

THE MARQUIS – SOUTH PARCEL (GPIN: I13c-0012-1173)
PDR REZONING
AMENDED AND RESTATED PROFFERS

THESE AMENDED AND RESTATED PROFFERS are made this 29th day of June, 2016 by and among **MARQUIS WILLIAMSBURG RE HOLDING LLC**, a Delaware limited liability company, and/or its successors and assignees (collectively the “Marquis”) (to be indexed as grantor) and the **COUNTY OF YORK, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (“County”) (to be indexed as grantee) and provide as follows:

RECITALS

R-1. Marquis is the owner of certain real property (the “Property”) located within the territorial confines of the County, shown and described as “Parcel 12” on that certain plat entitled “SUBDIVISION OF THE PROPERTY OF MARQUIS WILLIAMSBURG RE HOLDING LLC” dated January 6, 2012, prepared by Vanasse Hangen Brustlin, Inc., and recorded in the office of the Clerk of the Circuit Court for the County of York as Instrument No. 120001012 (the “Plat”) which is incorporated hereof by reference.

R-2. By Ordinance No. 13-15(r) adopted by the County Board of Supervisors on November 19, 2013, the zoning of the Property was changed from EO – Economic Opportunity to PDR – Planned Development Residential with proffers as described in Section 24.1-362 of the County’s zoning ordinance as in effect at that date. The proffers accepted in connection with the above referenced rezoning and Ordinance dated November 19, 2013 are recorded in the aforesaid Clerk’s Office as instrument no. 140003742 (the “Existing Proffers”). A master plan of development of the Property (the “Existing Master Plan”) dated November 12, 2013, is on file with the office of the County Planning Division.

R-3. Marquis is also the owner of two (2) parcels or areas within the Property more particularly described as below which remain zoned EO – Economic Opportunity and which were originally planned as the site for construction of a hotel and a site for shopping center signage, but which are to be rezoned to PDR as described below. The metes and bounds description of the two (2) said parcels or areas is as follows (the “EO Areas.”):

AREA 1

Beginning at a point having Virginia State Plane South Zone Coordinates
N=3621380.9147, E=12025844.4862;

Thence, S 33° 32' 35" W, 338.00 feet to a point;

Thence, S 42° 54' 54" W, 327.09 feet to a point;

Thence, N 42° 25' 44" W, 697.76 feet to a point;

Thence, N 71° 32' 57" E, 45.25 feet to a point;

Thence, N 68° 35' 19" E, 324.70 feet to a point;

Thence, S 87° 07' 01" E, 235.21 feet to a point;

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Thence, S 66° 53' 34" E, 266.21 feet to a point;
Thence, S 76° 01' 05" E, 49.10 feet to a point;
Thence, N 78° 31' 22" E, 7.77 feet, returning to the point of beginning and containing 6.9875 acres.

AREA 2

Beginning at a point having Virginia State Plane South Zone Coordinates N=3620995.4442, E=12023626.4960;

Thence, N 74° 01' 06" E, 184.13 feet to a point;
Thence, S 80° 26' 33" E, 122.90 feet to a point;
Thence, N 72° 30' 45" E, 272.04 feet to a point;
Thence, S 32° 50' 51" E, 300.00 feet to a point;
Thence, S 57° 09' 09" W, 539.15 feet to a point;
Thence, N 32° 50' 51" W, 205.58 feet to a point;
Thence, N 30° 58' 48" W, 302.94 feet, returning to the point of beginning and containing 4.9143 acres.

R-4. The Existing Master Plan depicts a site shown as “future public elementary school site” containing 7.0 +/- acres (the “Elementary School Property”) to be conveyed to the County without consideration under the terms of the Existing Proffers.

R-5. Marquis has filed an application (the “Application”) requesting that:

- a. The Existing Master Plan be revised to relocate the Elementary School Property and increase the size of the Elementary School Property to 14.43 acres +/-,
- b. Zoning of the EO Areas be amended to PDR – Plan Development Residential and that the EO Areas be incorporated into the residential development plan for the Property; and
- c. The Existing Proffers and Existing Master Plan be amended and restated.

