



970 019406

HIDEN PROPERTY PROFFERS

THESE PROFFERS are made as of this 29th day of October, 1997, by POWHATAN CROSSING, INC., a Virginia corporation, (together with its successors and assigns, the "Owner").

RECITALS

A. Owner is the owner of certain real property (the "Property") in James City County, Virginia consisting of approximately 403.7 acres more particularly described on Exhibit A attached hereto and made a part hereof.

B. The Property is designated Low Density Residential on the County's Comprehensive Plan Land Use Map, is within the County's Primary Service Area and is included within the Route 5 Transportation Improvement District (the "District") created to finance the construction of Alternate Route 5. Alternate Route 5 will bisect the Property. The Property is now zoned R-8.

C. Owner has applied for a rezoning of the Property from R-8, Rural Residential District, to PUD-R, Planned Unit Development-Residential District, with proffers, and in connection therewith has submitted a Master Plan in accordance with Section 20-484 of the County Zoning Ordinance entitled "Master Plan Hiden Property" and dated September 10, 1997 and revised October 15, 1997 (the "Master Plan").

D. Owner desires to offer to the County certain conditions

DEC 10 1997 01 07

on the development of the Property not generally applicable to land zoned PUD-R for the protection and enhancement of the community and to provide for the high-quality and orderly development of the Property.

NOW, THEREFORE, for and in consideration of the approval by the Board of Supervisors of James City County of the applied for rezoning and the approval of the Master Plan, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the applied for rezoning is not granted by the County, the Proffers shall thereupon be null and void.

CONDITIONS

1. Owners Association. All owners of lots or units within the Property by virtue of ownership of their lot or unit shall be members of a property or timeshare owners association with the power to levy mandatory assessments. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing the association(s) shall be submitted to and reviewed by the County Attorney. The Governing Documents shall require that the association adopt an annual maintenance budget and shall require that the association (i) assess all members for the maintenance of all properties owned or maintained by the association and (ii) file liens on members' properties for non-payment of such assessments and for

the cost of remedying violations of, or otherwise enforcing, the Governing Documents.

2. Density. There shall be no more than 150 single family lots and 350 timeshare units permitted on the Property. The 350 units shown in Area 2 with a Master Plan designation of "C" shall be developed and operated only as a "time-share project" as defined in the Virginia Real Estate Time-Share Act, Va. Code §§55-360 et seq.

3. Road Improvements. (a) Alternate Route 5. (i) At the request of the County, Owner shall convey to the County or the District right-of-way for Alternate Route 5 up to 140 feet wide in the location shown on the Master Plan.

(ii) Owner shall make a contribution of \$2,800.00 to the County for each of the first 130 lots or units shown on subdivision plats or site plans of the Property. Such contributions shall be made available by the County for use by the District for the construction of Alternate Route 5 or used by the County for any other project included in the County's capital improvement program, the need for which is generated in whole or in part by the development of the Property. Such contributions shall be made at the time of (i) final subdivision plat approval for lots in areas designated "A", Single Family Detached on the Master Plan and (ii) final site plan approval for timeshare units in areas designated "C", Multi-Family (Timeshares) on the Master

DEC 10 01 09

Plan.

(iii) At any time before the bidding of the construction contract for Alternate Route 5 by the District, Owner at its option may elect to either (x) construct at least 1,500 linear feet of Alternate Route 5 consisting of two lanes and a Class II bikeway within the right-of-way proffered above from the edge of the Conservation Area adjacent to Powhatan Swamp to the eastern boundary of the Property or within other right-of-way owned by the District or the County which road and bikeway shall be constructed in a manner consistent with the design plans and construction standards of the District for Alternate Route 5 or (y) Owner shall make a contribution of \$2,800.00 to the County for each of the 131st through 250th lot or unit shown on subdivision plats or site plans of the Property. Such contributions shall be made available by the County for use by the District for the construction of Alternate Route 5 or used by the County for any other project included in the County's capital improvement program, the need for which is generated in whole or in part by the development of the Property. Such contributions shall be made at the time of (i) final subdivision plat approval for lots in areas designated A Single Family Detached on the Master Plan and (ii) final site plan approval for timeshare units in areas designated "C" Multi-Family (Timeshares) on the Master Plan. If Owner elects to proceed under (x) above, Owner shall

DEC 10 6 0 1 1 0

construct such road prior to or contemporaneously with the construction of the balance of Alternate Route 5 by the District.

(iv) There shall be no more than two entrances into the Property from Alternate Route 5, one into the portion of the property south of Alternate Route 5 and one into the portion of the property north of Alternate Route 5. The two entrances shall be aligned. Owner shall construct right and left turn lanes on both approaches at the entrances to the Property from Alternate Route 5 at the time such entrances are constructed.

