

**JAMES RIVER COMMERCE CENTER
AMENDED PROFFER AGREEMENT**

005070

This Agreement made this 6th day of December, 1995, by and between Williamsburg Developments, Inc. a Virginia Corporation, and the Industrial Development Authority of James City County, Virginia, a political entity of the Commonwealth of Virginia ("the Owners") and the County of James City, Virginia, a political subdivision of the Commonwealth of Virginia ("the County").

Whereas, each of the Owners owns a separate tract of land situated in James City County, Virginia, the combination of which tracts is known as the James River Commerce Center, containing 208.14 acres, more or less, and lying adjacent to and on the southerly side of U.S. Route 60 East, Pocahontas Trail, more particularly described on Exhibits A, and B attached, but less and except the property described on Exhibit C (collectively "the Property"); and

Whereas, the Owners have applied for a rezoning of the Property from the Mixed Use District ("the Existing Zoning") to the Limited Business/Industrial District, M-1 ("the Proposed Zoning"); and

Whereas, the provisions of the County's Zoning Ordinance may be deemed inadequate for the orderly development of the Property; and

Whereas, the Owners are desirous of offering certain conditions for the protection of the community that are not generally applicable to land similarly zoned in addition to the regulations provided for in the Proposed Zoning regulations for protection and enhancement of the community and to provide for the high quality and orderly development of the Property.

NOW, THEREFORE, this Agreement witnesseth that for and in consideration of the County rezoning the Property from the Existing Zoning to the Proposed Zoning and pursuant

to Section 15.1-491.1 et. seq. of the Code of Virginia, 1950, as amended, and Section 20-16 of the Zoning Ordinance of the County, the Owners agree that in addition to the regulations provided in the Proposed Zoning, they and each of them will meet and comply with all of the following conditions in the development of the Property. In the event the requested rezoning is not granted by the County, these proffers shall thereupon become null and void.

1. **Limitations on Use.** Without the amendment of this agreement (as to uses otherwise generally permitted by the County's Zoning Ordinance) or the issuance of the applicable special use permit (as to uses only specially permitted by the County's Zoning Ordinance) the Property shall only be used for one or more of the following generally permitted uses provided, however, that the combination of floor area of (1) business, professional and governmental offices and (2) research and development offices which is not accessory to other permitted uses shall be limited to a total of 264,000 square feet.

Accessory uses as defined in Section 20-2 of the County's Zoning Ordinance.

Apartment or living quarters for a guard, caretaker or other person employed on the premises which is clearly secondary to the business or industrial use of the property.

Banks and other similar financial institutions.

Barber and beauty shops.

Book stores.

Business, professional, and governmental offices.

Contractor offices, equipment storage yards, shops and warehouses with storage (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

Courier services.

Data processing centers.

Employment services or agencies.

Fire stations.

Heavy equipment sales and service, with major repair (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

Indoor sports facilities, health clubs, exercise clubs and fitness centers.

Industrial and technical training schools.

Janitorial service establishments.

Laser technology production.

Lumber and building supply wholesale stores with storage (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

Machinery sales and service with major repair (limited to a fully enclosed building).

Manufacture and assembly of musical instruments, toys, novelties, and rubber and metal stamps.

Manufacture and bottling of soft drinks and wine.

Manufacture and processing of textiles and textile products.

Manufacture, compounding, assembly or treatment of products made from previously prepared paper, plastic, metal, textiles, tobacco, wood, paint, fiber glass, glass, rubber, leather, cellophane, canvas, felt, fur, horn, wax, hair and yarn.

Manufacture, compounding, processing or packaging of cosmetic, toiletry, and pharmaceutical products.

Manufacture of carpets and carpet yarns.

Manufacture of pottery and ceramic products using kilns fired only by gas or electricity.

Manufacture or assembly of appliances, tools, firearms, hardware products, and heating, cooling or ventilating equipment.

Manufacture or assembly of electronic instruments, electronic devices or electronic components.

Manufacture or assembly of medical, drafting, metering, marine, photographic and mechanical instruments.

Marine or waterfront businesses to include receipt, storage and transshipment of waterborne commerce, or seafood receiving, packing and distribution.

Nonemergency medical transport.

Nurseries (wholesale only).

Off-street parking as required by Section 20-53 of the County's Zoning Ordinance.

Plant, garden supply, hardware and paint wholesale stores.

Plumbing and electrical supply wholesale stores with storage (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

Post offices.

Printing, lithographing, engraving, photocopying, blueprinting and publishing establishments.

