

**PROFFER AMENDMENT**

THIS PROFFER AMENDMENT is made as of the 13th day of February, 1998, by JOHN GRIER CONSTRUCTION COMPANY, a Virginia corporation, the owner of record of the Property (as hereinafter defined) and NELSEN FUNERAL HOME INC., a Virginia corporation, the contract purchaser of the Property (as hereinafter defined) (collectively "the Owner" or "the Owners"), together with their respective successors and assigns, which Owners collectively own and/or have an interest in certain real property shown on the James City County Tax Map 38-4 as Parcels 1-29B and 1-34, also known as 3751 and 3785 Strawberry Plains Road, Williamsburg, Virginia 23185, respectively.

**RECITALS**

A. JOHN GRIER CONSTRUCTION COMPANY is the owner of record of certain real property in James City County, Virginia, more particularly described as follows:

All that certain tract, piece or parcel of land now or formerly situated in Jamestown District, James City County, Virginia, containing 8.0219 acres, more or less, shown and set forth as "Proposed LB Zone" on a plat entitled: "PROPOSED REZONING, SECTION 1 & 3, MIDLANDS, OWNER: JOSEPH S. TERRELL, BERKELEY DISTRICT, JAMES CITY COUNTY, VIRGINIA" made by AES, a professional corporation, dated July, 1985 ("the Whole Property").

B. Nelsen Funeral Home is the contract purchaser of a portion of the Whole Property which portion of the Whole Property is hereinafter referred to as the Property and is more particularly described as follows:

All that certain tract, piece or parcel of land now or formerly situated in Jamestown District, James City County, Virginia containing 3.65 acres, more or less, shown and set forth as "New Total Area, 3.65

APR 17 8 0035

Acres ±” on a plat entitled “PLAT OF SUBDIVISION AND LOT LINE EXTINGUISHMENT, BEING THE PROPERTY OWNED BY JOHN GRIER CONSTRUCTION, BERKELEY DISTRICT, JAMES CITY COUNTY, VIRGINIA,” dated 12/8/97, prepared by G. T. Wilson, Jr. of AES, Consulting Engineers.

C. The Property is currently zoned Limited Business District, LB with Proffers recorded in the Clerk’s Office of the Circuit Court for the City of Williamsburg and County of James City in James City County Deed Book 346, page 59, *et seq* (“the Old Proffers”) which Old Proffers limit the use of the Property to the following:

- Banks and other financial institutions;
- Office supply stores, secretarial and duplicating services;
- Business, governmental and professional offices;
- Doctors, dentists and other medical clinics or offices;
- Contractor’s offices without the storage of construction equipment or building materials;
- Off street parking as required.

D. The Owners have applied for an amendment of the Old Proffers. The amendment would result in a rezoning of the Property from the Limited Business District, LB with the Old Proffers to the Limited Business District, LB with new proffers (“the New Proffers”). The New Proffers would limit the use of the Property to the following:

- An apartment or living quarters for a guard, caretaker, proprietor or the person employed on the premises, which is clearly secondary to the commercial use of the property;
- Banks and other financial institutions;
- Office supply stores (with less than 10,000 square feet of floor area), secretarial and duplicating services;
- Business, governmental and professional offices;
- Doctors, dentists and other medical clinics or offices;
- Funeral homes;
- Lodges, civic clubs, fraternal organizations and service clubs;
- Contractor’s offices without the storage of construction equipment or building materials;
- Off street parking as required;

- Houses of worship.

In addition, the New Proffers would impose additional restrictions against the Property.

E. The proposed development will not be a burden on the public school system, the systems providing transportation, water and sewer, or fire or recreation facilities.

F. The James City County Land Use Plan Map of the James City County 1997 Comprehensive Plan designates the Property as “Moderate Density Residential” which designation specifically envisions “very limited commercial facilities.”

G. The Owners desire to offer to James City County (“the County”) the New Proffers for the development of the Property which New Proffers are not generally applicable to land similarly zoned and 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 County of the rezoning set forth above, and pursuant to Section 15.2-2302 *et seq* of the Code of Virginia, 1950, as amended, and Section 24-20 of the County Code, the Owners agree that they will meet and comply with all of the following proffers in developing the Property. In the event all of the requested amendment is not granted by the County, this Proffer Amendment shall thereupon become null and void.

