

THIS AGREEMENT, made this 9th day of June, 1987, by and between VIRGINIA INTERNATIONAL FINANCE & DEVELOPMENT, INC., party of the first part, hereinafter referred to as APPLICANT, and COUNTY OF JAMES CITY, a political subdivision of the Commonwealth of Virginia, party of the second part;

WHEREAS, APPLICANT is fee simple owner of a tract of land situate in James City County, Virginia, generally known as The Warhill Tract, containing 894.1 acres, more or less, as shown and set forth on plat entitled "Plat of 'Warhill' Powhatan District, James City County, Virginia", dated June 18, 1985, made by AES a professional corporation, which plat is recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City in plat book 41, page 12 and which is incorporated herein by reference; and,

WHEREAS, APPLICANT has applied to COUNTY for the rezoning of approximately one hundred thirty two (132) acres of such property lying between U. S. Route 60 on the northeast and the Virginia Power right-of-way on the southwest from A-2 to M-1 and B-1 zoning classifications and the balance of the property to R-4, all as shown on plan entitled, "THE MASTER PLAN, WARHILL TRACT", dated 12/17/86, amended thereafter as recently as 6/26/87, prepared by Rickmond Engineering, Inc., a copy of which is attached hereto and made a part hereof; and,

WHEREAS, in order to expedite the grant of the remainder of its rezoning request, APPLICANT has retracted its request for rezoning to B-1 and M-1 of a portion of the property lying east of the proposed 199 corridor and bounded on the south by the 200 foot wide Virginia Power right

of way; on the west by the proposed 199 corridor and on the east and north by the land of various other owners; and,

WHEREAS, APPLICANT in its application proposed to develop both residential and industrial/commercial portions of the property in three phases over a period of twenty years but in order to simplify and expedite its rezoning request does by these proffers further limit the permissible development in the areas to be rezoned M-1 and B-1 to that here proffered. In doing so, however, APPLICANT does not waive its right to seek expanded development rights in the future; and,

WHEREAS, APPLICANT has presented to COUNTY a comprehensive traffic study regarding Phase I which demonstrates that with the completion of certain highway improvements hereinafter proffered, traffic generated by Phase I industrial/commercial and residential development will not create an unacceptable burden upon highways and intersections adjacent to the Warhill Tract; and,

WHEREAS, COUNTY has requested a comprehensive traffic study for Phases II and III before making a final decision regarding the acceptability of the degree of residential development proposed by APPLICANT for Phases II and III; and,

WHEREAS, APPLICANT has employed Gorove/Slade Associates, Inc. to conduct the comprehensive Phase II and III traffic studies requested by COUNTY; and,

WHEREAS, it is expected that several months will pass before completion of such traffic studies and review and approval of same by COUNTY and by the Virginia Department of Transportation; and,

WHEREAS, APPLICANT in order to avoid delay of Phase I development pending completion and approval of the additional comprehensive traffic studies makes these proffers limiting its development rights to those specified herein for Phase I until and unless based upon the additional comprehensive traffic studies COUNTY shall subsequently approve all or part of the further development proposed for Phases II and III. In so doing APPLICANT wishes to induce COUNTY to grant the rezoning requested by APPLICANT so as to allow immediate development of Phase I while production, analysis and approval of the additional comprehensive traffic studies requested by COUNTY are under way:

NOW, THEREFORE, pursuant to Article I of Chapter 20 of the Code of the County of James City, Virginia, APPLICANT hereby proffers the following conditions to be effective upon granting of the rezonings requested by APPLICANT.

Development of the R-4 portion of the Warhill Tract shall proceed in three stages hereinafter referred to as Phase I, Phase II and Phase III. Development in areas zoned M-1 and B-1 shall be limited to Phase I improvements with additional development being contingent upon subsequent applications for further rezoning and/or proffer amendments.

