

AMENDED PROFFER AGREEMENT

THESE AMENDED PROFFERS are made this 5th day of August, 2004 by CUTTING EDGE DEVELOPMENT, L.L.C., a Virginia Limited Liability Corporation, GEORGE S. HANKINS, JR., HOWARD B. HANKINS and THE COUNTY OF JAMES CITY, VIRGINIA, a political subdivision of the Commonwealth of Virginia (together with their successors and assigns, the "Owner").

RECITALS

A. Owner is collectively the legal and/or equitable owner of five tracts or parcels of land located in James City County, Virginia, described as follows and hereinafter referred to as the "Property":

<u>Address</u>	<u>Tax Parcel ID No.</u>	<u>Approximate Acreage</u>
1) 5300 Palmer Lane	3911300001A	.163 acres
2) 5304 Palmer Lane	3911300001B	.203 acres
3) 5324 Palmer Lane	3911300002B	.543 acres
4) 5320 Palmer Lane	3911300003	.121 acres
5) 5340 Palmer Lane	3911300004	.354 acres

B. James City County, Virginia and / or assigns has contracted to purchase the Property.

C. The Property is now zoned MU Mixed Use District, with proffers and is subject to a Master Plan approved by the County. The existing proffers are dated October 25, 2000 and recorded in the Circuit Court of the City of Williamsburg and James City County on February 2, 2004 as Instrument No. 040003422 ("Existing Proffers"). See Exhibit "A" attached.

D. Owner has applied to rezone the Property from MU Mixed Use District, with proffers, to MU Mixed Use District with amended proffers.

E. Owner has submitted to the County a master plan entitled "Master Plan 7.75 + -Acres Ironbound Village Zoning Mixed Use" prepared by AES Consulting Engineers dated 5/29/04 (the "Master Plan") for the Property in accordance with Section 24-515 of the County Zoning Ordinance.

D. Owner desires to offer to the County certain conditions on the development of the Property not generally applicable to land zoned MU.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2297 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance and the granting of modifications to the setback requirements of Section 24-527 of the Zoning Ordinance to those set shown on the Master Plan pursuant to Section 24-527 of the Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void. The Existing Proffers are hereby amended as follows:

CONDITIONS

1. **Amendment.** These amended proffers shall only apply to the Property as described in "Recital A" and shall be the only proffer conditions enforceable against the referenced Property.

2. **Use.** The three buildings designated on the Master Plan for office use shall be used only for office or day care facility use. In no event shall any portion of the buildings be put to a retail use.

3. **Owners Association.** The Property is not be required to be a part of the owner's association identified in paragraph two of the Existing Proffers.

4. **Design Review.** Prior to the County being obligated to grant final development plan approval for any of the office/daycare buildings on the Property, there shall be prepared and submitted to the Director of Planning for approval design guidelines based generally on the design principals set forth in Section VII of the New Town Design Guidelines but recognizing that the Property in not within the New Town Development, which guidelines shall apply only to the three office/daycare buildings shown on the Master Plan. There shall be submitted to the Director of Planning with each development plan for the office/daycare buildings conceptual architectural plans, including architectural elevations, for the Director of Planning to review and approve for consistency with the approved design guidelines. Final architectural plans and completed buildings shall be consistent with the approved conceptual plans.

5. **Ironbound Road Buffer.** Prior to the County being obligated to grant final development plan approval for any of the office buildings on the Property, a landscaping plan for the setback along the Ironbound Road frontage of the Property shall be prepared and submitted for review and approval of the Director of Planning. The landscaping plan shall at a minimum meet the landscaping requirements of the Zoning Ordinance and, where possible shall require that existing trees and groups of trees be protected and preserved to promote a sense of maturity to the landscape. To provide a consistent treatment along Ironbound Road and particularly to enhance the entrance character of this road as it relates to the New Town area, the area of the setback shall be landscaped with lawns and varied shrubs and tree plantings to establish front yards for the adjacent uses. When the final cross section for the expansion of Ironbound Road is established, two alternating species of shade trees shall be planted 50' on center across the Ironbound Road frontage of the Property in accordance with the recommendations of the New Town Design Guidelines or an equivalent treatment consistent with the streetscape design of Ironbound Road and approved by the Director of Planning shall be provided. The approved landscaping plan shall be implemented in the development of the Property and may be bonded prior to actual installation.

