



THIS PROFFER is made as of the 29th day of April, 1996 from POWHATAN ASSOCIATES, a Virginia joint venture ("Powhatan Associates") and POWHATAN ENTERPRISES, INC., a Virginia corporation ("Powhatan Enterprises") to JAMES CITY COUNTY, VIRGINIA, a Virginia Political Subdivision ("the County"). The record owner from time to time of the Property (as hereinafter defined) is herein referred to as "the Owner".

### RECITALS

- A. Powhatan Associates is the current record owner of certain real property in James City County, Virginia, a description of which is attached as Exhibit "A" ("the Property").
- B. The Property is currently zoned Residential Planned Unit Development, PUD-R ("the Existing Use") for which all conditions relating to the Property are hereby replaced in their entirety by these Proffers.
- C. Powhatan Associates has applied for a rezoning of the Property to Residential Planned Community, R-4 with proffers in accordance with the proffers approved by the County on March 26, 1996 by resolution for Zoning Case No. Z-6-95 ("the Proposed Use").
- D. Upon approval by the County of the Proposed Use, Powhatan Associates has agreed to convey the Property to Powhatan Enterprises, Inc., in consideration of Powhatan Enterprises conveying certain property to the County for the construction of certain road improvements, all as more particularly described in Zoning Case No. Z-6-95.
- E. The County Zoning Administrator has determined in writing that the addition of the Property to the Master Plan described in Zoning Case No. Z-6-95 will not adversely affect the ability of Powhatan Enterprises to develop under the previously approved number of residential units, square footage and open space on it's currently approved Master Plan and that open space for development under that Master Plan shall be calculated in the manner as stated by

the Ordinance in effect on February 2, 1987 but that the Property added to the Master Plan would have to comply with the Residential Planned Community, R-4 Zoning District in effect at the time of the rezoning. The County Zoning Administrator's determination above described is evidenced by letter dated April 23, 1996 attached as Exhibit "B".

### **PROFFERS**

1. For and in consideration of the approval by the County of the Proposed Use and pursuant to § 15.1-491.1 et seq of the Code of Virginia, 1950, as amended, and § 20-18 of the James City County Code, the Owner of the Property agrees that it will meet and comply with the proffers for Zoning Case No. Z-6-95 in developing the Property, which proffers are hereby incorporated by reference. In the event the Proposed Use is not approved by the County or in the event any appeal from said approval is noted within 30 days after said approval, these Proffers shall thereupon become null and void.

### **MISCELLANEOUS**

2. All section and subsection headings of those Proffers are for convenience only and are not part of these proffers.

3. The Property will be developed in accordance with the Master Plan for Zoning Case No. Z-6-95 as revised by the addition of the Property as part of this rezoning. The Owner may from time to time, in final subdivision plats or site plans submitted to the County, relocate specific areas shown on the Master Plan (provided that such relocations are permitted by the County's Zoning Ordinance and this proffer) and provided that the Planning Director determines that said relocations do not alter the basic concept or character of the development.

4. These proffers are further subject and inferior to the vested rights under Zoning Case No. Z-6-95. Any conflict between the terms of these proffers and said vested rights shall be resolved in favor of said vested rights and any appeal from the approval of these proffers shall

not affect said vested rights.

5. The rights and responsibilities of Powhatan Enterprises and Powhatan Associates shall inure to and be binding upon their respective successors and assigns.

6. 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 a declaration that it is contrary to the Constitution of this Commonwealth or of the United States, 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 of the application thereof to the Owner or to any other government agency, person or circumstance.

**POWHATAN ASSOCIATES, a Virginia joint  
venture, by Bush Construction Company**

By: Marc B. Sharp (SEAL)  
Marc B. Sharp, Executive Vice President

**POWHATAN ENTERPRISES, INC.**

By: Lawrence E. Beamer (SEAL)  
Lawrence E. Beamer, President

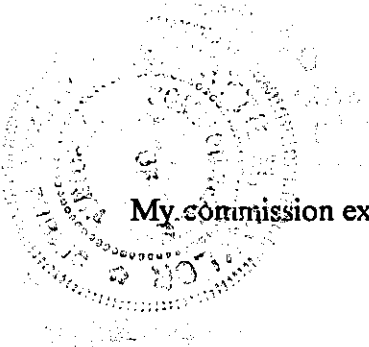
STATE OF VIRGINIA

CITY/COUNTY OF James City, to-wit:

The foregoing Proffer was acknowledged before me by Marc B. Sharp, Executive Vice President of Bush Construction Company on behalf of Powhatan Associates, a Virginia joint venture, this 17<sup>th</sup> day of May, 1996.