(v) Owner shall install a traffic signal at the intersection of Alternate Route 5 and the entrances to the Property at the earlier of (i) when Virginia Department of Transportation ("VDOT") signal warrants are met or (ii) when development has commenced on either side of Alternate Route 5 and the County has issued certificates of occupancy for more than 55 lots or dwelling units utilizing the entrances onto Alternate Route 5; provided that VDOT approves the installation of the traffic signal at that time.

(b) All road improvements proffered hereby shall be constructed in accordance with VDOT standards.

(c) Unless otherwise approved by the Director of Planning, Owner shall reserve a public right-of-way to provide a pedestrian connection from the Powhatan Secondary development to the Property and shall dedicate such right-of-way to the County upon

the written request of the County Administrator.

4. Alternate Route 5 Greenbelt. At the time of the conveyance of the Alternate Route 5 right-of-way to the County or the District, the Owner shall designate 150-foot greenbelt buffers along the Property's Alternate Route 5 frontage measured from a right-of-way line assuming a 120 foot right-of-way for Alternate Route 5 (measured 60 feet on either side of the centerline of the road). The greenbelt buffers shall be exclusive of any lots or units and shall be undisturbed, except for, with the approval of the Development Review Committee, utilities, drainage improvements, community entrance roads as shown generally on the Master Plan, pedestrian/bicycle trails, lighting, entrance features and signs.

5. Archaeology. (A) Before issuance of a land disturbing permit by the County for land disturbing within a Master Plan Area shown on the Master Plan, Owner shall submit a Phase I archaeological study that includes, at a minimum, that Master Plan Area to the Director of Planning for review and approval.

(B) (1) For all sites that the Phase I study recommends for Phase II evaluation or identifies as potentially being eligible for inclusion on the National Register of Historic Places (the "National Register"), Owner shall submit to the Director of Planning for review and approval a treatment plan. An acceptable treatment plan can consist of (i) performing a limited Phase II

DEC 10 6 01 12

study to establish the boundaries of the site and thereafter leaving the site completely undisturbed or preserving it in some other manner acceptable to the Director of Planning or (ii) performing a complete Phase II study of the site. If a complete Phase II study of a site is undertaken, such Phase II study shall be submitted to and approved by the Director of Planning.

(2) If the approved Phase II study concludes that a site is not eligible for inclusion on the National Register, Owner shall not be obligated to perform any further archaeological studies thereon.

(3) For all sites which the approved Phase II study indicates are eligible for inclusion on the National Register and/or those sites upon which a Phase III study is warranted, Owner shall submit to the Director of Planning for review and approval a treatment plan. An acceptable treatment plan can consist of (i) leaving the site completely undisturbed or preserving the site in some other manner acceptable to the Director of Planning and submitting an application to include the site on the National Register or (ii) performing a complete Phase III study of the site. If a complete Phase III study is undertaken on a site, the Phase III study shall be submitted to and approved by the Director of Planning.

(4) If the Phase II or Phase III study of a site determines the site is eligible for inclusion on the National

Register of Historic Places and such site is to be preserved in place, the treatment plan shall include nomination to the National Register of Historic Places.

(5) All approved treatment plans shall be incorporated into the plan of development for the site and the clearing, grading or construction activities thereon.

(C) All archaeological studies proffered hereby shall meet the VDHR Guidelines and the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation and shall be 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 as in effect at the time of the submission of the study.

6. Conservation Area. The Owner and/or the owners association shall grant, free of charge, to the Williamsburg Land Conservancy, another County approved land conservation entity and/or the County a conservation easement with terms consistent with these Proffers over the area designated on the Master Plan as Conservation Area generally in the locations shown on the Master Plan. The exact boundaries of the Conservation Area shall be shown on subdivision plats and/or site plans of the Property based on the buffer line and Conservation Area shown and set out on the map entitled "Revised Environmental Constraints Map Hiden Property" made by Williamsburg Environmental Group, Inc. and