I. Phase I.

Phase I shall commence with grant of the requested rezonings and as to R-4 development shall continue until such time as Phase II as approved by COUNTY under Article III of these proffers shall become effective. As to M-1 and B-1 development, Phase I shall continue until completion of all commercial, office and industrial construction allowed

under these proffers.

A. Phase I Development Permitted.

During Phase I, construction of improvements shall be limited to:

- (i) Not more than 60,000 sq. ft. of office space, and
- (ii) Not more than 150,000 sq. ft. of retail commercial space consisting of a neighborhood shopping center, and
- (iii) Not more than 300,000 sq. ft. of M-1 uses but expressly excluding retail commercial uses and office uses other than the 60,000 square feet of offices allowed under (i) above. The limitation on office and commercial retail uses shall not preclude inclusion of accessory office space reasonably necessary for the conduct of the particular light industrial activity for which the premises housing such office space is to be used, nor shall it preclude the inclusion of retail space as an accessory to any permitted M-1 primary use. Total accessory retail space shall, however, not exceed 30,000 square feet unless actual traffic studies performed under subsection B. 4 of this Section I shall establish to COUNTY'S satisfaction that such space will not create an unacceptable traffic impact upon the highways and intersections studied.
- (iv) Not more than 425 dwelling units. 110 of which shall be served solely by access to Longhill Road and the remainder of which shall be served by access to Route 614.

(Units accessed by Longhill Road shall consist of 40 townhouses and 70 single family dwellings. Units accessed by Route 614 shall consist of 100 condominiums, 20 townhouses and 195 single family dwellings), and

- (v) Not more than 212 acres of golf course with club house and other support facilities.

The general locations of the indicated Phase I developments are shown on Exhibit A attached hereto.

Construction of the above listed improvements is subject to timely construction of the following road improvements:

B. Phase I Road Improvements.

During Phase I, APPLICANT agrees to make the following road improvements at the times hereinafter stated in connection with developing the property: (APPLICANT shall provide all design and engineering work necessary to such road improvements and the resulting plans and specifications shall meet the then generally prevailing requirements of COUNTY and the Virginia Department of Transportation for comparable roads.) All roads in the M-1/B-1 zones shall be public roads.

1. Route 614 and Loop Road

a. In connection with the initial construction of commercial or industrial buildings and before issuance of occupancy permits for same, APPLICANT agrees to improve with two paved traffic lanes constructed to Virginia Department of Transportation specifications and to offer for dedication the portion of the road

labelled "Loop Road" leading from State Route 614 in a southerly direction to the intersection with Warhill Trail (the road which intersects the Loop Road and leads southwest to the land lying southwest of the Virginia Power right-of-way).

APPLICANT recognizes that COUNTY, upon submission of the site plan for development of a shopping center on the Warhill tract may require that the intersection of the Loop Road with State Route 614 be configured differently than as shown on the Master Plan. (Such reconfiguration may involve connection of the Loop Road to U. S. Route 60 at the present location of State Route 614 and connection of State Route 614 to the Loop Road with a "T" intersection). If COUNTY in connection with such site plan approval shall require the reconfiguration of the Loop Road in the area shown on the plan as "Area reserved from development until exact location of road can be determined" then APPLICANT agrees to reconfigure the road as requested by COUNTY and to construct same to the depth indicated above in accordance with the reconfigured plan as part of the shopping center construction. After shopping center site plan approval APPLICANT may develop any portion of the reserved area not needed for reconfiguration.

b. In addition to constructing the portion of the Loop Road described in #1 above, unless reconfiguration plans make it unnecessary, APPLICANT shall, in connection with the initial construction of commercial or industrial buildings, provide necessary right-of-way and widen State Route 614 to four traffic

lanes beginning at the intersection of the Loop Road with State Route 614 and proceeding northwesterly to the intersection of State Route 614 with U. S. Route 60. In addition, APPLICANT shall then construct an eastbound right-turn lane on State Route 614 serving the Loop Road entrance into APPLICANT'S property, which lane shall be 200 feet in length with a 200-foot taper and a westbound left-turn lane on State Route 614 at the loop entrance, which lane shall be 250 feet long with a 200-foot taper. Should applicable Virginia Department of Transportation design criteria require different dimensions, then such criteria shall apply. The Route 614 improvements here proffered shall be completed in not more than 365 days from issuance of the building permit for the first of the aforesaid buildings unless prevented by war, strikes, acts of God or other events beyond the reasonable control of APPLICANT. If such improvements are not complete within 365 days as described above, COUNTY shall withhold further building and occupancy permits until completion.

