

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 16TH DAY OF DECEMBER, NINETEEN HUNDRED NINETY-ONE, AT 1:05 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Thomas K. Norment, Jr., Chairman, Roberts District
Judith N. Knudson, Vice Chairman, Jamestown District

Perry M. DePue, Powhatan District
Jack D. Edwards, Berkeley District
Stewart U. Taylor, Stonehouse District
David B. Norman, County Administrator
Frank M. Morton, III, County Attorney

B. PRESENTATIONS

1. Chairman's Award

Mr. Norment announced that Anthony Conyers, Jr., Community Services Manager, and Leo P. Rogers, Jr., Assistant County Attorney were the recipients of the Chairman's Award and presented a resolution and gift certificate to each for their diligent work on the Prenatal Health Care Agreement with local physicians.

Mr. Conyers and Mr. Rogers expressed their thanks for the award.

C. MINUTES - December 2, 1991, Regular Meeting
December 3, 1991, Special Meeting

Mr. Norment asked if there were corrections or additions to the minutes.

Mr. Norment made a motion to approve the minutes as presented.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, Knudson, DePue (5). NAY: (0).

The Board individually expressed their pleasure of working with Mr. Norment and stated appreciation for his service to the County and community during his four-year tenure, the last year as Chairman.

Mr. Norment thanked the County staff for their hard work; the Board for the learning experience and opportunity to work with them; and, the County citizens for giving him the opportunity to serve them.

D. HIGHWAY MATTERS

Mr. Quintin Elliott, Resident Engineer, Virginia Department of Transportation, reported that he had been appointed Resident Engineer for Williamsburg Residency. Mr. Elliott stated signs requested by Ms. Knudson had been installed in Lakewood subdivision.

Mr. DePue stated that consideration be given to installation of a left-turn lane off Strawberry Plains Road into Medical Arts Center and Day-Care Center.

A brief discussion on responsibility of maintenance of the roadway ensued.

The Board congratulated Mr. Elliott on his appointment and expressed that they looked forward to working with him.

E. CONSENT CALENDAR

Mr. Norment asked if any Board member wished to discuss the item on the Consent Calendar.

Mr. Norment made a motion to approve the Consent Calendar.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, Knudson, DePue (5). NAY: (0).

1. Bank ResolutionsR E S O L U T I O NCENTRAL FIDELITY BANK

BE IT RESOLVED, that Central Fidelity Bank, Williamsburg, Virginia, be and it is hereby designated a depository for James City County accounts effective November 1, 1984, and that funds so deposited may be withdrawn upon a check, draft, note or order of the Board of Supervisors.

ACCOUNT NUMBER: 0900223285

JAMES CITY COUNTY GENERAL FUND

R E S O L U T I O NSOVRAN BANK, N.A.

BE IT RESOLVED that the Sovran Bank, N.A., of Williamsburg, Williamsburg, Virginia, be and it is hereby designated a depository for the accounts herein named;

Account 202-0197-7 James City County Subdivision Escrow
Account 202-0955-7 Housing Rehabilitation Escrow

and that funds so deposited may be withdrawn upon a check, draft, note or order of the Board of Supervisors.

BE IT FURTHER RESOLVED that all checks, drafts, notes or orders drawn against said accounts be signed by two of the following:

Chairman

OR

Vice Chairman

David B. Norman

County Administrator

OR

Sanford B. Wanner

Assistant County Administrator

Betty S. Pettengill

Treasurer

OR

Barbara S. Miller

Deputy Treasurer

whose signatures shall be duly certified to said Bank, and that no checks, drafts, notes or orders drawn against said Bank shall be valid unless so signed.

BE IT FURTHER RESOLVED, that said Bank is hereby authorized and directed to honor and pay any checks, drafts, notes or orders so drawn, whether such checks, drafts, notes or orders be payable to the order of any such persons signing and/or countersigning said checks, drafts, notes or orders, or any of such persons in their individual capacities or not, and whether such checks, drafts, notes or orders, or the individual credit of any of the other officers or not. For cash investment purposes, the Bank is also authorized and directed to honor requests for the transfer of money from savings to checking, checking to savings, and transfers from checking or savings to purchase certificates of deposit, repurchase agreements, or to make other lawful investments when requested by Betty S. Pettengill, Treasurer, or Barbara S. Miller, Deputy Treasurer. This resolution shall continue in force and said Bank may consider the facts

concerning the holders of said offices, respectively, and their signature to be and continue as set forth in the Certificate of the Clerk or Assistant Clerk, accompanying a copy of this resolution when delivered to said Bank or in any similar subsequent certificate, until written notice to the contrary is duly served on said Bank.

R E S O L U T I O N

CRESTAR

BE IT RESOLVED that Crestar, Williamsburg, Virginia, be and it is hereby designated a depository for James City County accounts designated below:

JAMES CITY COUNTY GENERAL FUND
ACCOUNT NUMBER: 95-0047-2

JAMES CITY COUNTY COMMUNITY
DEVELOPMENT
ACCOUNT NUMBER: 96-9058-1

and that funds so deposited may be withdrawn upon a check, draft, note or order of the Board of Supervisors.

BE IT FURTHER RESOLVED that all checks, drafts, notes or orders drawn against said accounts be signed by two of the following:

Chairman

OR

Vice Chairman

David B. Norman

County Administrator

OR

Sanford B. Wanner

Assistant County Administrator

Betty S. Pettengill

Treasurer

OR

Barbara S. Miller

Deputy Treasurer

whose signatures shall be duly certified to said Bank, and that no checks, drafts, notes or orders drawn against said Bank shall be valid unless so signed.

BE IT FURTHER RESOLVED, that said Bank is hereby authorized and directed to honor and pay any checks, drafts, notes or offers so drawn, whether such checks, drafts, notes or orders be payable to the order of any such persons signing and-or countersigning said checks,

drafts, notes or orders, or any of such persons in their individual capacities or not, and whether such checks, drafts, notes or orders, or the individual credit of any of the other officers or not. For cash investment purposes, the Bank is also authorized and directed to honor requests for the transfer of money from savings to checking, checking to savings, and transfers from checking or savings to purchase certificates of deposit, repurchase agreements, or to make other lawful investments when requested by Betty S. Pettengill, Treasurer, or Barbara S. Miller, Deputy Treasurer. This resolution shall continue in force and said Bank may consider the facts concerning the holders of said offices, respectively, and their signature to be and continue as set forth in the Certificate of the Clerk or Assistant Clerk, accompanying a copy of this resolution when delivered to said Bank or in any similar subsequent certificate, until written notice to the contrary is duly served on said Bank.

F. PUBLIC HEARINGS

1. Case No. SUP-35-91. Cindy Jump

Mr. O. Marvin Sowers, Jr., Director of Planning, stated Ms. Cindy Jump had applied for a special use permit to allow a family subdivision of a 2.9-parcel into two parcels of less than three acres in size, zoned A-1, General Agricultural, located at 4300 Centerville Road, further identified as Parcel No. (1-34) on James City County Real Estate Tax Map No. (36-2).

Staff recommended approval of the case with a condition listed in the resolution.

Mr. Norment opened the public hearing, and as no one wished to speak, he closed the public hearing.

Mr. DePue made a motion to approve Case No. SUP-35-91.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, Knudson, DePue (5). NAY: (0).

R E S O L U T I O N

CASE NO. SUP-35-91. CINDY JUMP

WHEREAS, the Board of Supervisors of James City County has adopted by Ordinance specific land uses that shall be subjected to a special use permit process; and

WHEREAS, the applicant has requested a special use permit to allow a family subdivision with lot sizes less than three acres in size in the A-1, General Agricultural District, on property identified as Parcel No. (1-34) on James City County Real Estate Tax Map No. (36-2).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-31-91 as described herein with the following condition:

1. Final subdivision approval shall be secured within 18 months from the date of the issuance of Case No. SUP-35-91.

2. Case No. Z-6-91. Stonehouse, Inc.

Mr. R. Patrick Friel, Senior Planner, stated that on November 4, 1991, during the rezoning of approximately 5,750 acres from A-1, General Agricultural, and B-1, General Business, to PUD, Planned Unit Development, six parcels totaling approximately 14 acres were not advertised or included in the resolution, but were part of the submitted package.

In concurrence with staff, the Planning Commission unanimously recommended approval of the rezoning with the same proffered conditions that were attached to the remainder of the site.

Mr. Norment opened the public hearing, and as no one wished to speak, he closed the public hearing.

Mr. Taylor made a motion to approve Case No. Z-6-91.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, Knudson, DePue (5). NAY: (0).

R E S O L U T I O N

CASE NO. Z-6-91. STONEHOUSE, INC.

WHEREAS, in accordance with Section 15.1-431 of the Code of Virginia, and Section 20-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified and a hearing scheduled on Zoning Case No. Z-6-91 for rezoning approximately 13.47 acres from A-1, General Agriculture; and .92 acres from B-1, General Business, to PUD, Planned Unit Development, on property identified as Parcel Nos. (1-5), (1-7) and (1-11) on James City County Real Estate Tax Map No. (4-4), Parcel No. (1-4) on James City County Real Estate Tax Map No. (5-4) and Parcel Nos. (1-18) and (1-19) on James City County Real Estate Tax Map No. (7-4); and

WHEREAS, the Planning Commission of James City County, following its public hearing, unanimously recommended approval of Case No. Z-6-91.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Zoning Case No. Z-6-91, with the same proffers that were accepted as part of Case No. Z-10-89.

G. BOARD CONSIDERATIONS

1. Case No. Z-12-90/SUP-48-90. Old Dominion French Winery

Mr. Allen J. Murphy, Jr., Principal Planner, stated no additional information had been received since the December 2, 1991, meeting. At that meeting, Mr. Murphy stated that Mr. Vernon Geddy, III, had applied on behalf of the Hankins Land Trust to rezone approximately 492 acres from A-1, General Agricultural, to M-1, Limited Industrial (approximately 255 acres) R-5, Multi-family Residential (approximately 223 acres), and A-1, General Agricultural (approximately 14 acres) with proffers. The special use permit application would allow a chateau/winery complex, a 300-room hotel, and other commercial uses in excess of 10,000 square feet, property located at the northeast juncture of Interstate 64 and Croaker Road.

Mr. Murphy reported that the Planning Commission reheard the cases at its November 12, 1991, meeting and recommended denial, by a 9-1 vote, for reasons that the proposed mix of uses did not maximize economic development potential of the Croaker Interchange area as suggested by the Comprehensive Plan.

Mr. Murphy stated that with the update of the Comprehensive Plan, staff recommended approval as the cases are generally consistent with the Comprehensive Plan and are located inside the Primary Service Area. Staff also recommended approval of the special use permit with conditions listed in the resolution.

Mr. DePue stated the decision was one of land use and made a motion to approve the cases.

Ms. Knudson stated opposition to the tourist related portion of the project and Mr. Edwards referred to the consultant's study of two years ago which recommended waiting for a better utilization of the property.

On a roll call, the vote was: AYE: Taylor, DePue, Norment (3).
NAY: Edwards, Knudson (2).

R E S O L U T I O N

CASE NO. Z-12-90. OLD DOMINION FRENCH WINERY

WHEREAS, in accordance with Section 15.1-431 of the Code of Section 20-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified and a hearing scheduled on Zoning Case No. Z-12-90 for rezoning approximately 492 acres from A-1, General Agricultural to M-1, Limited Industrial (approximately 255 acres), R-5, Multi-family Residential (approximately 223 acres), and A-1, General Agricultural (approximately 14 acres) with proffers on property identified as Parcels (1-39), (1-40), and (1-40A) on James City County Real Estate Tax Map No. (14-3).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Zoning Case No. Z-12-90, and accepts the voluntary proffers.

R E S O L U T I O N

CASE NO. SUP-48-90. OLD DOMINION FRENCH WINERY

WHEREAS, the Board of Supervisors of James City County has adopted by Ordinance specific land uses that shall be subjected to a special use permit process; and

WHEREAS, Case No. SUP-48-90 is an application for a special use permit to construct a chateau/winery complex, a 300-room hotel and other commercial uses in excess of 10,000 square feet on approximately 70 acres shown on the master plan submitted with this application on property identified as Parcels (1-39), (1-40), and (1-40A) on James City County Real Estate Tax Map No. (14-3).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-48-90 as described herein with the following conditions:

1. The secondary entrances on Croaker Road referred to in the proffers attached to this property shall not be permitted under this permit.
2. A plan for landscaping the internal buffer areas as shown on the special use permit plan shall be submitted and approved by the Development Review Committee as part of any development plan submitted in this area.
3. The square footage and location of commercial uses covered under this permit shall be governed by the submitted special use permit plan submitted as part of this application.
4. If construction in this area has not commenced within five years of the approval date of this permit, this permit shall be void. Commencement of construction shall be defined as the excavation and pouring of footings necessary for any structures allowed under this permit.

2. Joint Resolution to Amend the Restated Contract for the Joint Operation of Schools, City of Williamsburg and County of James City

Mr. John E. McDonald, Manager of Financial and Management Services, stated that the proposed Resolution repealed the revision to the school contract adopted in 1980 and offered changes to be effective on or after July 1, 1992.

Mr. Edwards made a motion to approve the Resolution.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, Knudson, DePue (5). NAY: (0).

R E S O L U T I O N

TO AUTHORIZE EXECUTION OF THE JOINT RESOLUTION TO AMEND
THE RESTATED CONTRACT FOR THE JOINT OPERATION OF SCHOOLS,
CITY OF WILLIAMSBURG AND COUNTY OF JAMES CITY

WHEREAS, the County of James City, the City of Williamsburg, the School Board of James City County and the School Board of the City of Williamsburg are desirous of amending the Restated Contract for the Joint Operation of Schools, City of Williamsburg and County of James City.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that it hereby adopts that Resolution dated December 1, 1991, entitled "Joint Resolution to Amend the Restated Contract for the Joint Operation of Schools, City of Williamsburg and County of James City" and authorizes and directs the Chairman and Clerk to the Board to execute the said Resolution.

Mr. Taylor left the meeting at 1:50 p.m.

3. Bruton Heights Property Exchange Agreement

Mr. Frank M. Morton, III, County Attorney, stated that he, Alvin Anderson, Esq., and Ms. Victoria Gussman, Colonial Williamsburg Foundation, had worked many months on the Exchange Agreement, Declaration of Covenants and Restrictions for Industrial Areas, Declaration of Covenants and Restrictions for School Site/Community Facility and License Agreement documents. He introduced Ms. Gussman who stated they were available to answer any questions the Board might have.

Mr. Edwards asked who would determine whether contamination had occurred at the Bruton Heights property.

Ms. Gussman responded that as a requirement, an environmental consultant would be hired to make that determination when underground storage tanks are removed.

Mr. Edwards made a motion to approve the resolution.

Mr. Norment expressed appreciation to all concerned parties that the process worked well. Mr. DePue echoed those comments.

On a roll call, the vote was: AYE: DePue, Edwards, Knudson, Norment (4). NAY: (0). ABSENT: Taylor.

R E S O L U T I O N

BRUTON HEIGHTS - LOCUST GROVE AGREEMENTS

WHEREAS, the County of James City (the "County"), the City of Williamsburg (the "City"), The Colonial Williamsburg Foundation (the "Foundation") and Williamsburg Development, Inc., ("WDI"), are desirous of exchanging property as described therein and reaching other agreements pertaining to the property.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that it hereby authorizes and directs the Chairman and Clerk to the Board of Supervisors to execute the following:

1. Exchange Agreement between the County, the City, the Foundation and WDI dated 1st day of December, 1991, which agreement is attached hereto and made a part hereof.
2. Declaration of Covenants and Restrictions - James River Commerce Center (Industrial Site) dated this 1st day of December, 1991, by and between WDI, the County and the Foundation, which declaration is attached hereto and made a part hereof.
3. Declaration of Covenants and Restrictions - Locust Grove (School/Community Facility Site) dated this 1st day of December, 1991, by the County and the Foundation, which declaration is attached hereto and made a part hereof.

G. PUBLIC COMMENT - None

H. REPORTS OF THE COUNTY ADMINISTRATOR - None

I. BOARD REQUESTS AND DIRECTIVES

Mr. Taylor returned to the meeting at 2:05 p.m.

Ms. Knudson stated she felt that the Board should support York County's latest resolution on widening of Coleman Bridge.

Mr. Sanford B. Wanner, Assistant County Administrator, stated staff investigated the request and was reluctant to prepare a resolution of recommendation for Board consideration.

Mr. DePue asked staff for a memo reflecting those thoughts.

Mr. Taylor asked about status of appointment of the Extension Office Unit Chairman and made a motion to urge the appointment of Ed Overton to that position.

After Board and staff discussion, Mr. DePue asked that a letter be sent to the State stating the Board's interest in the leadership position with respect to reorganizational activities.

Mr. Taylor withdrew his motion so that the matter could be discussed at the next executive session meeting.

Mr. Edwards emphasized to County residents that staff was proceeding with the process of finding space for nonprofit organizations.

Mr. DePue commemorated Garland Woody and expressed sadness at the loss of a man so dedicated in County service.

Mr. Norman echoed Mr. DePue's words and added that Garland Woody's legacy was the James City County Fire Department and Garland's selection of Richard Miller as Assistant Fire Chief to help him in building and training the department.

On behalf of staff, Mr. Norman thanked Mr. Norment for his support and encouragement, sense of humor and lightness he brought to serious tasks and service on the Board.

Mr. Norment recessed the Board for a James City Service Authority meeting at 2:20 p.m.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, Knudson, DePue (5). NAY: (0).

Mr. Norment reconvened the Board into open session at 2:25 p.m. for a work session on Financial Trends FY 1992.

WORK SESSION - Financial Trends

Mr. John E. McDonald, Manager of Financial and Management Services, presented a report that considered seven major categories of demographic data, revenue trends, expenditure trends, indicators of financial condition, comparison with other localities, school operating and capital requirements, capital financing needs and debt service, and a forecast of expected revenues and expenditures for the next five years.

Discussion by Board and staff followed.

School Contract Amendment

Mr. Edwards made a motion to reconsider the School Contract.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, Knudson, DePue (5). NAY: (0).

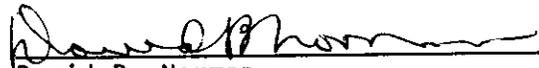
Mr. Edwards made a motion to approve the School Contract with a change to the language on page 5, 2(g) to read "expansion of existing school bus fleet."

On a roll call, the vote was AYE: Norment, Taylor, Edwards, Knudson, DePue (5). NAY: (0).

Mr. Taylor made a motion to adjourn.

On a roll call, the vote was AYE: Norment, Taylor, Edwards, Knudson, DePue (5). NAY: (0).

The Board adjourned at 3:28 p.m.



David B. Norman
Clerk to the Board

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Revision #3

PROFFERS

These PROFFERS are made as of this 28th day of October, 1991 by CRESTAR BANK, as Trustee of Hankins Land Trusts No. 1 and No. 2, GEORGE HANKINS, JR., ANN HANKINS, HOWARD HANKINS, KELLY HANKINS, MARY HENLY THOMPSON and LEROY THOMPSON (together with their successors and assigns, the "Owners").

RECITALS:

A. Owners are the owners of a tract of land containing approximately 491.8 acres located in James City County, Virginia (the "County") more particularly shown and set out on the Development Plan (the "Plan") dated March 1, 1991, prepared by AES, a professional corporation, and submitted to the County herewith (the "Property").

