

# James City County Board of Supervisors

## Reading File

July 26, 2005

### For Your Information:

1. James City County Planning Commission Annual Report, dated July 2005
2. Declaration of Condominium: The Fairways at Stonehouse, A Condominium
3. 2005 Traffic Count Summary
4. Cash Management Action Plan

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***JAMES CITY COUNTY  
PLANNING COMMISSION  
ANNUAL REPORT***

**FY 2004-2005**



**July, 2005**

***In memory of Joseph McCleary***

*Joseph McCleary was a dedicated member of the James City County Planning Commission from 2001 until 2005 and his service on the Commission is missed.*

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## MESSAGE FROM PLANNING COMMISSION CHAIRMAN

*Fellow citizens, enclosed is a report detailing the actions of the Planning Commission during the past year. The seven member Commission, with the support of the Planning Division, acted on the various issues which came before us and our recommendations were sent to the Board of Supervisors to be acted upon. We continue to request and look forward to active citizen participation in the planning process for James City County, now and in the future.*

Donald Hunt, Chairman

June, 2005

## **Introduction**

The James City County Board of Supervisors appoints members to the Planning Commission to review cases and make recommendations regarding land use, transportation, public facilities and utilities. The Commission's main responsibilities include updating and overseeing implementation of the County's Comprehensive Plan, assessing the annual Capital Improvements Program, and reviewing development cases. The Commission also reviews all Subdivision and Zoning Ordinance changes, rezonings, special use permits, master plans, and Agricultural and Forestal Districts.

The Planning Division provides staff support to the Planning Commission and its subcommittees: the Development Review Committee, which reviews major development cases; and the Policy Review Committee, which reviews specific planning related topics and makes recommendations to the Commission. Staff also regularly provides support for a number of other ongoing committees such as the New Town Design Review Board, Historical Commission, Historic Triangle Bicycle Advisory Committee, Corridor Enhancement Steering Committee, Development Roundtable, and other special project committees. Additionally, staff makes planning-related policy recommendations to the Planning Commission, administers and enforces the Zoning Ordinance, implements landscaping and bikeway projects, and acts as a liaison to a variety of other Board-appointed committees, community organizations and government entities. These include the Hampton Roads Planning District Commission, Pedestrian and Bicycle Advisory Committee, 2007 Community Activities Task Force, Public Private Transportation Act Committee.

Some of the ongoing planning initiatives undertaken in FY05 represent new programs and services to better serve customers and implement the Comprehensive Plan. These include providing the staff services to the Development Roundtable, Corridor Enhancement Steering Committee, Jamestown Road Demonstration Grant Program, the PPTA for development of the Warhill site and Builders for the Bay. While not a new on-going FY05 program, the New Town Design Review Board substantially expanded its activities in FY05, resulting in increased staff and commission involvement.

The Virginia State Code requires the Planning Commission to prepare an annual report to the Board of Supervisors concerning its activities and the status of planning activities in the community. During Fiscal Year 2004-2005, Planning Commission and staff activities primarily consisted of major projects, development review, and participation in a variety of community events and committee studies. Items contained in this report include a message from the Chairman of the Planning Commission, brief descriptions of each of the Planning Commission members, and information regarding the Planning Division staff. The report also contains summaries of the work of the Planning Commission and Division, including a list of major projects and major cases dealt with and/or approved.

## PLANNING COMMISSION MEMBERS AND PLANNING DIVISION STAFF

**Donald Hunt, Chairman (Stonehouse District Representative)** Don is a James City County native and has served on the Planning Commission since 1991. He received his Bachelor's degree in Horticulture from Virginia Tech and is the owner and operator of Hill Pleasant Farm, Inc., a fourth generation family business. In addition to the Planning Commission, he also serves on the Policy Committee and Development Review Committee, and was a member of the 2003 Comprehensive Plan Community Participation Team. Don's fourth term on the Planning Commission expires on 1/31/07.

**Jack Fraley, Vice-Chairman (Roberts District Representative)** Jack graduated from the University Of California (UCLA) with a Bachelors' Degree in Economics. He held several managerial positions with Shell Oil Company before starting up a new high technology venture for Shell in 1984, Rampart Packaging, located in the Busch Corporate Center. He retired from the business in 1998 to spend more time with his family and contribute to the community. Jack was appointed to the Planning Commission in January 2004 and was elected Vice-Chairman of the Commission in 2005. He also was appointed Chairman of the Commission's Development Review Committee in 2005. Jack serves as the four-time elected Chairman of the James City County Board of Zoning Appeals and is a member of the Design Review Board for the James River Commerce Center. Jack's first term on the Planning Commission expires on 1/31/08.

**W. Wilford Kale, Jr. (Powhatan District Representative)** Wilford, a native of Charlotte, North Carolina, has lived in James City County since 1962 and has served on the Planning Commission since 1998. He received his Bachelor's degree in History from Park College and is currently a Masters Degree candidate in history at the University of Leicester in Leicester, England. He currently serves as the Senior Staff Advisor for the Virginia Marine Resources Commission where he has worked since 1994. In addition to the Planning Commission, Wilford also serves on the Development Review Committee and was a member of the 2003 Comprehensive Plan Community Participation Team. Wilford's second term on the Planning Commission expires on 1/31/06.

**George Billups (At-Large)** George was appointed to the James City County Planning Commission in February 2002. He graduated from Virginia State College with a Bachelor of Science in the areas of Industrial Vocational Education and Science. He earned his Master's degree and Certificate of Advanced Studies from the State University of New York in the fields of Education and School Administration and Supervision. A retired high school principal and community activist, George has served on numerous local, state and federal boards which worked to create positive public policy and civil rights legislation. In addition to his service on the Planning Commission, George also currently sits on the Policy Committee and Regional Issues Committee, and was a member of the 2003 Comprehensive Plan Steering Committee. George's first Planning Commission term expires on 1/31/06.

**Ingrid Blanton (Jamestown District Representative)** Ingrid has lived in James City County since 1989 and was appointed to the Planning Commission in December 2004. She earned her undergraduate degree from Brown University in Providence, Rhode Island and her law degree from The College of William and Mary Marshall-Wythe School of Law. Since being admitted to the Virginia State Bar she has worked at the National Center for State Courts, been in private practice as partner in the law firm Twiford and Blanton, LLC, and served as director of the Williamsburg Land Conservancy. She has worked as the director of Planned Giving at the Colonial Williamsburg Foundation for the past six years. Currently she serves on the Development Review Committee, the Cash Proffer Policy Committee and as a board member of the Indigo Park and Recreation Association. Ingrid's first term on the Planning Commission expires on 1/31/08.

**Mary Jones (Berkeley District Representative)** Mary has been a James City County resident for seven years and was appointed to the Planning Commission in January 2005 to complete the unexpired term of previous commissioner Joseph McCleary. She attended Towson State University majoring in Mass Communication Studies. Currently, Mary is a committee member for Boy Scout Troop 155 as well as the Berkeley Band Boosters and is a Real Estate Referral Agent for Liz Moore and Associates. She is a member of the Policy Committee and was a member of the 2003 Comprehensive Plan Community Participation Team. Mary's first term on the Planning Commission expires on 1/21/09.