DEC 10 97 01 14

dated 8/1/97 and revised 9/16/97. The conservation easement over the Conservation Area shown on each individual subdivision plat or site plan shall be granted at the time of final approval thereof by the County. The Conservation Area shall remain undisturbed and in its natural state, preserving indigenous vegetation except as set forth below. With the prior approval of the County Engineer or his designee on a case by case basis, (i) dead, diseased and dying trees or shrubbery and invasive or poisonous plants may be removed from the Conservation Area; (ii) select hand clearing and pruning of trees shall be permitted in the Conservation Area to permit sight lines or vistas, (iii) utilities, roads, pedestrian paths, trails and bridges may intrude into or cross the Conservation Area and (iv) stormwater best management practices shall be permitted in the portion of the Conservation Area outside the RPA. The greenway proffered in Proffer 7 below and County trails and passive recreational facilities and structures located therein shall be permitted within the Conservation Area. If vegetation is removed from the Conservation Area it shall be replaced by indigenous vegetation that is equally or more effective in retarding runoff, preventing erosion and filtering nonpoint source pollution. Owner, at the request of the County, shall retain an environmental consultant acceptable to the County to prepare a three tiered restoration plan for the areas indicated on the "Revised Environmental

DEC 10 5 01 15

Constraints Map Hiden Property" made by Williamsburg Environmental Group, Inc. and dated 8/1/97 and revised 9/16/97 where timbering operations resulted in the removal of trees from or land disturbance within the Conservation Area to provide for the restoration of ground cover, shrubs and trees for that portion of the Conservation Area as determined to be necessary by the consultant. If stormwater BMP's are located in the Conservation Area, the restoration plan shall include a replanting plan for such BMP areas. The restoration plan shall include a phasing plan to ensure areas of the Conservation Area being restored have been stabilized prior to the commencement of development on adjacent developable areas. The restoration plan shall be submitted to the County Engineer for review and approval. Owner shall implement the recommendations of the approved restoration plan. Road and utility crossings shall be generally perpendicular through the Conservation Area and Owner shall endeavor to design utility systems that do not intrude into the Conservation Area. The Conservation Area shall be maintained by Owner unless the Williamsburg Land Conservancy, the other County approved land conservation entity or the County assumes responsibility therefor under its easement or the Conservation Area is conveyed to an owners association, at which time the association shall assume responsibility for its maintenance. The Conservation Area shall be exclusive of Lots.

7. Greenway. Owner shall grant the County an easement within the Conservation Area for a greenway through the Property in the general location shown on the Master Plan as "Trail Easement" as subdivision plats or site plans for adjacent Property are approved and/or recorded. The County shall be entitled to construct a trail with a minimum 10' wide travel path (which will be open to the general public), including necessary bridges, if any, through the Trail Easement and to install passive amenities such as benches, tables, gazebos, educational or descriptive markers or individual fitness stations. The location of the "Trail Easement" shall be varied within the Conservation Area by the County Engineer to ensure the ability to construct a viable trail network.

8. Recreation. (a) Owner shall provide the recreational facilities listed below in Area 1 shown on the Master Plan and make the cash contributions to the County described below before the County is obligated to approve final subdivision plats for more than 100 lots in Area 1:

- Parkland, including one playground of at least 1.9 acres.
- Cash contribution of \$9,900 in lieu of multi-purpose courts.
- Cash contribution of \$4,300 in lieu of playing fields.

(b) Owner shall provide the recreational facilities listed below in Area 2 shown on the Master Plan and make the cash contributions described below to the County before the County is

obligated to approve final subdivision plats or site plans for more than 235 dwelling units in Area 2:

- Recreation area of at least 2.5 acres.
- Cash contribution of \$13,650 in lieu of multi-purpose court.
- Cash contribution of \$5,950 in lieu of playing fields.

The recreational facilities in Area 2 may be open only to owners in Area 2.

(c) All cash contributions proffered by this Proffer 8 shall be used by the County for recreation capital improvements, which may include trails within the greenway proffered in Proffer 7. In lieu of the cash contributions for multi-purpose courts set forth above, Owner may construct one multi-purpose court in a location approved by the Development Review Committee. In lieu of the cash contributions for playing fields set forth above, Owner may construct one playing field in accordance with the standards of the Parks and Recreation Master Plan and in a location approved by the Development Review Committee. The exact locations of the facilities proffered hereby and the equipment to be provided at such facilities shall be subject to the approval of the Development Review Committee. All recreational facilities proffered hereby shall be conveyed to and maintained by the owners association and shall be open to all members of the association in good standing.

(e) Owner shall construct a Class II bikeway in accordance



with VDOT standards along both sides of the main public collector roads within the Property north of Alternate Route 5.

9. Entrance Signs. The entrance signs, lighting and entrance features at the entrances to the Property from Alternate Route 5 shall be subject to the review and approval of the Director of Planning before a sign permit for such signs is issued. The entrance signs shall be monument type signs.

10. Powhatan Crossing Buffer. The Owner shall maintain a buffer along the Property's common boundary line with the Powhatan Crossing subdivision with the width and in the locations shown on the Master Plan. This buffer shall be exclusive of any lots and shall be undisturbed, except for, with the approval of the Development Review Committee, berms, landscape features, walls or fences.