B. Owners have applied for a rezoning of the Property. Owners have requested that approximately 254.5 acres be rezoned from A-1 to M-1, with proffers, approximately 223.3 acres be rezoned from A-1 to R-5, with proffers, and approximately 14.0 acres be rezoned from A-1 to A-1, with proffers.

C. The M-1, R-5 and A-1 provisions of the County Zoning Ordinance may be deemed inadequate for the orderly development of the Property.

D. Owners desire to offer to the County certain conditions on the development of the Property not generally applicable to land zoned M-1, R-5 and A-1 for the protection and enhancement of

the community and to provide for the orderly development of the Property.

NOW, THEREFORE, in consideration of the approval by the Board of Supervisors of James City County of the requested rezoning described above, and pursuant to Section 15.1-491.2:1 of the Code of Virginia, as amended, Owners agree that they shall meet and comply with all of the following conditions in the development of the Property. If the requested rezoning is not granted by the County, these Proffers shall thereupon be null and void.

CONDITIONS

1. Traffic Studies. Owners have submitted to the County and the Virginia Department of Transportation ("VDOT") a Traffic Impact Study dated March 1, 1991 (based on projected traffic generation from the development of the Property) for their review and approval. Before the earlier to occur of (i) the County issuing building permits for more than 1,000,000 square feet of floor area within the Property or (ii) the expiration of five years from the date a certificate of occupancy is issued by the County for more than an aggregate of 50,000 square feet of floor area on the Property, Owners shall submit to the County and VDOT for their review and approval an updated Traffic Impact Study of the development of the Property by an independent traffic consultant, which shall be based on actual traffic counts from the Property. The Study shall indicate the traffic improvements needed to accommodate continued development of the

Property and indicate at what point in the continued development (based on number of square feet of floor area) such improvements are required. Continued development of the Property shall then be limited to the level (based on the number of square feet of floor area) which can be accommodated by the surrounding road system until the recommended improvements have been constructed.

2. Entrances. There shall be no more than five entrances into the Property, of which no more than three shall be full access entrances (i.e. entrances permitting turning movements in each direction in and out of the entrance). The main entrance into the Property shall be located opposite Cedar Point Road as shown on the Plan. The other two full access entrances shall be in the general locations shown on the Plan, one on Fenton Mill Road and one on Moss Side Lane, with such minor changes in their location as may be approved by the Development Review Committee. The remaining two permitted entrances shall be limited access entrances (i.e. permitting only right turns into and out of the entrance) and shall be along Croaker Road, and shall be subject to all required approvals.

3. Road Improvements. (a) The following road improvements shall be completed or construction thereof shall have commenced and guarantees in accordance with § 15.1-491.3 of the Virginia Code and the County Zoning Ordinance ("guarantees") for their completion and shall have been posted with the County before the County issues Certificates of Occupancy for more than 10,000 square feet of floor area within the Property:

- (i) Croaker Road shall be improved, at no cost to the County or VDOT, to four lanes from the end of the existing four lane section adjacent to the Property to immediately beyond the main entrance to the Property where it shall taper to two lanes. Necessary turn lanes with tapers and storage areas as required by VDOT based upon the approved Traffic Impact Study shall be constructed on Croaker Road and James City Parkway at the main entrance into the Property.
- (ii) A traffic signal shall be installed, at no cost to the County or VDOT, at the intersection of Croaker Road and the main entrance into the Property.
- (iii) Fenton Mill Road from Croaker Road to James City Parkway shall be closed, the existing pavement removed and seedlings planted thereon with the approval of VDOT.
- (iv) The crossover in the median of Croaker Road at its intersection with Fenton Mill Road shall be closed and the existing turn lanes shall be removed.
- (v) James City Parkway shall be constructed from the main entrance on Croaker Road to the location of the sewer pump station as shown on the Overall Water and Sewer Plan submitted to the County as a part of the Plan. James City Parkway from the main entrance shown on the Plan to its intersection with Corporate Campus Drive shall have a median at least 30 feet in width. Necessary turn lanes with tapers and storage areas as

required by VDOT based on the approved Traffic Impact Study shall be constructed.

(vi) Chateau Boulevard shall be constructed except for the segment thereof shown as "Possible Future Connection" on the Plan.

(vii) The new intersection of Fenton Mill Road and James City Parkway on the south side of the Property shall be constructed. Necessary turn lanes with tapers and storage areas as required by VDOT based on the approved Traffic Impact Study shall be constructed.

(b) Before the County shall issue any building permits for construction of buildings within the northern area designated M-1 Light Industrial on the Plan, (i) Moss Side Lane shall be improved, at no cost to the County or VDOT, to a 22 foot road from Croaker Road to its intersection with Corporate Campus Drive, or construction of the improvement shall have commenced and guarantees for its completion posted with the County, and (ii) all of Corporate Campus Drive shall have been constructed or its construction shall have commenced and guarantees for its completion shall have been posted with the County. The location of Corporate Campus Drive may be changed from that shown on the Plan, with the consent of the Director of Planning, to accommodate the requirements of potential users.

(c) A traffic signal shall be installed, at no cost to the County or VDOT, at the intersection of James City Parkway and Chateau Boulevard when determined to be warranted by VDOT or at

an earlier time in the discretion of the Owner with the approval of VDOT.

(d) The segment of Chateau Boulevard designated on the Plan as "Possible Future Link" shall be constructed at the request of the County based on the type and intensity of development on the southeastern area designated M-1 Light Industrial on the Plan.

(e) The road improvements proffered above shall be designed and constructed in accordance with VDOT standards and specifications, shall have the right-of-way width required by VDOT standards based on the type of road (i.e. with or without curb and gutter) and the needed capacity of the road and shall be dedicated to the County upon their completion.

(f) Roads within the portion of the Property to be rezoned R-5, with proffers, and the entrance road from Chateau Boulevard or James City Parkway into this area may be private. Any such private roads shall be designed and constructed in accordance with the County's standards and guidelines for private roads. Certifications in form and substance acceptable to the County Engineer that the construction of such private roads meets these standards and guidelines shall be provided to the County.

4. Uses. (a) Within the approximately 70 acres designated on the Plan as Light Industrial (Retail) M-1, the following use restrictions shall apply:

(i) The Chateau Winery building shall contain no more than 135,000 square feet of floor area of which no

more than 70,000 square feet shall be used for retail uses.

(ii) There shall be no more than one hotel/convention center of up to 300 rooms, subject to Condition 10 hereof, with accessory retail and restaurant uses;

(iii) No more than 120,000 square feet of floor area within all buildings (excluding retail uses in the Chateau Winery building and hotel/convention center referred to above) constructed in this portion of the Property shall be used for retail purposes until Owner has submitted the updated Traffic Impact Study described in Condition 1 hereof. If the approved Study indicates traffic from additional retail space can be accommodated, an additional 30,000 square feet of floor area in this portion of the Property can be used for retail purposes. As used herein, the phrase "floor area used for retail purposes" shall have the same meaning as the term "retail floor area" as used in Section 20-13 of the Zoning Ordinance.

(iv) There shall be no "strip shopping centers" (as defined below). For purposes of this Condition, "strip shopping center" shall mean a group of at least three physically connected and architecturally unified retail establishments which are planned, developed, owned and managed as a single operating unit, which

include an anchor tenant or tenants and other smaller retail establishments, which generally face the same direction, usually toward a public road, and for which on-site parking is provided in direct relationship to the characteristics of the establishments contained within the center.

While Owner owns or has the contractual right to purchase any of the Property, Owner shall submit reports to the County on a semi-annual basis beginning six months from the date the first certificate of occupancy is issued for development on the Property setting forth the number of square feet of retail floor area within each building on the Property.

(b) Within the approximately 184.5 acres designated on the Plan as Light Industrial M-1, no more than 20% of the floor area of any building constructed within this portion of the Property shall be used for retail uses. Only retail uses accessory to the main use of the building shall be permitted.

(c) The approximately 14.0 acres designated A-1 Vineyards on the Plan shall be used only for agricultural and passive recreational uses (including pedestrian trails and picnic areas) and water impoundments.

(d) The approximately 223.3 acres designated on the Plan as R-5 Time Share w/18 Hole Golf Course shall be developed as (i) one eighteen hole golf course, with related driving range, putting green, clubhouse, maintenance and cart storage facilities and (ii) a "time-share project" as defined in the Virginia Real

Estate Time-Share Act, Va. Code § 55-360 et seq. (the "Act") containing no more than 500 "time-share units" (as defined in the Act), subject to Condition 10 hereof, with related recreational amenities, sales and maintenance facilities. There shall be no conventionally owned residential development on the Property. The golf course shall be open to play by members of the general public.

5. Water and Sewer. (a) Except as provided in condition 5 (b) below, all development upon the Property shall be connected to public water and sewer systems approved by the County.

(b) A sales/information/administration/management facility of up to 10,000 square feet of floor area may be constructed and temporarily connected to a private well and septic system. The facility shall connect to approved public water and sewer systems when available at the Property.

(c) Before the County issues Certificates of Occupancy for more than 10,000 square feet of floor area within the Property, the following water and sewer improvements shall be constructed or their construction shall have commenced and guarantees shall have been posted for their completion:

(i) Extension of off-site sewer and water lines to the Property.

(ii) The 450,000 gallon water storage facility and related facilities including an all weather road providing access to the facilities in the general location shown on the Overall Water and Sewer Plan.

(iii) The sewer pump station in the general location shown on the Overall Water and Sewer Plan.

(iv) Water lines and gravity sewer lines along James City Parkway from its intersection with Fenton Mill Road to the sewer pump station and along Chateau Boulevard (including the segment designated as "Possible Future Link").

(v) A water line along James City Parkway from its intersection with Chateau Boulevard to its intersection with Croaker Road, with a stub connection at Corporate Campus Drive.

(vi) A sewer line along James City Parkway from its intersection with Chateau Boulevard to its intersection with Corporate Campus Drive.

(d) Before the County shall issue any building permits for the construction of buildings within the northern area designated as M-1 Light Industrial on the Plan, water and sewer lines shall have been constructed along the length of Corporate Campus Drive or their construction shall have commenced and guarantees for their completion shall have been posted with the County.

(e) Owner shall submit to the County Engineer for review and approval schematic internal sewer plans for all sewer lines other than those proffered above before submission of detailed construction plans.

6. Time-Share Estate Owners Association. A time-share estate owners association shall be formed in accordance with the

Act and shall have all powers and responsibilities as provided in the Act. The articles of incorporation and bylaws of the association shall be submitted to and reviewed by the County Attorney. As portions of the R-5 Property (exclusive of the time-share units themselves) are conveyed to the owners association in accordance with the Act, the association shall assume responsibility for all costs associated with the maintenance of the time-share project, including maintenance of private roads and common areas. In portions of the R-5 property not developed as a time-share project and the portion of the R-5 property developed as the time-share project until conveyed to the owners association, Owner shall be responsible for maintenance of any private roads and common areas.

7. Perimeter Buffer. There shall be a buffer area around the perimeter of the Property in the locations, with the width and of the type specified on the Plan. Where the perimeter of the Property abuts Croaker Road, Moss Side Lane and Riverview Road, the buffer shall be measured from the proposed road-right-way as shown on the Plan. Owner has submitted to the County for its review and approval a typical landscaping plan for the buffer area adjacent to Croaker Road. Landscaping within the buffer area adjacent to Croaker Road shall be generally in accordance with the approved typical landscaping plan and shall be subject to the approval of the Development Review Committee in the site plan approval process. Breaks or intrusions in the buffer area for entrances, roads, utilities, walkways, fences, signs and

other similar facilities shall be permitted with the prior approval of the Development Review Committee or the Planning Commission.

8. Archaeological. A Phase I Archaeological Study of the Property by the William and Mary Archaeological Project Center has been prepared and submitted to the County. The portion of the Property designated as "Site #1 - Prehistoric Base Camp (6500 B.C. - 1400 A.D.)" shall be preserved as recommended. A Phase II evaluation (meeting the guidelines set forth in the Virginia Department of Historic Resource's Guidelines for Preparing Archaeological Resource Management Reports and conducted under the supervision of a qualified archaeologist who meets, at a minimum the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards) of each of the areas designated as "Site #2 through Site #6" shall be completed before construction begins on the site in question. The recommendations of the Phase II study shall be incorporated into development and site grading or construction plans for the sites in question.

9. Well Site. Owner shall convey to the James City Service Authority upon the request of the Service Authority and without cost a parcel of 1.0 acre with access thereto for use as a well site in the location shown on the Overall Water and Sewer Plan or, if the Service Authority determines that the operation of a well on the site shown on the Overall Water and Sewer Plan is unacceptable due to water quality or quantity, in another

location on the Property acceptable to the Service Authority and Owners.

10. Phasing. (a) Anything to the contrary herein notwithstanding, the hotel referred to in Condition 4 (a) (ii) shall have no more than 150 rooms until the County has issued building permits and footings have been constructed and inspected for more than 500,000 square feet of light industrial uses (not including retail uses) on the Property, at which time the additional 150 rooms may be constructed.

(b) Anything to the contrary herein notwithstanding, the time-share project referred to in Condition 4 (c) shall initially contain no more than 100 time-share units. Thereafter for each 100,000 square feet of light industrial uses (not including retail uses) on the Property for which building permits have been issued and footings constructed and inspected, an additional 50 time-share units may be constructed up to the proffered limit of 500 units.

WITNESS the following signatures.

CRESTAR BANK, Trustee

By: [Signature]
Title: vice president

[Signature]
GEORGE HANKINS, JR.

[Signature]
ANN HANKINS

[Signature]
HOWARD HANKINS

[Signature]
KELLY HANKINS

[Signature]
MARY HENRY THOMPSON

[Signature]
LEROY THOMPSON

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF Richmond, to-wit:

The foregoing instrument was acknowledged before me this
27th day of November, 1991 by W. D. Harris,
Vice President of CRESTAR BANK, Trustee.

Helen C. Miller
NOTARY PUBLIC

My commission expires:
_____.

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF Newport News, to-wit:

The foregoing instrument was acknowledged before me this
27 day of November, 1991 by GEORGE HANKINS, JR.

Judy D. Knobling
NOTARY PUBLIC

My commission expires:

Jan. 9, 1993.

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF Newport News, to-wit:

The foregoing instrument was acknowledged before me this
27 day of November, 1991 by ANN HANKINS.

Judy D. Knobling
NOTARY PUBLIC

My commission expires:

Jan. 9, 1993.

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF Newport News, to-wit:

The foregoing instrument was acknowledged before me this
27 day of November, 1991 by HOWARD HANKINS.

Judy D Knobling
NOTARY PUBLIC

My commission expires:
Jan. 9, 1993.

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF Newport News, to-wit:

The foregoing instrument was acknowledged before me this
27 day of November, 1991 by KELLY HANKINS.

Judy D Knobling
NOTARY PUBLIC

My commission expires:
Jan. 9, 1993.

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF Newport News, to-wit:

The foregoing instrument was acknowledged before me this
27 day of November, 1991 by MARY HENLY THOMPSON.

Judy D Knobling
NOTARY PUBLIC

My commission expires:
Jan. 9, 1993.

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF Newport News to-wit:

The foregoing instrument was acknowledged before me this
27 day of November, 1991 by LEROY THOMPSON.

Judy D Knobling
NOTARY PUBLIC

My commission expires:

Jan. 9, 1993.

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

In the Clerk's office of the Circuit Court of the
City of Williamsburg, County of James City the

11 day of Feb, 1992 This Knobling

_____ was presented with certificate annexed and
admitted to record at 12:56 o'clock

Teste: Helene S. Ward, Clerk

by Helene S. Ward
Deputy Clerk

Revision Date 12/9/91

Whereas, by deed dated September 11, 1939, recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City in Williamsburg Deed Book 18, Page 60, et seq., Williamsburg Restoration, Incorporated conveyed to the School Board of the City of Williamsburg, certain real property ("the Bruton Heights School Property"); and

Whereas, the Contract Agreement for the Joint Operation of Schools, City of Williamsburg and James City County, dated January 14, 1954, effective July 1, 1955, vested in the County School Board of James City County an undivided one-half interest in the Bruton Heights School Property without the execution of any further deed or conveyance upon the approval of said transfer by the Circuit Court for the City of Williamsburg and County of James City; and

Whereas, the Circuit Court for the City of Williamsburg and County of James City by Order recorded in Chancery Order Book 11, page 385, et seq. did approve the aforesaid transfer; and

Whereas, the Amended and Restated Contract for the Joint Operation of Schools, City of Williamsburg and County of James City, dated October 9, 1980, affirmed that the County School Board of James City County, Virginia and the School Board of the City of Williamsburg, Virginia, held joint title to the Bruton Heights School Property; and

Whereas, Section 22.1-129 of the Code of Virginia (1950), as

amended, provides that whenever a school board determines that it has no use for some of its real property, the title to such real property shall be conveyed to the county or city or town comprising the school division, or if the school division is composed of more than one county or city, to the county or city in which the property is located and that to convey the title, the school board shall adopt a resolution that such real property is surplus and shall record such resolution along with the deed to the property with the Clerk of the Circuit Court for the county or city where such property is located and that upon the recording of the resolution and the deed, the title shall vest in the appropriate county, city or town; and

Whereas, the County School Board of James City County, Virginia and the School Board of the City of Williamsburg, Virginia on November 21, 1989 adopted a joint resolution declaring that the Bruton Heights School Property was surplus; and

Whereas, the Bruton Heights School Property is located within the jurisdictional boundaries of the City of Williamsburg, Virginia; and

Whereas, the County School Board of James City County, Virginia, and the School Board of the City of Williamsburg, Virginia, did execute and deliver a deed dated December 19, 1989 conveying title to the Bruton Heights School Property to the City of Williamsburg, Virginia; and

Whereas, the City of Williamsburg, Virginia has publicly solicited written and oral comments and conducted a public meeting

prior to the recordation of the aforesaid deed in an effort to determine the best use of the Bruton Heights School Property; and

Whereas, The Colonial Williamsburg Foundation desires to develop the Bruton Heights School Property which development would include the rehabilitation of the original Bruton Heights School building, auditorium and cottage with the following anticipated uses: an educational complex with research libraries, offices and facilities for historical and archaeological research, conservation, collection storage, program planning, development and administration of educational programs and interpreter training ("the Bruton Heights School Educational Center"); and

Whereas, the City of Williamsburg and the County of James City and each of them have determined that the Bruton Heights School Educational Center will be the best use of the Bruton Heights School Property and be in the best interest of and promote the health, safety and welfare of the citizens of both jurisdictions; and

Whereas, the City of Williamsburg is now prepared to record the aforesaid deed dated December 19, 1989 and the aforesaid resolution dated November 21, 1989; and

Whereas, on December 13, 1990, the City of Williamsburg revised its 1989 Comprehensive Land Use Plan designation of the Bruton Heights School Property to "Colonial Williamsburg Support" which designation is in fact consistent with the intended uses identified above; and

Whereas, on October 10, 1991, the City of Williamsburg

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completed a comprehensive amendment of its Zoning Ordinance and Official Zoning Map in accordance with its Comprehensive Land Use plan, as amended and described above, which zoning amendments designate the Bruton Heights School Property as "Museum Support District (MS)" which designation will permit generally the uses contemplated by the Bruton Heights School Educational Center; and

Whereas, The Colonial Williamsburg Foundation has offered certain real properties to each of the City of Williamsburg, Virginia and the County of James City, Virginia, in exchange for the conveyance of the Bruton Heights School Property which conveyances are deemed to be in the interest of and promote the health, safety and welfare of each of said jurisdictions.

NOW, THEREFORE, this Agreement made this 15th day of December, 1991.

