

**AMENDED AND RESTATED
PROFFER AGREEMENT**

THIS AMENDED AND RESTATED PROFFER AGREEMENT is made as of the 20th day of November, 2008, by WILLIAMSBURG LANDING, INC., a Virginia non-profit, non-stock corporation ("WLI"), together with its respective successors and assigns.

RECITALS

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

ALL that certain lot, piece or parcel of land with improvements thereon and appurtenances thereto belonging, lying and being in Jamestown District, James City County, Virginia, containing 50.0107 acres, more or less as shown on plat prepared by Landmark Design Group and entitled "BOUNDARY LINE ADJUSTMENT PLAT OF THE PROPERTY OF WILLIAMSBURG LANDING, INC., JAMES CITY COUNTY, JAMESTOWN DISTRICT, COMMONWEALTH OF VIRGINIA", dated June 27, 2002 and revised March 31, 2003, a copy of which is recorded in the Office of the Clerk of the Circuit Court for the City of Williamsburg and County of James City in Plat Book 91, page 34.

B. The existing proffers applicable to the Property are dated October 18, 2001 and recorded on March 5, 2002 as Instrument Number 020005864 ("the Existing Proffers"). The existing special use permit applicable to the Property is dated December 11, 2001 and identified by James City County (the "County") as Case No. SUP 19-01 ("the Existing SUP").

C. WLI has submitted this Amended and Restated Proffer Agreement in connection with an application for rezoning of the Property identified as James City County Case No. Z-0002-2008 (the "Application") and the amendment of the Existing SUP.

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

E. 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.

F. Upon the approval of the Application and acceptance of this Amended and Restated Proffer Agreement and the amendment of the Existing SUP, all prior proffers on the Property including but not limited to the Existing Proffers in favor of James City County shall become null and void.

NOW, THEREFORE, for and in consideration of the approval of this Application and acceptance by the County of this amended and restated proffer agreement and the approval of the amendment to the Existing SUP, WLI agrees that it will meet and comply with all of the following conditions in developing the Property. In the event both of the Application and the amendment to the Existing Special Use Permit are not granted by the County, these amended and restated 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, 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 specifically permitted living units over and above the sum of one hundred (100) nursing beds and one hundred (100) assisted living units shall not exceed eighty-seven (87) dwelling units.

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

4. All internal roads within the Property shall be private roads constructed to Virginia Department of Transportation construction standards (but not design standards – i.e. width, curvature, etc.) and accordingly said roads shall be maintained by WLI.

5. If not previously conducted, 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 Resources 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 right-of-way of Lake Powell Road, Brookwood Drive and/or Route 199. Areas between buildings and these roads 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 and noxious weeds may be removed.

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

8. To the extent not previously paid, a contribution shall be made to the James City Service Authority ("JCSA") in the amount of Five Hundred Dollars (\$500.00) for each independent living unit, assisted living unit and nursing bed not previously approved pursuant to the Existing Proffers and the Existing SUP (the "Per Unit Contribution"). The JCSA shall make these monies available for development of water supply alternatives, the need for which is generated by the development of the Property. In the event the monies are not used by the JCSA for the purpose designated within ten years from the date of receipt by the JCSA, the amounts

not used shall be used at the discretion of the Board of Directors of the JCSA for any other project in the JCSA's capital improvement plan, the need for which is generated by the development of the Property.

A. Such contributions shall be payable for each of the additional assisted living units and the additional nursing beds developed within the Property at the time of final site plan approval by the County for any particular assisted living unit or bed or any grouping, phase or section of assisted living units or beds.

B. The Per Unit Contribution(s) paid in each year shall be adjusted annually beginning January 1, 2003 to reflect any increase or decrease for the preceding year in the Marshall & Swift Building Cost Index (the "MSI"). In no event shall the Per Unit Contribution be adjusted to a sum less than Five Hundred Dollars (\$500.00) per additional assisted living unit and nursing bed. The adjustment shall be made using Section 98, Comparative Cost Multipliers, Regional City Averages of the MSI. In the event a substantial change is made in the method of establishing the MSI, then the Per Unit Contribution shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing MSI. In the event that the MSI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the MSI, approved in advance by the County Manager of Financial Management Services, shall be relied upon in establishing an inflationary factor for purposes of increasing the Per Unit Contribution to approximate the rate of annual inflation in the County.

9. WLI shall be responsible for developing and enforcing water conservation standards applicable to the Property, which standards shall be submitted to and approved by James City Service Authority ("JCSA") in accordance with the Water Conservation Guidelines

adopted by the County Board of Supervisors on November 27, 2007. The standards shall address, but not be limited to, such water conservation measures as limitations on the use of irrigation systems and irrigation wells, the use of approved landscaping materials including the use of drought resistant native and other low water use landscaping materials and warm season turf where appropriate, and the use of water conserving fixtures and appliances all in an effort to promote water conservation and to eliminate the use of public water resources. The standards shall be submitted to and reviewed by the County Attorney for general consistency with this proffer and shall be approved by the JCSA prior to final development plan approval.

10. WLI shall be responsible for installing Special Stormwater Criteria ("SSC") measures in accordance with the Special Stormwater Criteria Application Matrix shown in Table SSC-1 and the Menu of Special Stormwater Criteria Practices shown in Table SSC-2 of the Special Stormwater Criteria in James City County, Virginia, as adopted by the County Board of Supervisors on December 14, 2004. WLI shall demonstrate the application of SSC on development plans for the Property, which SSC application shall be approved by the County's Environmental Division Director prior to final development plan approval. This Proffer shall not apply to development plans approved prior to the date of the acceptance of these Proffers.

11. These Proffers shall supersede, amend and restate in their entirety the Existing Proffers, which are hereafter null, void and of no further effect.

12. 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 on 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 judgement 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.

WITNESS the following signature, thereunto duly authorized:

[SIGNATURES ARE LOCATED ON THE FOLLOWING PAGE]

WILLIAMSBURG LANDING, INC., a Virginia non-profit, non-stock corporation

By: SH Montgomery (SEAL)
President/CEO

STATE OF VIRGINIA

CITY/COUNTY OF James City to wit:

The foregoing instrument was acknowledged before me this 20th day of November, 2008, by STEPHEN H. MONTGOMERY, President/CEO of WILLIAMSBURG LANDING, INC., a Virginia non-stock, non-profit corporation, its agent in its behalf first duly authorized.

Mary L Morgan
NOTARY PUBLIC

My commission expires: 8-31-2011 notary id 183219

WMB162065313



VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 18 July 09
at 8:54 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