Radio and television stations, and accessory antenna or towers, self-supported (not attached to buildings) which are sixty feet or less in height.

Research, development, and design facilities.

Restaurants, tea rooms and taverns.

Security service offices.

Telephone exchanges and telephone switching stations.

Travel bureaus.

Warehouse, storage, and distribution centers with storage (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

Welding and machine shops with storage (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

2. **Initial Road Improvements.** Access to the Property shall be limited to one entrance on U.S. Route 60 opposite Tarleton Bivouac. Additional commercial entrances to the Property fronting on U.S. Route 60 shall be allowed but only with the prior review and approval of both the County's Director of Planning and the Virginia Department of Transportation ("VDOT"). Prior to issuance of any Certificate of Occupancy on the Property, the Owners shall install the following road improvements:

The installation of: (1) the main entrance to the Property from U.S. Route 60 the right of way for which main entrance shall be approximately 300 feet in depth tapering back to a two lane right of way and which main entrance shall incorporate a three lane roadway (one entering and two exiting) with right of way of sufficient width to accommodate a third exiting lane; (2) a right turn lane on the eastbound U.S. Route 60 approach; (3) a left turn lane on the eastbound U.S. Route 60 approach; (4) a left turn lane on the westbound U.S. Route 60 approach; and (5) separate left and right turn lanes exiting the Property.

3. **Traffic Light Improvements.** Upon meeting applicable VDOT warrants, the Owners shall signalize, in a manner acceptable to VDOT, the intersection of the entrance roadway to the Property with U.S. Route 60.
4. **Subsequent Road Improvements.** Except as hereinafter provided, development on the Property shall be limited to no more than 708,000 square feet of interior building area until the following road improvements are in place.
 - a. Widening of U.S. Route 60 from the existing two lane facility to a four lane divided (urban minor) arterial roadway along the entire frontage of the Property from the James River Elementary School property to the Ball metal property; and
 - b. Installation of a second northbound left turn lane onto U.S. Route 60 within the main entrance to the Property.

Notwithstanding the above limitation, the Owners may conduct a traffic analysis either (1) when VDOT includes for construction in its Six Year Plan alternate U.S. Route 60 East as generally shown on the County's Comprehensive Plan or (2) when development on the Property reaches or exceeds 300,000 square feet of interior building area. The Owners shall submit the traffic analysis to the Director of Planning for approval. If the approved results of that analysis indicate that additional development above 708,000 square feet of interior building area can be accommodated with only the initial road improvements specified in paragraph 2 above, the Director of Planning may allow such additional development prior to the installation of the improvements specified in subparagraphs a and b above.

5. **Setback from U.S. Route 60 East.** No building (or parking lot) shall be located within 140 feet of the centerline of the right-of-way of U.S. Route 60 East, existing at the time of approval of the rezoning of the Property.
6. **Owner's Association** The Owners shall provide documentation acceptable to the County Attorney demonstrating that an owners' association has been legally established with authority to impose, raise and collect assessments against the owners of lots according to law. The association shall have the ability to place a lien on any lot within the Property for unpaid assessments levied against that lot.
7. **Limitations on Land Disturbing Activities.** No land disturbing activities with the exception of stormwater facilities or other utilities approved by the Development Review Committee, and archaeological research, shall take place in any area shown as "Undevelopable Land" on the plats entitled "Subdivision of Property of Colonial Williamsburg Foundation, Being Part of the Locust Grove Tract, Situated in the Roberts District, James City County, Virginia", dated 8/7/91, recorded in James City County Plat Book 55, Page 43 and "Subdivision of Property of Colonial Williamsburg Foundation, Being Part of the Conveyance to Williamsburg Developments, Inc. Situated in the Roberts District, James City County, Virginia" dated April 27, 1992 recorded in James City County Plat Book 56, Pages 32-33.
8. **Conflict with Declaration of Covenants and Restrictions.** If any one or more of these proffers or any portion thereof be in conflict with any one or more of the conditions contained in the Declaration of Covenants and Restrictions recorded

in James City County Deed Book 545, Page 361, et. seq., the Supplemental Declaration thereto recorded in James City County Deed Book 583, Page 676, et. seq. or any amendment to either or both of said declarations, the more restrictive provision(s) shall govern.