**James Kennedy (At-Large)** Jim has been a resident of James City County for 21 years. After serving in the United States Navy he attended optician's school at Yorktown Naval Weapons Station where he earned his degree in opticianry. Currently he is the co-owner of Victor's Deli and Pizzeria in Williamsburg. Jim has served on many boards and commissions over the past several years. Most notably he served as Chairman of the Board of Supervisors in 2002 and was also the co-founder of the Stonehouse District Citizens Association. In addition to the Planning Commission, Jim also currently serves on the Policy Review Committee. Jim's first term on the Planning Commission expires on 1/31/09.



The James City County Planning Commission (Back from left: George Billups, Don Hunt, Jim Kennedy, Wilford Kale; Front from left: Mary Jones, Jack Fraley, Ingrid Blanton)

### Planning Division Staff



Pictured from left: Allen Murphy, Don Davis and Marvin Sowers

**Management Staff:** Marvin Sowers has been Planning Director of James City County since 1987. Don Davis has been Principal Planner for Comprehensive Planning since 1989. Allen Murphy, Zoning Administrator/Principal Planner for Current Planning joined the James City County staff in 1979. Combined, these three have more than 71 years of professional planning experience with 60 of those years as planners with James City County.

**Professional Planning Staff:** Tammy Rosario, Senior Planner II, joined the staff in 1995 and effective July, 2005 she will be transferring positions within the Division and taking on several new responsibilities. Chris Johnson, Senior Planner, joined the staff in 1997 as an intern and has been a Senior Planner since 2001. Karen Drake, Senior Planner, joined the staff in 2000 and became a Senior Planner in 2002. Matt Arcieri, Senior Planner, joined the staff in 2000 as an intern and was promoted to Planner in 2002 and Senior Planner in 2004. Trey Davis, Planner, joined the staff in 2002 as Development Management Assistant and was promoted to Planner in 2004. Ellen Cook, Planner, joined the staff in 2003. Scott Whyte joined the staff in 2004 as the staff's Landscape Architect. Matt Smolnik, Planner, joined the staff in

January 2005. Jason Purse, Planner, joined the staff in June, 2005. Jose L. Ribeiro, Planner, joined the staff in July, 2005.



Comprehensive Planners (*left*) from left: Trey Davis, Scott Whyte, Karen Drake and Tammy Rosario. Current Planners (*right*) from left: Matt Arcieri, Ellen Cook, Matt Smolnik and Chris Johnson.







Pictured from left: Melissa Brown, Clifton Copley, John Rogerson

**Zoning Officers:** John Rogerson began working for the County in 2000 and was promoted to the position of Zoning Officer in 2001. Melissa Brown joined the staff as a Zoning Officer in January, 2003. Clifton Copley joined the staff as a Zoning Officer in June, 2005.

**Front Desk:** Toya Ricks began working for the County in 2002 and became the Administrative Services Coordinator for the Planning Division later that year. Toya now works half time in that position. Geoff Cripe joined the staff as Development Management Assistant in September, 2004. Leanne Reinbach, Development Management Assistant, joined the staff as an intern in January, 2005 and was promoted to Development Management Assistant effective June, 2005. Christy Parrish began working for the County in 1993 and now works half time for the Planning Division as Administrative Services Coordinator.



Back from left: Geoff Cripe, Christy Parrish, Front from left: Toya Ricks, Leanne Reidenbach



Pictured from left: Jesse Contario, Josh Collins, Will Federspiel, Rob Williams

**Interns:** Jesse Contario continued working with the Planning Division as a paid intern through the first six months of 2005. Most notably Jesse assisted staff with the Capital Improvement Project and also in the development of the Planning Commission Annual Report. The staff brought on several additional volunteer interns throughout 2005. Stephanie Cappa and Leanne Reidenbach both served as volunteer interns performing excellent research on several key areas of interest to the Division. Leanne, a recent William and Mary graduate, was promoted to Development Management Assistant effective June, 2005. Josh Collins and Will Federspiel, two Masters Degree candidates from William and Mary's Thomas Jefferson Program in Public Policy, have joined the staff and will work with the Division throughout the summer of 2005. Staff expects to continue utilizing the many talents of the interns to assist on major projects and other administrative duties.



Staff planted grass and flowers along the east side of the building which had no landscaping before the Planning Division moved into Building A



Along the building on all sides staff planted several small shrubs and flowers

## **Staff Development and Changes**

Staff development continues to remain a high priority for both the Planning staff and the Planning Commission. Staff and Commission members take various planning and policy courses throughout each year. The Planning Division cross-trains its staff so that current and comprehensive planners are assigned current planning cases such as rezonings, special use permits, site plans and subdivisions. Current planners also assist in comprehensive planning activities such as the development and implementation of the Comprehensive Plan.

Over the course of fiscal year 2004-2005, the Planning Division had members participate in a variety of continuing education programs. Some of the training courses/seminars and conferences that the staff participated in this past year were: American Planning Association National Planning Conference, Chamber of Commerce seminars, American Institute of Certified Planners Exam Preparation Workshop, Rural Lands Conference, Virginia Chapter of the American Planning Association Conference, Virginia Association of Zoning Officers Conference, management courses, financial seminars, ESRI Geographic Information Systems Training and the Census Training Workshop.

In addition to development, staff underwent several changes this year. Both David Anderson, Senior Planner, and Sarah Weisiger, Planner, left in November 2004 to pursue employment opportunities elsewhere. Matt Smolnik, a graduate of the University of Pittsburgh who obtained his Masters Degree in Geography from West Virginia University was hired in January 2005 to fill one vacancy. Patrick Foltz, Development Management Assistant, left the Division in February 2005 also for employment elsewhere. Leanne Reidenbach, a recent graduate of William and Mary who joined the Division as an intern in January 2005 was promoted to replace Patrick effective June 2005. Toya Ricks, Administrative Services Coordinator, will now be working for the Division part time effective May 2005 as will former Zoning Officer Christy Parrish who will now be providing administrative support at the front desk. Recently, Clifton Copley was hired as a new Zoning Officer to replace the void created by Christy's change in position. Staff is also currently interviewing candidates for four Planner positions which have recently become vacant. Tammy Rosario, Senior Planner II, moved from part time back to full time effective January 2005 and transferred positions within the Division effective July 2005. Tammy now works half time as a Comprehensive Planner and half time as a Development Management Project Manager working specifically on open space acquisition. Senior Planner Chris Johnson recently accepted another job opportunity and left the Division in June 2005. Trey Davis, Planner, will also be leaving the Division shortly as he has been accepted to the School of Business at Georgetown University. Finally, staff is also interviewing to fill one additional Planner position which had been created earlier in the year as a result of the increasing workload the Division has experienced over the past several years. Although several positions must soon be filled staff has remained fastidious throughout the interviewing process to ensure that only quality candidates are offered positions within the Division. Although these several changes may prove to be trying at times staff remains optimistic and tireless in their efforts to ensure that the transition will be as painless and efficient as possible.