11. Area 2 Natural Open Space. At least 40% of the net developable acreage of Area 2 shall be retained as Natural Open Space.

12. Timeshare/Single Family Phasing. The County shall not be obligated to grant final subdivision plat approval for more than 100 lots in Area 1 until the County has granted Certificates of Occupancy for at least 100 units in Area 2.

13. No Access to Powhatan Crossing. Prior to final approval of the first subdivision plat or site plan for development on the Property, Owner shall (i) convey to the

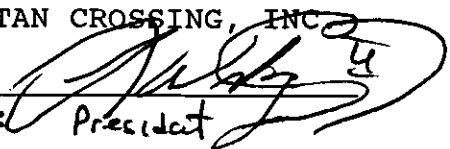
DEC 10 5 01 19

Powhatan Crossing Homeowners Association by quitclaim deed all its right, title and interest in and to the access easement from Powhatan Crossing Drive to the Property adjacent to the recreational lot in Powhatan Crossing, (ii) install a permanent cul de sac at the end of Powhatan Crossing Drive, and (iii) convey to the Powhatan Crossing Homeowners Association by quitclaim deed a strip of land between the permanent cul de sac and the Property such that the public road and the Property are no longer adjacent.

14. Headings. All section and subsection headings of Conditions herein are for convenience only and are not a part of these Proffers.

15. Severability. If any condition or part thereof set forth herein shall be held invalid or unenforceable for any reason by a court of competent jurisdiction, the invalidity or unenforceability of such condition or part thereof shall not invalidate any other remaining condition contained in these Proffers.

WITNESS the following signatures and seals:

POWHATAN CROSSING, INC
By: 
Title: President

STATE OF Virginia
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged before me

DEC 10 5 01 20

this 25th day of October, 1997 by C. Lewis Waltrip II as President of Powhatan Crossing, Inc.

Vernon M. Geddy III
NOTARY PUBLIC

My commission expires:
12/31/99

DEC 10 5 01 21

Prepared by:
Vernon M. Geddy, III, Esquire
Geddy, Harris & Geddy
516 South Henry Street
Williamsburg, VA 23185

Exhibit A

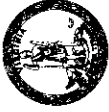
All that certain piece, or parcel of land described as the "Thomas & Martin Tract" containing 390.69 acres, more or less, but said land is sold in gross and not by the acre. The subject property is bordered by the Powhatan Swamp, Powhatan Crossing Subdivision, Powhatan Plantation and Powhatan Secondary Subdivision, as shown on that certain plat, entitled "P.W. Hiden Estate, Plat of Survey of the Thomas & Martin Tracts, Being Part of Powhatan Plantation, situated in Jamestown District, James City County, Virginia, Surveyed, November, 1944...", a copy of which plat is attached hereto and incorporated herein by reference, for a more complete description of the property sold herein.

Subject however to all easements, restrictions and conditions of record affecting the Property or apparent on the ground.

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
10 day of Dec 10 1991 This Proffers
_____ was presented in certificate annexed and
acknowledged at 10:33 o'clock
Teste: Richard S. Ware, Clerk
by: Debra S. Ward
Deputy Clerk

DEC 10 5 01 22

COMMONWEALTH OF VIRGINIA



OFFICIAL RECEIPT
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT
DEED RECEIPT

DATE: 12/10/97 TIME: 10:33:07 ACCOUNT: 830CLR970019406 RECEIPT: 97000031937
CASHIER: CHR REG: W804 TYPE: OTHER PAYMENT: FULL PAYMENT
INSTRUMENT : 970019406 BOOK: RECORDED: 12/10/97 AT 10:33
GRANTOR: FOWHATAN CROSSING INC EX: N LOC: CO
GRANTEE: JAMES CITY COUNTY EX: N PCT: 100%

DATE OF DEED: 10/29/97

\$25.00

RECEIVED OF : JCCO

CHECK :

DESCRIPTION 1: PROFFERS HIDDEN PROPERTY

2:

CONSIDERATION:

CODE DESCRIPTION

301 DEEDS

.00

ASSUME/VAL:

PAID CODE DESCRIPTION

24.00 145 VSLF

.00

MAP:

PAID

1.00

TENDERED :

25.00

AMOUNT PAID:

25.00

CHANGE AMT :

.00

CLERK OF COURT: HELENE S. WARD

DC-18 (5/97)

PLEASE RETURN TO:
COUNTY ATTORNEY
JCC - BLDG. C

25.