6. **Ironbound Road Bikeway.** If a bikeway is not included in the Ironbound Road expansion project within the road right-of-way along the Ironbound Road frontage of the Property, at the request of the County Administrator, the Owner of the Property or successors and assigns, shall grant the County an easement of sufficient width for a bike way immediately adjacent to the right-of-way of Ironbound Road along the Ironbound Road frontage of the Property.

7. **Right-of-Way Dedication.** The Owner of the Property, and their respective successors, heirs and assigns, upon the request of the County Administrator following approval by the County of any development plans for development of the Property, shall dedicate free of charge to the County or the Virginia Department of Transportation ("VDOT") up to an additional thirty (30) feet of right-of-way measured from the existing right-of-way line of Ironbound Road as necessary for the widening of Ironbound Road as shown on final road plans approved by VDOT for the Ironbound Road widening project. The thirty (30) foot reserved area shall be shown on the development plans for the Property.

8. **Entrance Design.** The entrance into the Property from Ironbound Road shall be designed so that no drop inlets, fire hydrants, streetlights, transformers or similar major utility structures will be located within thirty (30) feet of the existing right-of-way line of Ironbound Road.

WITNESS the following signatures:

CUTTING EDGE DEVELOPMENT, L.L.C.
a Virginia Limited Liability Corporation

By: *Howard B. Hankins, Inc.*
Managing Member
H. B. Hankins, Inc.

GEORGE S. HANKINS, JR.

George S. Hankins, Jr.

HOWARD B. HANKINS

Howard B. Hankins

Date:

Approved as to form:

Ma McKelvey
County Attorney

JAMES CITY COUNTY, VIRGINIA

By: *Sanford B. Wanner*
Sanford B. Wanner
County Administrator

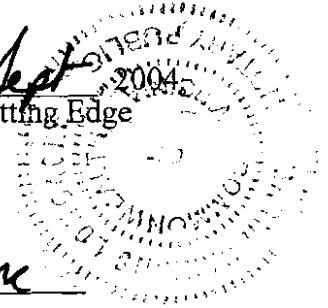
STATE OF VIRGINIA
CITY/COUNTY OF *Newport News*, to wit:

The forgoing Agreement was acknowledged before me this 2 day of Sept 2004
by Howard B. Hankins, President of H.B. Hankins, Inc., Managing Member of Cutting Edge
Development, LLC.

My commission expires: 8/31/06

Marianne H. Langner

Notary Public

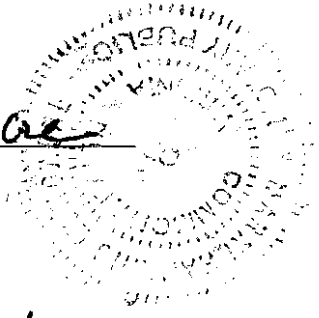


STATE OF VIRGINIA
CITY/COUNTY OF Newport News, to wit:

The foregoing Agreement was acknowledged before me this 2nd day of Sept, 2004,
by George S. Hankins, Jr.

My commission expires: 8/31/06

Marian H. Longacre
Notary Public

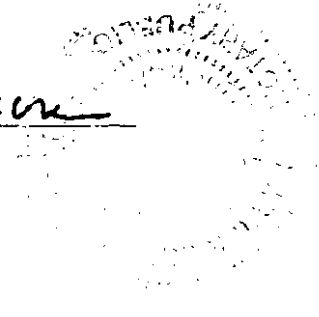


STATE OF VIRGINIA
CITY/COUNTY OF Newport News, to wit:

The foregoing Agreement was acknowledged before me this 2nd day of Sept, 2004,
by Howard B. Hankins.