WITNESSETH: That for and in consideration of the agreements herein contained, the sufficiency of which is hereby acknowledged, the City of Williamsburg, Virginia ("the City"), the County of James City, Virginia ("the County"), The Colonial Williamsburg Foundation ("the Foundation") and Williamsburg Developments, Inc. ("WDI") agree as follows:

1. Agreement among the City, the County and the Foundation

A. The City, acting on its own behalf and as agent for the County, shall convey to the Foundation the Bruton Heights School Property, more particularly described as follows:

All that certain tract and parcel of land in the City of Williamsburg, Virginia, being part of the tract of land situate in the area south and east of the Colonial National Monument Parkway, west of the Capitol Landing

Road, north of the C. & O. right of way and being more particularly bounded and described as "Area - 30.6144 Acres" on a plat entitled "Plat Of Bruton Heights School Standing In The Name Of The School Board Of The City Of Williamsburg, To Be Conveyed To Colonial Williamsburg Foundation", dated 9/27/90, revised 11/15/90 and 12/28/90, prepared by Charles R. Osborne of Langley and McDonald, P.C. and attached as Exhibit A.

B. The conveyance shall be by Special Warranty Deed prepared at the expense of the City. Provided the improvements on said property remain in substantially the same condition as they were on the date of this agreement, the Foundation agrees to rehabilitate the interior and exterior of the Original Building (without appendages) but including the auditorium and the cottage. The rehabilitation shall be commenced on either of said structures within twelve (12) months from the date of recordation of said deed, and be substantially completed on both structures within five (5) years of the date of commencement of rehabilitation. This obligation shall be fully met and satisfied upon the issuance by the City of certificates of occupancy for both structures to be rehabilitated. This obligation shall survive the delivery and recordation of the aforesaid deed. This obligation of rehabilitation shall be terminated if substantial damage of said structure(s) occurs by fire, windstorm, flood or other casualty beyond the control of the Foundation at any time prior to the completion of said rehabilitation.

The Foundation shall provide, by a license in the executed form attached as Exhibit B which the parties hereto agree shall not be recorded, the right for the County School Board of James City

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County and the School Board of the City of Williamsburg to continue using the school bus garage/maintenance/storage facilities designated on the plat attached to Exhibit B, until December 31, 1992 or such sooner date as may be mutually agreeable.

C. Title to the Bruton Heights School Property shall be insurable at the Foundation's expense by Lawyers Title Insurance Corporation or other national title insurance company of the Foundation's choice, subject only to exceptions normally appearing in owners' policies, exceptions as to easements and restrictions which will not materially interfere with the development of the property, and exception as to the aforesaid license to use of the school bus garage/maintenance/storage facilities.

D. If the Foundation determines that title to the property is not insurable by Lawyers Title Insurance Corporation or other national title insurance company, or, if the property is subject to easements or restrictions of record or apparent on the ground which will materially interfere with the Foundation's intended development and use of the Bruton Heights School Property, then the Foundation may terminate this contract by giving written notice to the City and the County at any time prior to settlement.

E. The risk of loss or damage to said property by fire or other casualty until the deed of conveyance is delivered to the Foundation is assumed by the Foundation.

2. Agreement between the City and Foundation

A. The Foundation shall convey to the City the following described properties:

Revision Date 12/9/91

Whereas, by deed dated September 11, 1939, recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City in Williamsburg Deed Book 18, Page 60, et seq., Williamsburg Restoration, Incorporated conveyed to the School Board of the City of Williamsburg, certain real property ("the Bruton Heights School Property"); and

Whereas, the Contract Agreement for the Joint Operation of Schools, City of Williamsburg and James City County, dated January 14, 1954, effective July 1, 1955, vested in the County School Board of James City County an undivided one-half interest in the Bruton Heights School Property without the execution of any further deed or conveyance upon the approval of said transfer by the Circuit Court for the City of Williamsburg and County of James City; and

Whereas, the Circuit Court for the City of Williamsburg and County of James City by Order recorded in Chancery Order Book 11, page 385, et seq. did approve the aforesaid transfer; and

Whereas, the Amended and Restated Contract for the Joint Operation of Schools, City of Williamsburg and County of James City, dated October 9, 1980, affirmed that the County School Board of James City County, Virginia and the School Board of the City of Williamsburg, Virginia, held joint title to the Bruton Heights School Property; and

Whereas, Section 22.1-129 of the Code of Virginia (1950), as

amended, provides that whenever a school board determines that it has no use for some of its real property, the title to such real property shall be conveyed to the county or city or town comprising the school division, or if the school division is composed of more than one county or city, to the county or city in which the property is located and that to convey the title, the school board shall adopt a resolution that such real property is surplus and shall record such resolution along with the deed to the property with the Clerk of the Circuit Court for the county or city where such property is located and that upon the recording of the resolution and the deed, the title shall vest in the appropriate county, city or town; and

Whereas, the County School Board of James City County, Virginia and the School Board of the City of Williamsburg, Virginia on November 21, 1989 adopted a joint resolution declaring that the Bruton Heights School Property was surplus; and

Whereas, the Bruton Heights School Property is located within the jurisdictional boundaries of the City of Williamsburg, Virginia; and

Whereas, the County School Board of James City County, Virginia, and the School Board of the City of Williamsburg, Virginia, did execute and deliver a deed dated December 19, 1989 conveying title to the Bruton Heights School Property to the City of Williamsburg, Virginia; and

Whereas, the City of Williamsburg, Virginia has publicly solicited written and oral comments and conducted a public meeting

prior to the recordation of the aforesaid deed in an effort to determine the best use of the Bruton Heights School Property; and

Whereas, The Colonial Williamsburg Foundation desires to develop the Bruton Heights School Property which development would include the rehabilitation of the original Bruton Heights School building, auditorium and cottage with the following anticipated uses: an educational complex with research libraries, offices and facilities for historical and archaeological research, conservation, collection storage, program planning, development and administration of educational programs and interpreter training ("the Bruton Heights School Educational Center"); and

Whereas, the City of Williamsburg and the County of James City and each of them have determined that the Bruton Heights School Educational Center will be the best use of the Bruton Heights School Property and be in the best interest of and promote the health, safety and welfare of the citizens of both jurisdictions; and

Whereas, the City of Williamsburg is now prepared to record the aforesaid deed dated December 19, 1989 and the aforesaid resolution dated November 21, 1989; and

Whereas, on December 13, 1990, the City of Williamsburg revised its 1989 Comprehensive Land Use Plan designation of the Bruton Heights School Property to "Colonial Williamsburg Support" which designation is in fact consistent with the intended uses identified above; and

Whereas, on October 10, 1991, the City of Williamsburg

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completed a comprehensive amendment of its Zoning Ordinance and Official Zoning Map in accordance with its Comprehensive Land Use plan, as amended and described above, which zoning amendments designate the Bruton Heights School Property as "Museum Support District (MS)" which designation will permit generally the uses contemplated by the Bruton Heights School Educational Center; and

Whereas, The Colonial Williamsburg Foundation has offered certain real properties to each of the City of Williamsburg, Virginia and the County of James City, Virginia, in exchange for the conveyance of the Bruton Heights School Property which conveyances are deemed to be in the interest of and promote the health, safety and welfare of each of said jurisdictions.

NOW, THEREFORE, this Agreement made this 1st day of December, 1991.

WITNESSETH: That for and in consideration of the agreements herein contained, the sufficiency of which is hereby acknowledged, the City of Williamsburg, Virginia ("the City"), the County of James City, Virginia ("the County"), The Colonial Williamsburg Foundation ("the Foundation") and Williamsburg Developments, Inc. ("WDI") agree as follows:

1. Agreement among the City, the County and the Foundation

A. The City, acting on its own behalf and as agent for the County, shall convey to the Foundation the Bruton Heights School Property, more particularly described as follows:

All that certain tract and parcel of land in the City of Williamsburg, Virginia, being part of the tract of land situate in the area south and east of the Colonial National Monument Parkway, west of the Capitol Landing

Road, north of the C. & O. right of way and being more particularly bounded and described as "Area - 30.6144 Acres" on a plat entitled "Plat Of Bruton Heights School Standing In The Name Of The School Board Of The City Of Williamsburg, To Be Conveyed To Colonial Williamsburg Foundation", dated 9/27/90, revised 11/15/90 and 12/28/90, prepared by Charles R. Osborne of Langley and McDonald, P.C. and attached as Exhibit A.

B. The conveyance shall be by Special Warranty Deed prepared at the expense of the City. Provided the improvements on said property remain in substantially the same condition as they were on the date of this agreement, the Foundation agrees to rehabilitate the interior and exterior of the Original Building (without appendages) but including the auditorium and the cottage. The rehabilitation shall be commenced on either of said structures within twelve (12) months from the date of recordation of said deed, and be substantially completed on both structures within five (5) years of the date of commencement of rehabilitation. This obligation shall be fully met and satisfied upon the issuance by the City of certificates of occupancy for both structures to be rehabilitated. This obligation shall survive the delivery and recordation of the aforesaid deed. This obligation of rehabilitation shall be terminated if substantial damage of said structure(s) occurs by fire, windstorm, flood or other casualty beyond the control of the Foundation at any time prior to the completion of said rehabilitation.

The Foundation shall provide, by a license in the executed form attached as Exhibit B which the parties hereto agree shall not be recorded, the right for the County School Board of James City

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County and the School Board of the City of Williamsburg to continue using the school bus garage/maintenance/storage facilities designated on the plat attached to Exhibit B, until December 31, 1992 or such sooner date as may be mutually agreeable.

C. Title to the Bruton Heights School Property shall be insurable at the Foundation's expense by Lawyers Title Insurance Corporation or other national title insurance company of the Foundation's choice, subject only to exceptions normally appearing in owners' policies, exceptions as to easements and restrictions which will not materially interfere with the development of the property, and exception as to the aforesaid license to use of the school bus garage/maintenance/storage facilities.

D. If the Foundation determines that title to the property is not insurable by Lawyers Title Insurance Corporation or other national title insurance company, or, if the property is subject to easements or restrictions of record or apparent on the ground which will materially interfere with the Foundation's intended development and use of the Bruton Heights School Property, then the Foundation may terminate this contract by giving written notice to the City and the County at any time prior to settlement.

E. The risk of loss or damage to said property by fire or other casualty until the deed of conveyance is delivered to the Foundation is assumed by the Foundation.

2. Agreement between the City and Foundation

A. The Foundation shall convey to the City the following described properties:

(1) The land, with improvements, identified on City of Williamsburg Tax Maps as Parcels 465-(05)-00-009 through 016 (the "Boundary Street Building"), and more particularly described as follows:

That certain piece or parcel of land situate in the City of Williamsburg, Virginia containing 1.475 acres, more or less, but sold in gross and not by the acre, as shown on plat entitled, "A SURVEY OF 1.475 ACRES OF LAND STANDING IN THE NAME OF THE COLONIAL WILLIAMSBURG FOUNDATION, CITY OF WILLIAMSBURG, VIRGINIA" dated August 17, 1990, revised 10/5/90, prepared by Lynn D. Evans, and attached as Exhibit C.

(2) The land, with improvements, identified on City of Williamsburg Tax Maps a Parcel 465-(0A)-00-013 (the "Conservation Laboratory"), and more particularly described as follows:

That certain piece or parcel of land situate in the City of Williamsburg, Virginia containing 0.489 acre, more or less, but sold in gross and not by the acre, as shown on plat entitled, "A SURVEY OF 0.489 ACRES OF LAND STANDING IN THE NAME OF THE COLONIAL WILLIAMSBURG FOUNDATION, CITY OF WILLIAMSBURG, VIRGINIA" dated August 17, 1990, prepared by Lynn D. Evans, and attached as Exhibit D.

(3) The land identified on City of Williamsburg Tax Maps as Parcel 465-(0A)-00-12, and more particularly described as follows:

That certain piece or parcel of land situate in the City of Williamsburg, Virginia, containing 0.234 acre, more or less, but sold in gross and not by the acre, as shown on plat entitled, "A SURVEY OF 0.234 ACRES OF LAND STANDING IN THE NAME OF THE COLONIAL WILLIAMSBURG FOUNDATION, CITY OF WILLIAMSBURG, VIRGINIA" dated August 17, 1990, prepared by Lynn D. Evans, and attached as Exhibit E.

B. Conveyance of the above properties shall be by General Warranty Deed with English Covenants of Title prepared at the Foundation's expense. The Foundation shall bear all grantor's tax chargeable upon recordation of such deed. The deed shall reserve

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exclusively to the Foundation the right to occupy the Boundary Street Building and the Conservation Laboratory for libraries, conservation laboratories, offices and other permitted uses under the existing zoning ordinances of the City until July 31, 1996, time being of the essence. The Foundation, by separate agreement in the form attached as Exhibit F, which the parties hereto agree shall not be recorded, shall agree to maintain during its occupancy, the Boundary Street Building and Conservation Laboratory in good order and repair equivalent to that generally prevailing in the other office building facilities owned and occupied by the Foundation, so that upon termination of its occupancy, the premises shall be left in good order and condition, normal wear and tear excepted; however, the City shall be responsible for all costs in excess of Five Thousand and No/100 Dollars (\$5,000.00) incurred by the Foundation for each twelve (12) month period after settlement for maintenance of the Conservation Laboratory and all costs in excess of Twenty Five Thousand and No/100 Dollars (\$25,000.00) incurred by the Foundation for each twelve (12) month period after settlement for maintenance of the Boundary Street Building. Such agreement shall also require the Foundation during its occupancy to maintain in force:

- (1) Broad form general liability insurance with a company or companies acceptable to the City covering the properties occupied by the Foundation. Such insurance shall name the City as an additional insured and shall have coverage limits of at least \$2,000,000.00 per

occurrence/\$1,000,000.00 per person/\$500,000.00 property damage. Such coverage and the City's inclusion as an additional insured shall be evidenced by a certificate of insurance issued to the City by the insurer(s). Such insurance shall not be cancellable without thirty (30) days' advance notice to the City.

(2) Fire and hazard insurance with extended coverage covering all buildings and improvements for full replacement value with loss proceeds payable in full to the City.

C. The properties shall be conveyed to the City free of all liens and encumbrances and subject only to the Foundation's reservation of use hereinabove set forth and to easements and restrictions of record and/or apparent on the ground which will not materially and adversely interfere with the use and development of the properties for the purposes for which they are zoned at date of settlement.

D. The risk of loss or damage to said properties by fire or other casualty until the deed of conveyance is recorded is assumed by the Foundation.

E. At the City's option, the properties shall be insurable at the City's expense by Lawyers Title Insurance Corporation or other national title insurance company of the City's choice, subject only to exceptions normally appearing in owners' policies, exceptions as to easements and restrictions which will not materially and adversely interfere with the development of the properties, and exception as to the reservation of right to allow the Foundation to

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occupy the properties until July 31, 1996.

F. Prior to the commencement of any development or redevelopment of any property to be conveyed to the City hereunder which would entail land disturbance and prior to the conveyance by the City of any parcel(s) or portion(s) thereof, the City, at its expense, shall cause a Phase I archaeological survey to be conducted upon the property or the portion thereof to be disturbed or conveyed. If archaeological features are discovered which are of significant cultural or historic value, and if the features are to be disturbed, then the City will cause a Phase II archaeological investigation to be conducted at its expense on the area to be disturbed. If as a result of a Phase II archaeological investigation a Phase III archaeological investigation becomes necessary, the City, at its expense, will also conduct a Phase III archaeological investigation. This obligation shall survive the settlement.

G. The City and the Foundation agree to cooperate in the preparation of a master plan for the area consisting of the entire block containing the properties to be conveyed to the City by the Foundation ("the Study Area"). The master plan shall identify and elaborate mutually agreeable goals for the Study Area, including the protection of the Colonial Historic Area from adverse visual noise, odor and light impacts. The plan may include but need not be limited to suggested uses and development features relating to the design, construction, use and operation of buildings, structures, landscaping, outdoor use areas, parking, street furniture, signs

and appurtenances. The costs of said study shall not exceed Twenty-Five Thousand and No/100 Dollars (\$25,000.00) without the prior written agreement of the City and the Foundation, one-half (1/2) of which shall be paid by the Foundation, with the balance being paid by the City. This obligation shall survive settlement but if for any reason, the City and the Foundation fail to commission the aforesaid master plan within twelve (12) months from the date hereof, the obligations under this paragraph shall become null and void, time being of the essence. Nothing herein shall obligate the City or the Foundation to proceed with any new construction, preservation, or other activity within the Study Area as a result of the aforesaid master plan, nor shall any provisions herein prevent the City or the Foundation from undertaking any new construction, preservation, or other activity within the Study Area in accordance with the City's Zoning Ordinance and other applicable regulations.

3. Agreement between the County and the Foundation

A. At settlement (hereinafter defined in paragraph 4(A) of this Agreement), the Foundation shall convey to the County the following properties (the "County Properties"):

- (1) A tract of approximately 30.8 acres of net developable area and shown as Parcel 1 on Exhibit G ("Parcel 1").
- (2) 45 contiguous acres of net developable area from the Locust Grove Parcel and shown as Parcel 2 on Exhibit G ("Parcel 2").

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"Net developable area" as used in this subparagraph A shall have the same meaning as defined in Section 20-2 of the Code of the County of James City, revised June 18, 1990. In addition, "net developable area" shall exclude lands within a Resource Protection Area (RPA) as defined in Section 19B-3 of said code.

B. Conveyance of the above properties shall be by General Warranty Deed with English Covenants of Title prepared at the Foundation's expense. The conveyances shall be subject to the covenants and restrictions hereinafter set forth. The Foundation shall bear all grantor's tax chargeable upon recordation of such deeds.

C. The County agrees that Parcel 1 shall be used for an elementary school and/or park, with associated uses. Parcel 1 will be conveyed subject to recorded covenants and restrictions in accordance with the provisions of this contract and as set forth in Exhibit H and special use permit conditions relating to the design, construction, use and operation of buildings, structures, landscaping, outdoor use areas, signs and appurtenances to assure that the use, visual impact, noise, odor and light generated by any development of Parcel 1 shall, to the extent reasonably possible, avoid any adverse effect on the Carter's Grove properties while permitting the uses herein contemplated.

D. The County agrees that Parcel 2 shall be developed and used generally in accordance with the master plan described in subparagraph F of this Section 3 and the covenants and restrictions set forth in Exhibit I relating to archaeological investigation

responsibility and the design, construction, use and operation of buildings, structures, landscaping, outdoor use areas, signs and appurtenances to assure that the use, visual impact, noise, odor and light generated by any development of Parcel 2 shall, to the extent reasonably possible, avoid any adverse effect on the Carter's Grove properties while permitting the uses herein contemplated.

E. The County agrees to file and process an application for rezoning of Parcel 2 to the Limited Industrial District, M-1, or such other similar zoning district as may be mutually agreed upon.

F. The County, WDI and the Foundation agree to cooperate in the preparation of a master plan for the entire Locust Grove tract and all of Parcels 1 and 2 east of the Carter's Grove service road all in accordance with the "Request for Proposal, Land Planning and Design Services" attached as Exhibit J; "master plan" as used herein shall also include the elements specified in Section 20-468(b) and 20-468(c) (1), (2) and (3) of the James City County Zoning Ordinance.