9. **Contract Not Amended.** Nothing in this Agreement shall be deemed to change any provision of the Agreement dated December 1, 1991 between the City of Williamsburg, Virginia, the County of James City, Virginia, The Colonial Williamsburg Foundation and Williamsburg Developments, Inc. and the limitations on the financial responsibilities of the parties thereto.
10. **No Relationship Created.** Neither Williamsburg Developments, Inc. nor the Industrial Development Authority of James City County, Virginia by the execution and delivery of this Proffer Agreement intend to create a joint venture, partnership, agency or other legal combination of their respective entities.
11. **Binding Upon Successors.** The obligations created by this Agreement shall be binding upon each of the successors in title to each of Williamsburg Developments, Inc. and the Industrial Development Authority of James City County, Virginia.
12. **Headings.** All section and subsection headings of this Agreement are for convenience only and are not part of these proffers.
13. **Prior Proffers Void.** Upon the approval of the requested rezoning, all prior proffers on the Property in favor of the County shall become null and void.
14. **Severability.** If any clause, sentence, paragraph, section or subsection of these proffers shall be adjudged by any Court of competent jurisdiction to be invalid

for any reason, including, but not limited to, a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States of America , or if the application thereof to the Owner or to any government agency or circumstance is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof or the specific application thereof, directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section, or subsection hereof, or affect the validity or application thereof to the Owner or to any other government agency, person or circumstance.

WILLIAMSBURG DEVELOPMENTS, INC.

By: Victoria Gussman
Victoria Gussman, Vice President

STATE OF VIRGINIA

CITY/COUNTY OF Williamsburg to-wit:

The foregoing document was acknowledged before me this 21 day of December, 1995
by Victoria Gussman, Vice President, of and acting on behalf of Williamsburg Developments,
Inc.

Bill Jewelsburg
NOTARY PUBLIC



My commission expires: Oct 31, 1996

**INDUSTRIAL DEVELOPMENT AUTHORITY
OF JAMES CITY COUNTY, VIRGINIA**

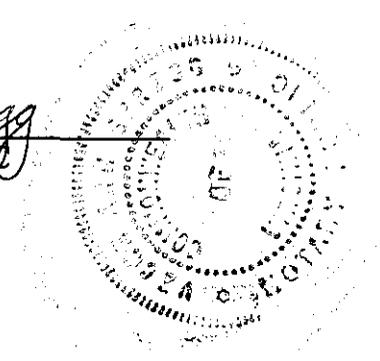
By: *Jon A. Nystrom*
Jon A. Nystrom, Chairman

STATE OF VIRGINIA

CITY/COUNTY OF *James City*, to-wit:

The foregoing document was acknowledged before me this 15TH day of December, 1995
by Jon A. Nystrom, Chairman, of and acting on behalf of the Industrial Development Authority
of James City County, Virginia.