R-6. A revised master plan (the “Revised Master Plan”) entitled “THE MARQUIS – SOUTH POD RESIDENTIAL DEVELOPMENT” made by Vanasse Hangen Brustlin, Inc., dated June 17, 2016 has been submitted to the County Planning Division for review by the County in connection with the Application. The Revised Master Plan is on file with the office of the County Planning Division.

R-7. The provisions of the County zoning ordinance may be deemed inadequate for protecting and enhancing orderly development of the Property. Accordingly, Marquis, in furtherance of the Application, desires to proffer certain conditions which are limited solely to those set forth herein in addition to the regulations provided for by the Zoning Ordinance for the protection of the community and enhancement of the development of the Property, in accordance

with the provisions of Section 15.2-2296, *et seq.* of the Code of Virginia (1950), as amended (the “Virginia Code”) and the County zoning ordinance.

R-8. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

NOW, THEREFORE, for and in consideration of the approval by the County of the Application, and pursuant to Section 15.2-296, *et seq.*, of the Virginia Code and the County zoning ordinance, Marquis hereby agrees that if the Application is approved then any subsequent development of the Property shall be in conformance with the following proffers:

PROFFERS:

1. Plan of Development. The Property shall be developed generally in accordance with these Amended and Restated Proffers and the Revised Master Plan. The Revised Master Plan is a conceptual plan for proposed development on the Property and provides only for the general location of buildings, proposed streets, parking, drainage facilities, landscaping, areas of open space, and buffer areas. Deviations from the Master Plan shall be allowed in accordance with the provisions of the County zoning ordinance and the Virginia Code, specifically including but not limited to Section 15.2-2302 of such Code. For all purposes under these Amended and Restated Proffers the EO Areas shall be included as part of the defined term the “Property.”

2. Property Owners Association(s). One or more property owners associations and/or condominium unit owners associations shall be established pursuant to and in accordance with the Virginia Property Owners Association Act, Section 55-508 *at seq.*, of the Virginia Code or the Virginia Condominium Act, Section 55-79.39 *et seq.*, of the Virginia Code, as applicable (hereinafter, each association shall be referred to as and “Owners Association”). All owners of residential lots, units and parcels within the Property shall be members of at least one of such Owners Associations(s) by virtue of their property ownership. The articles of incorporation and bylaws of each such Owners Association and declaration of covenants enforceable by each Owners Association (collectively the “Governing Documents”) shall be submitted to and reviewed by the County Attorney for consistency with this proffer and the requirements of Section 24.1-497 and Section 24.1-498 of the County zoning ordinance prior to sale of any individual dwelling unit.

3. Residential Units. There shall be no more than six-hundred (600) dwelling units constructed on the Property. Dwelling units constructed on the Property may consist of single-family detached, single-family attached, and multifamily units. Marquis shall be permitted to adjust the specific number of each unit type in its sole discretion, however, there shall be no more than one-hundred eighty-two (182) single-family detached residential units constructed on the Property.

4. Recreation Facilities. Recreation facilities shall be developed on the Property in accordance with the County zoning ordinance, specifically including the following:

a. Pedestrian connection to The Marquis shopping center adjacent to the Property;

b. Swimming pool (resort-style or lap pool) to be located on the Apartment Parcel as identified on the Master Plan;

c. A minimum of two (2) outdoor activity facility areas designed for activities such as community picnic shelters, barbeque grilling areas, horseshoe pits, and the like; and

d. Soft-surface multi-purpose trails of not less than three thousand (3,000) linear feet.

e. Sidewalks shall be provided on one (1) side of each street shown on the Revised Master Plan.