G. Subsequent to Settlement, the Foundation intends to convey certain remaining portions of the Locust Grove tract to be designated by the Foundation (including the Foundation's reversionary interest in the portion of Parcel 2 designated on Exhibit G as "Additional Area Required For Subdivision Approval") to WDI. This conveyance shall be made after the completion of certain archaeological and perimeter surveys and after the tract to be conveyed is rezoned to the Limited Industrial District, M-1, or

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such other similar zoning district as may be mutually agreed upon between the County, the Foundation and WDI but before the commencement of the design or construction of the entrance road to parcel 2, the required improvements to U.S. Route 60, or the installation or the construction of water and sewer facilities described below in this paragraph 3.G. Simultaneously with the aforesaid conveyance, the tract conveyed to WDI, shall be subjected to the covenants and restrictions set forth in Exhibit I. When, as and if either the County or WDI elects to proceed with the design and/or construction of an entrance road from Route 60 to the northerly property line of Parcel 2 and/or the required improvements to U.S. Route 60 in accordance with the aforesaid master plan, the County and WDI each agrees to pay upon demand a portion of the cost to design and construct said entrance road and said improvements to Route 60 as follows: the County - thirty percent (30%) and WDI - seventy percent (70%). When, as and if the County or WDI elects to proceed with the construction of the aforesaid road, that portion of Parcel 2 designated on Exhibit G as "Additional Area Required For Subdivision Approval" shall automatically revert to WDI, which shall be noted in the deed of conveyance of Parcel 2 and on the plat of dedication of said road.

It is further agreed by the County and WDI that the total costs of the design and construction of the entrance road and improvements to Route 60 shall not exceed \$1,450,000.00 without the written concurrence of the County and WDI. It is further agreed that the Foundation and WDI shall not directly or indirectly

participate financially in any access road that serves Parcel 1.

In addition, WDI and the County agree to pay in the aforesaid proportions the costs of design and/or construction of water and sewer facilities to serve Parcel 2 as generally depicted in the aforesaid master plan. The specific facilities subject to this joint cost sharing shall include the water line and gravity sewer line from Route 60 to the edge of Parcel 2, and the entire sewer force main and pumping station. Also included are the costs associated with the connection of these lines to the existing water and sewer facilities serving the Locust Grove Tract. The total costs of all of said facilities shall not exceed \$502,000 without the written concurrence of the County and WDI.

H. The County has, at its expense, conducted Phase I archaeological surveys of those portions of Parcels 1 and 2 proposed for land disturbance that have not previously been surveyed. Since archaeological features have been discovered which are of significant cultural or historical value, the County agrees, at its expense, to complete prior to conveyance by the County of either or both parcels or any portion thereof, a Phase II investigation on the areas to be disturbed, which have significant cultural or historical value. If as a result of a Phase II archaeological investigations, Phase III archaeological investigations become necessary, the County, at its expense, will either conduct Phase III archaeological investigations or leave said areas undisturbed until a Phase III archaeological investigation has been completed; however, the obligation for said

phase III investigations, if any, shall be limited to the areas to be disturbed on Parcel 2.

I. The Foundation's responsibilities pursuant to paragraphs 2 and 3 and WDI's responsibilities pursuant to paragraph 3 of this agreement may be assigned in whole or in part to any directly or indirectly wholly owned subsidiary of The Foundation. Such assignment may occur without the consent of the City and/or County.

4. General Conditions

A. Settlement shall occur at the offices of Phillips, Bartlett and Bland, P.C. on January 15, 1992, or as soon thereafter as title can be examined and papers prepared allowing a reasonable time to correct any defects reported by title examiner. If agreed between the City, the County and the Foundation, settlement for the transactions contemplated by paragraphs 1 and 2 hereof may occur prior to the settlement for the transaction contemplated by paragraph 3 hereof.

B. Prior to the date hereof, each party has had the right to conduct environmental and hazardous wastes surveys of the respective properties to be conveyed to it hereunder. Such surveys either have not revealed hazardous wastes or environmental conditions affecting the property, or have revealed hazardous wastes or environmental conditions which have been removed or remedied in accordance with applicable local, state and federal laws and regulations. The City and the County shall remain responsible for all costs and expenses related to any contamination at the Bruton Heights School Property from the underground storage

tanks (UST's) that were removed from the Bruton Heights School Property in 1991 (the Removed UST's) and the UST's that are presently located on the Bruton Heights School Property in the vicinity of the school bus garage/maintenance/storage facilities (the Bus Garage UST's) and any associated contamination at the Bruton Heights School Property from the Removed UST's or the Bus Garage UST's, including, without limitation, all remediation, testing or other action mandated by the Virginia State Water Control Board (the "SWCB"), the Virginia Department of Health, a local health department, or a court of competent jurisdiction. The City and the County shall remain responsible for the costs and expenses set forth above until the earlier of (i) in the case of the Removed UST's (a) five (5) years from the actual date of settlement or (b) such time as the SWCB provides written notice that no further monitoring or testing is required and no clean-up actions are necessary at the Bruton Heights School Property in connection with the Removed UST's and (ii) in the case of the Bus Garage UST's (a) five (5) years from the date of the removal of the Bus Garage UST's, or (b) such time as the SWCB provides written notice that no further monitoring or testing is required and no clean-up actions are necessary at the Bruton Heights School Property in connection with the Bus Garage UST's. In the event, the SWCB, the Virginia Department of Health, a local health department or a court of competent jurisdiction mandates any remediation, testing or other action at the Bruton Heights School Property and the source of any contamination is in controversy, the Foundation,

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the City and the County shall jointly agree upon and, consistent with the terms of the Public Procurement Act, hire an environmental consultant (the "Environmental Consultant") to determine whether the source of any such contamination is (a) the Removed UST's or the Bus Garage UST's, or (b) some other source; and if the Environmental Consultant determines the source of the contamination to be the Removed UST's or the Bus Garage UST's, it shall prescribe the proper remediation, testing or other action to be implemented to assure the Bruton Heights School Property complies with all local, state and federal regulations. The City and County shall implement all such prescribed remediation, testing or other action and the City and the County shall pay on an equal basis, the costs and expenses, including the Environmental Consultant's fees and expenses related to the remediation, testing or other action if the Environmental Consultant determines that the source of the contamination to be the Removed UST's or the Bus Garage UST's. If the Environmental Consultant determines that the source of the contamination is neither the Removed UST's nor the Bus Garage UST's, then the Foundation shall pay the Environmental Consultant's fees and expenses.

Except for the foregoing undertakings of the City and the County with respect to the Removed UST's and the Bus Garage UST's and associated contamination, this contract entails no undertaking by the City or the County to remedy any hazardous waste or environmental condition which may exist on the Bruton Heights School Property or by the Foundation or WDI to remedy any such

condition as may exist on any property to be conveyed by it to the City or the County hereunder and the City and County agree to accept such property "AS IS" and assume all environmental risks associated with such property. The Foundation, except as set forth above with regard to the Removed UST's, the Bus Garage UST's, and any associated contamination, agrees to accept the Bruton Heights School Property "AS IS" and assumes all other environmental risks associated with such property. This section shall survive closing.

C. All provisions of this Agreement which cannot be performed by time of settlement shall survive settlement and remain in full force and effect.

CITY OF WILLIAMSBURG, VIRGINIA

By: John Kelly
Mayor

COUNTY OF JAMES CITY, VIRGINIA

By: James K. Smith
Chairman, Board of Supervisors

THE COLONIAL WILLIAMSBURG FOUNDATION

By: Chas. R. Smith
President

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WILLIAMSBURG DEVELOPMENTS, INC.

By: *[Signature]*
President

STATE OF VIRGINIA

City OF Williamsburg, to-wit:

The foregoing instrument was acknowledged before me this 12 day of December, 1991, by John Hodges, Mayor, for and on behalf of the City of Williamsburg, Virginia.

[Signature]
NOTARY PUBLIC
My commission expires: Sept. 22, 1992

STATE OF VIRGINIA

County OF James City to-wit:

The foregoing instrument was acknowledged before me this 19th day of December, 1991, by Thomas K. Norment, Jr., Chairman of the Board of Supervisors, for and on behalf of the County of James City, Virginia.

Masi Lou Smith
NOTARY PUBLIC
My commission expires: Feb. 8, 1993

STATE OF VIRGINIA

City OF Williamsburg, to-wit:

The foregoing instrument was acknowledged before me this 15th day of January, 1991, by Charles R. Longworth, President, for and on behalf of The Colonial Williamsburg Foundation.

Dianne Mergen Hardie
NOTARY PUBLIC

My commission expires: March 16, 1993

STATE OF VIRGINIA

City OF Williamsburg, to-wit:

The foregoing instrument was acknowledged before me this 15 day of January, 1992, by John J. Hollowell President, for and on behalf of Williamsburg Developments, Inc.

Dianne Mergen Hardie
NOTARY PUBLIC

My commission expires: March 16, 1993

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DECLARATION OF COVENANTS AND RESTRICTIONS

JAMES RIVER COMMERCE CENTRE

THIS DECLARATION, made this 15th day of January, 1992, by Williamsburg Developments, Inc., a Virginia Corporation ("WDI"); James City County, Virginia, a political subdivision of the Commonwealth of Virginia ("the County"); and The Colonial Williamsburg Foundation, a Virginia non-profit corporation ("the Foundation")

W I T N E S S E T H :

WHEREAS, WDI and the County each presently or in the future will own separately certain contiguous parcels of real property in James City County, Virginia, now or formerly owned by the Foundation and located south of Route 60 East and more particularly described herein, and desire to create thereon a development to be known as James River Commerce Centre; and

WHEREAS, WDI and the County desire to develop an aesthetically pleasing setting for industry and business, and to this end, desire to subject said separately owned parcels of real property together with such additions as may expressly be made to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which are for the benefit of said parcels of real property, the owners thereof, and the parties hereto; and

WHEREAS, the Foundation owns certain other parcel(s) of real

property in the general vicinity of the proposed James River Commerce Center on which parcel(s) are located the historic Carter's Grove Plantation and related museums, exhibits, gardens, etc. ("the Carter's Grove Property"); and

WHEREAS, the Foundation has required as a condition to its agreement to convey the parcels to each of WDI and the County, the imposition of certain covenants and restrictions for the protection of the scenic and historical values of the Carter's Grove Property; and

WHEREAS, WDI and the County desire to preserve the values and amenities in said development, to protect the scenic and historical values of the adjacent Carter's Grove Property, and to create an association to which should be delegated and assigned the powers of administering said development and its facilities and enforcing these covenants, restrictions, easements, charges and liens and collecting and disbursing the assessments and charges hereinafter created and promoting the health, safety and welfare of the owners thereof; and

WHEREAS, the James River Commerce Centre Association, Inc. has been incorporated under the laws of the State of Virginia as a non-profit corporation for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, WDI and the County declare that the Land as hereinafter defined, and such additions as may be made pursuant to Article Ten hereof, is and shall be held, transferred, sold, conveyed, used and occupied subject to the covenants, restrictions,

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19 easements, charges and liens ("Covenants and Restrictions")
20 hereinafter set forth.

21 ARTICLE ONE

22 DEFINITIONS

23 Section 1.1. "LAND" shall mean the real property described on
24 Exhibit "A", and any other real property made subject to the
25 Covenants and Restrictions by WDI and the County pursuant to
26 ARTICLE TEN and all the improvements erected on the Land.

27 Section 1.2. "BUILDING SITE" shall mean a portion of the Land
28 consisting either of a lot, a portion of a lot, contiguous lots, or
29 portions of contiguous lots but exclusive of public roads.

30 Section 1.3. "THE ASSOCIATION" shall mean the James River
31 Commerce Centre Association, Inc., a Virginia non-profit
32 corporation.

33 Section 1.4. "IMPROVEMENT OR IMPROVEMENTS" shall mean
34 structures and construction of any kind, whether above, on, or
35 below a Building Site's surface, such as, but not limited to,
36 buildings, outbuildings, antennas, communication dishes, heating
37 and air conditioning units, flag poles, water lines, sewer lines,
38 electrical and gas distribution facilities, loading areas, parking
39 areas, walkways, walls, fences, screens, hedges, plantings, signs,
40 curbs, gutters, paved surfaces, lighting systems, irrigation
41 systems, traffic control devices and systems.

42 Section 1.5. "OWNER OR OWNERS" shall mean the person(s), sole

proprietorship(s), partnership(s), limited partnership(s), corporation(s), trust(s) or other legal entities in whom title to a Building Site is vested as shown by the official records in the office of the Clerk of the Circuit Court for the City of Williamsburg and County of James City, Virginia, and their lessee(s), licensee(s), employee(s) and all of their successors.

Section 1.6. "PROPERTY LINE" shall mean a line bounding a Building Site.

Section 1.7. "RIGHT-OF-WAY LINE" shall mean a line bounding either a public or private street. The term "right-of-way" as used in these covenants and restrictions shall not include access limited to the Owner(s) of a Building Site(s).

ARTICLE TWO

GENERAL CHARACTER AND PURPOSES

The Land is subjected to these Covenants and Restrictions in recognition of the Land's environmental and historic features and sensitive location and to insure a unified, managed development, distinguished by visual quality and sensitivity to the natural and historic setting and to promote beneficial business development by specifying the proper use and most appropriate development of each Building Site on the Land. It is the intent of these Covenants and Restrictions to insure that the Building Sites be maintained as an attractive setting for business and appropriate industry with ample landscaped and natural areas, attractive high quality structures, proper and desirable use and appropriate development of the

Building Sites, to insure a sense of continuity in aesthetic values; to protect the Owners of the Building Sites against improper and undesirable use of surrounding Building Sites; to protect adjacent property owned by The Foundation including, but not limited to, the Carter's Grove Property, from visual intrusions, light, noise or air emissions; to prevent Improvements built of improper or unsuitable materials or design; to encourage the erection of attractive Improvements with appropriate locations; and to prevent haphazard and/or inharmonious development of Building Sites.

ARTICLE THREE

GENERAL CONDITIONS

Section 3.1. "USES". All Building Sites shall be used for offices, display rooms, general administration, restaurants (excluding fast food restaurants), light manufacturing, assembling or processing, wholesaling, warehousing, research and development and businesses of a kindred nature, including auxiliary facilities that are necessary or directly related to the uses enumerated above, and for such other uses as the County, WDI and the Foundation shall determine to be in harmony with the general character and purposes of these Covenants and Restrictions. A complete written description of each proposed use and operating characteristics shall be submitted to the County, WDI and the Foundation. This submittal shall include sufficient detail to permit an assessment of the extent of noise, odor, glare, vibration, dust, gases, radiation or liquid wastes that may be

created. After the submission of said complete written description, the County, WDI and the Foundation shall have a period of fifteen (15) calendar days to approve or reject said use. All uses must receive the prior written approval of the County, WDI and the Foundation, which approval shall be withheld if the Foundation, WDI or the County, in its sole discretion, determines that the proposed use is incompatible with the protection of the historic, scenic and environmental objectives set forth in Article Two. All uses shall not be contrary to these Covenants and Restrictions or in violation of any laws of the United States, the statutes of Virginia, or applicable ordinances of James City County, Virginia.

Section 3.2. "REVIEW AND APPROVAL".

A. GENERAL. No Improvement of any kind shall be installed, erected, placed, assembled, altered or permitted to remain on any Building Site unless and until the plans and specifications for the Improvements, showing the nature, shape, size, color, architectural design, material, location and landscaping, paving, existing and proposed utility plans, lighting plans, curbing and storm drainage have been first approved in writing by the Design Review Board hereinafter referenced. In no event shall any Improvements of any type be located on any Building Site if the Improvement, after construction, is visible at any time of year from the Carter's Grove Property or such Improvement produces sound, odors, smoke or other emissions which may be readily detected from the Carter's Grove Property.

B. DESIGN REVIEW PROCESS

(1) Design Review Board

In order to achieve the overall design and environmental objectives set forth in these Covenants and Restrictions, all plans for building and site design shall be reviewed by a Design Review Board (DRB), whose purpose will be to evaluate all proposals for development on a Building Site(s) for adherence to these Covenants and Restrictions. Proposals will be evaluated for their aesthetic standards, sympathy with the natural environment, and compatibility with other development on the Land.

The initial membership and by-laws of the DRB shall be determined by the Association. The initial DRB shall have at least one representative from each of the County and WDI with the balance of its membership appointed by the Trustees of the Association. The criteria and controls described herein provide a conceptual framework for the DRB and applicants to follow in evolving a design for each Building Site(s) that shall be consistent with the architectural and environmental quality envisioned for the James River Commerce Centre.

All applicable local, state and/or federal regulations shall take precedence in cases where they are more restrictive than the criteria set forth herein. The submission to, and approval of the plans by the DRB shall be in addition to any permits or approval required by any local, state or federal laws or regulations.

(2) Design Review Procedures

Each development proposal shall be reviewed by the DRB as the design for the building and site evolves.

Optional Pre-Design Conference: Before the design is initiated, if requested by the applicant, the DRB shall meet with the applicant, the applicant's architect, and other consultants designated by the applicant, to clarify mutual design objectives, the characteristics of the particular Building Site(s) and technical issues related to design review procedures. At this meeting, the applicant shall make available a topographical survey of the Building Site(s) at a minimum scale of 1"=50'0" and including the following information:

- (a) Property boundaries, including relationship to adjacent lands and access roads.
- (b) Topography, shown by two foot contour intervals.
- (c) Locations of any existing utilities or other improvements on the site.
- (d) Description of general site drainage characteristics.
- (e) Location and description of any characteristics and noteworthy natural features such as stream beds, etc.
- (f) Description of existing site vegetation, to include the location of trees and shrubs which, because of intrinsic landscape value or relationship to their surroundings, are outstanding in terms of potential site development. This includes identification of every tree with a diameter of 12 inches or more, at a height of three feet above grade, as well as groups of trees of any size. A reasonable adjustment of the requirements may be made when it becomes difficult to specify the information required because of dense vegetation or other impediments.

Subsequent to the pre-design conference a series of submissions shall be made to the DRB, following the normal process of design, as follows:

Preliminary Plan Approval: The applicant shall submit a schedule of construction techniques and timing and four sets of

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preliminary architectural and site plans, as follows:

- (a) Dimensioned building plans, sections, and elevations at a scale of 1/16"=1'0" or 1/8"=1'0", with representations of exterior materials, textures, colors, fenestration, and other detailing necessary for accurately depicting the finished building and its site.
- (b) Outline specifications to indicate the intent for major architectural, structural, mechanical, electrical, and site elements.
- (c) Samples of proposed exterior materials and colors.
- (d) Site plan(s) at a minimum scale of 1"=50'-0", showing:
 - All trees with a diameter of 12" or more, at a height three feet above grade, which are proposed for removal due to site or building construction
 - Proposed grading at a contour interval of two feet
 - Layout of all roads, parking and service areas, walks, and other elements which constitute modification of the natural site
 - Planting plan, including size, placement, and species of proposed new plant materials and integration with existing planting
 - Indication of all site lighting, with heights, spacing, design, and illumination characteristics
 - Location of building footprint and ancillary structures including storage facilities.
 - Locations of signs
- (e) A cross section of the site at an appropriate scale, in longitudinal and transverse directions, indicating the relationship of the building and major grading to the street, adjacent properties, and tree edges. The site plan and sections will be sufficiently accurate to permit analysis of visual screening, proposed grading, erosion control, drainage, tree protection, and landscape architectural design.
- (f) Plans for the major entrance sign and building identification sign, if any, including dimensions, location, material, lettering, color, and lighting, and elevations of the prototype for on-site directional-type signs, showing format, letter face, and colors.

- (g) Detailing of proposed methods for protecting any existing trees affected by grading, paving, or other construction.
- (h) An estimate of the maximum number of employees contemplated for the proposed development and timing of shifts during which they will work.
- (i) An estimate of the quantity of automobiles and quantity and types of trucks to use the Building Site on a daily basis.

