

## GOVERNOR'S LAND PROFFER AGREEMENT

This Proffer Agreement Amendment, made as of this 10th day of September, 1992, by Governor's Land Associates, a Virginia joint venture between Dominion Lands, Inc., a Virginia corporation, and Governor's Land, Inc., a Virginia corporation ("Owner").

RECITAL

WHEREAS, Owner is the record title owner of certain real property in James City County, Virginia (hereinafter called "the Property") being a 1440-acre, more or less, tract along Route 5 more particularly described as follows:

All that certain tract, piece or parcel of land belonging, lying and being in James City County, Virginia on the south side of State Route 5 also known as John Tyler Highway containing approximately 1444.424 acres, more or less, as shown on that certain plat of survey entitled "BOUNDARY SURVEY OF THE GOVERNOR'S LAND LOCATED IN JAMES CITY COUNTY, VIRGINIA" prepared by Bengtson, DeBell, Elkin & Titus, Ltd., Engineers, Surveyors, Planners, Landscape Architects, dated July 8, 1988, which plat is recorded in the Plat Books in the Clerk's Office of the Circuit Court of James City County, Virginia, said property being subject to a right-of-way containing 3.1127 acres conveyed by instrument recorded in the aforesaid Clerk's Office in Deed Book 210, Page 165.

Subject, however, to all recorded unreleased restrictive covenants, easements and rights of way of record affecting said property.

Together with all rights and privileges, tenements, hereditaments, easements and appurtenances unto the said land belonging or in anywise appertaining, including riparian rights.

and

WHEREAS, the Owner has applied for rezoning of the Property from the General Agricultural District, A-1, to the Residential Planned Community District, R-4: and

WHEREAS, the County of James City (hereinafter the "County") may be unwilling to rezone the property from the General Agricultural District, A-1, to the Residential Planned Community District, R-4, because the Residential Planned Community District, R-4, zoning regulations may be deemed inadequate for the orderly development of the Property; and

WHEREAS, more flexible and adaptable zoning methods are deemed advisable to permit the use of the Property; and

WHEREAS, the Owner is desirous of offering certain conditions for the protection of the community that are not applicable to land similarly zoned in addition to the regulations provided for in the Residential Planned Community District, R-4.

NOW, THEREFORE, this agreement witnesseth that for and in consideration of the County of James City rezoning the Property from the General Agricultural district, A-1, to the Residential Planned Community District, R-4, and pursuant to Section 15.1-491.1, et seq. of the Code of Virginia, 1950, as amended, and Section 20-15, et seq. of Chapter 20 of the Code of James City County, Virginia, the Owner agrees that in addition to the regulations provided for in the Residential Planned Community District, R-4, it will meet and comply with all of the following conditions to the development of the Property.

CONDITIONS

1. The number of residential units shall be limited in relation to the areas as designated on the Master Plan as follows:

<u>Project Land Bay Area</u>	<u>R-4 Designation</u>	<u>Maximum Density/Dwelling Types (Dwelling Units per Land Bay Area)</u>
1	A	186 (single-family)
2	A	385 (single-family)
3	B	138 (townhouse/cluster)
4	B	121 (townhouse/cluster)

**NOTE: THE TOTAL NUMBER OF UNITS ON THE 1444.424 ACRE GOVERNOR'S LAND PARCEL SHALL NOT EXCEED 722 UNITS (OVERALL DENSITY 1/2 UNITS/ACRE). MAXIMUM DENSITIES PER LAND BAY ARE SHOWN ABOVE. IF DENSITY WITHIN A LAND BAY IS MAXIMIZED PER THE TABLE ABOVE, THE NUMBER OF UNITS IN THE OTHER LAND BAYS SHALL BE REDUCED SO THAT THE FINAL NUMBER OF DEVELOPED UNITS ON THE 1444.424 ACRE GOVERNOR'S LAND DOES NOT EXCEED 722 UNITS.**

All Project Land Bay Areas identified as "R-4 Designation" "B" shall be limited to townhouse dwelling types or single-family cluster lots as approved by the Planning Commission.