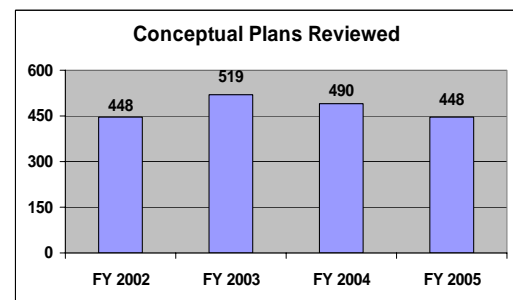
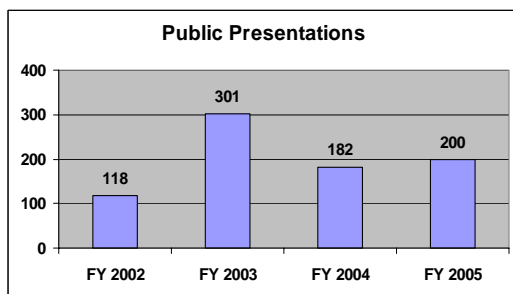
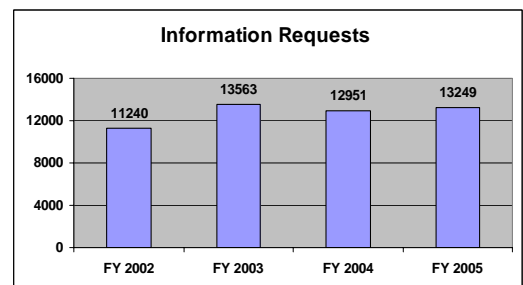
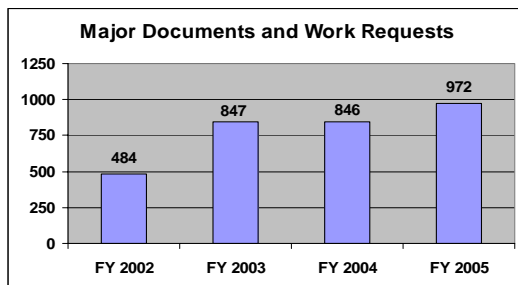
In addition to the changes outlined above the Division also recently experienced a change in location. On February 11, 2005 the Division relocated to Building A in the Governmental Complex. 21 employees of the Department of Development Management and the Planning Division now comfortably share roughly 5,000 square feet of newly renovated office space. Senior Planner Chris Johnson donated many pieces of original artwork to decorate the refurbished area. Recently, nearly the entire staff worked together to landscape the area surrounding the building. The landscaping materials were funded through a grant and the staff volunteered their own time and energy to plant them. Although the move created some additional hardships for staff over the past few months, the Division has now settled into their new office and everyone is enjoying the larger space.

## Citizen Inquiries

The Planning Division responds to over 12,000 citizen inquiries each year. The long-range and current planning sections of the Division handle a variety of questions on a daily basis. The long-range planning section is responsible for citizen's inquiries regarding the Comprehensive Plan, development issues, population, census and housing estimates, land use, transportation, and traffic issues. The number of inquiries directed to the long range planning section this year remained steady at last year's elevated level due to several major developments and population growth. The current planning section responds to citizen's inquiries regarding land development cases, zoning and subdivision ordinances, site plans, landscaping, development submittal requirements and general development in James City County. The administrative staff handles questions regarding the Planning Commission and Board of Supervisors meetings, application processes, public hearing notices, development case status and other logistical and informational questions. These inquiries come from attorneys, architects, contractors, engineers, developers, landowners, and citizens at large. A substantial amount of staff time is dedicated to providing this service to keep the public informed and to provide an additional outlet for citizen response and comment.

## Development Review

Development review activities consist primarily of rezonings, special use permits, site plans, subdivisions, and conceptual plans. A list of major cases and a fiscal year summary appear later in this report. In May of 2004, Planning staff created the Development Roundtable, a bi-monthly conceptual review meeting for applicants that need to resolve engineering issues before submitting a site plan. In addition to regular development review, the Planning Division handles a variety of other activities. Some of the activities that Planning staff handles are shown graphically below while others are shown in later sections. Moreover, staff has the responsibility of constant review and, as necessary, updating documents such as the Zoning Ordinance to assist the Planning Commission, the Board of Supervisors, and citizens in development activities. The number of tasks taken on by the Planning staff remained comparable to the workload of FY 2004.



## **MAJOR PROJECTS**

### **Capital Improvements Program**

Each year the Planning Commission reviews projects proposed by County agencies for inclusion in the Capital Improvements Budget. In light of current fiscal restraints on the County, many projects have temporarily been given medium or low priority. Projects selected by the Planning Commission for the FY 2006 CIP that have a high priority are listed below.

- ❑ Purchase Development Rights (PDR)
- ❑ Warhill Sports Complex Improvements
- ❑ Toano Convenience Center Relocation
- ❑ Ambulance Replacement
- ❑ Eighth Elementary School

In addition to the projects above, the Board of Supervisors funded the following selected projects as part of the FY 2006 Budget.

- ❑ New High School
- ❑ Parks and Recreation Referendum
- ❑ Radio System Improvements
- ❑ Water Quality Improvements

### **Primary Roads Priorities**

The FY05 Primary Roads Priorities, outlining the County's funding priorities for a safe, efficient and adequate transportation network, was drafted by staff and presented to the James City County Board of Supervisors on September 14, 2004. The priorities include widening Route 199 at points where it consists of only two lanes, improving the intersection of Route 199 and Route 31 with adequate pedestrian facilities, relocating portions of Pocahontas Trail (Route 60), continuing work on the Greensprings and Virginia Capital Trails, advancing the Peninsula Light Rail Project, and landscaping and additional aesthetic enhancements. Improvements to the Monticello Avenue and Ironbound Road intersection continue to be designed prior to the widening of Ironbound Road. All projects are proposed to be included in the Virginia Department of Transportation's (VDOT) six-year improvement program.

### **Secondary Roads Priorities**

The FY05 Secondary Roads Priorities, outlining the County's funding priorities for secondary roads and transportation construction projects in 2005, was drafted by staff and presented to the James City County Board of Supervisors on March 23, 2004. In accordance with a request from VDOT the Board of Supervisors postponed approval of the six-year Secondary Roads Priorities Plan from 2004 to 2005. On February 22, 2005 the Board of Supervisors approved the Six-Year Secondary Roads Priorities Plan. Atop the list for improvements under the plan were the widening of Ironbound Road to a four lane road with a median and a multi-use pedestrian path from Tewning Rd. to Strawberry Plains Rd., and improvements to the shoulders and ditches alongside Croaker Road. Improvements to curves in Mount Laurel Road and Barnes Road were also given priority as was repairing the inadequately sized

drainage pipes installed at Scott's Pond subdivision which are now causing flooding of roads and yards.

