

AMENDED PROFFERS

FOR

MICHELLE POINT

November 6, 2007

PROFFERS

THESE PROFFERS are made this 6th day of November, 2007 by Michelle Point, LLC a Virginia limited Liability Company (together with his successors and assigns, the "Owner").

RECITALS

A. Owner is the owner of a tract or parcel of land located in James City County, Virginia, containing approximately 38.58 acres with an address of 9001 Barhamsville Road, James City County, Virginia and being Tax Parcel 1210100003 (the "Property"). The Property is now zoned A-1.

B. Owner has applied to rezone the Property from A-1 to R-5, Multifamily Residential District, with proffers.

C. Owner has submitted to the County a master plan entitled "Plan of Development, Michelle Point, a "Green" Community of Mixed Costs Housing" prepared by LandMark Design Group dated November 26, 2003 and revised December 19, 2003 (the "Master Plan") for the Property in accordance with 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 R-5.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and the County 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. Master Plan. The Property shall be subdivided and developed generally as shown on the Master Plan, with only minor changes thereto that the Development Review Committee determines do not change the basic concept or character of the development.

2. Owners Association. There shall be organized an owner's association (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 require that the Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs, recreation areas, private roads and parking areas ("Reserve"), and shall require that the association (i) assess all members for the maintenance of all properties owned or maintained by the association and (ii) file liens on members' properties for non-payment of such assessments. 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. Owner shall maintain all common areas on the Property until 90% of the lots/units on the Property have been sold to minimize Association dues during that period so as to not adversely affect purchaser's ability to qualify for a home mortgage. At the time Developer's maintenance obligation under this Section ends, there shall be at least \$14,850.00 in the Reserve and Owner shall supply evidence of the same to the Director of Planning.

3. Water Conservation. Water conservation standards shall be submitted to and approved by the James City Service Authority and Owner and/or the Association shall be

responsible 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 site plan or subdivision approval.

4. Affordable Housing. A minimum of 11 of the lots with single-family detached dwelling units shall be reserved and offered for sale at a net sales price to buyer at or below \$135,080.00 subject to adjustment as set forth herein ("Restricted Units"). A second deed of trust shall be assigned unto the James City County Office of Housing and Community Development for the difference of the appraised value of the single-family detached unit and the net sales price paid by the purchaser of the unit, which shall be reflected on a settlement statement for review prior to closing. This deed of trust shall, subject to the request of James City County Office of Housing and Community Development, be assigned to James City County at the time of closing, utilizing appropriate approved procedures and identifying the net sales price paid by the purchaser of the unit for the 11 single-family detached units sold through James City County for \$135,080.00 or less. The Second Deed of Trust will be prepared so as to provide the Purchaser a 15 year loan, forgivable during the 15 year term, in such form as approved by the Office of Housing and Community Development, the County Attorney, and the Virginia Housing Development Authority.

A minimum of 11 of the lots with townhouse dwelling units shall be reserved and offered for sale at a net sales price to buyer at or below \$121,940.40 subject to adjustment herein ("Affordable Units"). A second deed of trust shall be assigned unto the James City County Office of Housing and Community Development for the difference of the appraised value of the

townhouse and the net sales price paid by the purchaser of the townhouse, which shall be reflected on a settlement statement for review prior to closing. This deed of trust shall, subject to the request of James City County Office of Housing and Community Development, be assigned to James City County at the time of closing, utilizing appropriate approved procedures and identifying the net sales price paid by the purchaser of the townhouse for the 11 townhouses sold through James City County for \$121,940.40 or less. The Second Deed of Trust will be prepared so as to provide the Purchaser a 15 year loan, forgivable during the 15-year term, in such form as approved by the Office of Housing and Community Development, the County Attorney, and the Virginia Housing Development Authority. Per this proffer, the townhouse units shall be under construction and available for sale prior to the closing of the first single-family unit in order to expedite the availability of affordable housing in James City County.

The maximum prices set forth herein shall consist of the amount set forth above plus any adjustment as included in the Marshall and Swift Building Cost Index annually beginning January 1, 2008. Rates are to be taken from the January supplement index of the adjusting year. 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. Developer shall consult with and accept referrals of, and sell to, potential qualified buyers from the James City County Office of Housing and Community Development on a non-commission basis.

5. Archaeology. A Phase I Archaeological Study for the entire Property shall be submitted to the Director of Planning for review and approval prior to land disturbance. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as 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 Director of Planning 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 III 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 areas. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' *Guidelines for Preparing Archaeological Resource Management Reports* and the Secretary of the Interior's *Standards 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 Property and the clearing, grading or construction activities thereon.