My commission expires: 8/31/06

Marian H. Longacre
Notary Public

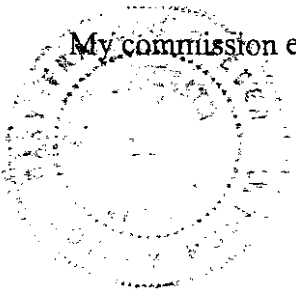


STATE OF VIRGINIA
CITY/COUNTY OF James City, to wit:

The foregoing Agreement was acknowledged before me this 2nd day of Sept, 2004,
by Sanford B. Wanner, County Administrator of James City County, Virginia.

My commission expires: October 31, 2005.

Mary Frances Rieger
Notary Public



Prepared by and return to:
Michael H. Drewry, Esquire
James City County, Virginia
101-C Mounts Bay Road
Williamsburg, VA 23187
(757) 253-6832

EXHIBIT A

040003422

PROFFERS

THESE PROFFERS are made this 25th day of October, 2000 by SHADE J. PALMER and CARLETHA R. PALMER (together with their successors and assigns, the "Owner") and R. L. TURLINGTON.

RECITALS

A. Owner is the owner of two tracts or parcels of land located in James City County, Virginia, one containing approximately 2.558 acres with an address of 112 Magazine Road, Williamsburg, Virginia and being Tax Parcel 3910100047A and the second containing approximately 5.190 acres with an address of 4450 Ironbound Road, Williamsburg, Virginia and being Tax Parcel 3910100047 (together, the "Property"). The Property is now zoned R-2.

B. R. L. Turlington and/or assigns ("Buyer") has contracted to purchase the Property conditioned upon the rezoning of the Property.

C. Owner and Buyer have applied to rezone the Property from R-2 to MU Mixed Use District, with proffers.

C. Buyer has submitted to the County a master plan entitled "Master Plan Ironbound Village" prepared by AES Consulting Engineers dated 09/13/2000 (the "Master Plan") for the Property in accordance with Section 24-515 of the County Zoning Ordinance.

D. Owner and Buyer desire to offer to the County certain conditions on the development of the Property not generally applicable to land zoned MU.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2297 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance and the granting of modifications to the setback requirements of Section 24-527 of the Zoning Ordinance to those set shown on the Master Plan pursuant to Section 24-527 of the Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

CONDITIONS

1. **Use**. The three buildings designated on the Master Plan for office use shall be used only for office or day care facility use. In no event shall any portion of the buildings be put to a retail use.

2. **Owners Association**. There shall be organized an owner's association or associations (the "Association") in accordance with Virginia law in which all property owners in the development, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and

governing the Association shall be submitted to and reviewed by the County Attorney for consistency with this Proffer. The Governing Documents shall grant the Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing Documents.

3. **Water Conservation.** The Association shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. The standards shall be approved by the James City Service Authority prior to final subdivision approval.

4. **Affordable Housing.** A minimum of five lots with houses or townhomes shall be reserved and offered for sale at a price at or below \$95,000.00 subject to adjustment as set forth herein. A minimum of an additional ten lots with houses or townhomes shall be reserved and offered for sale at a price at or below \$100,000.00 subject to adjustment as set forth herein. The maximum prices set forth herein shall be adjusted by increasing such prices by the cumulative rate of inflation as measured by

the Consumer Price Index - Urban, U.S. City Average annual average change for the period from January 2001 until the date of the sale contract for the lot with house or townhome in question. The annual increase shall not exceed five percent (5%). The Director of Planning shall be provided with a copy of the settlement statement for each sale at a price at or below the maximum prices set forth above. Owner shall consult with and accept referrals of, and sell to, potential qualified buyers from the Department of Housing and Community Development on a non-commission basis.

5. **Recreation.** In lieu of providing active recreational facilities on the Property, Owner shall make a contribution to the County of \$250.00 for each residential lot or unit shown on a final development plan for the Property at the time of final development plan approval for use by the County for capital improvements to or equipment for Ironbound Square Park.

6. **Phasing.** The infrastructure (utilities, parking and pad sites) for all three office buildings and at least one of the office buildings shall be completed and a certificate of occupancy issued therefor before the County is obligated to issue building permits for more than twenty (20) residential lots or units on the Property.