### **Virginia Capital Trail**

The County has been an active partner in the design and location of both the Virginia Capital and Greensprings Trails. The Virginia Capital Trail will be a combination bikeway and pedestrian facility linking historic, cultural, and scenic sites along the Route 5 corridor with Jamestown Island and Williamsburg. At its completion, the trail will link Colonial Williamsburg with the City of Richmond. A feasibility study has been completed and engineering design work is currently in progress. This design stage is being funded through a federal, state, and county partnership. The section of the trail planned for James City County will run adjacent to Route 5, connecting the Chickahominy Riverfront Park with the Greensprings Trail, which is a leg of Virginia Capital Trail. This alignment was chosen subsequent to a feasibility study completed in 1999 with the input of citizens. Construction is scheduled to begin in the fall of 2005.

### **Greensprings Trail**

Greensprings Trail will provide a multi-use path for non-motorized transportation between Route 5 and the Jamestown Settlement. The path's trailhead is adjacent to Jamestown High School. From this point, the path will extend Southeast in the vicinity of Greensprings Road, running through Mainland Farm to Jamestown Road. The trail will then cross Jamestown Road and join an existing multi-use path to the Colonial Parkway. Trail users can access Colonial Williamsburg via the Colonial Parkway from the Jamestown Settlement. Design is complete with funding coming from a federal, state, and county partnership. The County has played a large role in design and right of way acquisition throughout FY05. Project engineers plan to begin construction in summer of 2005 and complete the trail in time for the celebration of the 400<sup>th</sup> anniversary of Virginia in 2007.

### **Route 199 Improvements**

In October of 2002 VDOT signed a comprehensive agreement utilizing the Public Private Transportation Act of 1995 to complete vital improvements to the Jamestown Corridor, with emphasis on the widening of Route 199. Planning staff collaborated with VDOT on design elements of the project including landscaping and decorative fencing. Two sections of Route 199 were targeted for widening. The first section is in the vicinity of Mounts Bay Road and the second section is centered at College Creek. The widened section of Route 199 between Pocahontas Trail and South Henry Street opened in November 2004. The project was completed five months ahead of schedule and within budget. The Route 199/Jamestown Road intersection also underwent improvements. The purpose of this project is to decrease congestion at the intersection. Hardscape enhancements including decorative fencing, multi-use path, and Williamsburg green poles and signage have recently been installed as a result of collaboration among the County, City of Williamsburg, VDOT and the Corridor Enhancement Committee. The enhancements were jointly funded by James City County and the City of Williamsburg. All construction is set to be completed in time for Jamestown's 400<sup>th</sup> anniversary in 2007.

### **Light Rail Project**

Improved passenger rail service for the Peninsula has been under consideration for several years. The project would provide much needed congestion relief on Interstate 64 which would in turn provide

relief for the primary roads within James City County, especially Route 199 and Richmond Road. The County and City of Williamsburg Planning Divisions continue to work with Hampton Roads Transit on this project.

### **Five Forks Sub area Study**

During FY 03-04, a traffic consultant with Kimley-Horn produced a “Traffic Impact Alternatives Analysis” to aid analysis of proposed development projects within the Five Forks vicinity that were likely to have major traffic and environmental impacts. As a follow-up and in accordance with Economic Development Action 12 G of the Comprehensive Plan, the Board of Supervisors formed a committee of County staff, residents, and business owners to evaluate redevelopment and land-use issues in Five Forks. The committee held four meetings for the purpose of receiving feedback from citizens and to produce a draft of principles for Five Forks. These were approved by the Planning Commission on September 13, 2004. The Board of Supervisors also approved the Five Forks Primary Principles on September 28, 2004. These Principles have already served as guidelines for new Special Use Permit and Rezoning cases within the Five Forks vicinity. In April 2005 planning staff presented a summary of the Five Forks planning process at the Virginia Planning Association Conference in Warrenton, VA.

### **New Town**

The New Town Development Review Board (DRB), assisted by staff, continued to review proposed developments in New Town. Throughout FY 04-05 several individual site plans were approved including banks and mixed use structures, and the first non-residential buildings opened. The New Town Old Point National Bank received site plan approval in June, 2004 and has recently opened as has the First Advantage Credit Union which received site plan approval in August, 2004. Several other buildings are currently under construction. The New Town Prudential-McCardle Office Building, the New Town Mixed Use Buildings, the New Town Court Square, the New Town Towne Bank and the New Town Lambert Building are all currently under construction. The New Town Movie Theatre is in the later stages of construction and is expected to be completed by August, 2005. The New Town Retail on Main St. has also begun construction on the first phase of what will be a three phase project. The first residents of New Town are scheduled to move into the New Town Townhouses in June, 2005. Currently plans are underway for the public open spaces to be located at Court Square, Village Square, Pecan Square, and Civic Green. Also under consideration currently are roadway improvements to Monticello Avenue and Ironbound Road. The DRB is reviewing a multitude of conceptual plans, rezonings, site plans, and subdivisions with construction expected for the upcoming FY 2006.

### **Historical Commission**

**The Planning Division has administrative responsibility for the Historical Commission. Responsibilities include taking minutes, preparing the budget, and assisting with projects such as “Oral Histories.” Currently, the Commission is working on the transcription of the oral histories from their minutes. Staff also continues to assist with the relocation of the Norge Depot to the James City County Library site. Recently Steve Hicks was named project manager for that venture. As a former VDOT employee Mr. Hicks will ensure that the project meets all of the standards and requirements VDOT has specified for that project.**

## **Architectural Assessment Project**

Using a \$25,000 matching grant from the Virginia Department of Historic Resources (VDHR) to survey the County's architectural resources, a consultant completed a field study for the project and provided documentation, analysis, and recommendations to the Planning Division. Staff has forwarded all information to the County Historical Commission for consideration. The County or the Historical Commission may use the results of the survey to guide the development of a policy for the protection of historic structures. Staff developed a GIS layer that identifies the location of over 200 architecturally significant structures in the county.

## **Neighborhood Connections**

The Planning Division participated in the Neighborhood Connections program during FY 2005 by providing two staff liaisons to work with 21 County neighborhoods in communicating and resolving pertinent issues. Issues dealt with this year include growth and expansion, increased construction in the neighborhoods, traffic safety, and ensuring the smooth and fair transition of neighborhood common grounds from developer control to control by the homeowners' association. Staff serves as a primary reference in assessing proposed street name changes and informing the home-owner associations of details involved with rezonings. Staff worked for several months on plans for a celebration commemorating the tenth anniversary of the Neighborhood Connections program. The celebration occurred in November 2004.

## **Landscaping**

Recently the Planning Division has completed a number of landscaping projects around the County. The Chickahominy Riverfront Park buffer was completed adding a beautiful planting bed (alongside Route 5) that provides a buffer between Route 5 and the Campground. A screen around the pool was also implemented at the Chickahominy Riverfront Park. The entrance to Jamestown High School was enhanced adding a number of plants to create a more aesthetically pleasing environment. The Courthouse bio-retention feature was also completed adding several wet plants to the BMP in order to create a more environmentally friendly area. Finally, screening in several areas served to create more aesthetically pleasing environments along main roads. Most notably, the area across from Settler's Mill on Jamestown Road, the Jamestown Campsites area, and the median along Route 60 near Airport Road were all enhanced with screening or landscaping.