5. Public Site for Elementary School and Amenities.

a. The Elementary School Site as relocated and enlarged by the Application consists of two separate and distinct areas, described on the Revised Master Plan as: "FUTURE ELEMENTARY SCHOOL PARCEL AREA = 9.76 ACRES" ("School Site") and "FUTURE ELEMENTARY SCHOOL ATHLETIC FIELDS PARCEL AREA = 4.67 ACRES" ("Athletic Fields Site").

b. In order to address school impacts generated by development of the Property, upon request by the County Administrator, the School Site and the Athletic Fields site shall be conveyed to the County, without consideration, restricted in use as only a public elementary school with associated parking, playgrounds, fields, recreation areas and amenities compatible with the residential character of the residential development by Marquis. Lighting for the Athletic Fields Site shall be specifically permitted.

c. Marquis reserves the right to impose and maintain certain easements over and upon the Elementary School Site as deemed necessary by Marquis for the benefit of the remainder of the Property, including but not limited to a landscaped buffer between any buildings and the remainder of the Property, provided such easements are not unreasonably detrimental to the County's ability to use the Elementary School Site for its intended purposes.

d. Marquis shall transfer and assign to the County any permits, rights and/or approvals held by Marquis necessary to allow the County to construct a wetland crossing between the School Site and the Athletic Fields Site (the "Permits.") In the event that Marquis is not obligated for an reason to convey the Athletic Fields Site to the County, Marquis shall not be obligated to so transfer or assign the Permits to the County. Should Marquis exercise its rights hereunder to reacquire the Athletic Fields Site, the County shall transfer and assign to Marquis without payment or consideration any Permits previously transferred to the County as pursuant to this paragraph.

e. Marquis shall have the option to purchase the School Site from the County after conveyance of such property, or to terminate this proffer prior to conveyance of such property, which such option shall be triggered by any one of more of the following events:

i. The County or the York County School Board determines that it will not utilize the Elementary School Site for its intended purposes as an elementary school.

ii. The School Site and/or Athletic Fields Site are used or developed for any other purpose than those set forth in this instrument.

iii. The County or the York County School Board fails to confirm the School Site as the location for construction of an elementary school and/or fails to enter into an architectural contract for design of an elementary school on the School Site on or before September 1, 2017.

iv. The price paid to the County by Marquis for reacquisition of the School Site shall be the fair market value of the School Site as agreed upon by the parties. In the event of disagreement between the County and Marquis as to such fair market value, each of the County and the Marquis shall obtain at its expense an appraisal of the fair market value of the School Site, conducted by an appraiser licensed by the Commonwealth of Virginia. The consideration paid to the County by the Marquis for the School Site shall be the average of the two (2) such appraisals.

f. Marquis shall have the option to purchase the Athletic Fields Site in the event that the County or the York County School Board determines not to use such site for athletic and/or recreational facilities serving the school or County parks and/or recreation programs. In the event that Marquis exercises its option to reacquire the Athletic Fields Site the consideration paid to the County for such site shall be \$1.00.

g. In the event the County decides to sell the Elementary School Property, or any portion thereof, Marquis reserves the right of first refusal (the "Right of First Refusal"), which shall be exercised as follows. Upon receipt by the County of a written offer to purchase the Elementary School Site, which the County Board of Supervisors by majority vote in a duly convened meeting elects in its sole discretion to accept, the County shall, within fifteen (15) days, provide Marquis with a copy of such written offer, and within thirty (30) days of receipt of the copy of the offer, Marquis shall deliver to the County Administrator a written notice stating whether it intends to exercise its Right of First Refusal. A failure to deliver such notice to the County Administrator within thirty (30) days shall constitute a waiver by Marquis of its Right of First Refusal. In the event Marquis shall elect to exercise its Right of First Refusal, then thereafter Marquis shall purchase the Elementary School Property (or the Portion thereof at issue) in strict accordance with the economic terms and conditions of said offer. A default by Marquis of its obligation to purchase the Elementary School Site shall constitute a waiver by Marquis of its Right of First Refusal, and the County shall then have the right to sell the Elementary School Site to the offeror pursuant to the terms of said offer. In the event the sale by the County to the offeror shall not be consummated, then Marquis shall have a Right of First Refusal on any subsequent offer to purchase the Elementary School Site, as specified in this paragraph. Notices to Marquis shall be sent by first class mail, or hand delivered, to the current address for Marquis, or for its successor in interest, on file with the office of the Real Estate Assessor for the County.

h. Marquis may rely upon the athletic field or fields, open space or other recreation amenities on the Elementary School Site in order to meet recreation space and amenity obligations stipulated in York County Code § 24.1-361(e). Further, any bridge, walkway, trail or other crossing established by the County between the School Site and the Athletic Fields Site may be incorporated by Marquis into the trail system established pursuant to paragraph 4(d) above.