APPLICANT shall install a traffic signal at the intersection of the Loop Road and State Route 614 at such time as the traffic counts performed under the provisions of #4 of this Section B indicate a need based on applicable criteria contained in the uniform traffic control device regulations of the Virginia Department of Transportation. Such signal shall meet design criteria prescribed by the Virginia Department of Transportation for comparable intersections.

c. At such time as traffic count information provided as required by #4 of this Section B shows the need therefor, but in no event later than issuance of an occupancy permit for commencement of any business upon the property, APPLICANT shall modify the State Route 614/U. S. Route 60 intersection so as to:

- (i) Provide for two left-turn lanes on eastbound State Route 614 allowing for dual left turns on to northbound U. S. Route 60. One lane shall be an exclusive left-turn lane and the other shall be a left/through lane. Each lane shall be 200 feet in length and shall be served by a 200-foot taper. Should applicable Virginia Department of Transportation design criteria require different dimensions, then such criteria shall apply.
- (ii) Provide one exclusive right-turn lane on eastbound State Route 614 serving southbound U. S. Route 60. Said lane shall be 200 feet in length and shall be served by a 200-foot taper. Should applicable Virginia Department of Transportation design criteria require different dimensions, then such criteria shall apply.
- (iii) Provide such modifications of traffic signal timing and phasing as shall be warranted as determined by the Virginia Department of Transportation.

2. Loop Road and Warhill Trail Access to R-4 Areas.

a. Before commencing sale of lots, townhouses or condominiums in the portion of the R-4 area accessed by Route 614, APPLICANT shall improve with two paved traffic lanes meeting Virginia Department of Transportation specifications and offer for dedication

the portions of Warhill Trail and the Loop Road which provide access from State Route 614 to the residential portions of the Warhill Tract. The portion of Warhill Trail to be offered for dedication intersects with the Loop Road described in #1 a. above and leads southwesterly to the westerly side of the Virginia Power right of way which it crosses.

3. Longhill Road and Warhill Trail.

a. At such time as traffic count information provided as required in #4 of this Section B shows the need therefor based on applicable criteria contained in the uniform traffic control device regulations of the Virginia Department of Transportation, APPLICANT shall install a traffic signal at the intersection of Longhill Road and Warhill Trail. Such signal shall meet design criteria prescribed by the Virginia Department of Transportation for comparable intersections.

b. Warhill Trail shall be a four-lane divided roadway extending northerly from its intersection with Longhill Road to the intersection of Warhill Trail with the first intersecting street after which it may be a two lane road.

4. Traffic Counts and Level of Service Analysis.

During July of the year following any year in which an occupancy permit is issued for Phase I residential, commercial, office or industrial improvements, or at such other time as requested by COUNTY in connection with any site plan submission for Phase I commercial, office or industrial improvements, APPLICANT shall cause

Gorove/Slade Associates, Inc. or some other traffic analyst acceptable to COUNTY to conduct traffic counts at the following intersections and on the road links connecting such intersections as well as on the section of Longhill Road beginning at its intersection with Warhill Trail and extending easterly to its intersection with its proposed intersection with Route 199 and the portion of Route 60 lying between Route 614 and 658 and between Route 614 and 646:

- a. Route 60/Route 614
- b. Route 60/199
- c. Route 614/Loop Road
- d. Longhill Road/Warhill Trail.