## **Builders for the Bay**

Builders for the Bay is an agreement among the Center for Watershed Protection, the Alliance for the Chesapeake Bay, and the National Association of Home Builders to lead community efforts to change existing subdivision codes and ordinances to allow for more environmentally sensitive site designs. This effort was ongoing throughout FY 04-05, with a number of meetings held. Throughout these discussions a set of principles were developed which should help land developers and the County better steward the environment in the development process. A final meeting was held to discuss the principles and their implementation as well as the publishing of a booklet designed to outline the recommended development principles. Staff is now looking toward identifying the next steps in the implementation process. Once these objectives have been set, staff hopes to develop a timeline specifying when they hope to see these recommendations implemented.

## **Site Plan Review Process**

Staff worked extensively with various stakeholders in the developmental community to identify way to improve the site plan review process. This led to the creation of the bi-monthly Development Roundtable for customers to present plans and specific questions to various departments in the County. Currently customers can obtain feedback from the Planning Division, Environmental Division, the James City County Service Authority and the Virginia Department of Transportation when they attend the meetings. These Development Roundtable meetings have provided opportunities for developers to discuss project design and development with County staff in an informal manner and receive feedback in advance of preparing development plans for submission to the County. Furthermore the Development Roundtable meetings have served to create an expedited and more efficient review process. On another recommended improvement, Planning staff continues to work with staff in the Information Technology Division to modify the existing Case Tracking database for inclusion on the County web site. When the modifications have been completed, applicants and citizens will be able to access submittal dates and agency comments for every development plan under review.

## **Rural Lands Study**

The Board of Supervisors expressed a desire to investigate alternatives for residential development in rural land areas outside the Primary Service Area (PSA) which will support the goals of the Comprehensive Plan. This project came about due to Board concerns about the impact on rural lands of adopting a cash proffer policy. The options to be examined from a fiscal, environmental, and land-use planning standpoint include rural cluster developments outside of the PSA and standards (including minimum lot sizes) for conventional subdivisions in areas zoned A-1 (general agriculture) outside the PSA. The result of this project will be a draft rural residential cluster ordinance and draft ordinance amendments for any recommendations pertaining to conventional subdivisions to be voted on by the Board of Supervisors in February, 2006. The Planning Division has recently hired the Renaissance Planning Group (RPG) to spearhead the rural lands study. Kenneth Schwartz, Chris Sinclair, Katharine Ange, Eric Wright, Milton Herd and Vladimir Gavrilovic will be the key RPG personnel heading the effort.

## **Comprehensive Plan**

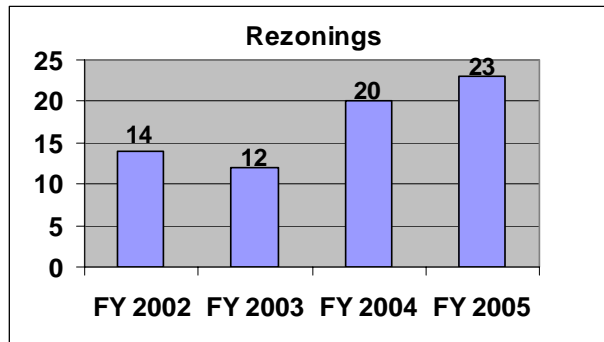
The Board of Supervisors adopted the 2003 Comprehensive Plan, "Vision for Our Future", on August 12, 2003. In September 2003, the Virginia Municipal League awarded its highest honor, the "President's Award" for the Comprehensive Plan update due to public outreach and the technical review process. Presented below is a list of the most notable accomplishments of FY 2005 in the implementation of the principles and tenets enumerated in the 2003 Comprehensive Plan:

- Administrative actions have been centered on ensuring quality and timely review of all cases. The addition of another planner position in the past year has made it possible for staff to counter the increased workload facing the Division. Currently, 97% of review comments are sent out prior to the thirty day comment deadline. A total of five cases qualified for and received expedited review.
- New Town Sections 2, 3, 4 & 6 and Norge Neighborhood are being developed to embody the concepts of preserving community character, encouraging fewer and shorter auto trips, and facilitating walking, bicycling, and transit use. The Planning Division plays a lead role in project review to ensure projects are consistent with the Comprehensive Plan and the New Town Master Plan and Design Guidelines.



- Division staff successfully encouraged developers to consider mixed use and mixed income residential development. Over the past year, developers have proposed developments that utilize the flexibility in County regulations to promote affordable housing. Examples include Michelle Point, Pocahontas Square, The Station at Norge, and New Town Sections 3 & 6, for a total of more than 500 units.
- Case examples of true mixed use development inside the Primary Service Area (PSA) include: Norge Neighborhood and New Town Sections 2, 3, 4, 5 and 6. Additional support is offered in the recently adopted Five Forks Primary Principles.
- The Board of Supervisors (BOS) adopted a resolution in support of the Peninsula Light Rail Project on September 14, 2004.
- The Five Forks Primary Principles, which attempt to retain the uniqueness of the Five Forks area, were adopted by the BOS in September 2004. Division staff played a major role in the process.
- Planning staff sponsored the creation of an Architectural Survey Geographic Information System (GIS) layer for use during the planning process.
- Public facilities receiving funding in the FY 06 Capital Improvement Plan (CIP) include: Greenways and trails, Freedom Park, Warhill Sports Facility, Grounds Equipment Storage Facility, the Eighth Elementary School, and the Third High School.
- The Greensprings Trail was approved and fully funded, a major step forward in the implementation of the Bikeway Plan and Greenways Master Plan. Planning Division staff played a major role in the design, right of way acquisition and funding negotiations. Construction is scheduled for summer 2005.
- Several landscaping projects were completed by the Division along the Chickahominy Riverfront Park road frontage, Jamestown Road, the Route 199 and Monticello Avenue interchange, Route 5 and Route 60.
- Planning Division staff was actively engaged in beautification efforts for 2007, through the Corridor Enhancement Steering Committee. A beautification program for Jamestown Rd. has been implemented as well as several right of way beautification projects.