2. The Owner shall designate a 150-foot greenbelt buffer along the Property's Route 5 frontage (exclusive of right-of-way dedicated herein for future improvements of Route 5 to a four-lane divided highway) as defined by the Greenbelt Corridor Policy of James City County. The "Greenbelt" buffers shall be undisturbed and exclusive of any lots, except for approved utilities, drainage improvements, jogging/nature trails, community entrance roads as shown generally on the Master Plan and appropriate historical, environmental, directional, and community identification signage as approved by the Planning commission.

3. As part of the approval of any subdivision plan within Land Bays 2 or 3, the Owner shall provide recreational amenities for the community as located on the Master Plan as follows: one regulation-size 25-meter swimming pool and 2,000 minimum square foot neighborhood recreation center; four regulation-size tennis courts; two tot lots with playground equipment; one regulation "basketball" size multi-use court; and 5 miles of jogging/fitness/nature/pedestrian trails (approximately half of which shall be hard surface and half of which shall be a soft "natural" surface).

4. As part of the approval of any subdivision plan which approval causes the number of approved units to exceed 455, the Owner shall provide recreational amenities for the community as generally located on the Master Plan as follows: one regulation 25-meter swimming pool and 2,000 minimum square foot clubhouse/recreation center; four regulation-size tennis courts; one tot lot with playground equipment; 5 miles of jogging/fitness/nature/pedestrian trails (approximately half of which shall be hard surface and half of which shall be a soft "natural" surface).

5. All such recreational amenities per paragraphs 3 and 4 shall be guaranteed by a surety as part of the public improvements covered by the appropriate subdivision agreement and completed within one (1) year of recordation of said subdivision.

6. All archaeological sites identified on the property shall be handled pursuant to the memorandum of agreement dated August 16, 1991 between Governor's Land Associates and James City County and James City County Historical Commission.

7. The Owner shall dedicate as open space to an appropriate non-profit land stewardship entity approved by the Board of Supervisors a "conservation easement" of approximately 194± acres as shown generally on the Master Plan subject only to any drainage improvement and/or utility easement (as shown generally on the Master Water, Sanitary Sewer, and Storm-water Management plans prepared by AES, a professional corporation, dated June 6, 1989 and

submitted with these proffers) and/or nature, pedestrian, and/or golf trails and bridges as approved by the James City County Planning Commission. A 20-foot wide buffer strip of natural vegetation shall be maintained along both sides of any drainage ditches within this area. Where the drainage improvement or utility easements pass through forested areas of this open space, there shall be no clear cutting or commercial harvesting of timber within the easements. Select understory, maintenance, and visual path clearance may take place along the James River frontages; select, but necessary hand clearing may be implemented along the wetland frontage (i) in conjunction with the establishment of the golf course fairways and/or (ii) for understory, maintenance, or visual path purposes as approved by the Planning Commission. There shall be no use of pesticides, herbicides, fertilizers, or other

agricultural chemicals within the conservation easement except as approved by the County Administrator.

The ability to access the nature/pedestrian trails within the "conservation easement" shall apply equally to owners of Governor's Land units and all other citizens of James City County.

The boundaries of the "conservation easement" shall be identified by metes and bounds upon submittal of the subdivision or site plan for each property abutting the said "conservation easement" and said boundaries shall conform generally to the areas on the Master Plan shown as "Conservation Easement" (generally, south of the conceptual golf holes shown on said "Master Plan").

8. An overall Stormwater Best Management Plan for the entire project will be submitted to James City County for review and approval by the Director of Code Compliance. The Plan shall be submitted to the County by January 1, 1993 and shall be approved no later than April 1, 1993.

9. Shoreline erosion abatement measures as approved by the Planning Commission shall be provided along James River frontage, phased in conjunction with development along said frontage.

10. Prior to any subdivision plat or site plan approval for any development area within the Land Bays defined above, Owner shall submit to Planning Commission for its approval a plan for each respective development area delineating general limits of clearing and grading and general building envelopes.

11. Select understory, maintenance, and visual path clearance may take place along the James River frontage; select, but necessary hand clearing may be implemented along the wetland frontage (i) in conjunction with the establishment of the golf course fairways and/or (ii) for understory, maintenance, or visual path purposes as approved by the Planning Commission. The golf course defined herein shall adhere to an Integrated Pest Management (IPM) plan fertilizer and pesticide method as approved by the Planning Commission. Any wells used for golf course irrigation shall not draw from the Chickahominy Piney Point aquifer and data on any such well pumping shall be provided James City County. The James City Service Authority shall be given quarterly reports of the amount of pumping (peak gallons per minute/total gallons) during each preceding quarter and projected usage for the next following quarter.