Such study shall include a level of service analysis and shall be used by COUNTY to determine whether the additional road improvements described in the last paragraph of B 1 b, traffic signal at 614/Loop Road intersection; B 1 c (i), two left-turn lanes on 614, (ii), right turn lane on 614 and (iii), (traffic signal modifications); and B 3 b, traffic signal at Longhill Road/Warhill Trail intersection, are warranted. In any event, each of such improvements shall be in place or under construction before any Phase II development begins unless other road improvements dictated by such Phase II and III comprehensive traffic impact study as shall hereafter be approved by COUNTY shall make a particular improvement unnecessary and such other road improvements are in place or under construction. "Under construction" shall mean that a legally binding construction contract has been let for accomplishment of the construction in question and

that the work is substantially under way.

II. Other Matters.

A. 199 Right of Way.

For a period of sixty (60) months following grant of the requested rezoning, APPLICANT shall not proceed with development of any kind within the area designated as "proposed Route 199" on the Master Plan, except for extension across, under and through thereof of such utility lines as are necessary to development of APPLICANT'S other land. APPLICANT shall consult with COUNTY and the Virginia Department of Transportation before installing such utilities or road segment in order to make such installation compatible with 199 engineering. If prior to the end of the sixty (60) month period acquisition of right-of-way across the Warhill Tract for Route 199 has been completed APPLICANT may proceed with development in any portion of the reserved area which is not acquired.

B. Drainage and Water and Sewer Plans.

APPLICANT shall, in connection with construction of improvements from time to time, construct such portions of the drainage and water and sewer improvements shown on the "Master Utility Plan" dated December 17, 1986 prepared by Rickmond Engineering, Inc. as COUNTY shall then require to serve the proposed improvements and to protect adjacent properties from erosion and siltation.

APPLICANT shall further reserve from development those areas shown on COUNTY'S "Drainage Study of Upper Powhatan Creek Water Sheds" dated 2/19/87, prepared by Camp, Dresser & McKee as are designated on

APPLICANT'S Master Plan and shall permit construction thereon of such sedimentation basins and other facilities as are called for in said Drainage Study. APPLICANT reserves the right to submit substitute designs of a more aesthetic nature which, if deemed by COUNTY to be equally effective for the intended purpose and of equal feasibility, shall be constructed in lieu of the facilities shown in said study. Such substitution shall, however, be subject to a mutually satisfactory resolution of the payment of any excess construction costs involved.

C. Archaeological Studies.

Upon grant of the requested rezoning APPLICANT shall cause an archaeological study acceptable to COUNTY to be prepared for the Warhill tract exclusive of the R-4 area for which a 58 lot subdivision has been previously approved and the B-1 area lying adjacent to State Route 614 upon which an archeological study has already been conducted. An acceptable study shall include reconnaissance, systematic surface collection and shovel test pits as reasonably required and site identification and examination as appropriate. The total cost to APPLICANT for such study including studies already performed on Warhill by Maar Associates, Inc. shall not exceed \$23,250.17.

Should all study funds here committed be insufficient to fund an archaeological study on the entire Warhill tract (exclusive of the 58 lot area mentioned in the preceding paragraph) then APPLICANT shall consult with COUNTY in determining the portions to be excluded. Thereafter, APPLICANT shall give COUNTY written notice of intent to submit a site or subdivision plan in any area not studied, whereupon

COUNTY at its expense shall have sixty (60) days from receipt of such notice in which to conduct initial archaeological reconnaissance in the proposed area or areas. If such reconnaissance reveals sites which COUNTY wishes to study in greater detail, then COUNTY shall so notify APPLICANT in writing whereupon COUNTY shall have sixty (60) days from the date of such notice in which to conduct further studies.

D. Buffer Zones.

APPLICANT shall at all times maintain free from development all areas designated as "buffer zones" on the Master Plan to which these Proffers refer, including those shown in the B-1 and M-1 areas. Existing trees and vegetation within such zones shall remain "as is" except that APPLICANT shall have the right to install and construct over, under and across such zones, such new roads, drainage structures, storm water management facilities, utilities and entrance signs as may be necessary to development of the Warhill Tract and as are approved by the Subdivision Review Committee of COUNTY'S Planning Commission.

