

SUPPLEMENTAL PROFFERS  
FOR THE POWHATAN "COMMERCIAL/OFFICE PARCEL"

THESE SUPPLEMENTAL PROFFERS are made as of this 26th day of February, 2004, by **POWHATAN ENTERPRISES, INC.**, a Virginia corporation (together with its successors and assigns, "Powhatan") (index as a "grantor"); and the **COUNTY OF JAMES CITY, VIRGINIA** (the "County") (index as the "grantee").

RECITALS

R-1. Powhatan is the owner of certain real property in James City County, Virginia, a portion of which is more particularly described on EXHIBIT A attached hereto and made a part hereof (the "Property").

R-2. The Property is subject to the proffers (the "Existing Proffers"), dated March 11, 1996, of record in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia (the "Clerk's Office") in Deed Book 803, at page 740. The Existing Proffers are made a part hereof and incorporated by reference.

R-3. The Property is also subject to a plan of development entitled "Exhibit F Master Plan of Powhatan" prepared by Langley and McDonald, P.C., dated July, 1982, last revised on February 29, 1996 (the "Existing Plan of Development"), a copy of which is on file with the County's Director of Planning.

R-4. Powhatan desires to amend the Existing Proffers and the Existing Plan of Development which changes only pertain to the Property.

R-5. Powhatan has reduced the allowable townhouse density within the News Road Corridor by a total of 188 units which development would have otherwise generated 1,504 vehicle trips per day pursuant to the Institute of Transportation Engineers (“ITE”). Based upon that reduction in townhouse density, the Existing Proffers, the Existing Plan of Development and the notes thereon, Powhatan, without further traffic studies, reviewed and approved by the Planning Director, is seeking to develop the Property with commercial and/or office uses which do not exceed a total of 62,000 square feet provided the ITE trip generation for such use(s) does not exceed 1,504 vehicles per day; however, the last sentence of proffer 20 of the Existing Proffers may conflict with the intended use by stating: “No commercial uses shall be permitted on the “Commercial/Office” area if the ITE trip generation for such commercial use per square foot exceeds the ITE trip generation for office use per square foot.”

R-6. Powhatan has applied for a proffer amendment solely to allow commercial and/or office development on the Property without further traffic studies provided that the aggregate amount of square feet of commercial and/or office floor area does not exceed 62,000 square feet and provided further that the ITE trip generation for the commercial and/or office uses does not exceed 1,504 vehicles per day.

R-7. The provisions of the County’s Zoning Ordinance (“Zoning Ordinance”), Section 24-1, et seq. of the County Code, may be deemed inadequate for protecting and enhancing orderly development of the Property. Accordingly, Powhatan, in furtherance of its application, desires to proffer certain additional conditions which are specifically limited solely to those set forth herein in addition to the regulations provided for by the Zoning Ordinance for the protection and enhancement of the development of the Property, in accordance with the

provisions of Section 15.2-2296 *et seq.* of the Code of Virginia (1950), as amended (the "Virginia Code") and Section 24-16 of the Zoning Ordinance.

R-8. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

NOW, THEREFORE, for and in consideration of the approval by the Board of Supervisors of the County of the proffer amendments set forth above and the approval of these Supplemental Proffers and all related documents described herein, and pursuant to Section 15.2-2296, et seq., of the Virginia Code and Section 24-16 of the Zoning Ordinance, Powhatan agrees that all of the following conditions shall be met and satisfied in developing the Property.

PROFFERS:

PROFFERS APPLICABLE TO THE PROPERTY

1. Application of Existing Proffers and Existing Plan of Development. Development and use of the Property shall hereafter be subject to and in accordance with the Existing Proffers as amended hereby and the Existing Plan of Development as amended hereby, which are both incorporated herein by reference.
2. Amended Plan of Development. Powhatan will also develop the Property in accordance with a plan of development entitled "Plan of Development, Powhatan of Williamsburg Secondary, James City County, Virginia" prepared by Landmark Design Group dated January 6, 2004 ("the Amended Plan of Development").
3. Amended Proffer. The last sentence of proffer number 20 of the Existing Proffers is deleted and in lieu of the sentence deleted, the following sentence is substituted:

"Without additional traffic studies reviewed and approved by the Planning Director, no commercial and/or office uses shall be permitted on the Property if the ITE trip generation for such commercial and/or office uses exceeds 1,504 vehicles per day."