Annette M. Taylor  
NOTARY PUBLIC

My commission expires: 11-30-99



STATE OF VIRGINIA

CITY/COUNTY OF James City, to-wit:

The foregoing Proffer was acknowledged before me by Lawrence E. Beamer, President on behalf of Powhatan Enterprises, Inc., this 9<sup>th</sup> day of May, 1996.

Kay L. Martin  
NOTARY PUBLIC

My commission expires: October 31, 1996



**EXHIBIT "A"**

All those certain pieces or parcels of property lying and being in Berkeley District, James City County, Virginia, and more particularly shown and set forth as "Parcel P20", "Parcel P18", and "Parcel P21", on that certain plat entitled "PLAT OF PARCELS ALONG RELOCATED ROUTE 5 CORRIDOR IN, THROUGH AND ADJACENT TO POWHATAN SECONDARY OF WILLIAMSBURG, BERKELEY DISTRICT, JAMES CITY COUNTY, VIRGINIA" dated 3/15/96, prepared by Langley and McDonald, P.C., a copy of which plat is attached hereto, made a part hereof, and incorporated herein by reference.

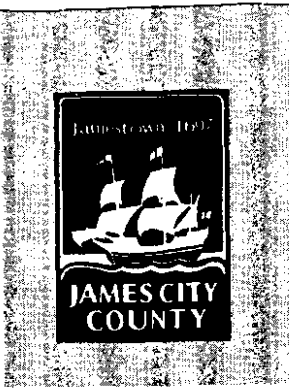


EXHIBIT "B"

BOOK 0790 PAGE 0039

DEPARTMENT OF DEVELOPMENT MANAGEMENT

P. O. Box 8784

Williamsburg, Virginia 23187-8784

County Government Center, 101-E Mounts Bay Road

Development Manager  
(804) 253-6671

Code Compliance  
253-6626

County Engineer  
253-6678

Planning  
253-6685

Integrated Pest Management  
253-2620

April 23, 1996

Mr. Lawrence E. Beamer, President  
Powhatan Enterprises, Inc.  
12441 Warwick Blvd.  
Newport News, VA 23602

SUBJECT: Z-6-95. Powhatan Secondary

Dear Mr. Beamer:

This is to confirm that if parcels A-1, A-3, and A-4 as shown on the master plan submitted with the above referenced zoning use and last revised 2/29/96 were rezoned to R-4 and added to the Powhatan Planned Community, that addition would not adversely affect the ability of Powhatan Planned Community to develop the previously approved number of residential units, square footage and open space shown on the master plan. Open space for development under that master plan shall be calculated in the manner as stated by the Ordinance in effect on February 2, 1987; however, the individual parcels to be added would have to comply with R-4 requirements in effect at the time of the rezoning.

This letter supersedes my letter to you dated April 22, 1996.

Sincerely,

Bernard M. Farmer, Jr.  
Zoning Administrator

BMF/cg

You have thirty days from this date in which to appeal this decision to the Board of Zoning Appeals, in accordance with §15.1-496.1 of the Code of Virginia, or this decision shall be final and unappealable.

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

30<sup>th</sup> day of May 1996. This copy presented to the Clerk of the Court and annexed and admitted to record at 1:02 o'clock

COMMONWEALTH OF VIRGINIA



OFFICIAL RECEIPT  
WILLIAMSBURG/JAMES CITY COUNTY CLERK  
DEED RECEIPT

DATE: 05/30/96 TIME: 13:08:43 ACCOUNT: 8300LF90007468 RECEIPT: 96000018782  
COUNTER: CHB REG: W804 TYPE: OTHER PAYMENT: FULL PAYMENT  
INSTRUMENT : 960007468 BOOK: C PAGE: 0 RECORDED: 05/30/96 AT 13:08  
GRANTOR NAME : FOUNTAIN ASSOCIATES EX: N LOCALITY: CO  
GRANTEE NAME : JAMES CITY COUNTY VIRGINIA EX: N PERCENT: 100%  
AND ADDRESS :  
RECEIVED OF : JCCC

CHECK : \$15.00  
DESCRIPTION 1: PROFFERS PARCEL P20, PARCEL P19 & PARCEL P21

CONSIDERATION:	.00	ASSUME/VAL:	.00	PAID:	
CODE DESCRIPTION		PAID CODE DESCRIPTION			PAID
301 DEEDS		145 VBLF			15.00
		TENDERED :			15.00
		AMOUNT PAID:			15.00
		CHANGE AMT :			.00

CASE RETURN TO:  
COUNTY ATTORNEY  
3 - BLDG. C

CLERK OF COURT: HELENE S. WARD