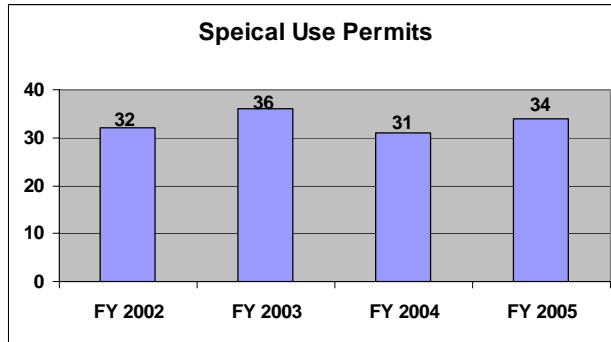
## Major Cases – Rezoning



<b>Z-05-04</b>	<b>New Town – Sections 3 &amp; 6</b>	
Location:	4201 Ironbound Road	PC: Approved- 9/13/04
Zoning:	R-8 to MU	BOS: Approved- 10/26/04
District:	Berkeley	
<b>Z-06-04</b>	<b>Lightfoot Mixed Use (Cap Care/Noland)</b>	
Location:	6601 Richmond Road	PC: Approved- 12/6/04
Zoning:	B-1 to MU	BOS: Approved- 1/11/05
District:	Stonehouse	
<b>Z-13-04</b>	<b>Monticello at Powhatan North</b>	
Location:	Powhatan Parkway	PC: Indefinitely Deferred
Rezoning:	R-8 to R-2	BOS:
District:	Powhatan	
<b>Z-14-04</b>	<b>Pocahontas Square Proffer Amendment</b>	
Location:	Pocahontas Trail	PC: Approved- 3/7/05
Rezoning:	R-5 to R-5 with amended Proffers	BOS: Approved- 4/26/05
District:	Roberts	
<b>Z-15-04</b>	<b>The Villas at Five Forks</b>	
Location;	Ingram Road	PC: Approved- 5/2/05
Rezoning:	R-8 to R-2	BOS: Hearing- 6/28/05
District:	Berkeley	
<b>Z-16-04</b>	<b>Burlington Woods</b>	
Location:	Longhill Road	PC: Approved- 4/4/05
Rezoning:	R-8 to R-2	BOS: Approved- 5/25/05
District:	Powhatan	
<b>Z-02-05</b>	<b>Ironbound Square Redevelopment</b>	
Location:	Ironbound Road	PC: Approved- 4/4/05
Rezoning:	R-2 to MU	BOS: Approved- 5/10/05
District:	Berkeley	

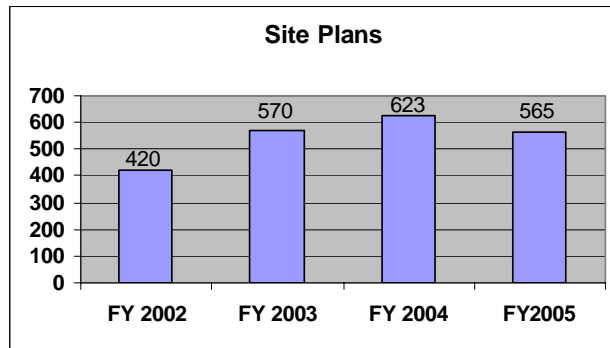
<b>Z-03-05</b>	<b>Centerville Road Subdivision</b>	
Location:	Centerville Road	PC: Approved- 4/4/05
Rezoning:	A-1 to R-2	BOS: Approved- 5/10/05
District:	Powhatan	
<b>Z-06-05</b>	<b>Warhill Tract – Third High School/TNCC</b>	
Location:	Centerville Road	PC: Hearing- 7/11/05
Zoning:	R-8 to PUD-R	BOS:
District:	Powhatan	
<b>Z-07-05</b>	<b>Jamestown Retreat</b>	
Location:	Jamestown Road	PC: Hearing- 7/11/05
Rezoning:	LB & R-2 to R-5	BOS:
District:	Jamestown	
<b>Z-09-05</b>	<b>Governor’s Grove</b>	
Location:	John Tyler Highway	PC: Hearing- 7/11/05
Rezoning:	B-1, R-8 to MU	BOS:
District:	Berkeley	
<b>Z-10-05</b>	<b>The Villages at Whitehall (LaGrange)</b>	
Location:	Old Stage Rd. and Barhamsville	PC: Hearing- 7/11/05
Rezoning:	B-1 & A-1 to R-2	BOS:
District:	Stonehouse	
<b>Z-11-05</b>	<b>The Villages at Whitehall (Task., H. Neck, Rochambeau)</b>	
Location:	Rochambeau Drive	PC: Hearing- 7/11/05
Rezoning:	A-1/B-1 to R-2	BOS:
District:	Stonehouse	

## Major Cases – Special Use Permits



<b>SUP-24-04</b>	<b>Basketville of Williamsburg</b>	
Location:	7761 Richmond Road	PC: Approved- 10/4/04
Zoning:	B-1	BOS: Approved- 11/9/04
District:	Stonehouse	
<b>SUP-25-04</b>	<b>Bay Lands Federal Credit Union at Norge</b>	
Location:	Richmond Road	PC: Approved- 11/1/04
Zoning:	B-1	BOS: Approved- 12/14/04
District:	Stonehouse	
<b>SUP-30-04</b>	<b>JCSA Riverview Plantation Water System Improvements</b>	
Location:	Riverview Road and Newman Road	PC: Approved- 12/6/04
Zoning:	A-1	BOS: Approved- 1/11/05
District:	Stonehouse	
<b>SUP-32-04</b>	<b>Diamond Healthcare, Williamsburg Place</b>	
Location:	5477 & 5485 Mooretown Road	PC: Approved- 1/10/05
Zoning:	M-1	BOS: Approved- 2/08/05
District:	Berkeley	
<b>SUP-3-05</b>	<b>JCSA Water Storage Facility, Warhill</b>	
Location:	5700 Warhill Trail	PC: Approved- 3/7/05
Zoning:	R8/M1	BOS: Approved- 3/22/05
District:	Stonehouse	

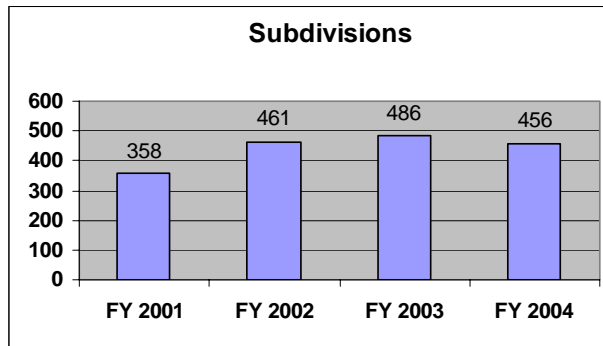
## Major Cases – Site Plans



<b>SP-090-04</b>	<b>Colonial Heritage Mass Grading</b>		
Location:	Richmond Road		
Zoning:	MU	Final:	11/4/04
District:	Stonehouse		
<b>SP-098-04</b>	<b>Warhill Green</b>		
Location:	Centerville Road	Preliminary:	10/4/04
Zoning:	R-5	Final:	3/23/05
District:	Powhatan		
<b>SP-102-04</b>	<b>New Town- Blocks 6 and 7</b>		
Location:	Monticello Avenue	Preliminary:	9/8/04
Zoning:	MU	Final:	9/27/04
District:	Berkeley		
<b>SP-103-04</b>	<b>New Town- Movie Theatre</b>		
Location:	Monticello Avenue	Preliminary:	9/8/04
Zoning:	MU	Final:	9/27/04
District:	Berkeley		
<b>SP-116-04</b>	<b>The Station at Norge</b>		
Location:	Croaker Road	Preliminary:	3/27/05
Zoning:	R-5	Final:	5/27/05
District:	Stonehouse		
<b>SP-121-04</b>	<b>Williamsburg Crossing- Parcel 23</b>		
Location:	John Tyler Highway	Preliminary:	12/6/04
Zoning:	B-1	Final:	5/4/05
District:	Berkeley		
<b>SP-125-04</b>	<b>GreenMount Industrial Park Road Ph. 2</b>		
Location:	GreenMount Parkway	Preliminary:	12/2/04
Zoning:	M-2		
District:	Roberts		

