph 1 above.
8. Testimony of Bagley, page 4, line 7. Delete the words "those other than Burns" and substitute "the purchaser". There was no evidence heard that Mr. Quigley represented either realtor plaintiff.
9. Testimony of Bagley, page 4, bottom. Add an additional sentence "Mr. Bagley further testified that Stafford Knolls Development, Ltd. had made payments to Burns on the note in the amount of \$30,000.00 on or about October 1, 1979, and \$28,366.85 on or about November 2, 1979, these payments including principal, interest and late payment penalty." Reason: to accurately reflect the testimony.
10. Testimony of Burns, page 5, line 15. Delete the sentence as to the intention of Mr. Burns. Plaintiffs and their counsel have no recollection that Mr. Burns so testified. If the trial Court's notes show such testimony by Burns, this objection is withdrawn.
11. Testimony of Burns, page 5, bottom. To make his testimony complete, add at end "Mr. Burns testified on cross-examination that he had received payments on the note totalling \$58,366.85 on or before November 5, 1979; and in response to a question on cross-examination as to whether these payments he had received on the note were proceeds of the sale, Mr. Burns answered yes."
12. Incidents of Trial, page 6, line 23. Delete the words "again took under advisement" and substitute "denied".

13. Incidents of Trial, page 6, lines 24-25. Delete the words "the settlement by the Court" and substitute the words "the Court interpreted paragraph 13 of the contract, as a matter of law, to mean that Plaintiffs were entitled to receive from Defendant 10% of all sums received by Defendant as proceeds of the deferred purchase money Deed of Trust Note held by Defendant, whether such sums be in payment of principal or interest or penalty or any combination thereof" then leave the rest of this sentence as stated. Reason: to reflect accurately the actual ruling and judgment rendered by the Court.

The foregoing Objections are respectfully submitted to the trial Court, with the request that the Written Statement tendered by Defendant be corrected as indicated above if the Court's own notes and recollection so indicate.

EBY & WALKER, INC.
and
COUNTRYSIDE REALTY, INC.


By: _____


Counsel

James S. G. Turner
Counsel for Plaintiffs

CERTIFICATE

I certify that a copy of the foregoing Notice of Objections was mailed, postage prepaid, to Richard R. Nageotte, this 26th day of February, 1981.


James S. G. Turner



THIRTY-FIRST JUDICIAL CIRCUIT OF VIRGINIA
PRINCE WILLIAM COUNTY
CITIES OF MANASSAS AND MANASSAS PARK

March 10, 1981

CHAMBERS OF

HERMAN A. WHISENANT, JR.
JUDGE

CIRCUIT COURT CHAMBERS
9302 PEABODY STREET
MANASSAS, VIRGINIA 22110
TELEPHONE 369-9310

MR. JAMES S. G. TURNER
Attorney at Law
236 South Fraley Boulevard
Dumfries, Virginia 22026

MR. RICHARD R. NAGEOTTE
Attorney at Law
14908 Jefferson Davis Highway
Woodbridge, Virginia 22191

RE: Eby & Walker, Inc., et al
vs. Law No. 10697
B. Calvin Burns

Gentlemen:

I have reviewed the written Statement of Facts in the above matter along with the Notice of Objection to the written Statement of Facts. I attempted notification by telephone to counsel yesterday of my ruling in this matter. I will confirm the notification to counsel by this letter.

The Court sustained the objections by Mr. Turner to the written Statement of Facts and I will by this letter ask Mr. Turner to prepare a written Statement of Facts incorporating his objections accordingly. I will ask both counsel to endorse the written Statement of Facts prepared by Mr. Turner. Upon receipt of the written Statement of Facts prepared by Mr. Turner, I will then make any final corrections and sign the written statement.

Thank you for your consideration of this matter.

Very truly yours,


HERMAN A. WHISENANT, JR.

HAWJr.:dra

WRITTEN STATEMENT OF FACTS, TESTIMONY, OR OTHER
INCIDENTS OF THE CASE

COMES NOW B. Calvin Burns, Defendant, by counsel, and in accordance with Rule 5:9(c) tenders within 55 days after entry of Final Judgment this Written Statement of Facts, Testimony, or Other Incidents of the Case. Further, Defendant places counsel for Plaintiffs, Eby & Walker, Inc. and Countryside Realty, Inc., upon formal notice pursuant to the Rules that motion is hereby made for the trial judge, The Honorable Herman A. Whisenant, Jr., to enter this Statement of Facts, Testimony, or Other Incidents of the Case no earlier than 10 days nor later than 15 days after the filing of same. Counsel for Plaintiffs Eby & Walker, Inc. and Countryside Realty, Inc., is placed upon formal notice that he must within 10 days pursuant to Rule 5:11 make objections to this Written Statement of Facts, Testimony, or Other Incidents of the Case if he be so advised.