12. Prior to any approval of a subdivision or site plan of the Property or any Land Bay therein, the Owner, at its expense, shall cause to be prepared a comprehensive drainage study of the subject Land Bay, and implementation schedule of drainage improvements for review and approval by the County Director of Code Compliance.

13. Upon approval of the drainage study and implementation schedule, the Owner shall be obligated to incorporate the recommendations of the study in the said subdivision or site plan in accordance with the said implementation schedule.

14. Within 120 days of written request by James City County the Owner shall convey to James City County, without cost, fee simple title to a 10-acre site as a public use site with fee-simple access rights to a public road within the Property. Such site shall be at a location as identified generally on the proposed Master Plan.

15. That the number of entrances and driveways to the project off of Route 5 shall be limited to three: one being identified as "community entrance" as shown on the Master Plan; one being for a temporary construction entrance opposite Brick Bat Road (S.R. 613); and one being for a temporary construction entrance at Governor's Landing Road (an existing private driveway) if approved by the Planning Commission.

16. That all property owners at Governor's Land shall be required to join the homeowners association. The homeowners association shall be a legal non-profit corporation. An annual budget for maintenance of all common open space, recreation areas, sidewalks, parking, private streets, if any, and other privately-owned but common facilities serving the project shall be required and shall be included in the restrictive covenants along with lien powers to assess each property owner for any non-payment. The restrictive covenants provisions for the maintenance budget shall provide that the owner shall be responsible for any budget deficiency during the development term.

17. In conjunction with the approval of any subdivision plan within any Land Bay, all areas designated on the Master Plan within said Land Bay as "Major Open Space" shall be identified by metes and bounds and shall conform generally to the proportionate acreage breakdowns (plus or minus 10%) between "Major Open Space" and the balance of acreage in each Land Bay as shown on the Master Plan. The major open space areas per land bay have been measured and are itemized below. Total major open space for the project will not be reduced. Major Open Space areas shall be undisturbed and exclusive of any lots, except for golf fairways, utilities, drainage improvements, roads as shown generally on the Master Plan, jogging, nature, or golf trails or bridges, and signage approved by the Planning Commission.

Land Bay 1	71 Acres
Land Bay 2	317 Acres
Land Bay 3	139 Acres
Land Bay 4	<u>138</u> Acres
<b>TOTAL MAJOR OPEN SPACE</b>	<b>665 ACRES</b>

18. Any use herein of the term "wetland" shall be defined as an area identified as a "wetland" under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (Corps of Engineers Multi-Parameter as stated in Technical Report Y-87-1 entitled "Corps of Engineers Wetlands Delineation Manual" published January, 1987) and pursuant to Section 62.1-13.5 of the Code of Virginia. A qualified environmental engineer retained by Owner and approved by the County Administrator or his designee shall prepare a wetland delineation map for approval by the County Administrator or his Designee.

19. A) The Owner agrees that, until a plan (including an appropriate funding plan) for the improvement of Route 5 to a four-lane divided highway, or such other equivalent or lower design category approved by VDOT and James City County or an alternate roadway that eliminates the need to widen existing Route 5 to a four lane divided highway ("Improvements"), in James City County from Route 199 to the Governor's Land entrance off of Route 5 has been approved by VDOT and James City County, Owner shall be limited to final subdivision and/or site plan of no more than a total of 250 units (single-family, townhouses, and/or clusters) of the project's total 722 units defined in Paragraph 2 herein. However, the owner shall have the right to continue platting lots beyond 250 through the build out of the property provided that letter(s) of credit ("Letters of Credit") equal to the product of the number of lots platted in excess of 250 times \$4,873.00 is deposited with James City County prior to final subdivision and/or site plan approval of the lots causing the total to exceed 250. Upon approval of the "Funding Plan", James City County shall immediately release all Letters of Credit to owner. James City County may draw on the Letters of Credit only when construction of the improvements is required or if the Letters of Credit are not kept current or otherwise renewed. Construction of the improvements shall commence only when the average daily traffic on Route 5, as measured by the criteria in Exhibit "C", reaches 13,000 vehicles per day. If a "Funding Plan" is not approved prior to the platting of more than 400 total lots, or, in any event, if a Funding Plan is not approved prior to January 1, 1995, then the use of Letters of Credit shall satisfy all applicable transportation proffers related to Route 5. In the event VDOT and James City County determine that no improvement of Route 5 in James City County from Route 199 to the Governor's Land entrance off of Route 5 is necessary, the Owner shall not be limited in the subdivision and/or site plan of the project's total 722 units defined in Paragraph 2 herein and all Letters of Credit shall immediately be returned to owner.