6. Environmental Protections. The Owner shall grant, free of charge, to a County approved land conservation entity and/or the County a conservation easement with terms consistent with these Proffers over the area generally delineated on the Master Plan as "Approx. Limits of 25% Slopes (Undevelopable) Wetlands and Floodplain Areas Contained Within Limits" generally in the locations shown on the Master Plan (the "Conservation Area"). The exact boundaries of the Conservation Area shall be shown on subdivision plats and/or site plans of the Property. The conservation easement over the Conservation Area shown on each individual subdivision plat or site plan shall be granted at the time of final approval thereof by

the County. The Conservation Area shall remain undisturbed by Owner and in its natural state, except as set forth below. Dead, diseased and dying trees or shrubbery and invasive or poisonous plants may be removed from the Conservation Area. With the prior approval of the Environmental Director utilities may intrude into or cross the Conservation Area and clearing and construction activities necessary therefore may take place in the Conservation Area. Pedestrian paths, trails and bridges generally as shown on the Master Plan or included in these Proffers may intrude into or cross the Conservation Area and clearing and construction activities necessary therefore may take place in the Conservation Area. Stormwater BMPs may be located in the Conservation Area but shall not be located in nor impact the channel flow of perennial streams unless specifically approved by the Environmental Division. The Conservation Area shall be exclusive of lots or dwelling units.

7. Entrance/Taper. There shall be one entrance into the Property from Route 30 generally in the location shown on the Master Plan. The entrance shall have a right turn taper 150 feet in length from eastbound Route 30 into the Property. The taper proffered hereby shall be constructed in accordance with Virginia Department of Transportation ("VDOT") standards and shall be completed prior to final subdivision plat approval.

8. Streetscapes. Streetscape improvements shall be provided and installed along both sides of the internal streets 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 and may be installed in phases as residential units are constructed. Streetscape improvements shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney within six months of the issuance of a certificate of occupancy for adjacent residential units.

9. Sidewalks. There shall be sidewalks installed on one side of each of the public streets on the Property and may be installed in phases as residential units are constructed. Sidewalks shall be bonded prior to final subdivision plat approval and installed prior to issuance of certificates of occupancy for adjacent dwelling units.

10. Pedestrian Trail. There shall be a paved walking trail at least six feet in width installed on the Property along its Route 30 frontage generally as shown on the Master Plan. There shall be a soft surface walking trail at least six feet in width installed on the Property in the other locations generally as shown on the Master Plan. The trails shall be located to avoid mature or specimen trees where reasonably feasible. The design and materials of the trail shall be subject to the approval of the Director of Planning. Both trails shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney prior to final subdivision plat approval.

11. Route 30 Buffer. There shall be a variable width buffer along the Route 30 frontage of the Property ranging from 90 to 150 feet in width generally as shown on the Master Plan. The buffer shall be exclusive of any lots or units and shall be undisturbed, except for the entrance, taper and the trails as shown generally on the Master Plan, and with the approval of the Development Review Committee, for utilities, sidewalks, trails, lighting, entrance features and signs. Dead, diseased and dying trees or shrubbery, invasive or poisonous plants, windfalls and deadfalls may be removed from the buffer area. In areas where the buffer is less than 150 feet, supplemental landscaping consisting of at least 125% of Zoning Ordinance requirements shall be installed between the townhouses and Route 30 and adjacent to any pump station located in the buffer to create a visual screen that partially but not completely blocks the view of the townhouses from Route 30 in accordance with a plan approved by the Director of Planning prior to final approval of development plans.

12. Curb and Gutter. All streets on the Property shall be constructed using curb and gutter.

13. Recreation. (a) Owner shall provide the recreational facilities listed below as shown on the Master Plan and make the cash contributions to the County described below before the County is obligated to approve final subdivision plats for more than 30 lots on the Property:

- Parkland, including one playground of at least one acre, with tot lot equipment.
- Cash contribution of \$6,720.00 in lieu of multi-purpose courts.
- One multi-purpose playing field.

(b) All cash contributions proffered by this Proffer 13 shall be used by the County for recreation capital improvements, the need for which is caused in whole or in part by the development of the Property. The exact locations of the facilities proffered hereby and the equipment to be provided at such facilities shall be subject to the approval of the Development Review Committee. All recreational facilities proffered hereby shall be conveyed to and maintained by the Association and shall be open to all members of the association in good standing.