6. Construction of Roadway. Prior to October 1, 2017 and before the County shall be obligated to issue any building permit for a residential dwelling or unit, Marquis shall construct the road in the location shown approximately on the Revised Master Plan as “Marquis Parkway” from its existing terminus at or adjacent to the boundary of the Property, extending to the point at which the Elementary School Site first adjoins the purposed Marquis Parkway. Final asphalt topcoat and acceptance of the road into the state system by the Virginia Department of Transportation shall not be required, but the roadway shall be constructed and graveled or asphalted so as to permit construction traffic associated with engineering, materials delivery, grading and construction on the Elementary School Site for its intended purposes.

a. In the event that the County or the York County School Board fails to enter into a contract for architectural design of an elementary school on the School Site on or before September 1, 2016, the October 1, 2017 deadline for road construction described in this paragraph shall be extended by one (1) month for each month (or any partial month) during which no contract for architectural design exists. The County shall notify Marquis of the date of full execution of such contract within ten (10) days of its execution.

b. In the event that Marquis is not obligated to convey the Elementary School Site as provided by paragraph 5, the obligation to construct the Marquis Parkway road described in this paragraph shall be of no force or effect.

7. Pedestrian Connections to Adjacent Properties. Marquis shall provide a pedestrian connection between the Property and the adjacent Marquis commercial development. Such connection shall be shown on the development plans for the Property.

8. Subdivision. The Property may be subdivided in accordance with the County’s Subdivision Ordinance prior to final site plan approval for development of the Property. The resulting subdivided parcels may be developed at different times pursuant to different site plans, therefore all private streets or access ways serving more than one property owner will be subjected to one or more maintenance agreements which establish a mechanism for sharing the cost of maintenance of the private street or access way among such property owners.

9. Successors and Assigns. These Proffers shall run with the title to the Property and shall be binding on the parties hereto and their respective successors and assigns; provided, however once a party ceases to own any portion of the Property, such party shall have no continuing liability hereunder.

10. Severability. In the event that any clause, sentence, paragraph, subparagraph, section or subsection of these Amended and Restated Proffers shall be judged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that

it is contrary to the Constitution of the Commonwealth of Virginia or the United States, or if the application thereof to any owner of any portion of the Property or to any government agency is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, subparagraph, section, subsection or provision 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, subparagraph, section, subsection or provision hereof.

11. Headings. All paragraph and subparagraph headings of the Amended and Restated Proffers herein are for convenience only and are not part of these Amended and Restated Proffers.

12. Conflicts. In the event that there is any conflict between these Amended and Restated Proffers and the County zoning ordinance, the conflict shall be resolved by the County's Zoning Administrator subject to the appeal process to the Board of Zoning Appeals and the Courts as otherwise provided by law.

13. Void if Application not Approved. in the event that the Application is not approved by the County or is overturned by subsequent judicial determination, these Amended and Restated Proffers and the Revised Master Plan shall be null and void.

14. Incorporation of Recitals. The Recitals set forth above shall be included and read as part of these Proffers and are incorporated herein by reference.

{Signatures and Notary Clause on the following page}

WITNESS the following signatures, thereunto duly authorized:

**MARQUIS WILLIAMSBURG RE HOLDING
LLC,**
a Delaware limited liability company

By: _____

Print Name: _____

Title: _____

STATE OF _____

CITY/COUNTY OF _____, to wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by _____ as _____ of Marquis Williamsburg RE Holding LLC, a Delaware limited liability company.

Notary Public [Affix Notarial Stamp]

My Commission expires: _____

Notary Registration No.: _____

EXHIBIT A