Approval, rejection, or recommendation for changes shall be made by the DRB within thirty days of receiving the proposal. The DRB shall reserve the right to request a meeting with the applicant and the applicant's architect to discuss the design at this stage.

Final Plan Approval: Prior to any site-clearing, development, or building, the applicant shall submit working drawings and specifications for the building and the site to insure adherence to the approved Preliminary Plan.

The DRB shall have fourteen days after four sets of the required drawings and specifications have been submitted to review and give an opinion of the final plan. The DRB reserves the right to request a meeting with the applicant to discuss any modifications necessary to make the design conform to the approved Preliminary Plan.

The DRB shall return to the applicant one complete set of drawings and specifications marked "approved" and signed by an authorized representative of the DRB. This set and the duplicate original sets retained by the DRB, the County and WDI shall become a part of the agreement between the applicant, the County, and WDI.

The DRB may approve minor deviations from the approved design

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and promulgate further guidelines, provided such guidelines shall be in conformity with the spirit and intent of these Covenants and restrictions. No application for a building permit shall be made without receiving such approval, as provided herein. Neither the County, WDI nor the DRB, shall be liable to anyone submitting an application for approval or to any Owner for negligence, misfeasance or non-feasance arising out of or in connection with the approval or disapproval or failure to act on such application.

Notwithstanding anything to the contrary, after the expiration of one (1) year from the date of the filing by the Owner with the DRB of a copy of a permanent occupancy certificate issued by the appropriate governmental body having jurisdiction over the Improvements, said Improvements shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to be in compliance with all provisions of these Covenants and Restrictions, unless actual notice of such noncompliance executed by the DRB shall appear of record in the office of the Clerk of the Circuit Court for the City of Williamsburg and County of James City or unless legal proceedings shall have been instituted to enforce compliance.

Section 3.3. "SETBACKS". No building, outbuilding or parking area shall be built within the following setback areas on any Building Site located on any portion of the Land designated "Zoned M-2" south of the southern boundary (and an extension thereof) of the land designated "Now or Formerly Ball Corporation" on Exhibit "A".

Setback Areas

From building to edge of roads 50'

From building to edge of paved parking area or circulation road 15'

Within all other areas of the Land, no building, outbuilding or parking area shall be built on any Building Site within the following setback areas:

Setback Areas

From building to edge of roads 50'

From building to edge of paved parking area or circulation road 20'

In the event more than one of the above setback requirements shall apply to a Building Site and should conflict with another, the greater setback requirement shall govern. The areas within the setbacks are to be used solely for utilities, landscaping, lawns, driveways which do not run parallel to an existing Right-Of-Way Line, walks or bike paths.

Section 3.4. "HEIGHT LIMITATIONS". All portions of any Improvements constructed above grade on any portion of the Land designated "Zoned M-2" south of the southern boundary (and an extension thereof) of the land designated "Now or Formerly Ball Corporation" on Exhibit "A" shall not exceed sixty (60) feet in height.

All portions of any Improvements constructed above grade on all other areas of the Land shall not exceed thirty five (35) feet in height.

Exceptions to these limitations may be granted only by the

County and WDI with increased setbacks from building to edge of roads 1' for each 1' of excess building height and from building to edge of paved parking area or circulation road 1/2' for each 1' of excess building height, provided that any exception is based upon a finding by both the County and WDI that the proposed Improvement, after construction:

- A. does not materially and adversely affect other developments within the James River Commerce Centre
- B. will not be visible from the Carter's Grove Property during any season of the year

Section 3.5. "UNDEVELOPABLE AREAS". There shall be no construction of any sort inside the undevelopable area identified on Exhibit A except for stormwater management facilities approved by the DRB. Neither trees nor understory plant material shall be removed within the undevelopable area, nor shall additional plant material be planted therein except upon the written approval of the DRB.

Section 3.6. "BUILDING CONSTRUCTION".

A. GENERAL. The existing topography shall be respected as much as possible when orienting buildings and parking.

Buildings and parking areas shall be designed to preserve the existing tree cover wherever possible.

All utilities shall be placed underground except for minimal necessary above-ground equipment which shall be shielded from view from public roads and from parking areas.

The architectural style of each building or structure shall be

created. After the submission of said complete written description, the County, WDI and the Foundation shall have a period of fifteen (15) calendar days to approve or reject said use. All uses must receive the prior written approval of the County, WDI and the Foundation, which approval shall be withheld if the Foundation, WDI or the County, in its sole discretion, determines that the proposed use is incompatible with the protection of the historic, scenic and environmental objectives set forth in Article Two. All uses shall not be contrary to these Covenants and Restrictions or in violation of any laws of the United States, the statutes of Virginia, or applicable ordinances of James City County, Virginia.

Section 3.2. "REVIEW AND APPROVAL".

A. GENERAL. No Improvement of any kind shall be installed, erected, placed, assembled, altered or permitted to remain on any Building Site unless and until the plans and specifications for the Improvements, showing the nature, shape, size, color, architectural design, material, location and landscaping, paving, existing and proposed utility plans, lighting plans, curbing and storm drainage have been first approved in writing by the Design Review Board hereinafter referenced. In no event shall any Improvements of any type be located on any Building Site if the Improvement, after construction, is visible at any time of year from the Carter's Grove Property or such Improvement produces sound, odors, smoke or other emissions which may be readily detected from the Carter's Grove Property.

B. DESIGN REVIEW PROCESS

Optional Pre-Design Conference: Before the design is initiated, if requested by the applicant, the DRB shall meet with the applicant, the applicant's architect, and other consultants designated by the applicant, to clarify mutual design objectives, the characteristics of the particular Building Site(s) and technical issues related to design review procedures. At this meeting, the applicant shall make available a topographical survey of the Building Site(s) at a minimum scale of 1"=50'0" and including the following information:

- (a) Property boundaries, including relationship to adjacent lands and access roads.
- (b) Topography, shown by two foot contour intervals.
- (c) Locations of any existing utilities or other improvements on the site.
- (d) Description of general site drainage characteristics.
- (e) Location and description of any characteristics and noteworthy natural features such as stream beds, etc.
- (f) Description of existing site vegetation, to include the location of trees and shrubs which, because of intrinsic landscape value or relationship to their surroundings, are outstanding in terms of potential site development. This includes identification of every tree with a diameter of 12 inches or more, at a height of three feet above grade, as well as groups of trees of any size. A reasonable adjustment of the requirements may be made when it becomes difficult to specify the information required because of dense vegetation or other impediments.

Subsequent to the pre-design conference a series of submissions shall be made to the DRB, following the normal process of design, as follows:

Preliminary Plan Approval: The applicant shall submit a schedule of construction techniques and timing and four sets of

- (g) Detailing of proposed methods for protecting any existing trees affected by grading, paving, or other construction.
- (h) An estimate of the maximum number of employees contemplated for the proposed development and timing of shifts during which they will work.
- (i) An estimate of the quantity of automobiles and quantity and types of trucks to use the Building Site on a daily basis.

Approval, rejection, or recommendation for changes shall be made by the DRB within thirty days of receiving the proposal. The DRB shall reserve the right to request a meeting with the applicant and the applicant's architect to discuss the design at this stage.

Final Plan Approval: Prior to any site-clearing, development, or building, the applicant shall submit working drawings and specifications for the building and the site to insure adherence to the approved Preliminary Plan.

The DRB shall have fourteen days after four sets of the required drawings and specifications have been submitted to review and give an opinion of the final plan. The DRB reserves the right to request a meeting with the applicant to discuss any modifications necessary to make the design conform to the approved Preliminary Plan.

The DRB shall return to the applicant one complete set of drawings and specifications marked "approved" and signed by an authorized representative of the DRB. This set and the duplicate original sets retained by the DRB, the County and WDI shall become a part of the agreement between the applicant, the County, and WDI.

The DRB may approve minor deviations from the approved design

Setback Areas

- From building to edge of roads 50'
- From building to edge of paved parking area or circulation road 15'

Within all other areas of the Land, no building, outbuilding or parking area shall be built on any Building Site within the following setback areas:

Setback Areas

- From building to edge of roads 50'
- From building to edge of paved parking area or circulation road 20'

In the event more than one of the above setback requirements shall apply to a Building Site and should conflict with another, the greater setback requirement shall govern. The areas within the setbacks are to be used solely for utilities, landscaping, lawns, driveways which do not run parallel to an existing Right-Of-Way Line, walks or bike paths.

Section 3.4. "HEIGHT LIMITATIONS". All portions of any Improvements constructed above grade on any portion of the Land designated "Zoned M-2" south of the southern boundary (and an extension thereof) of the land designated "Now or Formerly Ball Corporation" on Exhibit "A" shall not exceed sixty (60) feet in height.

All portions of any Improvements constructed above grade on all other areas of the Land shall not exceed thirty five (35) feet in height.

Exceptions to these limitations may be granted only by the

contemporary. Building materials shall be approved by the DRB. All penetrations through the roof shall be screened or organized in a manner integral to the architectural form of the building.

The design and construction objective for all Improvements shall be to create buildings with compatible quality and appearance on all exterior walls, rather than placing disproportionate emphasis on the front elevation of the building by downgrading the aesthetic appeal of the side and/or rear elevations of the building. All accessory buildings and enclosures, whether attached to or detached from the main building, shall be of a similar or compatible design and materials. No ground or roof mounted antennae or communication dishes shall be permitted unless the DRB shall have given prior approval in writing.

B. Construction Guidelines

- (1) Equipment Access: Access to each Building Site shall be limited to one location along the public or common roadway subject to approval by the DRB. Mud, dirt, or other surface debris deposited on the public or common roadway at the access point shall be washed or removed daily to avoid compaction and damage to the roadway and to minimize impact on the drainage system.
- (2) Temporary Structures: Temporary structures, portable offices, and other related facilities shall be maintained in good repair and arranged in a compact and organized manner on the Building Site. These facilities shall be situated so as not to be obtrusive or unsightly when seen from the road or adjacent properties.

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All temporary structures and portable facilities shall be removed within thirty days after the completion of all construction activity or occupancy of the building, whichever is later.

- (3) Temporary Utilities: All temporary utilities on the Building Site shall be grouped and installed in a single, unobtrusive location. Distribution to the various areas of construction shall be from one approved on-site point.
- (4) Equipment and Materials Storage: The area designated for storage of equipment and materials shall be at a location that shall be visually unobtrusive from the roadway and adjacent properties where possible. Mobile equipment is to be aligned in an orderly manner at the end of each work day.
- (5) Construction Debris: Construction debris shall be concealed during construction either by on-site burial or by locating it in a visually unobtrusive place, for removal on a regular basis. If a debris pit is used during construction, protective fencing shall be required. Open burning of debris shall not be permitted unless approved in advance in writing by the DRB.

After construction is completed, temporary barriers, surplus materials, and all trash, debris, and rubbish shall be removed from the site. All backfill shall be cleared of building material, stone, and rubbish or modified to present a neat appearance with appropriate site stability.

- (6) Interim Signs: Construction signs shall conform to criteria specified by the DRB in order to maintain continuity. One sign will be permitted in order to identify the name of the projected facility, the parties participating in the design and construction, and the anticipated date of occupancy. The location of the sign will follow the same criteria as that for permanent signs. The sign will be removed upon completion of the project. Additional directional signs may be permitted to assist in the direction of construction traffic.

- (7) The Foundation shall be notified in writing at least 7 days prior to the commencement of pile driving or other construction activities having comparable noise volumes.

B. Sediment and Erosion Control Guidelines

All construction activity shall comply with all applicable local, state and federal erosion and sediment control rules and regulations now in effect or such subsequent and more restrictive rules and regulations in effect.

C. Tree Protection Guidelines

- (1) Tree Protection during Construction and as a Condition of Site Modifications: All trees and other plant materials designated to be preserved shall be protected during construction. Retaining walls and/or other appropriate measures shall be used around trees designated to remain in the case of site modifications that permanently alter the trees' growing conditions. After the final site plan and before construction approval, those trees that are to remain shall be marked in the field. Damage or destruction of any tree shall be the responsibility of the Owner whether caused by the Owner, its agents, employees, contractors, or licensees.
- (2) All trees that are not to be preserved are to be removed in a manner that shall not damage the remaining trees. Any trees to remain which have been damaged during the clearing operation must be repaired in an approved manner by a qualified arborist as soon as final clearing has been completed.

Section 3.7. "PARKING". Parking shall not be permitted on either public or private streets within the Land. Adequate parking shall be provided on each Building Site.

The parking area requirements are as follows:

- A. The minimum distance from edge of parking area to entrance roads or other public roads shall be 30 feet as measured from edge of paving to edge of paving.

- B. A 10 foot wide curbed island, extending the depth of the parking bays shall be located at the end of all rows of parking. There shall be a maximum of 20 parking spaces between curbed islands.
- C. All parking areas shall be surfaced with bituminous concrete; a top coating of brownstone is encouraged. All curb and gutter shall be concrete. Stalls shall be indicated by space markings on the curb and gutter only, or by white paint.
- D. All sidewalks abutting parking areas shall be scored, cast-in-place concrete. Specialty paving, such as brick or concrete pavers, may be used to denote building entrances and drop-off areas.
- E. It shall be the responsibility of the Owner to insure that all parking areas and drives are properly maintained to present a sightly and well-kept condition.
- F. Parking area screening shall be provided by the use of evergreen or deciduous shrubs. Large masses of single varieties of shrubs are encouraged. Adequate numbers of shrubs, of appropriate varieties shall be used to provide a continuous screen of the parking areas as seen from the street.

Section 3.8. "LOADING AREAS". All loading and unloading of materials from vehicles shall be conducted entirely upon the Building Site. Sufficient loading and unloading spaces shall be provided for each Building Site and adequate provisions shall be made for handling all freight received or shipped. All freight handling operations shall be conducted on those sides of the building which do not face the main entrance to the Building Site or the public roadway. Structures shall be so designed and so placed upon the Building Site, and loading facilities shall be so constructed and so located that motor vehicles, whether rear

loading or side loading may be loaded or unloaded at any loading dock or door, or loading area, without extending beyond the property line. Loading/unloading operations including, but not limited to, docks and doors, shall be screened from view by appropriate planting and screen walls which are compatible with the building design and materials, or by the use of earth beams or landscaping materials.

Section 3.9. "SIGN STANDARDS". No billboards, signs or other advertising devices of any character, temporary or permanent, shall be erected, pasted, posted, painted, displayed or permitted upon any part of any Building Site, or structure thereon, without the prior written approval of the DRB. Prior to erection of any sign, the plans therefor shall be first submitted to the DRB, in a form sufficient to convey the total impression created by the sign. The DRB may reject plans for any sign, if, in the sole opinion of the DRB, such sign does not conform to the general character of the development as described in ARTICLE TWO hereof.

All signs within the Land except building face signs shall be of one style, to be determined by the DRB. Sign sizes shall follow an established hierarchy: (1) project entry sign; (2) parcel entry signs; (3) traffic control, directional, and street identification signs.

A single sign not exceeding 45 square feet in size shall be allowed on each building face, and a single sign shall be allowed on or near each exterior building entry door, subject to DRB approval. The area of any sign shall include the entire face of the

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sign and any structural work incidental to its erection and/or decoration. If the sign is composed of individual letters, figures, or design, the space between and around such letters, figures, or design shall be considered as part of the sign area. No sign shall project more than eighteen (18) inches from any wall. No sign shall extend above the dominant roofline of a building without the prior written approval of the DRB. Permanent free standing signs are permitted subject to the same building sign limitations described above.

A sign may be externally illuminated provided that no flashing, traveling, animated or intermittent illumination shall be used. Such illumination shall be confined to the area of the sign except when such illumination is backlighting for an otherwise nonilluminated sign. No colored illumination, other than white, shall be used without prior written approval of the DRB. Internally illuminated signs are prohibited unless a specific written waiver is obtained from the DRB.

The total size of any such sign on any Building Site shall not exceed a total of forty-five (45) square feet in area unless, in the sole opinion of the DRB the size of the Improvements and/or the distance of the Improvements from the nearest Right-Of-Way Line warrant a larger sign. In addition, one sign may be erected on a Building Site to offer the property for sale or lease of a size not to exceed forty-five (45) square feet in area, and temporary signs may be erected during construction operations of a uniform character and size specified in writing by DRB.

It shall be the responsibility of the Owner to insure that all signs erected or placed on the Building Site are well maintained at all times. The Association, at its option, after ten (10) days notice as hereinafter provided, shall have the power to enter upon and maintain or remove, at the Owner's expense, any and all signs which are not constructed or not maintained in accordance with this section.

Section 3.10. "BUILDING MATERIALS". Without prior written permission from the DRB, no building shall be permitted with exterior walls which are constructed of exposed galvanized steel sheeting, concrete block or light-weight aggregate block, whether painted or not. All major mechanical equipment including, but not limited to, air conditioning equipment, heating equipment, trash receptacles and electrical transformers shall be screened from view. The DRB may prohibit any protrusion from the buildings which the DRB considers not in conformity with the general character of the development as described in ARTICLE TWO hereof.

Section 3.11. "WASTE AND REFUSE". All waste materials or refuse, combustible and noncombustible, shall be stored and maintained in closed containers. All containers placed on any part of any Building Site outside the buildings constructed thereon shall be shielded from view by permanent structures, screens or landscaping compatible to the building's design or as otherwise approved in writing by the DRB.

Section 3.12. "RIGHT TO REPURCHASE". If, after the expiration of two (2) years from the date of closing of a sale or the

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execution of a lease by WDI or the County for any Building Site, any such purchaser or lessee shall not have obtained the approval required in Section 3.2 of this ARTICLE and begun, in good faith, the construction of Improvements as approved, upon the said Building Site, WDI or the County, as appropriate, may at any time during the period commencing on the last day of said two (2) year period, or as hereinafter extended, and ending one hundred and twenty (120) days thereafter, at its sole option, by written notice to its purchaser or lessee, require said purchaser or lessee to reconvey to it the Building Site, free and clear from all liens and encumbrances, and at such time WDI or the County as appropriate shall refund to its purchaser the purchase price less any of its related expenses and enter into possession of the Building Site formerly owned by it. In the event WDI or the County exercises said right of repurchase, no separate refund shall be made to a lessee of such Building Site; such lease shall then automatically terminate and WDI or the County, as appropriate, shall have the right to enter possession of the Building Site formerly owned by it.

If such purchaser or lessee shall have begun the construction of such Improvements within said two (2) year period, but fails to complete the said Improvements in full compliance with the provisions hereof, within a period of two (2) years from the date of said closing of a sale or lease executed, WDI or the County as appropriate may at any time during a period commencing on the last day of said two (2) year period, or as hereinafter extended,

and ending sixty (60) days thereafter, at its sole option, require its purchaser or lessee to reconvey to it the Building Site formerly owned by it and all Improvements thereon, free and clear from all liens and encumbrances, and at such time WDI or the County as appropriate shall refund jointly to its purchaser and its purchaser's lessee, if any, the purchase price plus the value of all Improvements on the Building Site and enter into possession thereof. In the event WDI or the County exercises said right of repurchase, no separate refund shall be made directly to a lessee of such Building Site; such lease shall then automatically terminate and WDI or the County as appropriate shall have the right to enter into possession of the Building Site formerly owned by it. The value of all Improvements on said Building Site shall be established by the mean appraisal from three (3) independent appraisers, whose professions shall be determined by the circumstances of the particular situation, and whose mean appraisal shall be binding on all parties concerned. The County shall appoint the first appraiser, the Owner in question shall appoint the second, and the third appraiser shall be appointed by the first two appraisers.