E. Sewer Phasing.

If development of the Warhill Tract shall require public sewer connections exceeding the 1,422 prepaid connections now owned by APPLICANT, then development requiring such additional connections shall not proceed until such additional connections are acquired by APPLICANT.

III. Phase II and III Approval.

APPLICANT has employed Gorove/Slade Associates, Inc. to perform a comprehensive traffic impact study to determine the feasibility of the Phase II and Phase III development described

hereinbelow. Such study, as more particularly described herein, shall be delivered to COUNTY as soon as reasonably possible, completion being expected within six to eight weeks following the date of these Proffers. No approval shall be given to any portion of Phases II or III until the comprehensive traffic impact study has been delivered to and approved by COUNTY. After approval of such study Phase II and III development may proceed in the R-4 area but shall be subject to the time schedules and limitations set forth herein.

A. Phase II.

Phase II as proposed is as follows: For a period beginning at the end of Phase I and extending sixty (60) months thereafter, subject, however, to the traffic study requirements set out in paragraph C of this Section III and accomplishment of the road improvements there called for, no more than an additional 350 dwelling units may be constructed in the area zoned R-4 so that at the end of Phase II a total of 775 dwelling units together with golf course and club house may exist in the area zoned R-4.

B. Phase III.

Phase III as proposed is as follows: Beginning at the end of Phase II, and subject to traffic study requirements set out in paragraph C of this Section III and accomplishment of the road improvements there contained, 193 additional dwelling units may be constructed in the area zoned R-4 so that upon completion of all R-4 improvements, a total 968 dwelling units together with golf course and club house shall have been constructed in the R-4 zone.

C. Traffic Study Requirements.

No building permit shall be applied for or issued for any Phase II or III building construction until COUNTY'S approval of the comprehensive traffic impact study prepared by Gorove/Slade Associates, Inc. or some other traffic analyst acceptable to COUNTY. The study shall show projected additional traffic generated by Phase II and III development of Warhill and the effect of such additional traffic as well as on the section of Longhill Road beginning at its intersection with Warhill Trail and extending easterly to its intersection with its proposed intersection with Route 199 and the portion of Route 60 lying between Route 614 and 658 and between Route 614 and 646:

- a. Route 60/Centerville Road
- b. Route 60/Loop Road
- c. Route 60/199
- d. Route 614/Loop Road
- e. Longhill Road/Warhill Trail

Such study shall include a level of service analysis and shall also include recommended additional road improvements and/or reductions in density as are necessary to provide at least a Level of Service D at such intersections and road links as well as on any new intersections and road links which may be recommended by the study.

No Phase II or III improvements may be constructed until the aforesaid comprehensive traffic impact study has been approved by COUNTY'S Board of Supervisors or their designated agent. Such approval shall not be unreasonably withheld.

Upon COUNTY'S approval of the comprehensive traffic study APPLICANT shall incorporate the study's recommendations in the remaining R-4 development of the Warhill Tract. The timing of accomplishment of such recommendations shall be established by an implementation schedule approved by COUNTY'S Board of Supervisors or their designated agent. Upon approval, APPLICANT may, beginning with the time periods above stipulated for Phase II and III, proceed with the remaining development allowed during such Phase, subject, however, to the implementation schedule and accomplishment of the road improvements there called for. If, however, at any time during Phase II or III the traffic generation rates and distributions solely from Warhill are determined by COUNTY'S Board of Supervisors or their designated agent as the result of a current independent traffic analysis of the above-described intersections and road links to be materially greater than the total site generated traffic and distributions projected for such Phase by the previously approved comprehensive traffic impact study, and if APPLICANT is unwilling or unable to provide additional road improvements reasonably sufficient to provide a Level of Service D on such intersections and road links, the Planning Commission may reduce the permissible densities for such Phase and any subsequent Phase to the extent that not less than a Level of Service D is provided on said intersections and road links; provided, however, that such reduction shall not prohibit the improvement of subdivided lots or buildings sites already sold to third parties..

