

011723

**PROFFER AGREEMENT**

THIS PROFFER AGREEMENT is made as of the 14th day of March, 1995, by **AMERICAN RETIREMENT CORPORATION**, a Tennessee corporation ("ARC"), together with its respective successors and assigns.

**RECITALS**

A. ARC is the owner of certain real property in James City County, Virginia ("the Property") more particularly described as follows:

All that certain tract or parcel of land situate in James City County, Virginia, and more particularly described as a portion of "Parcel C" north of "Parcel B", west of "Parcel A", south of Va. State Route 199 and east of Va. State Route 617 on that certain plat entitled "PLAT OF 'PARCELS 'A' AND 'B'", BEING A SUBDIVISION OF PROPERTY OF AMERICAN RETIREMENT CORPORATION TO BE CONVEYED TO WILLIAMSBURG LANDING, INC." dated October 6, 1983 consisting of two sheets and prepared by Charles R. Orsborne, Land Surveyor, Langley and McDonald, Engineers-Planners-Surveyors, a copy of which is recorded in Plat Book 39, pages 20 and 21.

B. ARC has entered into an Option Agreement granting to Williamsburg Landing, Inc. ("WLI") the option to purchase the Property pursuant to certain terms and conditions ("the Option").

C. The Option provides in pertinent part that ARC shall cooperate with WLI in securing all approvals, rezonings, special use permits, certificates of public need, other permits and utilities as WLI deems reasonably necessary for the development of the Property for an expansion of WLI's continuing care retirement community.

D. Accordingly, ARC, at the request of WLI, has applied for a rezoning of the Property and the issuance of a special use permit.

E. ARC has requested that the Property be rezoned from the Planned Unit Development District-Residential (PUD-R) to Multi-Family Residential (R-5). ARC has also requested a special use permit for the Property to permit nursing homes and facilities for the residence and care of the aged.

F. The provisions of the James City County Zoning Ordinance may be deemed inadequate for the orderly development of the Property.

G. ARC, at the request of WLI, desires to offer to James City County certain conditions on the development of the Property not generally applicable to land zoned Multi-Family Residential District (R-5) for the protection and enhancement of the community and to provide for the high quality and orderly development of the Property.

H. Upon the approval of the requested rezoning and special use permit, all prior proffers on the Property in favor of James City County shall become null and void.

NOW, THEREFORE, for and in consideration of the approval by James City County ("the County") of the rezoning set forth above and the issuance of the requested special use permit, and pursuant to § 15.1-491.1, et seq. of the Code of Virginia, 1950, as amended, and § 20-18 of the County Code, ARC, at the request of WLI, agrees that it will meet and comply with all of the following conditions in developing the Property. In the event both of the requested rezoning and special use permit are not granted by the County, these proffers shall thereupon become null and void.

**CONDITIONS**

1. The use of the Property shall be limited to accessory buildings or structures, apartments, community recreation facilities, off street parking as required, accessory restaurants, retail shops associated with community recreation facilities, signs, single-family dwellings

contained within a cluster development, two-family dwellings, townhouses, three-family dwellings all of which are to be used as facilities for the residence and/or care of the aged; and, with the special use permit, single-family dwellings, nursing homes and facilities for the residence and/or care of the aged.

2. The aggregate number of generally and specially permitted living units over and above the sum of a sixty (60) bed nursing home and a sixty (60) unit assisted living facility shall not exceed two (2) dwelling units per acre of the gross acreage of the Property.

3. The entrances to the Property shall be limited to entrances from Williamsburg Landing Drive. No entrances except temporary construction entrances approved by the County and the Virginia Department of Transportation shall be permitted from Lake Powell Road to the Property.

4. All internal roads within the Property shall be designed and constructed to Virginia Department of Transportation standards and guidelines but said roads shall be private and maintained by the Owner.

5. A Phase I Archaeological Study for the area to be disturbed on the Property shall be submitted to the Director of Planning for his review and approval prior to land disturbance. A treatment plan shall be submitted to and approved by the Director of Planning for all sites that are, in the Phase I study, recommended for a Phase II evaluation and/or identified as being eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken such a study shall be approved by the Planning Director and a treatment plan for said sites shall be submitted to and approved by the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If, in the Phase II study, a site is determined eligible for nomination

to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study area. All Phase I, Phase II and Phase III studies shall meet the Virginia Department of Historic Resource's Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standard and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the site and the clearing, grading or construction activities thereon.

6. No building on the Property shall be erected closer than 100 feet to the existing rights of way of Lake Powell Road and Route 199. These areas shall be left in their existing natural wooded states, except for utility crossings, construction road entrances, signs and storm water management facilities each of which must be approved by the Development Review Committee of James City County Planning Commission. Notwithstanding the aforesaid, dead, diseased or dying trees or trees weakened by age, storm or other injury and dead, diseased or dying shrubbery may be removed.

7. No building on the Property shall exceed three (3) stories in height.

8. If any clause, sentence, paragraph, section or subsection of these 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 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.

**AMERICAN RETIREMENT CORPORATION,  
a Tennessee corporation**

By: *W. E. Sheriff* (SEAL)  
Chairman of the Board

STATE OF TENNESSEE

CITY/COUNTY OF Williamson, to-wit:

The foregoing instrument was acknowledged before me this 22 day of March, 1995 by W. E. Sheriff, Chairman of the Board of AMERICAN RETIREMENT CORPORATION, a Tennessee corporation, its agent in its behalf first duly authorized.

*Ruby C. Wood*  
NOTARY PUBLIC

My commission expires: 12-8-96



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 30 day of Aug, 1995. This Proffer was presented with certificate annexed and admitted to record at 1:14 o'clock

Teste: Helene S. Ward, Clerk  
by *Helene S. Ward*  
Deputy Clerk

COMMONWEALTH OF VIRGINIA



PLEASE RETURN TO:  
COUNTY ATTORNEY  
JCC - BLDG. C

SPECIAL RECEIPT  
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT  
DEED RECEIPT

DATE: 03/30/95 TIME: 13:14:26 ACCOUNT: 095CLR750011723 RECEIPT: 9500020086  
CASHIER: CHR RES: H804 TYPE: OTHER PAYMENT: FULL PAYMENT  
INSTRUMENT : 950011723 BOOK: 0 PAGE: 0 RECORDED: 08/30/95 AT 13:14  
GRANTEE NAME : AMERICAN RETIREMENT CORPORATI EX: N LOCALITY: DC  
GRANTEE NAME : AMERICAN RETIREMENT CORPORATI EX: N PERCENT: 100%  
AND ADDRESS :  
RECEIVED BY : GOOD DATE OF DEED: 03/14/95

CHECK : \$14.00  
DESCRIPTION 1: PARCEL C & B & A ROUTE 199 AMERICAN  
2: RETIREMENT CORPORATION  
CONSIDERATION: .00 ASSURE/WAL: .00 MAP: PA 0  
CODE DESCRIPTION PAID CODE DESCRIPTION PA 0  
301 DEEDS 13.00 195 VSLF 13.00

TENDERED : 14.00  
AMOUNT PAID: 14.00  
CHANGE PMT : .00

CLERK OF COURT: HELENE S. WARD