<b>SP-126-04</b>	<b>New Town, Block 3</b>		
Location:	New Town Ave./Ironbound Road	Preliminary:	12/2/04
Zoning:	MU	Final:	5/3/05
District:	Berkeley		
<b>SP-127-04</b>	<b>New Town, Retail Ph. 1</b>		
Location:	Monticello Avenue	Preliminary:	12/1/04
Zoning:	MU	Final:	2/8/05
District:	Berkeley		
<b>SP-139-04</b>	<b>Colonial Heritage Ph. 3, Sec. 1</b>		
Location:	Richmond Road	Preliminary:	2/7/05
Zoning:	MU		
District:	Stonehouse		
<b>SP-141-04</b>	<b>Carolina Furniture Warehouse</b>		
Location:	Richmond Road	Preliminary:	4/6/05
Zoning:	B-1		
District:	Berkeley		
<b>SP-011-05</b>	<b>Citizens and Farmers Bank Parking Extension</b>		
Location:	LaGrange Parkway	Preliminary:	3/1/05
Zoning:	PUD-C		
District:	Stonehouse		
<b>SP-014-05</b>	<b>New Town- Lambert Building, Blocks 6 and 7</b>		
Location:	Monticello Avenue	Preliminary:	3/23/05
Zoning:	MU	Final:	5/6/2005
District:	Berkeley		
<b>SP-015-05</b>	<b>New Town- Hagee Building, Block 8</b>		
Location:	Monticello Avenue	Preliminary:	3/22/05
Zoning:	MU	Final:	5/26/05
District:	Berkeley		
<b>SP-028-05</b>	<b>Oaktree Office and Air Tight Self Storage Expansion</b>		
Location:	Ironbound Road	Preliminary:	5/2/05
Zoning:	B-1		
District:	Berkeley		
<b>SP-030-05</b>	<b>Wedmore Place at Williamsburg Winery</b>		
Location:	Wessex Hundred	Preliminary:	5/2/05
Zoning:	R-8		
District:	Roberts		

## Major Cases – Subdivisions



<b>S-59-04</b>	<b>Greensprings West, Ph. 6 (57 Lots)</b>	
Location:	Centerville Road	Preliminary: 9/13/04
Zoning:	R-4	
District:	Jamestown	
<b>S-64-04</b>	<b>Jamestown Hundred, Lots 10-41 (32 Lots)</b>	
Location:	Reade's Way	Preliminary: 8/2/04
Zoning:	R-2	Final: 10/29/04
District:	Jamestown	
<b>S-65-04</b>	<b>133 Magruder Ave. – Sadie Lee Taylor Property (4 Lots)</b>	
Location:	Magruder Avenue	Preliminary: 8/4/04
Zoning:	R-2	Final: 3/23/05
District:	Roberts	
<b>S-70-04</b>	<b>Wexford Hills, Ph. 2A (5 Lots)</b>	
Location:	Wrenfield Drive	Preliminary: 8/24/04
Zoning:	A-1	Final: 10/7/04
District:	Stonehouse	
<b>S-75-04</b>	<b>Pocahontas Square (96 Lots)</b>	
Location:	Pocahontas Trail	Preliminary: 9/16/04
Zoning:	R-5	
District:	Roberts	
<b>S-80-04</b>	<b>Williamsburg Winery Subdivision (4 Lots)</b>	
Location:	Wessex Hundred	Preliminary: 12/6/04
Zoning:	R-8	
District:	Roberts	
<b>S-90-04</b>	<b>Minichiello Villa (4 Lots)</b>	
Location:	Ironbound Road	Preliminary: 10/21/04
Zoning:	R-2	
District:	Berkeley	

<b>S-91-04</b>	<b>Marywood Subdivision (115 Lots)</b>		
Location:	John Tyler Highway		
Zoning:	R-1		
District:	Jamestown		
<b>S-94-04</b>	<b>Armistead Point- Kingsmill (14 Lots)</b>		
Location:	Kingsmill Road		
Zoning:	R-4	Final:	11/9/04
District:	Roberts		
<b>S-102-04</b>	<b>New Town, Block 5, Parcel F, Lots 21-24 (4 Lots)</b>		
Location:	New Town Avenue	Preliminary:	11/9/04
Zoning:	MU	Final:	2/2/05
District:	Berkeley		
<b>S-109-04</b>	<b>Scott's Pond, Sec. 3B (21 Lots)</b>		
Location:	Scott's Pond Drive	Preliminary:	4/27/05
Zoning:	R-2	Final:	5/25/05
District:	Powhatan		
<b>S-110-04</b>	<b>New Town, Blocks 8B and 5F, Lots 1-20 and 25-34 (30 Lots)</b>		
Location:	New Town Avenue	Preliminary:	1/12/05
Zoning:	MU	Final:	4/13/05
District:	Berkeley		
<b>S-111-04</b>	<b>Colonial Heritage, Ph. 3, Sec. 1 (95 Lots)</b>		
Location:	Richmond Road	Preliminary:	2/7/05
Zoning:	MU		
District:	Stonehouse		
<b>S-119-04</b>	<b>The Retreat Ph. 2 (22 Lots)</b>		
Location:	Barnes Road	Preliminary:	1/27/05
Zoning:	A-1		
District:	Stonehouse		
<b>S-08-05</b>	<b>Colonial Heritage- Phase 1 Sec. 3A (27 Lots)</b>		
Location:	Richmond Road	Preliminary:	3/17/05
Zoning:	MU	Final:	5/17/05
District:	Stonehouse		
<b>S-15-05</b>	<b>Colonial Heritage- Phase 3 Sec. 2 (51 Lots)</b>		
Location:	Richmond Road	Preliminary:	4/27/05
Zoning:	MU		
District:	Stonehouse		
<b>S-17-05</b>	<b>Polk Estates (4 Lots)</b>		
Location:	Richmond Road	Preliminary:	4/27/05
Zoning:	A-1		
District:	Stonehouse		



# **DECLARATION OF CONDOMINIUM**

## **THE FAIRWAYS AT STONEHOUSE, A CONDOMINIUM**

**MADE BY: THE FUTURA GROUP, L.L.C.  
116 LANDMARK SQUARE  
SUITE 102  
VIRGINIA BEACH, VIRGINIA 23452**

**DATED: DRAFT – 07/12/05**

**PREPARED BY:**

**MICHAEL A. INMAN, ESQUIRE  
INMAN & STRICKLER, P.L.C.  
575 LYNNHAVEN PARKWAY, SUITE 200  
VIRGINIA BEACH, VIRGINIA 23452-6715**

**TAX MAP & PARCEL NO:**

**DECLARATION OF CONDOMINIUM**  
**OF**  
**THE FAIRWAYS AT STONEHOUSE, A CONDOMINIUM**

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# DECLARATION OF CONDOMINIUM

OF

## THE FAIRWAYS AT STONEHOUSE, A CONDOMINIUM

WHEREAS, **THE FUTURA GROUP, L.L.C.**, a Virginia limited liability company, being the owner of record of the fee simple title to the real property situate, lying and being in James City County, Virginia, more particularly described in EXHIBIT A, and depicted more particularly on that certain plat entitled "Condominium Plat of THE FAIRWAYS AT STONEHOUSE, A CONDOMINIUM", dated \_\_\_\_\_, made by \_\_\_\_\_, Virginia, attached hereto as EXHIBIT B, both of which Exhibits are incorporated herein by reference; and

WHEREAS, it is the desire and intention of the Declarant to submit the property that it owns, afterwards referred to as the "Property", to the provisions of the Condominium Act and thereby create a Condominium.