Wicki Ann Sprigg
NOTARY PUBLIC



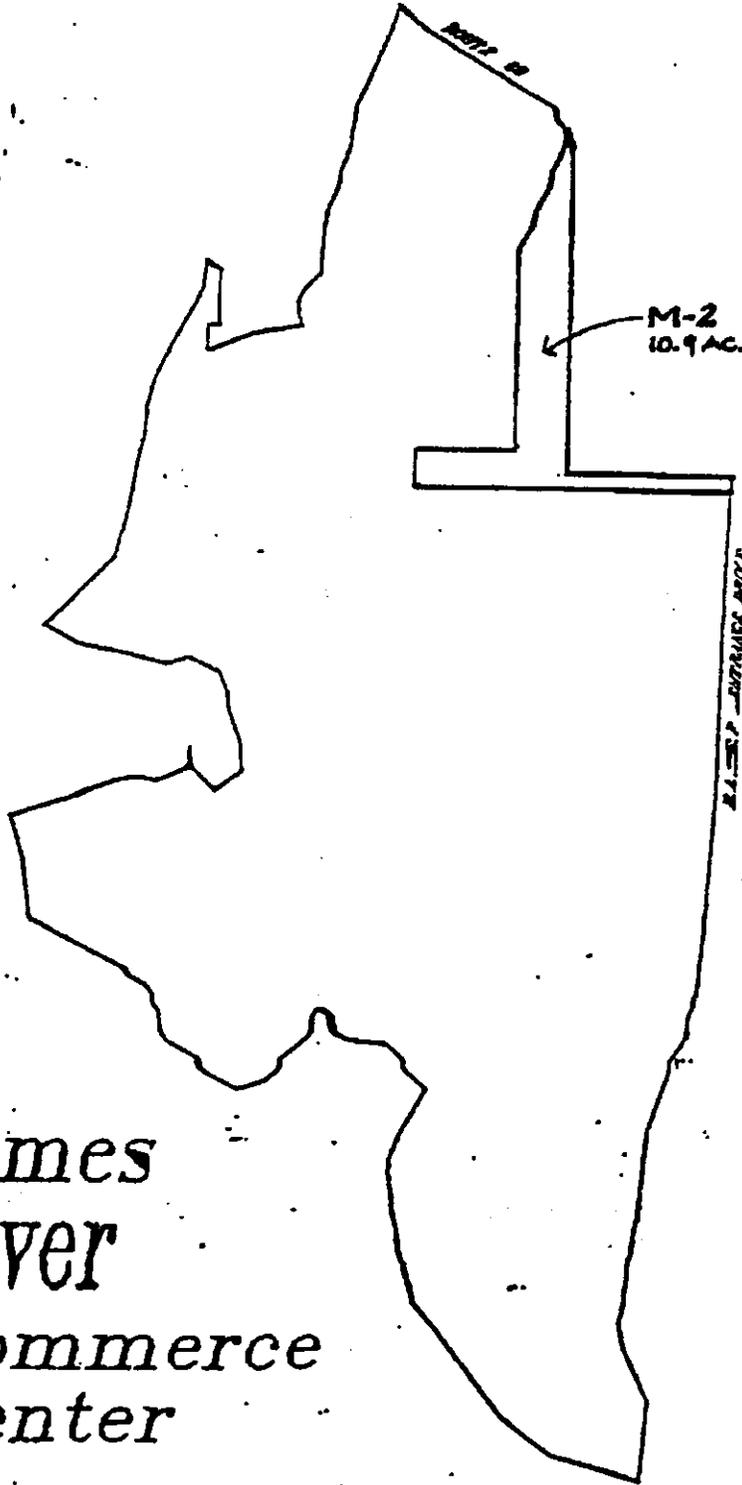
My commission expires: *March 31, 1996*

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 prepared by Langley and McDonald, P.C., a professional corporation, Engineers-Planners-Surveyors, dated 08/07/91 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 = 16.2113 ACRES" together with "ADDITIONAL AREA REQUIRED FOR SUBDIVISION APPROVAL = 3.1387 ACRES" which plat is recorded in Plat Book 55, Page 43.

EXHIBIT "B"

All that certain lot, piece or parcel of land, containing 154.8946 acres, with improvements thereon, and appurtenances thereunto belonging, lying and being in James City County, Virginia, as shown on a plat of survey prepared by Langley and McDonald, P.C., dated April 27, 1992, entitled "Subdivision of Property of Colonial Williamsburg Foundation Being Part of The Locust Grove Tract to be conveyed to Williamsburg Developments, Inc. situated in the Roberts District, James City County, Virginia", which plat is recorded in Plat Book 56, Pages 32 and 733.



James
River
Commerce
Center



Langley and McDonald, P.C.
 Real Estate & Business - Plans
 Licensed Architects in Commonwealth of Virginia
 1978-1979

M-2 ZONING PLAN

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

19 day of April, 1996 This Deed was presented with certification annexed and admitted to record at 3:49 o'clock

Teste: Helene S. Ward, Clerk
 by [Signature]
 Deputy Clerk

14-14

COMMONWEALTH OF VIRGINIA



PLEASE RETURN TO:
COUNTY ATTORNEY
JCC - BLDG. C

OFFICIAL RECEIPT
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT
DEED RECEIPT

DATE: 04/19/96 TIME: 15:49:08 ACCOUNT: 830CLR960005070 RECEIPT: 96000008905
CASHIER: CHE REG: WB04 TYPE: OTHER PAYMENT: FULL PAYMENT
INSTRUMENT : 960005070 BOOK: 0 PAGE: 0 RECORDED: 04/19/96 AT 15:49
GRANTOR NAME : WILLIAMSBURG DEVELOPMENTS EX: N LOCALITY: CO
GRANTEE NAME : COUNTY OF JAMES CITY EX: N PERCENT: 100%
AND ADDRESS :
RECEIVED OF : JCCO DATE OF DEED: 12/06/95
CHECK : \$23.00

DESCRIPTION 1: LOCUST GROVE TRACT AMENDED PROFFERS
2:

CONSIDERATION:	.00	ASSUME/VAL:	.00	MAP:	
CODE DESCRIPTION		PAID	CODE DESCRIPTION	PAID	
301 DEEDS		22.00	145 VSLF	1.00	

TENDERED : 23.00
AMOUNT PAID: 23.00
CHANGE AMT : .00

CLERK OF COURT: HELENE S. WARD