If such purchaser or lessee shall have purchased or leased a Building Site with Improvements thereon or shall have completed such Improvements within said two (2) year period, but deviate(s) from the uses and/or Improvements approved for said Building Site without the required written consent and such purchaser or lessee does not comply with appropriate written notice to cease and desist

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such unapproved use within ten (10) days thereof, WDI or the County, as appropriate, may, at any time, at its sole option, by written notice to its purchaser or lessee, require its purchaser or lessee to reconvey to it the Building Site formerly owned by it free and clear of all liens and encumbrances, and at such time WDI or the County, as appropriate, shall refund jointly to its purchaser and its purchaser's lessee, if any, the purchase price, plus the appraisal value, as provided for herein, of all improvements on said Building Site. In the event WDI or the County exercises said right of repurchase, no separate refund shall be made directly to a lessee of such building site; such lease shall then automatically terminate and WDI or the County, as appropriate, shall have the right to enter into possession of the Building Site formerly owned by it. At any time, WDI or the County, as appropriate, may extend, in writing, the time in which such improvements may be begun or completed.

In exercising any of the foregoing rights of repurchase, WDI or the County, as appropriate, shall acquire the Building Site formerly owned by it subject to all existing mortgages under which funds have been disbursed and the refund shall be decreased by the amount of such mortgage funds disbursed. Notwithstanding anything in this Section to the contrary, the County shall have no rights to repurchase land sold or leased by WDI and vice versa.

Section 3.13. "RIGHT TO RESUBDIVIDE". Once a Building Site has been purchased or leased from WDI or the County, such Building Site

shall be considered as a single unit and it shall not be resubdivided, or a portion of the Building Site sold, leased or rented unless the prior written approval is given by WDI or the County as the predecessor in title of the property to be resubdivided. This restriction on subdivision is in addition to any restriction imposed on subdivisions by the James City County subdivision Ordinance.

Section 3.14. "WEED REMOVAL AND LAWN MAINTENANCE". It shall be the duty of the Owners of every unimproved portion of any Building site to keep the weeds and/or grass neatly cut in their respective portions of generally level areas of the Building Site to a height not to exceed ten (10) inches. Owners of every Building Site shall maintain their lawns in a neat and sightly manner with all grass areas not to exceed a maximum height of five (5) inches. In the event any such Owner does not comply with this provision within ten (10) days after the Association gives such Owner written notice to comply, the Association shall have the right to enter upon the Building Site in question and cut any weeds and grass thereon, and charge the cost of such work to the Owner. If such charge is not paid within ten (10) days after such Owner is notified of the cost thereof, the Association may take any action it deems necessary to secure payment for said services including, but not limited to, action to obtain a judgment and lien against said Building Site for services rendered.

Section 3.15. "CONDITION OF PREMISES". In order to maintain a quality environment for Owners of Building Sites, Owners of

Building Sites shall carefully maintain their Building Sites and Improvements of whatever nature thereon in a safe, clean and wholesome manner and in an adequate and complete condition of repair at all times. Exterior painted or stained surfaces shall be properly maintained. If the Owner does not maintain the Building Site and the improvements thereon in a proper manner, the Association may enter upon such Building Site and undertake such maintenance as may be necessary and charge the cost of same to the Owner. If such charge is not paid within ten (10) days after such Owner is notified of the cost thereof, the Association may take any action it deems necessary to secure payment for said services, including but not limited to action to obtain a judgment and lien against said Building Site for the services rendered.

Section 3.16. "LANDSCAPING".

A. Landscaping on the Building Site shall be required around buildings and within parking areas, and shall provide a transition from the natural vegetation of the woodland to the man-made environment adjacent to the building.

Building Sites and building entrances may be enhanced with plantings of shrubs, ground covers and ornamental flowering trees.

Building Site landscaping requirements shall be as follows:

- (1) Two shade trees shall be planted per parking island measuring 10 feet X 36 feet and one shade tree per parking island measuring 10 feet X 18 feet. In addition, all parking area islands shall be planted in ground cover or mulched.
- (2) Areas disturbed during construction shall be seeded, sodded or planted in ground cover and shrubs.

- (3) Service areas, dumpsters, transformers and mechanical equipment shall be adequately screened with evergreen shrubs and/or screen wall/fence to compliment architectural treatment of building.
- (4) Plant materials, as well as height and caliper of the same, shall be approved in advance of installation by the DRB. Use of plants native to the area is required unless specifically approved in writing by the DRB.
- (5) Ornamental plant rotation shall not require DRB approval.

Open areas on any Building Site not used for buildings, storage, parking, access roads and loading areas shall be left in their natural state, or be suitably graded, drained, seeded and maintained in grass or other suitable ground cover, and shall be further landscaped with flowers, trees and/or shrubs so as to provide a pleasing setting.

B. Within a 30 foot strip along both sides of the main entrance Right of Way, each Owner shall plant the following:

- (1) One deciduous shade tree for every 35 feet of lot frontage along all public Rights of Way. The required trees are to be planted between parking areas and the public Rights of Way. Locations and varieties of proposed trees shall be approved by the DRB in order to provide a consistent appearance along all internal public Rights of Way. Upon written approval of the DRB, credit may be given for existing trees which are preserved.
- (2) The existing wooded area along the Ball Metal property lines shown on Exhibit "A" shall be preserved. The minimum width of this landscape buffer shall be not less than 40 feet in all locations.
- (3) An area along the entire frontage of Route 60, except for the entrance Right of Way, shall be landscaped to a depth of approximately 400' in a manner which shall provide a consistent and

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unified character to the highway frontage. The landscaping shall be installed and maintained by WDI and the County, or their designee.

Landscaped areas shall be properly maintained in a sightly and well kept condition and shall include such pruning, weeding, spraying, mulching, replanting and replacement, from time to time, as is required.

Landscaping plans shall be submitted in accordance with the provisions of Article Three, Section 2, and at such other times as appropriate, to the DRB for approval and such plans shall be implemented and completed within three (3) months after completion of building construction, or at such later time as permitted by the DRB. If landscaping as approved is not properly installed and maintained by the Owner, the Association may, within ten (10) days after the Association gives such Owner written notice to comply, reenter upon such Building Site and undertake such execution and maintenance as may be necessary and charge the cost of same to the Owner. If such charge is not paid within ten (10) days after such Owner is notified of the cost thereof, the Association may take any action it deems necessary to secure payment for said services including, but not limited to, action to obtain a judgment and a lien against said Building Site for services rendered.

The Association shall also have the right, but not obligation, to enter upon a strip of ground ten (10) feet in width on all sides of each Building Site not contiguous to a street for the purpose of planting and caring for trees, shrubs and bushes which are located on property not then accessible by roadways. The Association shall

further have the right, but not obligation, to enter upon a strip of ground thirty (30) feet in width parallel to and contiguous to all Right of Way frontages for the purpose of planting and caring for trees, shrubs and groundcovers.

Existing trees larger than twelve (12) inches in caliper may not be removed unless such removal is approved in writing by DRB.

Section 3.17. "OUTSIDE STORAGE AND EQUIPMENT". No materials, supplies or equipment or products shall be stored or permitted to remain on any portion of any Building Site outside a permanent structure without the prior written approval of the DRB. Outdoor storage shall be permitted only where such storage is screened from view by an appropriate permanent screen and is confined to locations approved by the DRB. These provisions shall apply also to the bulk storage of all liquids, including fuel oil and petroleum products, and air conditioning and processing equipment. All screening shall be compatible with specific building designs of the particular Building Site. This provision shall not be applicable to the materials and equipment and supplies stored in relation to and as a part of the construction of the permanent structures upon each Building Site, which materials, equipment and supplies shall be removed immediately upon completion of construction.

Section 3.18. "FENCES AND WALLS". No fence, wall, or other structures shall be erected, installed or permitted to remain without the prior written approval of the DRB. Temporary erosion and sedimentation fences shall not require any approval from the DRB.

Section 3.19. "EXTERIOR AND INTERIOR LIGHTING". No exterior lighting shall be installed or operated except that necessary for security and safety which lighting shall not be installed without the prior written approval of the DRB. All interior and exterior lighting must be so arranged or shielded as to minimize off site glare reflecting into the night sky or onto any portion of any adjacent street or onto any adjacent property. The DRB may limit or require adjustment to exterior lighting, if in its sole judgment excessive illumination is being caused and/or such lighting is directly visible from the Carter's Grove Property.

Section 3.20. "EXCAVATION AND OIL DRILLING". No excavation shall be made on, and no sand, gravel or soil or other earth materials shall be removed from any Building Site, except in connection with landscaping and construction of Improvements and upon the completion thereof, exposed openings shall be back-filled, compacted, and the disturbed ground shall be graded, leveled and paved or landscaped in accordance with the provisions herein.

Prospecting or drilling for oil, natural gas, coal, minerals, precious stones or kindred substances shall not be permitted on any part of any Building Site.

Section 3.21. "POLLUTION, NOISE AND NUISANCES". Except as part of the normal construction process of Improvements, no use shall be permitted or maintained on any portion of any Building Site which causes, produces, or contributes to any of the following:

- A. Noxious, toxic, or corrosive fumes or gases.
- B. Noise that, because of excessive or unusual volume, duration, intermittence, beat, frequency, or

pitch is objectionable to Owners of other Building Sites on the Land or to the Foundation.

- C. Odors which might permeate or in any way adversely affect Owners of other Building Sites on the Land or the Foundation.
- D. Smoke and other visible emissions.
- E. The attraction of flies, insects or the creation or emission of dust or dirt.
- F. No outdoor loudspeakers, bells or horns shall be permitted except as required for emergency usage.

Section 3.22. "DRIVEWAYS". The location of any and all driveways and curbs shall receive the prior written approval of the DRB, at the time of the approval of the plans and specifications for any construction of improvements. No driveway or curb shall be located, relocated or remain upon any portion of any Building Site without the prior written approval of the DRB. The DRB specifically reserves the right to limit ingress or egress to any road public or private, serving any Building Site.

Section 3.23. "RESERVATION OF RIGHT AS TO UTILITIES". The County and WDI and each of them specifically reserves the exclusive right at any time to grant easements, rights of way or licenses over, under and across all setback areas and property lines as established in ARTICLE THREE, Section 3 hereof, for the following specific and general purposes:

- A. There shall be a ten (10) foot utility and storm water conveyance easement along each Property Line with the ability (but not the obligation) by the County and/or WDI to cut trees, install lines, etc. at its sole discretion.
- B. For the construction, operation and maintenance of electric light or power, telephone or telegraph, water, irrigation, gas, or sewer, pipes, conduits, lines, trails

or systems to serve the Land or other real property owned by the County or WDI or The Foundation.

- C. To enable any other public utility to serve the Land or other real property owned by the County or WDI or The Foundation.
- D. For purposes of drainage, or for ingress and egress to serve said Land or other real property owned by the County or WDI or The Foundation.

Such easements, rights of way or licenses may be granted by the County and/or WDI, as appropriate, across, through, under, upon or over any private or public streets, driveways, landscaped areas or paved areas, which are now existing or which may hereinafter be established in said setback areas.

Should any public utility company, governmental body, or other person, firm or corporation require such an executed easement, right of way or license by any Owner in addition to that executed by the County and/or WDI, then such Owner or sublessee, does hereby agree for itself, and its successors, and assigns individually and jointly to execute the same upon the request of the County and/or WDI.

In the event the County and/or WDI grants to a utility company, governmental body, or other person, firm or corporation the right to locate its transmission lines or mains or other facilities under any driveway, parking area, fence, lawn or walkway, such easement shall provide that the Grantee shall repair to a mutually agreeable level, as determined by the parties, any damage to same occasioned by the installation, relocation, maintenance or repair of such facilities.

Section 3.24. "HISTORICAL ARTIFACTS". The Foundation hereby

retains ownership rights to any prehistorical and/or historical artifacts discovered on or under any portion of the Land. In the event such artifacts are discovered, before such artifacts shall be disturbed or removed, notice shall be given to the Foundation, and the Owner shall cooperate fully with the Foundation and grant such licenses and easements reasonably necessary to allow such artifacts to be removed. Notwithstanding anything in these Covenants and restrictions to the contrary, the Foundation shall have a period not exceeding fourteen days after its receipt of notice to remove said artifacts, unless a longer period is acceptable to the Owner. Should the Foundation fail to remove said artifacts within said period, the Owner shall have no further obligation pursuant to this Section. The time periods referred to in ARTICLE THREE, Section 12 shall be held in abeyance during the period such artifacts are being removed.

Section 3.25. "REPAIRS". Notwithstanding that the DRB may have approved an Owner's landscape plan or an Owner's plans and specifications for a building, if the Owner, during its landscaping or construction, causes any destruction or damage to occur to trees, landscaping, curbs, gutters, road surfaces, drainage ways, storm sewer, sanitary sewer, water system or other improvements installed by the County and/or WDI, utility companies or other Owners, or to the sprinkler system installed by the County and/or WDI or to existing trees, streambeds, etc. which are to be preserved, if any, which damage or destruction is not called for by the plans approved by the DRB, then Owner, at his own cost and

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expense, will restore or replace, as required by the County and/or WDI, any such items so damaged or destroyed.

ARTICLE FOUR

SPECIFIC ENFORCEMENT OF PROTECTIVE COVENANTS

The County, WDI, the DRB and the Association, and each of them, reserve and are hereby separately granted the right to enter upon all Building Sites to inspect for purposes of determining compliance with these Covenants and Restrictions and further in case of any violation or breach of any of these Covenants and Restrictions, to enter upon the Building Site(s) upon which or as to which such violation or breach exists, and to summarily abate and remove, at the expense of the Owner, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions herein interpreted by the Association, and that the County, WDI, the DRB and/or the Association shall not, by reason thereof, be deemed guilty of any manner of trespass for such entry, abatement, or removal. The County, WDI, the DRB and/or the Association and every Owner are further separately empowered to seek by legal proceedings, either in law or in equity, necessary remedies for a continuing breach of these Covenants and Restrictions. A failure to enforce any of these Covenants and Restrictions shall in no event be construed, to be a waiver thereof or acquiescence in or consent to any continuing, further or succeeding breach or violation thereof.

In the event, in the opinion of the enforcing party, it shall be necessary to secure the services of an attorney to enforce the provisions of all or any of these Covenants and Restrictions, then the fee of such attorney, and all other costs in connection with any contemplated or actual legal proceeding in such connection, shall become a lien against the Building Site which is the subject of the proceedings. If such costs and attorney's fees are not paid within ten (10) days from the date of written notice thereof, by the Association, to the Owner, of the Building Site in question, such fee and costs shall bear interest and constitute a lien against the Building Site in question.

The Foundation reserves and is hereby granted the same rights of entry, inspection, abatement, removal and enforcement hereby reserved and separately granted to the County, WDI, the DRB and the Association but only as such rights relate to the Foundation's rights or interest under paragraphs 3.1, 3.2 (A), 3.5, 3.21 and 3.24 of these Covenants and Restrictions.

ARTICLE FIVE

ACCEPTANCE OF PROTECTIVE COVENANTS

Each Owner of a Building Site, by the acceptance of a deed of conveyance, lease or sublease or right to enter thereon, accepts the same subject to all these Covenants and Restrictions, acknowledges them to be reasonable and acknowledges the rights, created or reserved by these Covenants and Restrictions and all easements, rights, benefits and privileges of every character

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hereby granted, created or served, and all obligations hereby imposed shall run with the Land and bind every Owner of every interest therein, and inure to the benefit of every Owner, as though the provisions of these Covenants and Restrictions were recited and stipulated in each and every deed of conveyance, lease, sublease and license.

ARTICLE SIX

MORTGAGES

All liens resulting from these Covenants and Restrictions shall be deemed subordinate to all mortgages, now or hereafter executed, encumbering any Building Site which comprises the Land and none of said Covenants and Restrictions or other provisions shall supersede or in any way reduce the security or affect the validity of any such mortgage; however, if any portion of any Building Site is acquired in lieu of foreclosure or is sold under foreclosure of any mortgage or under judicial sale, tax foreclosure or forfeiture, any purchaser at such sale, his heirs, successors and assigns, shall hold any and all properties so purchased or acquired subject to all these Covenants and Restrictions.

ARTICLE SEVEN

FAILURE TO ENFORCE

None of the Covenants and Restrictions shall be abrogated or waived by any failure to enforce the provisions hereof, no matter how many violations or breaches may occur.

ARTICLE EIGHT

INVALIDITY OF ANY SECTION

The invalidity of any of these Covenants and Restrictions in whole or in part by judgment, court order or in any other manner shall not impair or affect in any manner the validity, enforceability or effect of the rest of said Covenants and restrictions.

ARTICLE NINE

ASSIGNABILITY

The rights, privileges and powers retained by the County and/or WDI shall be assignable to and shall inure to the benefit of their successors and assigns; however, successors and assigns shall not include an Owner as herein defined.

ARTICLE TEN

ADDITIONAL REAL PROPERTY

Upon mutual agreement, the County and WDI shall have the right to render additional real property subject and subservient to these Covenants and Restrictions by executing and delivering for recordation a supplement to these Covenants and Restrictions stating:

- A. a description of the real property to be added that is to be subject and subservient to these Covenants and Restrictions;
- B. that the County and/or WDI is the owner in fee simple of such real property; or, in lieu thereof, all other persons, firms or corporations having an interest in the real property to be added, may join in such supplement; and
- C. a statement of any additional restrictions or burdens to which the real property to be added shall be subjected, if any, and a statement of any restrictions, burdens or provisions of these Covenants and Restrictions which will

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in whole or in part not be applicable or apply in modified form, if any.

ARTICLE ELEVEN

NO RECIPROCAL NEGATIVE EASEMENT

Notwithstanding anything in these Covenants and Restrictions to the contrary, no real property other than that described on exhibit A shall, by implication, be subject and subservient to these Covenants and Restrictions.

ARTICLE TWELVE

AMENDMENT OR MODIFICATION

These Covenants and Restrictions may, at any time, be amended, modified or repealed in whole or in part by the mutual agreement of the County and WDI, so long as at least twenty-five (25) percent of the Land subject to these Covenants and Restrictions, exclusive of public-rights-of-way, is owned by the County and WDI. If the County and WDI own less than twenty five (25) percent of the Land subject to these Covenants and Restrictions, with the exception of ARTICLE THREE, Sections 1, 3, 4, 5, 11, 12, 19, 20, 21, 23 and 24 hereof, these Covenants and Restrictions may be amended or modified in whole or in part at a meeting specifically called for that purpose with the affirmative vote of three-fourths (3/4) of the total number of votes authorized pursuant to ARTICLE FOURTEEN hereof.

ARTICLE THIRTEEN

ASSOCIATION

Every Owner of every Building Site shall become a member of the Association which shall be governed by a Board of Trustees

consisting of three (3) Trustees who shall, not later than December 31, 1992, be designated on an interim basis by the County and WDI until the first annual meeting of the Association.

Section 13.1. "CUMULATIVE VOTING". In all subsequent annual elections for Trustees, a member voting in accordance with the provisions of ARTICLE FOURTEEN, may vote for as many persons as there are Trustees to be elected, or may cumulate said votes and give one (1) candidate as many votes as the number of Trustees to be elected, multiplied by the number of votes to which the voter is entitled under ARTICLE FOURTEEN hereof, or to distribute such votes on the same principle among as many candidates as such member shall see fit. Fractionalized voting shall not be permitted.