UNDISPUTED FACTS

It is undisputed that Plaintiff realtors Countryside Realty, Inc. and Eby & Walker, Inc. obtained for Defendant B. Calvin Burns a purchaser for a tract of 133.805 acres of land; that after negotiations, the contract dated January 11, 1978 (trial exhibit) was formed, and resulted in the sale of Defendant's property. This contract was by agreement of all parties assigned to Stafford Knolls Development, Ltd., a Virginia Limited Partnership, a business entity in which Mr. William Bagley, an officer of Countryside Realty, Inc., was also involved as a principal.

Circuit Court Clerk of the
Prince William County, Va.
Filed March 27 1981
[Signature] Deputy Clerk

This case revolves around the language contained in paragraph 13 of the contract dated January 11, 1978. . It was the position of Defendant in this case that he is responsible for the payment of the deferred commission on proceeds, which does not include interest, as the result of the deferred purchase money deed of trust note. It is the position of Plaintiffs that the proper interpretation of the contract is that the Defendant is obligated to pay to Plaintiffs 10% of whatever proceeds are actually received by Defendant from the sale, including both principal and interest, because the contract placed on Plaintiffs part of the risk of loss in the event the deferred purchase money note was not fully paid, and because Defendant contracted to pay Plaintiffs 10% of all proceeds actually received. Subsequently, a real estate settlement was held on September 5, 1978, in the offices of Daniel H. Borinsky, Attorney at Law, who represented the seller Burns in accordance with settlement statements prepared by Michael Quigley, Attorney at Law, of Molinari & Quigley, attorney for the new purchaser Stafford Knolls Development, Ltd. At this settlement a deed was executed by Burns deeding the property to Stafford Knolls Development, Ltd., a Virginia Limited Partnership. A deferred purchase money deed of trust (trial exhibit) and deferred purchase money note (trial exhibit) were executed by Stafford Knolls Development, Ltd., a Virginia Limited Partnership, in favor of the holder Burns and a settlement statement (trial exhibit) was circulated and approved by Burns as seller, Stafford Knolls Development Ltd., a Virginia Limited Partnership, as purchaser and Eby & Walker, Inc. and Countryside Realty, Inc., as realtors.

After the settlement conducted on September 5, 1978, 10% of the sale proceeds received by Defendant in cash at the settlement was paid to Plaintiffs as partial payment of real estate commission due under the contract. On November 5, 1979, after Burns received the first annual payment of the deferred purchase money deed of trust note in the amount of \$58,366.85 he forwarded a check in the amount of \$1,875.82 to Eby & Walker, Inc. and a check in the amount of \$1,875.82 to Countryside Realty, Inc. The payment received by Burns pursuant to the deferred purchase money deed of trust note was the sum of \$37,516.56 principal and \$20,850.20 interest and penalties on the note. Plaintiffs acknowledge receipt of their equal 5% share of the principal amount received, but made demand for an equal share of 5% each of all interest received by Burns. Burns refused this demand and as a result a warrant in debt was filed by Eby & Walker, Inc. and Countryside Realty, Inc. in the General District Court of Prince William County, Virginia, for failure to pay real estate commission under contract dated January 11, 1978. The case was removed by Burns to the Circuit Court of Prince William County and was tried before a jury on the 1st day of December, 1980.

After hearing all of the evidence for both Plaintiffs and Defendant, counsel for Plaintiffs moved that the Court discharge the jury because no significant facts were in dispute, and that the Court decide the case as a matter of law by interpreting the meaning of the contract; Counsel for Defendant agreed that no significant facts were in dispute; whereupon the Court discharged

the jury and decided the case by interpreting the contract as a matter of law. As a result thereof the court entered judgment in favor of the Plaintiffs, all as is set out in the Final Order of this Court entered on the 24th day of December, 1980.