### NEW PROFFERS

1. Uses:

The uses of the Property shall be limited to the following:

APR 17 2003 0037

- An apartment or living quarters for a guard, caretaker, proprietor or the person employed on the premises, which is clearly secondary to the commercial use of the property;
- Banks and other financial institutions;
- Office supply stores (with less than 10,000 square feet of floor area), secretarial and duplicating services;
- Business, governmental and professional offices;
- Doctors, dentists and other medical clinics or offices;
- Funeral homes;
- Lodges, civic clubs, fraternal organizations and service clubs;
- Contractor's offices without the storage of construction equipment or building materials;
- Off street parking as required;
- Houses of worship.

2. Conceptual Plan:

The Property will be developed generally in accordance with a conceptual plan entitled "Nelsen Funeral Home, James City County, Virginia" dated January 29, 1998 prepared by J. Stuart Todd Architects, Inc. ("the Conceptual Plan"). The Owner may, from time to time, in final plats or site plans submitted to the County, relocate the specific uses shown on the Conceptual Plan (provided that such uses are permitted by the County Zoning Ordinance and these Proffers) provided that the County's Director of Planning determines that said relocations do not alter the basic concept or character of the development as depicted in the Conceptual Plan.

3. Architectural Design and Building Materials:

The architectural design and building materials of the main building on the Property shall be substantially in accordance with the rendering on file with the County entitled "NELSEN FUNERAL HOME, JAMES CITY COUNTY, VIRGINIA" prepared by J. Stuart Todd, Inc. as determined by the County's Director of Planning.

APR 17 00 38

The architectural design and building materials of the monument style sign at the northeast corner of the Property shall be subject to the review and approval of the County's Director of Planning.

The screening of the dumpster pad and the screening of all exterior heating and air conditioning compressors shall be subject to the review and approval of the County's Director of Planning.

4. Sidewalk Along Midlands Road:

In conjunction with the development of the Property, the Owner shall install a concrete sidewalk on the Property four (4) feet in width adjacent to and parallel with the entire northerly border of the Property except in the area of the driveway to and from the Property and to and from Midlands Road where the sidewalk and driveway apron shall be integrated with each other. The plans for said sidewalk shall be subject to review and approval by the County's Director of Planning.

5. Tree Protection:

In conjunction with the development of the Property, the Owner shall provide orange mesh tree protection fencing around but outside of the dripline of each of the following trees shown on the Conceptual Plan as follows:

Along Strawberry Plains Road:

- 2--14" Magnolias
- 1--24" Gum
- 1--36" Oak

APR 17 0039

Along the southerly property line of the Property:

- 1--24" Oak
- 1--14" Oak
- 1--16" Oak
- 1--18" Maple
- 1--8" Hickory
- 1--18" Maple

None of the trees hereby protected shall be applied against the number of trees otherwise required by the County's Zoning Ordinance or these proffers.

During construction, no parking or storage shall be permitted within the areas of tree protection fences.

6. Enhanced Landscaping:

The area of the Property shown on the Conceptual Plan between the right of way of Strawberry Plains Road and the parking lot shall be supplemented with landscaping so that the required number of plants equal up to one hundred thirty-three percent (133%) of the County's Landscaping Ordinance requirements with up to thirty-three percent (33%) of the required number of trees being evergreen. The plan for all landscaping hereby required shall be subject to the review and approval of the County's Director of Planning.

APR 17 8 00 40

7 Environmental Protection:

The storage and use of any of the contaminants included in the Safe Drinking Water Act Amendments Phase II, IIB or V shall be prohibited on the Property.

8. Lighting of Parking Area and Drive Aisles:

All parking area and drive aisle lighting shall be limited to twenty (20) feet in height above finished floor elevation and shall be approved by the County's Director of Planning provided that all such exterior light fixtures on the Property shall be horizontally mounted recessed fixtures with no lens, bulb or globe extending below the casing or otherwise unshielded by the case so that the light source is visible from the side of the fixture.

9. Headings:

All section and subsection headings of this Proffer Amendment are for convenience only and are not part of these proffers.