D. Other Requirements.

All other matters set out in Section II of these Proffers shall apply to Phases II and III.

IV. Private Roads.

A. Where Private Roads Allowed.

Private Roads shall be allowed only in the area zoned R-4. No private road shall be constructed until engineering plans and specifications for such road have been submitted to and approved by COUNTY as conforming to applicable Virginia Department of Transportation requirements for an equivalent public road.

B. Engineer's Certification.

All private road construction shall be overseen by a Professional Engineer authorized to practice in Virginia which engineer shall be chosen and compensated by APPLICANT. The engineer shall certify to COUNTY that based on on-site inspections, such engineer finds the road improvements to be constructed and properly located as shown on the approved construction plans and specifications.

Certificates shall be made in writing upon completion of the following stages:

1. Staking out of right of way.
2. Clearing and erosion control.
3. Drainage system improvements.
4. Road base installation.
5. Paving.

The professional engineer shall upon completion of all of the above improvements, deliver to COUNTY his final written

certification that said facilities were constructed in accordance with the plans and specifications approved by COUNTY. Such plans shall be certified by the professional engineer to meet Virginia Department of Transportation standards at the time they are submitted to County.

This agreement shall be binding upon and inure to the benefit of COUNTY and APPLICANT and their respective successors and assigns.

WITNESS the following signatures:

VIRGINIA INTERNATIONAL FINANCE AND DEVELOPMENT, INC.

BY: Walter J. Scruggs
President

STATE OF VIRGINIA
CITY OF WILLIAMSBURG, to-wit:

The foregoing instrument was acknowledged before me this 30 day of June, 1987 by WALTER J. SCRUGGS, President of VIRGINIA INTERNATIONAL FINANCE AND DEVELOPMENT, INC.

Gene B. Sears

Notary Public

My commission expires: August 29, 1990

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 and County of James City the 11 day of July, 1988 This Agreement was presented with certificate annexed and admitted to record at 12:33 o'clock
Testo: Helene S. Ward, Clerk
by Helene S. Ward
Deputy Clerk

PLAT RECORDED IN
P.B. NO. 47 PAGE 43 & 44

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FULL PAYMENT
CASE NUMBER
01/LR88230
PAYOR NAME
06/CO OF JAMES CITY
GRANTOR
22/VIRGINIA INTERNATIONAL FIN
GRANTEE
23/CO OF JAMES CITY
DESC OF PROPERTY
24/132 AC WARHILL TRACT
DATE OF INSTRUMENT
25/6/9/87
PURPOSE
33/AGREE/PLATS

301 DEEDS	1	24.00
301 DEEDS	1	20.00
AMOUNT TENDERED		44.00
CHANGE		.00
TOTAL		44.00

WMSBURG/JAMES CITY CIRCUIT CT

01/11/88 12:33

Received at 11 Jan 1988
12:33'clock in the Clerk's Office
of the City of Williamsburg, and County of
James City, Va.
000 Ct Tax
200 County Tax
200 City Tax
200 Prop. Fee (City)
200 Prop. Fee (County)
200 Record. Fee
300 Plats
000 Ct Tax
200 Local Tax (County)
200 Local Tax (City)
Misc. Fee
Total

11 Jan 1988
12:33'clock in the Clerk's Office
of the City of Williamsburg, and County of
James City, Va.
000 Ct Tax
200 County Tax
200 City Tax
200 Prop. Fee (City)
200 Prop. Fee (County)
200 Record. Fee
300 Plats
000 Ct Tax
200 Local Tax (County)
200 Local Tax (City)
Misc. Fee
Total Helene S. Ward, Clerk

VIRGINIA: City of Williamsburg and County of
James City
In the Clerk's Office
City of Williamsburg and County of
James City
was received with original
of record
Helene S. Ward, Clerk
Deputy Clerk

Helene S. Ward, Clerk
City of Williamsburg and County of James City