In addition, upon preliminary subdivision approval of the first subdivision and/or site plan for the Property, Owner agrees to dedicate sufficient right-of-way from its property along its Route 5 frontage for improving Route 5 to a four-lane divided highway as determined necessary by VDOT. Said first subdivision and/or site plan for the Property shall include provision for

construction of right and left turn lanes on Route 5 into the entrance to the Property.

The "funding plan" referred to herein, while not precluding the possibility, does not anticipate any funding from either James City County or VDOT.

B) Unless otherwise agreed, Owner, in accordance with Code of Virginia, Section 15.1-466E, agrees to enter into a development agreement with James City County prior to approval of any subdivision and/or site plan within any Land Bay to contribute \$2,125,000 (herein "Contributions") for the improvements in James City County. Said Improvements shall include, but shall not be limited to, the following:

- i) Turn lanes at the community entrance to the Property;
- ii) Signalization at the community entrance to the Property when required by VDOT;
- iii) Improvements of Route 5 along the Property's frontage to a four lane divided highway, or such other equivalent or lower design category approved by VDOT and James City County including, but not limited to, and subject to approval by VDOT and James City County, a Class 1 Bikeway to be provided along the Property frontage exclusive of the greenbelt buffer described in Paragraph 2 herein; and
- iv) Other Route 5 off-site improvements including, but not limited to, necessary utility relocations, and acquisition of necessary Route 5 right-of-way for the Improvements described herein.

The form of said development agreement shall be in substantially the same form as that attached hereto as Exhibit A. The said Contributions shall begin upon commencement of and as payment for the preliminary engineering design work for the improvement of Route 5 as approved by James City County and VDOT. Except as otherwise set forth herein, the balance of said Contributions shall be due in full, unless otherwise agreed, subject to (i) VDOT and James City County's determination that the Improvements are necessary and upon VDOT's and James City County's approval of a plan for funding and construction of the Improvements and issuance of the first permit for the construction of the Improvements; and (ii) upon final approval of any subdivision and/or site plan which approval causes the number of approved units (single-family, townhouse, and/or cluster) to exceed 400. In any event, upon final approval of any subdivision and/or site plan which approval causes the number of approved units to exceed 250 or on or before January 1, 1992, whichever shall first occur, the balance of said Contributions not then expended shall be placed in an escrow,

interest-bearing account to which James City County or its designee shall be a necessary party. The said escrowed balance shall be used for the purposes set forth in this paragraph.

In any event, upon final approval of any subdivision and/or site plan which approval causes the number of approved units (single-family, townhouse, and/or cluster) to exceed 400, Owner shall have completed or contracted to complete (i) donation of right-of-way and the construction of Route 5 to a four-lane divided highway, or such equivalent or lower design category approved by VDOT and James City County, across the Route 5 frontage of the Property; (ii) construction of left and right turn lanes on westbound Route 5 at the community entrance to the Property; and (iii) signalization of the Route 5 community entrance to the Property and any other traffic control measures required by VDOT on the portion of Route 5 that would be improved along the Property's frontage per (i) above in this paragraph.

It is understood and agreed that it is the intention of the Owner and James City County to design the Improvements of Route 5 in such a way as to respect the historic character of Route 5 and to minimize the impact on existing development while addressing valid safety concerns. Governor's Land Partners shall participate in and cooperate with any legislative study of the future of the Route 5 corridor. Among other common goals for the design of Improvements for Route 5, the Owner and James City County agree to strive for: (1) lower speed limits; (2) minimization of through truck traffic; and (3) design standards, including landscaping design standards, which are the minimal necessary, yet appropriate for the historic character and safety needs of Route 5. It is also understood and agreed that while design plans and a funding plan for Improvements, including acquisition of necessary right-of-way, will commence within a reasonable time after the approval of the Governor's Land rezoning, that the timing of construction of said Improvements shall be as approved by James City County and VDOT.