TRIAL TESTIMONY

Mr. Ralph Mauller, Real Estate Salesman, Eby & Walker, Inc., testified on behalf of Plaintiffs.

Mr. Mauller testified on direct examination that Plaintiffs found the purchaser for this real estate transaction. He testified that the realtors assisted in arranging financing. He testified that Mr. Borinsky, an Attorney at Law, represented the Defendant Burns throughout the transaction. He testified that Mr. Quigley, an Attorney at Law from Molinari & Quigley, was present at settlement and represented the purchaser. Mr. Mauller testified that at settlement someone, although he did not remember who, suggested the possibility of a note for payment of the real estate commission. He testified that they did not discuss any terms for the note and that the idea of Burns signing a note for the deferred commission was rejected at settlement by Burns. Mr. Mauller testified that he had one discussion with Mr. Borinsky after settlement and asked Mr. Borinsky to ask Mr. Burns if Mr. Burns would be willing to give them more security for payment of their deferred commission, but that Mr. Burns declined to do so.

Mr. William Bagley, Principal, Countryside Realty, Inc., testified on behalf of the Plaintiffs.

Mr. Bagley testified that the Plaintiffs were instrumental in obtaining a purchaser which in the first instance was

Weston Enterprises, Ltd., and that the contract was executed by Burns. Subsequently, it was agreed by all parties that the contract would be assigned to Stafford Knolls Development, a Virginia Limited Partnership, and that Mr. William Bagley was a general partner in this partnership. Mr. Bagley testified that Mr. Michael Quigley, an attorney with Molinari & Quigley, represented the purchaser at the settlement held on September 5, 1978. He testified that the settlement statements were prepared by the law office of Molinari & Quigley and that Mr. Daniel H. Borinsky, Attorney at Law, represented Mr. Burns at the settlement. Mr. Bagley testified that the amount shown as deferred payment to realtor in the amount of \$18,758.33 on the settlement statement represented 10% of the first trust and that both he and Mr. Mauller of Eby & Walker, Inc. were aware of the amounts specified on the settlement statement and did not object to the settlement statement at time of settlement. Mr. Bagley testified that it was he who brought up the question of a note for the deferred commission monies and that it was his intention in requesting this note to substantiate the amount due on the settlement statement.

Mr. Bagley further testified that upon payment of the first installment of the deferred purchase money deed of trust note Mr. Burns did pay 10% of the principal amount received in the form of one check to each of the realtors representing 5% of this total amount.

On cross-examination Mr. Bagley testified that both the deferred purchase money deed of trust and deferred purchase money note were executed at settlement by Stafford Knolls Development

Ltd., a Virginia Limited Partnership, and that he was one of the signatories as a general partner. He testified that the total commission due was \$35,458.33 as shown on the settlement statement and that \$18,758.33 was deferred, all as shown on the settlement statement dated September 5, 1978, and that he signed the settlement statement.

Mr. Bagley testified that Mr. Burns made a payment of \$1,875.82 to Countryside Realty, Inc. in October 1979. Mr. Bagley further testified that Stafford Knolls Development, Ltd. had made payments to Burns on the note in the amount of \$30,000.00 on or about October 1, 1979, and \$28,366.85 on or about November 2, 1979, these payments including principal, interest and late payment penalty.

Mrs. Hazel Eby, President and Treasurer of Eby & Walker, Inc., testified on behalf of Plaintiffs.

She testified that the funds due with respect to the real estate commission not deferred were paid at settlement. Mrs. Eby further testified that Mr. Burns made payment in the amount of \$1,875.82 to Eby & Walker, Inc. on November 8, 1979.

Mr. B. Calvin Burns testified on behalf of the Defendant's case.

Mr. Burns testified that he entered into the contract dated January 11, 1978, and consented to its assignment to Stafford Knolls Development, Ltd., a Virginia Limited Partnership. He testified that he was aware of Mr. Bagley's involvement both as a realtor and as a principal in the purchase of the property. He testified that he attended settlement, at which time all of the parties executed the settlement statement and that the principals