14. Cash Contributions for Community Impacts. (a) A contribution of \$976.50 for each dwelling unit on the Property other than the 22 units whose prices are restricted pursuant to Proffer 4 above shall be made to the James City Service Authority ("JCSA") in order to mitigate impacts on the County from the physical development and operation of the Property. The JCSA may use these funds for development of alternative water sources or any project related to improvements to the JCSA water system, the need for which is generated in whole or in part by the physical development and operation of the Property.

(b) A contribution of \$976.50 for each dwelling unit on the Property other than the 22 units whose prices are restricted pursuant to Proffer 4 above shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including, without limitation, for emergency services, school uses, off-site road improvements, library uses, and public use sites.

(c) The contributions described above, unless otherwise specified, shall be payable prior to final subdivision plat approval.

(d) The per unit contribution amount shall consist of the amount set forth in the above paragraphs plus any adjustment as included in the Marshall and Swift Building Cost Index ("Index") if payment is rendered on or after January 1, 2008. In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in preceding paragraphs in this section. In the event that the Index is not available, a reliable government or other independent publication evaluating information heretofore used in determining the Index (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.

15. County Trail Easement. Owner shall grant at the request of the County Administrator an easement 12 feet in width within the existing Virginia Power easement in the buffer along Route 30 for a greenway trail, with the exact location of the easement to be subject to the approval of the Owner, which approval shall not be unreasonably withheld. The County shall be entitled to construct a trail, including necessary bridges, if any, through the easement

area and to install passive amenities such as benches, tables, gazebos, educational or descriptive markers or individual fitness stations.

16. Sewer Service. If, as of March 1, 2004, JCSA has acquired all necessary easements to provide access for gravity sewer lines from the Property to the existing Fenwick Hills pump station, the Owner shall utilize such gravity sewer to the Fenwick Hills pump station. If, as of the date of approval of the requested rezoning of the Property, JCSA has not acquired all necessary easements to provide access for gravity sewer lines from the Property to the existing Fenwick Hills pump station, the Owner shall utilize an on-site pump station feeding into the Hampton Roads Sanitation District force main along Route 30. Should an onsite pump station feeding into the Hampton Roads Sanitation District force main along Rt. 30 be used, the Owner shall make a contribution of \$2000.00 per unit for the first fifty units to the James City Service Authority to mitigate maintenance costs. Such contribution shall be payable for each unit prior to final subdivision plat approval.

17. Emergency Crossover. Prior to the issuance of any certificates of occupancy for residential units on the Property, there shall be a gated, gravel surface emergency access crossover on Route 30 at the entrance to the Property, with signage to indicate emergency use only and with the design of the crossover being subject to the prior approval of the Fire Department and VDOT.

18. Green/Sustainable Building. The developer shall incorporate the use of "green" building practices and materials in each unit in the development as follows: paints low in volatile organic compounds ("VOC"), carpets certified by the Carpet and Rug Institute to be free from formaldehyde, low VOC sub-flooring, built-in dehumidifiers, transfer grills in each bedroom for balanced heating and cooling, value engineered framing, engineered lumber and cellulose

insulation. These items shall be shown on the architectural drawings for each unit, and shall be approved as part of the building review and inspection process.

19. Energy Efficient Homes. All the town homes shall be certified by a HERS rater to meet or exceed the Energy Star Certification. A HERS rating is an evaluation of the energy efficiency of a home, compared to a computer-simulated reference house of identical size and shape as the rated home that meets the minimum requirements of the Model Energy Code (MEC). The HERS rating results in a score between 0 and 100; with the reference house assigned a score of 80. From this point, each 5% reduction in energy usage (compared to the reference house) results in a one point increase in the HERS score. Thus, an ENERGY STAR qualified new home is required to be significantly more energy-efficient than the reference house and thus must achieve a HERS score of at least 86. A copy of the HERS Energy Star Certification for each unit shall be provided to the Director of Planning upon request.

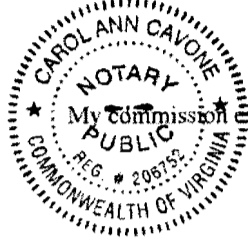
WITNESS the following signature.

MICHELLE POINT, LLC

By: Richard B. Warr
Title: Managing Member

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

The foregoing instrument was acknowledged this 6th day of
November, 2007, by Richard B. Warr, as MANAGING MEMBER
of MICHELLE POINT, LLC on behalf of the LLC.



Carol Ann Cavone
NOTARY PUBLIC