C) Further, unless otherwise agreed, Owner, in accordance with Code of Virginia, Section 15.1-466E, agrees, subject to A) and B) herein as part of the funding plan for the Improvements to underwrite, guarantee, or otherwise provide sufficient funding over and above those funds contributed in B) above and those funds contributed in the Greensprings project Proffer Paragraph 26 B), a copy of which is attached hereto as Exhibit B., to complete the Improvements as necessary subject to provision having been made in a legally binding agreement (herein the "Agreement") specifying, without limitation, a mutually acceptable method of reimbursing Owner (and/or releasing Owner from any underwriting or guarantee described herein), or at least providing Owner the prospect of reimbursement, for any funds provided by Owner over and above those contributed by Owner per B) above. Provided, however, that no reimbursement shall be made of any assessment, tax, or levy including, but not limited to any special assessments paid by Owner



as specified in the Governor's Land recorded restrictive covenants, paid by Owner for the Route 5 Improvements described herein. The sources of said reimbursements and/or release from any underwriting or guarantee described herein may include, but is not limited to: (i) contributions from other developers; and/or (ii) reimbursements via a transportation and/or sanitary and/or other special taxing district for the remaining undeveloped land in the Route 5 corridor; and/or (iii) special assessments from the purchasers of units (single-family, townhouses, and/or clusters) within the Greensprings and Governor's Land projects as specified in each project's respective recorded restrictive covenants; and/or (iv) reimbursement in accordance with Code of Virginia, Section 15.1-466E(c); and/or (v) any other source specified in the Agreement.

D) In the event James City County and VDOT determine that no Improvements shall be made to Route 5 between Five Forks and Route 199 and that improvements to Ironbound Road north of Five Forks to proposed Route 199 are necessary in lieu of any Improvements to Route 5 between Five Forks and Route 199, Owner agrees that its proffers as set forth herein for improvements between Five Forks and Route 199 shall apply to the said improvements to Ironbound Road north of Five Forks to proposed Route 199.

Governor's Land Associates, a Virginia joint venture between Dominion Lands, Inc., a Virginia corporation and Governor's Land, Inc., a Virginia corporation

By: [Signature]  
President, Governor's Land, Inc.,  
General Partner

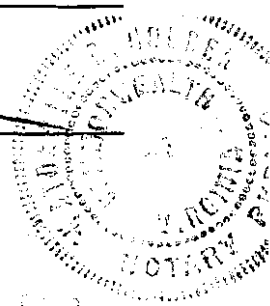
STATE OF VIRGINIA

CITY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged before me this 16 day of November, 1998, by C. Lewis Waltrip, II, of Governor's Land Associates.

[Signature]  
Notary Public

My commission expires: July 31, 1996



In the presence of  
City of Williamsburg  
9 17  
[Signature]  
Subscribed to and  
1:14  
clock  
Teste: [Signature]  
Deputy Clerk

COMMONWEALTH OF VIRGINIA



OFFICIAL RECEIPT  
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT  
DEED RECEIPT

DATE: 11/17/92 TIME: 19:14:26 ACCOUNT: 095CLR920015846 RECEIPT: 92000024421  
CASHIER: CHB REG: W804 TYPE: AB PAYMENT: FULL PAYMENT  
INSTRUMENT : 920015846 BOOK: 0 PAGE: 0 RECORDED: 11/17/92 AT 19:14  
GRANTOR NAME : GOVERNORS LAND ASSOCIATES EX: N LOCALITY: CC  
GRANTEE NAME : DOMINION LANDS INC EX: N PERCENT: 100%  
AND ADDRESS :  
RECEIVED OF : JOOB (FRANK ACCT) DATE OF DEED: 09/10/92  
CHECK : \$18.00

RETURN TO:  
ATTORNEY  
G. C

DESCRIPTION 1: GOVERNORS LAND PROFFER AGREEMENT  
2:

CONSIDERATION:	.00	ASSUMPTION:	.00	MAP:	
CODE DESCRIPTION	PAID	CODE DESCRIPTION		PAID	
201 DEEDS	17.00	145 VSLF		1.00	
		TENDERED :		18.00	
		AMOUNT PAID:		18.00	
		CHANGE AMT :		.00	

CLERK OF COURT: HELENE S. WARD