7. **Streetscapes.** The Owner shall provide and install streetscape improvements along both sides of the internal street

shown on the Master Plan in accordance with the County's Streetscape Guidelines Policy. The streetscape improvements shall be shown on development plans for the Property and submitted to the Director of Planning for approval.

8. Design Review. Prior to the County being obligated to grant final development plan approval for any of the office/daycare buildings on the Property, there shall be prepared and submitted to the Director of Planning for approval design guidelines based generally on the design principals set forth in Section VII of the New Town Design Guidelines but recognizing that the Property is not within the New Town Development, which guidelines shall apply only to the three office/daycare buildings shown on the Master Plan. There shall be submitted to the Director of Planning with each development plan for the office/daycare buildings conceptual architectural plans, including architectural elevations, for the Director of Planning to review and approve for consistency with the approved design guidelines. Final architectural plans and completed buildings shall be consistent with the approved conceptual plans.

9. Ironbound Road Buffer. Prior to the County being obligated to grant final development plan approval for any of the office buildings on the Property, a landscaping plan for the 50 foot setback along the Ironbound Road frontage of the Property consistent with this Condition 9 shall be prepared and submitted

for review and approval of the Director of Planning. The landscaping plan shall at a minimum meet the landscaping requirements of the Zoning Ordinance and, where possible shall require that existing trees and groups of trees be protected and preserved to promote a sense of maturity to the landscape. To provide a consistent treatment along Ironbound Road and particularly to enhance the entrance character of this road as it relates to the New Town area, the area of the 50 foot setback shall be landscaped with lawns and varied shrubs and tree plantings to establish front yards for the adjacent uses. When the final cross section for the expansion of Ironbound Road is established, two alternating species of shade trees shall be planted 50' on center across the Ironbound Road frontage of the Property in accordance with the recommendations of the New Town Design Guidelines or an equivalent treatment consistent with the streetscape design of Ironbound Road and approved by the Director of Planning shall be provided. The approved landscaping plan shall be implemented in the development of the Property and may be bonded prior to actual installation.


10. Ironbound Road Bikeway. If a bikeway is not included in the Ironbound Road expansion project within the road right-of-way along the Ironbound Road frontage of the Property, at the request of the County Administrator, Buyer, as owner and developer of the Property, shall grant the County an easement of


sufficient width for a bike way immediately adjacent to the right-of-way of Ironbound Road along the Ironbound Road frontage of the Property.

11. **Right-of-Way Dedication.** Buyer, owner and developer of the Property, and their respective successors, heirs and assigns, upon the request of the County Administrator following approval by the County of any development plans for development of the Property, shall dedicate free of charge to the County or the Virginia Department of Transportation ("VDOT") up to an additional thirty (30) feet of right-of-way measured from the existing right-of-way line of Ironbound Road as necessary for the widening of Ironbound Road as shown on final road plans approved by VDOT for the Ironbound Road widening project. The thirty (30) foot reserved area shall be shown on the development plans for the Property.

12. **Entrance Design.** The entrance into the Property from Ironbound Road shall be designed so that no drop inlets, fire hydrants, streetlights, transformers or similar major utility structures will be located within thirty (30) feet of the existing right-of-way line of Ironbound Road.

WITNESS the following signature:


Shade J. Palmer


Carletha R. Palmer

R. L. Turlington
R. L. Turlington

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF James City, to-wit:

The foregoing instrument was acknowledged this 30th
day of October, 2000, by Shade J. Palmer and Carletha R.
Palmer, husband and wife.

My commission expires: July 31st, 2002
Mary R. Seldens
NOTARY PUBLIC



STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 25th
day of Oct-, 2000, by R. L. Turlington.

My commission expires: 2-28-03
Janice M. Shepper
NOTARY PUBLIC



VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 21 Sept. 04
at 4:35 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

Prepared by:
Vernon M. Geddy, III, Esquire
Geddy, Harris, Franck & Hickman, LLP
1177 Jamestown Road
Williamsburg, VA 23185
(757) 220-6500

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 2 Sept 04
at 3:25 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