10. New Proffers Replace Old Proffers:

These New Proffers shall replace and supersede in their entirety the Old Proffers.

11. Severability of Provisions:

If any clause, sentence, paragraph, section or subsection of these New 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 the 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

APR 17 2004 1

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.

WITNESS the following signatures and seals:

JOHN GRIER CONSTRUCTION COMPANY

By: Joseph S. Terrell (SEAL)  
President

NELSEN FUNERAL HOME

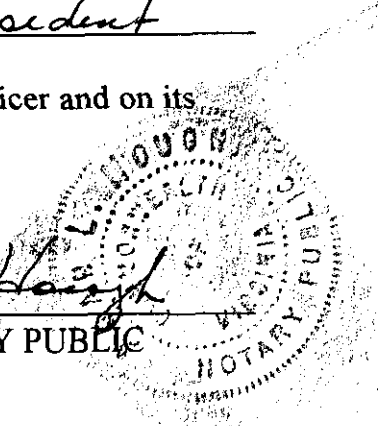
By: Blair H. Adser (SEAL)  
President

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged before this 12 day of March, 1998 by Joseph S. Terrell, Vice President of JOHN GRIER CONSTRUCTION COMPANY, its officer and on its behalf.

Adah R. Haigh  
NOTARY PUBLIC



My commission expires: 10/31/2000

APR 17 8 00 42



COMMONWEALTH OF VIRGINIA

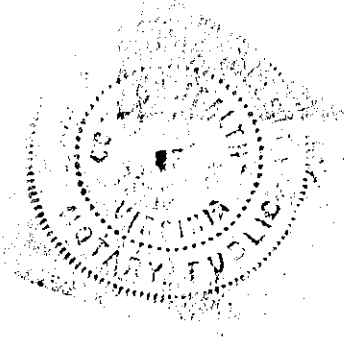
CITY/COUNTY OF Henrico, to-wit:

The foregoing instrument was acknowledged before this 16th day of March, 1998 by BLAIR H. NELSEN, C.E.O. of NELSEN FUNERAL HOME, its officer and on its behalf.

Arnd Raymond Wollett  
NOTARY PUBLIC

My commission expires: August 31, 2001

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COMMUNICATIONS SECTION  
Y 1230004 04/17/98

VIRGINIA: City of Williamsburg and County of James City, to Wit:  
In the presence of the Circuit Court of the City of Williamsburg and County of James City the Proffer was presented, read and approved and filed at 9:10 o'clock AM on April 17, 1998 by William S. Ward Deputy Clerk

APR 17 8 00 43

Prepared by:  
Alvin P. Anderson, Esquire  
Anderson, Franck & Davis, P.C.  
P.O. Drawer Q  
Williamsburg, VA 23187  
(757) 229-7322

COMMONWEALTH OF VIRGINIA



OFFICIAL RECEIPT  
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT  
DEED RECEIPT

DATE: 04/17/98 TIME: 09:10:17 ACCOUNT: 890CLR980006941 RECEIPT: 98000011050  
CASHIER: CHB REG: W604 TYPE: AMEND PAYMENT: FULL PAYMENT  
INSTRUMENT : 980006941 BOOK: PAGE: RECORDED: 04/17/98 AT 09:10  
GRANTOR: JOHN GSTER CONSTRUCTION COMPANY EX: N LOC: CO  
GRANTEE: NELSEN FUNERAL HOMES INC EX: N PCT: 100%

RECEIVED OF : JCCO CHECK : \$16.00 DATE OF DEED: 02/12/98

DESCRIPTION 1: 6.0219 AC REZONING SEC 1 & 3 MIDLANDS  
2: AMENDED PROFFER

CONSIDERATION: ASSUME/VAL: .00 MAP:  
CODE DESCRIPTION: PAID CODE DESCRIPTION .00  
301 DEEDS 17.00 145 VSLF

TENDERED : 18.00  
AMOUNT PAID: 18.00  
CHANGE AMT : .00

CLERK OF COURT: HELENE S. WARD

DC-16 (1/97)

PLEASE RETURN TO:  
COUNTY ATTORNEY  
JCC - BLDG. C

*Neo Rogers*

*[Faint, illegible text and markings]*