Section 13.2. "QUALIFICATIONS". Except for those persons appointed by the County and WDI under Sections 13.3 thru 13.5 of this ARTICLE THIRTEEN only Owners of record title, or authorized representatives of such Owners, or lessees or their authorized representatives entitled to vote are qualified to be Trustees.

Section 13.3. "ELECTION OF TRUSTEES". So long as at least twenty-five (25) percent or more of the area of the Land subject to these Covenants and Restrictions, exclusive of public rights-of-way, is owned by the County or WDI or the County and WDI collectively, the three (3) Trustees shall be appointed by the County and/or WDI. So long as fifteen (15) percent but less than twenty-five (25) percent of the area of the Land subject to these Covenants and Restrictions, exclusive of public rights-of-way, is owned by the County or WDI, or the County and WDI collectively, two

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(2) Trustees shall be appointed by them and one (1) Trustee shall be elected by the members entitled to vote in said election. So long as five (5) percent but less than fifteen (15) percent of the area of the Land subject to these Covenants and Restrictions, exclusive of public rights-of-way, is owned by the County or WDI or the County and WDI collectively, one (1) Trustee shall be appointed by the County and WDI and two (2) Trustees shall be elected by the other members entitled to vote in said election. If less than five (5) percent of the area of the Land subject to these Covenants and restrictions, exclusive of public rights-of-way, is owned by the County or WDI or the County and WDI collectively, all of the Trustees shall be elected by the other members entitled to vote in said election. All votes cast by the County and/or WDI shall be in accordance with Section 13.4 of this Article.

Section 13.4. "VOTES - THE COUNTY AND WDI". WDI and the County shall each be entitled to the number of votes determined pursuant to the following formula: Area of the portion of the Land owned by WDI divided by the total area of the Land, multiplied by total number of votes to which both the County and WDI are entitled, rounded to the nearest whole number, equals number of votes to which WDI is entitled. Number of votes to which both the County and WDI are entitled less number of votes to which WDI is entitled equals number of votes to which the County is entitled.

Section 13.5. "TERM OF OFFICE". Except as otherwise provided herein, Trustees appointed by the County and/or WDI and/or elected at the Association's annual meeting shall serve for a term of three

(3) years. At the first annual meeting, one (1) Trustee shall be appointed by WDI for a term of one (1) year, one (1) Trustee shall be appointed by WDI for a term of two (2) years, and one (1) Trustee shall be appointed by the County for a term of three (3) years. Thereafter, as their respective terms are completed, one (1) Trustee shall either be appointed or elected in accordance with the provisions of Section 13.3 and Section 13.4 of ARTICLE THIRTEEN hereof, to serve for a period of three (3) years. Whenever any one or more of said appointed Trustees shall die, be unable to act, resign, or be removed by either the County or WDI, then the unexpired term or terms shall be filled by appointment by the party who had originally appointed said Trustee. Whenever any one or more of said elected Trustees shall die, be unable to act, resign, cease to have an interest in the Land or be removed by the membership, then the unexpired term or terms shall be filled in accordance with the provisions for election as herein before set forth, and, if necessary, a special election shall be called by the Association to fill a vacant seat or seats.

Section 13.6. "POWERS AND DUTIES OF THE BOARD OF TRUSTEES".

The Board of Trustees shall have the following powers and duties, whenever in the exercise of its discretion it may deem them necessary or advisable:

- A. to enforce, independently by proceedings in law or equity or both either in the name of the DRB, the Association, the County, WDI, or any Owner, any or all of the Covenants and

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Restrictions herein; provided, however, that this right of enforcement shall not serve to prevent such amendments or modifications of these Covenants and Restrictions being made by the parties having the right to make such amendments or modifications, nor shall it serve to prevent the assignment of those rights by the proper parties, wherever and whenever such right of assignment exists. The expenses and costs of any such proceedings shall, however, be collected and lienable or be paid out of the general funds of the Association.

- B. to provide for the plowing and removal of the snow from streets, as necessary, until said streets are accepted by the Virginia Department of Transportation.
- C. to care for, spray, trim and protect and replant trees on all public streets and in other common areas where trees are planted, except where otherwise provided for; to care for, protect and replant flowers and shrubbery and resow grass in the common areas in the public streets or rights of way.
- D. to cut and remove weeds and grass from vacant property; to pick up and remove therefrom loose material, trash and rubbish of all kinds and to do all things necessary or desirable in the judgment of the Trustees to keep such vacant and unimproved property neat in appearance.
- E. to provide such lights and signs, if any, as the Trustees may deem advisable on streets, parks, parking, gateways, entrances or other features, and in other common areas.
- F. to provide, as the Trustees deem advisable, at suitable locations, receptacles for the collection of rubbish and for the disposal of such rubbish as is collected.
- G. to provide for the maintenance of gateways, entrances, and other ornamental features now existing or which may hereafter be erected or created on the Land, or to which all of such Owners, have access and the use thereof.
- H. to exercise such control over easements as it

may acquire from time to time.

- I. to exercise such control over streets as may be within its power and as it may deem necessary or desirable.
- J. to clean, repair, maintain, repave and reconstruct private streets or roads, lanes, pedestrian ways and other rights-of-way.
- K. to establish policies and procedures for the review and approval of plans and specifications required by these Covenants and Restrictions and to have the right to provide for any improvement or maintenance of improvement which they may deem necessary or desirable.
- L. to establish by-laws and other rules or regulations for the Association and Board of Trustees.
- M. to appoint members to the DRB for the purpose of review and approval of plans and specifications required by these Covenants and Restrictions.

Section 13.7. "METHOD OF PROVIDING GENERAL FUNDS". For the purpose of providing general funds to enable the Association to perform the duties and to maintain the improvements herein provided for, all of the Building Sites shall be subject to an annual assessment to be paid to the Association on the first day of each January by the respective Owners thereof. The amount of such assessment shall be fixed from year to year at the annual meeting of the Association by the affirmative vote of a majority of the total number of votes cast in accordance with ARTICLE FOURTEEN hereof.

Section 13.8. "SPECIAL ASSESSMENTS". The Trustees shall, in accordance with the provisions of this paragraph, have the power to levy special assessments, if deemed necessary or desirable by said

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Trustees, in addition to general assessments, as herein provided, on an annual basis for maintenance and replacement of the landscaping, medians and right -of-way in all streets; for the maintenance, replacement and operating costs of street lights; for any other special purpose, emergency or unanticipated expenses; and to meet any anticipated or actual operating deficit of the Association. All special assessments are due and payable not later than sixty (60) days from the date that they are levied.

Section 13.9. "NOTICE". A written or printed notice, deposited in the United States Post Office, with postage prepaid for certified mail and addressed to the respective Owners at the last address listed with the Association, shall be deemed to be sufficient and proper notice for this purpose or any other purpose where notices are required under these Covenants and Restrictions. Such notice shall be deemed to have been given three days after posting.

Section 13.10. "ASSESSMENT-INTEREST AND LIEN". After the date when an assessment payment is due, it shall bear interest at the legal rate of interest as specified in the Code of Virginia then in existence until paid and such payment and interest shall constitute a lien upon said Building Site and said lien shall continue in effect until the amount is fully paid. At any time after the passage of the resolution levying an assessment and its entry in its minutes, the Board of Trustees may, in addition, by motion, institute legal proceedings to cause a lien to be filed with the Clerk of the Circuit Court for the City of Williamsburg and County

of James City or their successors for such unpaid assessment. The trustees, their successors and assigns, shall have the right to collect such unpaid assessments through whatever legal proceedings are available.

Section 13.11. "EXPENDITURES LIMITED TO ASSESSMENTS FOR CURRENT YEAR". The Association shall at no time expend more money within one year than the total amount of annual and special assessments for that particular year, plus any surplus which it may have on hand from previous assessments; nor shall the said Association enter into any contract binding the assessments of any future year to pay for any such obligations and no such contract shall be valid or enforceable against the Association, it being specifically intended that the assessment for each shall be applied as far as is practicable towards the paying of the obligations of that year, and that the Association shall have no power to make a contract affecting the assessment of any future or subsequent years. The language of this section shall not prohibit the Association from making a staged or sequential set of improvements over several years provided, however, that one stage of improvements must not mandate the carrying out of the later stages unless the funds to pay the costs of such later stages are available.

Section 13.12. "ASSOCIATION NOTIFY MEMBERS OF ADDRESS". The Association shall, from time to time, notify its members of the official address of said Association, the place and time of regular meetings of the Association, designate place where payments shall

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be made and the location where any other business in connection with said Association may be transacted, and in case of any change of such address, the Association shall notify all of the members of its new address in accordance with the provisions of Section 9, "NOTICE" of this ARTICLE THIRTEEN.

Section 13.13. "OBSERVE ALL LAWS". The Association shall observe all the state, county, and other laws, and if at any time any of the provisions of the Association shall be found to be in conflict therewith, then such parts of the Association's regulations as are in conflict with such laws shall become null and void, but no other parts not in conflict therewith shall be affected thereby. The Association shall have the right to make such reasonable rules and regulations and provide such means and employ such agents as shall enable it adequately and property to carry out the provisions as herein provided, subject, however, to the limitations of its right to contract as herein provided.

ARTICLE FOURTEEN

VOTING

In all elections and on all matters requiring a vote, every Owner shall have the right to vote in person or by written proxy, one (1) vote for each full acre of a Building Site (exclusive of areas within public streets) owned in the James River Commerce Centre and one (1) vote for each fraction of an acre of said Building Site (exclusive of areas within public streets) owned in excess of one-half acre; provided, however, that lessees of Building Sites in the James River Commerce Centre for a term of

twenty-five (25) years or more may, to the extent of the Building site (exclusive of areas within public streets) under such lease, shall exercise the Owner's right to vote to the Owner's exclusion during the term of said lease, if the lease so provides. No other person shall have the right to vote. Joint, common or other multiple ownership of any of said Building Sites shall not entitle the Owners of said property to more than the number of votes which would be authorized if the property were held under one name.

ARTICLE FIFTEEN

CONFLICT WITH LAWS

All federal, state and local statutes, laws, ordinances and regulations shall take precedence over these Covenants and Restrictions where they are more restrictive. If said laws, ordinances and regulations are less restrictive, these Covenants and Restrictions shall take precedence.

ARTICLE SIXTEEN

CONSTRUCTION OF COVENANTS AND RESTRICTIONS

WDI and the County, each acknowledge that these Covenants and Restrictions have been developed jointly by their respective representatives and as such, there shall be no presumption in favor of one party or the other in case of the construction of any ambiguity.

ARTICLE SEVENTEEN

APPLICABLE LAW

These Covenants and Restrictions shall be interpreted and

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applied according to the law of the Commonwealth of Virginia.

WILLIAMSBURG DEVELOPMENTS, INC.

By: *John T. Hollowell*
President

JAMES CITY COUNTY, VIRGINIA

By: *J. Edwards*
Chairman, Board of Supervisors

THE COLONIAL WILLIAMSBURG FOUNDATION

By: *Charles K. Lyman*
President

STATE OF VIRGINIA

CITY/COUNTY OF Williamsburg, to-wit:

The foregoing was acknowledged before me this 15 day of January, 1992, by John T. Hollowell, President of and acting on behalf of Williamsburg Developments, Inc., a Virginia Corporation.

Wianne Mergen Hardie
NOTARY PUBLIC

My commission expires: March 16, 1993

STATE OF VIRGINIA

CITY/COUNTY OF Williamsburg, to-wit:

The foregoing was acknowledged before me this 15 day of

January, 1992, by Jack D. Edwards, Chairman of and acting on behalf of the Board of Supervisors of James City County, Virginia.

Dianne Morgan Hardie
NOTARY PUBLIC

my commission expires: March 16, 1993

STATE OF VIRGINIA

CITY OF WILLIAMSBURG, to-wit:

The foregoing was acknowledged before me this 15th day of January, 1992 by Charles R. Longworth, President of and acting on behalf of The Colonial Williamsburg Foundation.

Dianne Morgan Hardie
NOTARY PUBLIC

my commission expires: March 16, 1993

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EXHIBIT A

All that certain lot, piece or parcel of land, with improvements thereon and appurtenances thereunto belonging, lying and being in Roberts District, James City County, Virginia, as shown on a plat of survey attached hereto and made a part hereof, prepared by Langley and McDonald, P.C., a professional corporation, Engineers-Planners-Surveyors, dated 8/7/91 entitled "SUBDIVISION OF PROPERTY OF COLONIAL WILLIAMSBURG FOUNDATION, BEING PART OF THE LOCUST GROVE TRACT, SITUATED IN THE ROBERTS DISTRICT, JAMES CITY COUNTY, VIRGINIA" on which plat the property hereby conveyed is more particularly described as "PARCEL 2, TOTAL AREA = 61.2113 ACRES, NET DEVELOPABLE AREA = 45.0000 ACRES, UNDEVELOPABLE AREA = 16.213 ACRES" together with "ADDITIONAL AREA REQUIRED FOR SUBDIVISION APPROVAL = 3.1387 ACRES".

DECLARATION OF COVENANTS AND RESTRICTIONS
LOCUST GROVE

THIS DECLARATION, made this 15th day of January, 1992, by James City County, Virginia, a Virginia municipal corporation (the "County"); and The Colonial Williamsburg Foundation, a Virginia non-stock, non-profit corporation, its successors or assigns (the "Foundation").

W I T N E S S E T H :

WHEREAS, the Foundation is presently the owner of certain real property in James City County, Virginia, south of Route 60 East (the "Land") and more particularly described on Exhibit A and shown on Exhibit B attached hereto; and

WHEREAS, the Foundation and the County have entered into an agreement dated as of December 1, 1991, to convey the Land, as hereinafter defined, to the County, subject to certain covenants and restrictions; and

WHEREAS, the Foundation desires to protect the scenic and historical values of the adjacent Carter's Grove Plantation Property (the "Carter's Grove Plantation Property") and its adjacent property in the James River Commerce Centre and develop an attractive high quality, aesthetically pleasing setting for a school, a park and certain related recreational facilities; and to this end, desires to subject said real property together with such additions as may hereinafter expressly be made thereto to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said real property, the owners thereof, and the parties hereto; and

NOW, THEREFORE, the Foundation declares that the Land, and such additions thereto as may hereafter be made pursuant to Article Ten hereof, is and shall be held, transferred, sold, conveyed, used and occupied subject to the covenants, restrictions, easements, charges and liens ("Covenants and Restrictions") hereinafter set forth.

ARTICLE ONE
DEFINITIONS

Section 1.1. "LAND" shall mean the real property described on Exhibit A, or any part thereof, and any other real property made subject to the Covenants and Restrictions pursuant to ARTICLE TEN hereof and all the Improvements erected on the Land.

Section 1.2. "IMPROVEMENT OR IMPROVEMENTS" shall mean structures and construction of any kind, whether above, on, or

below the land, such as, but not limited to, buildings, outbuildings, antennas, heating and air conditioning units, flag poles, water lines, sewer lines, electrical and gas distribution facilities, loading areas, parking areas, walkways, walls, fences, screens, hedges, plantings, signs, curbs, gutters, paved surfaces, lighting systems, irrigation systems, traffic control devices and systems.

Section 1.3. "OWNER OR OWNERS" shall mean the person(s), sole proprietorship(s), partnership(s), limited partnership(s), corporation(s), trust(s) or other legal entities in whom title to the Land is vested as shown by the official records in the office of the Clerk of the Circuit Court for the City of Williamsburg and County of James City, Virginia, and all of their successors.

ARTICLE TWO
GENERAL CHARACTER AND PURPOSES

The Land is subjected to these Covenants and Restrictions in recognition of the Land's environmental and historic features and sensitive location and to insure a unified, managed development, distinguished by visual quality and sensitivity to the natural and historic setting by specifying the proper use and most appropriate development of the Land. It is the intent of these Covenants and Restrictions to insure that the Land be maintained as attractive, aesthetically pleasing settings with ample landscaped and natural areas, attractive high quality structures, proper and desirable use and appropriate development; to protect that portion of the Carter's Grove Plantation Property designated the "Protected Area" and shown on Exhibit C hereto, from all visual intrusions, light, noise or air emissions; to guard against erection of Improvements built of improper or unsuitable materials or design; to encourage the erection of attractive Improvements with appropriate locations; to prevent haphazard and/or inharmonious development of the Land; and to provide a high quality of development of said Land.

ARTICLE THREE
GENERAL CONDITIONS

Section 3.1. "USES". The Land shall be used for (a) an elementary school which may include within the school building structure (i) a child care facility, (ii) a preschool facility, and (iii) community recreational facilities, (b) a park which may include community recreational facilities, and (c) such auxiliary uses as are necessary or directly related to the use of the Land for an elementary school and park. The use of the Land for community recreational activities shall be limited to those recreational facilities set forth in Exhibit D attached hereto. Other recreational facilities may be permitted upon written approval of the use, location and design by the Foundation.

Section 3.2. "REVIEW AND APPROVAL". A representative from the Foundation shall participate in the review of all preliminary

and final architectural, site, landscaping, and drainage plans for construction of any Improvements on the Land.

Section 3.3. "GENERAL". In no event shall any Improvements of any type be located on the Land if the Improvement or the construction thereof is visible at any time of the year from the Protected Area of the Carter's Grove Plantation Property or such Improvement or construction thereof produces noise, sound, odors, smoke or other visible emissions which may be readily detected from the Carter's Grove Plantation Property.

Section 3.4. "BUFFER AREA". The Buffer Area as identified on Exhibit B hereto shall be maintained to protect the Carter's Grove Plantation Property visually and auditorially from the uses of the Land by maintaining or enhancing a dense natural forest cover to serve as a screen between the Land and the Carter's Grove Plantation Property. The removal of trees or understory plant material within the Buffer Area shall be subject to the prior written approval of the Foundation. The Owner shall use its best efforts to maintain the existing natural forest cover to achieve a natural physical and sound barrier between the Land and Carter's Grove Plantation Property. In the event the existing natural forest cover is substantially destroyed so as to no longer provide an effective buffer, the Owner and the Foundation shall share on an equal basis the cost of replacing the forest cover in order to restore the natural physical and sound barrier between the Land and Carter's Grove Plantation Property. Either party shall have the right after ten (10) days written notice to replace the buffer and charge the other party one-half of the reasonable costs of replacing the forest cover.

Uses within the Buffer Area shall be limited to walking, biking and equestrian paths, picnic areas, benches and related facilities. Other uses may be permitted with the prior written approval of the Foundation.

All uses within the Buffer Area shall use design, location, signage, and/or physical barriers to discourage uncontrolled access to the adjacent Carter's Grove Plantation Property.

Walking, biking and equestrian paths shall be clearly defined to reduce off-path use with edges of stone, timber or plantings being preferred. Such paths shall be composed of bark, mulch, gravel, or asphalt. Picnic areas and benches shall not be concentrated in any one area to prevent soil compaction and environmental damage.

Section 3.5. "SETBACKS". No building, outbuilding or parking area shall be built on the Land within the following minimum setback area:

From Route 60 on the northern boundary of the Land 50'

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The area of setback from Route 60 shall be landscaped in a manner consistent with adjoining property on Route 60. Narrower setback widths shall be subject to the prior written approval of the Foundation.

Section 3.6. "HEIGHT LIMITATIONS". All portions of any improvements constructed above grade shall not exceed thirty-five (35) feet in height as measured according to the BOCA Basic Building Code definition.