of Stafford Knolls Development, Ltd., a Virginia Limited Partnership, which included Mr. Bagley, signed the deferred purchase money deed of trust note and deed of trust. Mr. Burns testified that this was further substantiated by his review of the settlement statement dated September 5, 1978, and that no one from Eby & Walker, Inc. or Countryside Realty, Inc. made any suggestion to him that they were entitled to in excess of 10% of the principal balance due under the deferred purchase money deed of trust at any time until he forwarded to them their individual checks in the amount of \$1,875.82 by his letter dated November 5, 1979. Mr. Burns testified that after he forwarded these sums to the respective realtors Eby & Walker, Inc. and Countryside Realty, Inc., a demand was made upon him by their attorney in this case, Mr. Turner, to pay 10% on the interest earned under the terms of the deferred purchase money deed of trust note. Mr. Burns refused to make this payment and this law suit resulted. Mr. Burns testified on cross-examination that he had received payments on the note totalling \$58,366.85 on or before November 5, 1979; and in response to a question on cross-examination as to whether these payments he had received on the note were proceeds of the sale, Mr. Burns answered yes.

INCIDENTS OF TRIAL BEFORE THE TRIAL COURT

Upon conclusion of the Plaintiffs' evidence the Defendant, by counsel, made a motion to strike upon the grounds that the contract of 11 January 1978, clearly provided in paragraph 13 thereof that the commission of 10% from seller to the Plaintiffs Eby & Walker, Inc. and Countryside Realty, Inc. was to be


based upon the total sales price, although a portion would be deferred if a part of the sales price was deferred. The specific amount to be paid was not set out in paragraph 13, but the amount could be determined by reading the other provisions of the contract and settlement statement dated September 5, 1978. That the intention of the Plaintiffs Eby & Walker, Inc. and Countryside Realty, Inc. was established by their direct testimony that at no time prior to Defendant's payment in November 1979, more than one year after the contract and settlement, did the Plaintiffs express that it was their intention that the deferred real estate commission as set out in the contract and settlement statement should also be applied to the amount of interest paid pursuant to the terms and conditions of the deferred purchase money note and deed of trust. Further, that the approval of the settlement statement by Eby & Walker, Inc. and Countryside Realty, Inc. on September 5, 1978, without objection now estopped them to claim commission money in excess of those specified in the settlement statement. The Court took Defendant's motion to strike under advisement and thereupon Defendant put on evidence in the form of testimony of Mr. Burns as set out above. Thereafter Defendant renewed its motion to strike, which motion the Court denied. The Court then proceeded to discharge the jury and ruled as a matter of law that the Court interpreted paragraph 13 of the contract, as a matter of law, to mean that Plaintiffs were entitled to receive from Defendant 10% of all sums received by Defendant as proceeds of the deferred purchase money Deed of Trust Note held by Defendant, whether such sums be in payment of principal or

interest or penalty or any combination thereof and that as a matter of law the Plaintiffs Eby & Walker, Inc. and Countryside Realty, Inc. should be granted judgment.

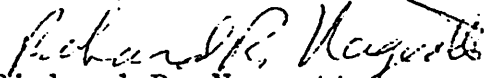
The foregoing Written Statement of Facts, Testimony and Other Incidents of the Case have been rewritten by counsel for Plaintiffs, to reflect the ruling of the trial court sustaining every objection made to this Written Statement by counsel for Plaintiffs, and the foregoing Revised Statement is respectfully tendered to the trial court this 12th day of March, 1981.

B. CALVIN BURNS


Redrafted in accordance with the instructions of the trial court:


James S. G. Turner
236 South Fraley Boulevard
Dumfries, Virginia 22026
Counsel for Plaintiffs

SEEN AND EXCEPTED TO ~~FOR THE REASONS STATED ON PAGE 8.~~


Richard R. Nageotte
14908 Jefferson Davis Highway
Woodbridge, Virginia 22191
Counsel for Defendant

The attached Written Statement of Facts, Testimony, or Other Incidents of the Case has been entered this 23rd day of March, 1981.


HERMAN A. WHISENANT, JR., JUDGE

ASSIGNMENTS OF ERROR

I. The trial court erred in discharging the jury and ruling that the contract should be interpreted as a matter of law.

II. The trial court erred in finding that the contract required Burns to pay a real estate commission upon the interest received by Burns from payments of the Deferred Purchase Money Deed of Trust Note for the following reasons:

a. By failing and refusing to consider relevant evidence in the form of settlement statements which were in evidence before the court.

b. By failing and refusing to construe the contract in accordance with the practical construction given to it by the parties.

c. By not ruling that Plaintiffs Eby & Walker and Countryside Realty were estopped to place any other construction on the contract than that acquiesced to by all parties at settlement.