4. Landscaping of the Property. Prior to the issuance of a certificate of occupancy for any development on the Property or portion thereof then being developed, Powhatan shall provide the following landscaping on the portion of the Property then being developed:

a. Powhatan shall provide enhanced landscaping along the frontage of the Property adjacent to News Road which landscaping shall exceed the number of plantings otherwise required by the Zoning Ordinance currently in effect by a factor of fifteen percent (15%); and

b. Powhatan shall provide a landscape buffer in the form of a berm, planted with a single row of trees the size and type of which shall be determined by Powhatan. The berm shall be located adjacent to and along the western boundary of the Property adjoining the common area of Powhatan Place, except that no berm shall be required in such areas where there are roadways, drainage structures, drainage facilities, 25% or greater slopes, wetlands, where such berm would not be permitted under applicable ordinances, statutes, or regulations, where such berm would not be permitted under applicable easements or other restrictions in the chain of title to the Property, where placement of the berm would raise safety concerns, and/or where placement of the berm would raise stormwater management concerns. The berm shall be 15 feet in width at the base and have a slope ratio (run : rise) of 3:1. The slope ratio may be steeper at Powhatan's discretion. Notwithstanding the aforesaid, the slope ratio of the berm shall not be steeper than that which is permitted by the County Code.

5. Limitation on Number of Curb Cuts. Access to News Road to the Property shall be limited to no more than two (2) curb cuts at existing locations; however, with the review and approval of the Planning Director, said locations may be changed but not increased in number.

6. Architectural Compatibility. Prior to final site plan approval for the Property or portion thereof then being developed, architectural elevations shall be submitted to the Planning Director for review and approval solely to determine the general compatibility of all buildings on the property with the design and materials of that currently in place at the Monticello Marketplace and the Marketplace Shoppes.

7. Sidewalk. Powhatan shall either construct a sidewalk parallel to and along the front property line of the Property within the existing right of way of News Road or, in the alternative, provide a bond in form and amount acceptable to the County to guarantee construction of the same when, as and if sidewalks are constructed on the adjacent properties. Provided, however that the sidewalk otherwise herein required shall be constructed not later than the time when a certificate of occupancy is issued for any building on the Property.

8. Prohibited Uses. The following uses which are generally permitted in the Residential Planned Community, R-4 zoning district are hereby prohibited:

- automobile service stations
- private clubs, civic or service clubs, lodges and fraternal organizations
- public billiard parlors, arcades, pool rooms, bowling alleys, dance halls and other centers of amusement
- fast food restaurants


9. Supplemental Proffers and Amended Plan of Development. These Supplemental Proffers and the Amended Plan of Development amend and supplement the Existing Proffers and the Existing Plan of Development but only as to the Property. No other amendment to the Existing Proffers and/or the Existing Plan of Development is intended or accomplished hereby. To the extent that the Amended Plan of Development or the provisions of these Supplemental Proffers conflict with the provisions of the Existing Plan of Development or the Existing

Proffers, the Amended Plan of Development and these Supplemental Proffers shall govern, but only as to the Property.

10. Recitals. The Recitals set forth above shall be included and read as a part of these Proffers and are incorporated by reference.

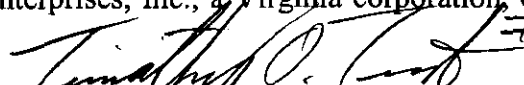
WITNESS the following signatures, thereunto duly authorized:

POWHATAN ENTERPRISES, INC.

By:   
Lawrence E. Beamer, President

COMMONWEALTH OF VIRGINIA  
COUNTY OF JAMES CITY, to wit:

The foregoing instrument was acknowledged before me this 26th day of February, 2004 by Lawrence E. Beamer, President of Powhatan Enterprises, Inc., a Virginia corporation, on its behalf.

  
NOTARY PUBLIC

My commission expires: 2/28/2005

#6048867 v6



**EXHIBIT A**

All that certain piece or parcel of land shown and set forth as "Comm./Office, 11.6 AC" including but not limited to the area designated as "Detention Pond, 3 AC" on that plan of development entitled "Exhibit "F," Master Plan of Powhatan" prepared by Langley and McDonald, P.C. dated July 1982 with revisions dated 6/2/86, 6/6/86, 6/10/86, 1/26/87, 3/30/89, 11/25/94, 12/15/95 and 2/29/96.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 4-26-2004  
at 8:57 AM/PM. The taxes imposed by Virginia Code  
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

STATE TAX	LOCAL TAX	ADDITIONAL TAX
\$ _____	\$ _____	\$ _____

TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B. Woolridge Clerk

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