Section 3.7. "BUILDING CONSTRUCTION". Buildings and parking areas shall be designed to preserve the existing tree cover wherever possible. All utilities shall be placed underground except for minimal necessary above-ground equipment which shall be buffered from view from public roads. Service docks and other loading areas, dumpsters and other waste or refuse containers, waste materials or refuse, storage areas, transformers and electric meters shall be located so as to be shielded from view from the main entrance from the public roadway where possible and shall be screened with appropriate materials.

Section 3.8. "SCREENING". All parking areas, active play areas, heating and air conditioning units, dumpsters, loading docks and doors shall be screened from view from the Carter's Grove Plantation Property by buildings, earth berms, tree cover and/or landscaping materials.

Section 3.9. "SIGNS". Except for signs which are not visible from the Carter's Grove Plantation Property or from a public road, no billboards, signs or other advertising devices of any character other than signs necessary to identify the school and park, shall be erected, pasted, posted, painted, displayed or permitted upon any part of the Land, or structure thereon. Internally illuminated signs are prohibited unless a specific written approval is obtained from the Foundation.

Section 3.10. "FENCES AND WALLS". No fence, wall, or other structures shall be erected, installed or permitted to remain in the Setback Areas without the prior written approval of the Foundation.

Section 3.11. "EXTERIOR AND INTERIOR LIGHTING". No exterior lighting shall be installed or operated except that necessary for security and safety. All interior and exterior lighting must be so arranged or shielded as to minimize off site glare reflecting into the night sky or onto any portion of any adjacent street and avoid off site glare reflecting onto the adjacent property. The Foundation may limit or require adjustment to exterior lighting, if in its sole judgment excessive illumination is being caused and such lighting is visible from the Carter's Grove Plantation Property.

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Light standards shall not exceed twenty-four (24) feet in height.

Section 3.12. "POLLUTION, NOISE AND NUISANCES". The following uses shall not be permitted or maintained on any portion of the Land:

1. No outdoor loudspeakers, bells or horns shall be permitted except as required for emergency usage.
2. No outdoor amphitheaters or lighted playing fields shall be permitted.
3. No seating for unlighted playing fields in excess of (i) two (2) players' benches per field, each bench seating a maximum of twenty (20) players, and (ii) spectator seating for fifteen (15) persons per field, shall be permitted.

Section 3.13. "ACCESS". The location of any and all access roads from Route 60 located east of the intersection of Plantation Drive and Route 60 into the Land shall be and remain subject to the prior written approval of the Foundation.

Section 3.14. "HISTORICAL ARTIFACTS". The Foundation hereby retains ownership rights to any prehistorical and/or historical artifacts discovered on or under any portion of the Land.

ARTICLE FOUR
SPECIFIC ENFORCEMENT OF PROTECTIVE COVENANTS

The Foundation reserves and hereby separately grants the right to enter upon the Land to inspect for purposes of determining compliance with these Covenants and Restrictions and further in case of any violation or breach of any of these Covenants and Restrictions, to abate and remove after 10 days notice, at the expense of the Owner, any Improvements, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions herein interpreted by the Foundation shall not, by reason thereof, be deemed guilty of any manner of trespass for such entry, abatement, or removal. The Foundation and every Owner are further separately empowered to seek by legal proceedings, either in law or in equity, necessary remedies to a continuing breach of these Covenants and Restrictions. A failure to enforce any of these Covenants and Restrictions shall in no event be construed, taken or held to be a waiver thereof or acquiescence in or consent to any continuing, further or succeeding breach or violation thereof.

In the event, in the opinion of the enforcing party, it shall be necessary to secure the services of an attorney to enforce the provisions of all or any of these Covenants and Restrictions, then the fee of such attorney, and all other costs in connection with

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by contemplated or actual legal proceeding in such connection, shall become a lien against the Land which is the subject to proceedings. If such costs and attorney's fees are not paid within thirty (30) days from the date of written notice thereof, by the foundation, to the Owner in question, such fee and costs shall bear upon and constitute a lien against the Land in question.

ARTICLE FIVE
ACCEPTANCE OF PROTECTIVE COVENANTS

Each Owner of the Land or any portion thereof, by the acceptance of a deed of conveyance, lease or sublease or right to enter thereon, accepts the same subject to all these Covenants and Restrictions and the jurisdiction, right, and power of the Grantor, created or reserved by these Covenants and Restrictions and all easements, rights, benefits and privileges of every character hereby granted, created or served, and all obligations hereby imposed shall run with the Land and bind every Owner of every interest therein, and inure to the benefit of every Owner, as though the provisions of these Covenants and Restrictions were recited and stipulated in each and every deed of conveyance, lease and sublease.

ARTICLE SIX
MORTGAGES

All liens resulting from these Covenants and Restrictions shall be deemed subject to and subordinate to all mortgages, now or hereafter executed, encumbering the Land and none of said Covenants and Restrictions or other provisions shall supersede or in any way reduce the security or affect the validity of any such mortgage; however, if any portion of the Land is acquired in lieu of foreclosure or is sold under foreclosure of any mortgage or under judicial sale, tax foreclosure or forfeiture, any purchaser at such sale, his heirs, successors and assigns, shall hold any and all properties so purchased or acquired subject to all these Covenants and Restrictions.

ARTICLE SEVEN
FAILURE TO ENFORCE

None of the Covenants and Restrictions shall be abrogated or waived by any failure to enforce the provisions hereof, no matter how many violations or breaches may occur.

ARTICLE EIGHT
INVALIDITY OF ANY SECTION

The invalidity of any of these Covenants and Restrictions in whole or in part by judgment, court order or in any other manner

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shall not impair or affect in any manner the validity, enforceability or effect of the rest of said Covenants and Restrictions.

ARTICLE NINE
ASSIGNABILITY

The rights, privileges and powers herein retained by the Foundation shall be assignable to any subsidiary of the Foundation or any related party and shall inure to the benefit of such successors and assigns; however, successors and assigns shall not include an Owner as herein defined.

ARTICLE TEN
ADDITIONAL REAL PROPERTY

The Foundation and the County shall have the right at any time to render additional real property subject and subservient to these Covenants and Restrictions by executing and delivering for recordation a supplement to these Covenants and Restrictions stating:

- (a) a description of the real property to be added that is to be subject and subservient to these Covenants and Restrictions;
- (b) that the Foundation and/or the County are the owner or owners in fee simple of such real property; or, in lieu thereof, all other persons, firms or corporations having an interest in the real property to be added, may join in such supplement; and
- (c) a statement of any additional restrictions or burdens to which the real property to be added shall be subjected, if any, and a statement of any restrictions, burdens or provisions of these Covenants and Restrictions which will in whole or in part not be applicable or in modified form be applicable to the new addition to the Land, if any.

ARTICLE ELEVEN
NO RECIPROCAL NEGATIVE EASEMENT

Notwithstanding anything in these Covenants and Restrictions to the contrary, no real property shall, by implication, be subject and subservient to these Covenants and Restrictions.

ARTICLE TWELVE
AMENDMENT OR MODIFICATION

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These Covenants and Restrictions may be amended, modified or repealed in whole or in part by the Foundation with the prior written agreement of Owner or Owners.

ARTICLE THIRTEEN
CONFLICT WITH LAWS

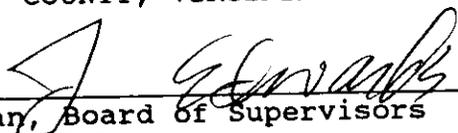
All federal, state and local statutes, laws, ordinances and regulations shall take precedence over these Covenants and Restrictions where they are more restrictive. If said laws, ordinances and regulations are less restrictive, these Covenants and Restrictions shall take precedence.

ARTICLE FOURTEEN
APPLICABLE LAW

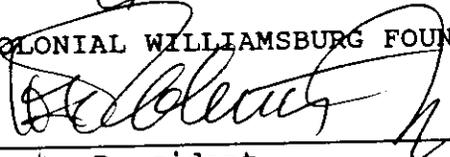
These Covenants and Restrictions shall be interpreted and applied according to the law of the Commonwealth of Virginia.

WITNESS the following signatures.

JAMES CITY COUNTY, VIRGINIA

By: 
Chairman, Board of Supervisors

THE COLONIAL WILLIAMSBURG FOUNDATION

By: 
Vice President

STATE OF VIRGINIA

CITY/COUNTY OF Williamsburg, to-wit:

The foregoing was acknowledged before me this 15 day of January, 1991, by JACK EDWARDS, ~~Thomas K. Norment, Jr.~~ chairman of and acting on behalf of the Board of Supervisors of James City County, Virginia.

Wianne Morgan Hardie
NOTARY PUBLIC

My commission expires: March 16, 1993

STATE OF VIRGINIA

CITY/COUNTY OF Williamsburg, to-wit:

The foregoing was acknowledged before me this 15 day of January, 1991, by WILLIAM L. ROBERTS, JR., ~~Charles R. Longworth,~~ President of and acting on behalf of The Colonial Williamsburg Foundation.

Wianne Morgan Hardie
NOTARY PUBLIC

My commission expires: March 16, 1993

[Exhibit A to
Declaration of Covenants and
Restrictions of Locust Grove]

EXHIBIT A

Legal Description

ALL that certain lot, piece or parcel of land, with improvements thereon, and appurtenances thereunto belonging, lying and being in the Roberts District, James City County, Virginia, as shown on a plat of survey attached hereto as Exhibit B (the "Plat") prepared by Langley and McDonald, P. C. A Professional Corporation, Engineers, Planners, Surveyors, dated May 9, 1991, entitled "Subdivision of Property of Colonial Williamsburg Foundation Being Part of The Carter's Grove & Locust Grove Tracts Situated In The Roberts District, James City County, Virginia", with reference to the Plat recorded contemporaneously herewith, the real estate is more particularly described as follows:

BEGINNING at a point along the southern right-of-way line of U. S. Route 60; thence S. 25° 20' 30" W. a distance of 781.50 feet to a point; thence S. 06° 04' 45" W. a distance of 178.50 feet to a point; thence S. 49° 26' 00" W. a distance of 92.50 feet to a point; thence S. 35° 53' 10" W. a distance of 60.00 feet to a point; thence S. 04° 14' 00" E. a distance of 43.75 feet to a point; thence S. 10° 56' 40" E. a distance of 61.80 feet to a point; thence S. 81° 26' 00" W. a distance of 387.92 feet to a point; thence N. 01° 35' 40" E. a distance of 287.11 feet to a point; thence N. 66° 10' 25" W. a distance of 139.75 feet to a point; thence S. 60° 21' 20" W. a distance of 421.00 feet to a point; thence N. 09° 51' 15" W. a distance of 770.00 feet to a point; thence N. 25° 28' 05" E. a distance of 630.15 feet to a point; thence S. 70° 46' 35" E. a distance of 395.18 feet to a point; thence N. 41° 38' 29" E. a distance of 282.66 feet to a point along the southern right-of-way line of U. S. route 60; thence along the southern right-of-way line of U. S. Route 60, along a curve to the left having a radius of 1125.35 feet and an arc distance of 212.17 feet S. 53° 45' 36" E. a distance of 211.86 feet to a point; thence S. 59° 09' 40" E. a distance of 515.00 feet to a point, which is the point and place of BEGINNING, and containing 32.8242 acres.

BEING the same property conveyed to Colonial Williamsburg Foundation, by deed dated October 2, 1969, and recorded in the Clerk's Office of the Circuit Court of the County of James City, Virginia, in Deed Book 123, page 497.

JOINT RESOLUTION TO AMEND THE RESTATED CONTRACT
FOR THE JOINT OPERATION OF
SCHOOLS, CITY OF WILLIAMSBURG AND COUNTY OF JAMES CITY

DATE OF DOCUMENT: DECEMBER 1, 1991

PREAMBLE

By Agreement dated October 9, 1980 the County School Board of James City County, Virginia, and the County of James City, parties of the first part and the School Board of the City of Williamsburg, Virginia and the City of Williamsburg, Virginia, parties of the second part entered into a restated contract for the operation of a joint school system, hereinafter referred to as the "Restated Contract".

By Resolution dated October 9, 1980 the City of Williamsburg (hereinafter referred to as "City") and County of James City (hereinafter referred to as "County") and their respective school boards amended the funding formula as set forth in the Restated Contract.

By Resolution dated February 27, 1989 the City of Williamsburg and County of James City and their respective school boards further amended the Restated Contract to provide that James City County would fully pay all costs of constructing three schools as described therein and that the County would have all ownership equity in such schools.

The parties now wish to further amend the restated contract by adopting a new funding formula which will supplant the formula set out in the Resolution dated October 9, 1980.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the Resolution dated October 9, 1980 entitled "Joint Resolution To Amend The Restated Contract For the Joint Operation Of Schools City of Williamsburg and County of James City." is hereby REPEALED in its entirety effective June 30, 1992. Commencing fiscal year 1992/1993, the following provisions will apply which will replace the provisions of the Resolution dated October 9, 1980 and will also supplant Articles I, II, III B, IV, V and VI, of the Restated Contract as well as all other provisions thereof which are inconsistent with this Resolution:

1. Operational Costs. Beginning fiscal year 1992/1993, City's contribution toward annual operational costs of the joint school system shall be the greater of:

a. A portion of the total operational costs jointly approved by County and City for such fiscal year which portion shall be equivalent to the percentage of City students enrolled in the joint system determined as hereinafter set forth plus an add-on of four (4) percentage points. If, however, the percentage of City students enrolled in the system as of any determination date shall fall below eight percent (8%), then the add-on for the fiscal year next following such determination date (defined in 1 b below) shall be reduced to one-half (1/2) of the City student percentage. (For example, if the City student percentage is 7.8%, the add-on for the following fiscal year shall be reduced from four percent (4%) to three and nine-tenths percent (3.9%); OR,

b. The following percentage as here designated for the particular fiscal year which shall supplant both the percentage and add-on determined under a above:

FY 1993	18.72%;	FY 1994	17.72%;	FY 1995	16.72%;
FY 1996	15.72%;	FY 1997	14.72%;	FY 1998	13.72%;
FY 1999	12.72%;	FY 2000	11.72%;	FY 2001	10.72%.

For the purposes of calculating the percentage of City students under a above, the average school division daily membership shall be computed as of September 30 of the preceeding fiscal year which date is here defined as the "determinaton date". The percentage thus obtained shall be used in applying the formula to the next fiscal year. Both City and County shall be entitled to review all pertinent school enrollment records to verify such calculations. Should either City or County, after reviewing such records wish to contest the accuracy of the calculation for any year, it must elect to do so by December 31 immediately following the September 30 calculation cut-off date. The contesting party shall give written notice to the other on or before December 31 specifying the basis of its disagreement. Upon receipt of such notice, the parties shall meet together as soon as is reasonably practicable and shall in good faith attempt to resolve the dispute. Should such efforts fail, each party shall appoint a certified public accountant as its arbitration representative. Such representatives shall choose a attorney at law duly licensed to practice in Virginia as a third arbitrator. The decision of the arbitrators shall bind both parties. Each party shall compensate its own accountant and the fees of the attorney shall be equally shared by the parties.

"Operational Costs" are all costs of operating the joint school system other than Capital Project Costs and shall include, but not be limited to: Administration, operation of school plants, routine maintenance of school plants, instructional costs, f.i.c.a. taxes and other employer funded employment benefits, repair and replacement of

furnishings and equipment.

2. Capital Project Costs. For each of fiscal years 1992/1993; 1993/1994; 1994/1995; 1995/1996 and 1996/1997 City shall pay to County Two Hundred Eighty Thousand Dollars (\$280,000) as City's contribution toward the cost of school division capital projects. During such time City shall have no further obligation to contribute toward the cost of capital projects. City and County shall negotiate in good faith regarding subsequent capital project contributions, if any. After giving City a reasonable opportunity to comment regarding proposed capital projects expenditure, County shall make the final recommendation as to expenditure of capital projects monies contributed by City and County.

"Capital Project Costs" shall include: (a) All costs of land acquisition; all costs of land lease having a term of at least ten (10) years, including but not limited to rents and lease negotiation fees and costs; (b) all construction costs of new buildings including all architectural, engineering, consultation and other design and development costs related thereto; (c) all costs of equipping new buildings, building additions and renovations and other structures or facilities; (d) all construction costs for major renovations of and/or additions to existing buildings, structures and facilities, including all architectural, engineering, consultation and other design and development costs related thereto ("major" being defined for purposes of this subsection (d) as in excess of \$50,000.00); (e) all major studies such as engineering, feasibility, etc. related to existing or

proposed school facilities, sites, properties, equipment, etc. ("major" being defined for purposes of this subsection (e) as in excess of \$20,000.00; (f) all costs for acquisition of major equipment and mechanical systems whether new or replacement, ("major" for purposes of this subsection (f) being defined as either unit or total system purchase price during a fiscal year in excess of \$50,000.00. Separate purchases of separate components shall be combined to determine purchase price); (g) expansion of existing school bus fleet.

3. Termination. Either the Williamsburg City Council or the James City County Board of Supervisors may elect to terminate this contract at any time by giving written notice to the other. Unless City and County shall agree otherwise, termination shall become effective at the close of the school year next following the school year during which notice was given.

Upon termination, City shall have one hundred percent (100%) equity in all school facilities located within City's corporate limits and County shall have one hundred percent (100%) equity in all school facilities located in County. "Facilities" shall include all real and personal property located at a school site. All other property not identified with a specific school site shall be distributed Twenty-six percent (26%) to City and Seventy-four percent (74%) to County. Such non school site property includes, but is not limited to, central administration and operations real and personal property, school buses, vehicles and equipment not used primarily at a particular school.

In applying the above percentages to non school site property,

the current values of such properties shall be determined as follows:

Real Property - Fair market value based on comparable sales and highest and best use.

School Buses - As shown in most recent issue of valuation booklet for school buses, "Yellow Book" published by Yellow School Buses P.O. Box 261 Los Angeles, CA 90078 or if out of publication, as determined by other mutually agreeable method.

Other Personal Acquisition cost depreciated over five (5) years with 10% salvage value.

4. School Board Membership. Effective July 1, 1993 City's School Board shall consist of two (2) members and County's School Board shall consist of five (5) members. The two School Boards shall serve as one Board for all decisions regarding operation of the joint school system including the hiring and firing of the superintendent.

5. Review of Contract. The Restated Contract as here amended shall be reviewed by City and County prior to fiscal year beginning July 1, 1997, and every fifth (5th) year thereafter. Each review shall commence not later than January of the previous fiscal year. The parties intend that any subsequent amendments to the Restated Contract shall result from the regularly scheduled reviews, and each party represents to the other its intent to withhold requests for further amendments until the time of such scheduled reviews unless urgent

necessity dictates otherwise.

6. Effective Date of Amendments. All future amendments to the Restated Contract as here amended shall become effective on the July 1 following the calendar year in which the parties reach written agreement as to such amendment.

IN WITNESS WHEREOF, Pursuant to resolution duly adopted, the City of Williamsburg, Virginia, on this 12 day of December, 1991; the County of James City on the 16 day of December, 1991; the City School Board of the City of Williamsburg on the 17th day of December, 1991; and the School Board of James City County on the 17th day of December, 1991, do hereunto affix our hands and seals.

CITY OF WILLIAMSBURG

By John Holm
Mayor

ATTEST:

Lain S. Bodie
Clerk

COUNTY OF JAMES CITY

By James Kennedy
Chairman

ATTEST:

David Thomas
Clerk

CITY SCHOOL BOARD OF
THE CITY OF WILLIAMSBURG

By Karen A. Jamison
Chairman

ATTEST:

Angela H. Mitchell
Clerk

SCHOOL BOARD OF
JAMES CITY COUNTY

By Vicki A. Sprigg
Chairman

ATTEST:

Angela H. Mitchell
Clerk