NOW, THEREFORE, the Declarant states as follows:

**1. PURPOSE; NAME, ADDRESS AND LOCATION; LEGAL DESCRIPTION; PORT WARWICK CONSERVANCY.**

1.1. Purpose. The purpose of this Declaration is to submit the realty and improvements of the above-mentioned property to condominium ownership and use in the manner prescribed by the Laws of the Commonwealth of Virginia.

1.2. Name, Address and Location. The name of this condominium is THE FAIRWAYS AT STONEHOUSE, A CONDOMINIUM. The Condominium is located \_\_\_\_\_, Williamsburg, Virginia.

1.3. The Land. The real property described in Exhibit A and Exhibit B is the land hereby submitted to condominium ownership. Such property is subject to such easements, restrictions, reservations and rights-of-way of record, together with those contained or provided for in this instrument and the Exhibits attached hereto at such time as they become subject to the terms hereof.

1.4. Effect. All of the provisions of this Declaration of Condominium and all Exhibits attached hereto shall be binding upon all Unit Owners and are enforceable equitable servitudes running with the land and existing in perpetuity until this Declaration is revoked and the Condominium is terminated as provided herein. In consideration of receiving, and by acceptance of a grant, devise or mortgage, all grantees, devisees or mortgagees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through or under such persons agree to be bound by the provisions hereof. Both the burdens imposed and the benefits granted by this instrument shall run with each Unit as herein defined.

## **2. CREATION OF A CONDOMINIUM; SURVEY AND DESCRIPTION OF IMPROVEMENTS.**

2.1. Submission of Property. The Declarant hereby submits the Property as more particularly bounded and described on Exhibit B to the provisions of the Condominium Act, and further declares that on and subject to the terms and conditions hereinafter set forth, the Property shall be held, conveyed, leased, rented and occupied, improved and/or encumbered subject to the provisions of the Condominium Act and the covenants and restrictions hereinafter set forth, including the By-Laws of the "Association" and the Declarant further declares that the Property shall be a condominium known as "THE FAIRWAYS AT STONEHOUSE, A CONDOMINIUM".

2.2. Survey. On Exhibit B there is a survey of the land, graphic description and plot plan of the improvements constituting the condominium, identifying the Units and Common Elements and their relative locations and approximate dimensions. Each Unit is identified on Exhibit B by a specific number. No Unit bears the same number as any other Unit.

## **3. DEFINITION OF TERMS.**

The terms used in this Declaration and the Exhibits attached hereto shall have the meanings stated as follows, unless the context otherwise requires:

3.1. "Assessment" means a share of the funds required for the payment of Common Expenses which is assessed against the Unit Owners from time to time.



3.2. "Association" means THE FAIRWAYS AT STONEHOUSE CONDOMINIUM ASSOCIATION, INC., a Virginia non-stock corporation, which is the entity responsible for the operation of the Condominium.

3.3. "Board" or "Board of Directors" means the Board of Directors of the Association responsible for the administration of the Association.

3.4. "By-Laws" means the By-Laws of the Association as they exist from time to time.

3.5. "Common Elements" means all portions of the Condominium Property other than the Units.

3.6. "Common Expenses" means all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the Condominium Instruments.

3.7. "Common Profits" means the excess of all receipts of the Association, including, but not limited to, assessments, rents, profits and revenues on account of the Common Elements, in excess of the amount of Common Expenses.

3.8. "Condominium" means that form of ownership of real property which is created pursuant to the laws of the Commonwealth of Virginia which is comprised of Units that may be owned by one or more persons and there is appurtenant to each Unit an undivided share in the Common Elements. The term shall also mean THE FAIRWAYS AT STONEHOUSE, A CONDOMINIUM, as established by this Declaration.

3.9. "Condominium Act" means the Condominium Act of the Commonwealth of Virginia as set forth in Section 55-79.39, et seq., of the Code of Virginia of 1950, as the same exists at the time of recording this Declaration in the Clerk's Office of the Circuit Court of James City County, Virginia.

3.10. "Condominium Instruments" shall be a collective term referring to this Declaration, By-Laws, plats and plans, recorded pursuant to the provisions of the Condominium Act. Any exhibit, schedule or certification accompanying a Condominium Instrument and recorded simultaneously therewith shall be deemed an integral part of that Condominium Instrument. Any amendment or certification of any Condominium Instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the

affected Condominium Instrument, so long as such amendment or certification was made in accordance with the provisions of the Condominium Act and this Declaration.

3.11. "Condominium Property" means and includes the land and personal property hereby subjected to condominium ownership and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

3.12. "Condominium Unit" means a Unit together with the undivided interest in the Common Elements appertaining to that Unit.

3.13. "Declarant" means THE FUTURA GROUP, L.L.C., which has created this Condominium.

3.14. "Declaration" means this instrument and all Exhibits attached hereto.

3.15. "Institutional Lender" means a state or federal savings or commercial bank or savings and loan association or trust company, insurance company, real estate investment trust, pension fund, or an agency of the United States Government, mortgage company or like entity holding a mortgage on a Unit, and their successors and assigns.

3.16. "Limited Common Element" shall mean a portion of the Common Elements reserved for the exclusive use of one or more, but less than all, of the Units.

3.17. "Assignable Limited Common Element" shall mean a portion of the property which may be assigned to a specific Unit owner for that Unit owners exclusive use.

3.18. "Occupant" means the person or persons other than the Unit Owner in actual possession of a Unit.

3.19. "Person" means a natural person, corporation, partnership, association, trust or other entity capable of holding title to real property, or any combination thereof.

3.20. "Unit" means a portion of the Condominium designed and intended for individual ownership and use.

3.21. "Unit Owner" means one or more Persons who own a Condominium Unit

The definitions herein contained shall prevail as the context requires whether or not the same are capitalized in their usage herein.

#### **4. INTEREST IN COMMON ELEMENTS; LIMITED COMMON ELEMENTS; OWNERSHIP AND BOUNDARIES OF UNITS.**

##### 4.1. Interest in Common Elements; Common Elements and Limited Common Elements; Units Defined.

4.1.1. Interest in Common Elements: Each Unit Owner shall own, as an appurtenance to his Unit, an equal undivided interest in the Common Elements. The percentage of undivided interest of each Unit shall not be changed without the unanimous consent of all Unit Owners. No Unit Owner shall bring action for partition or division of his undivided interest in the Common Elements.

4.1.2. Common Elements: The Common Elements shall be all areas in the building not included in the definition of Unit. Specifically, the common elements include, but are not limited to, the streets and drive aisles on the Condominium Property, the parking spaces not assigned as limited common elements, building exteriors, the roofs, the grounds outside the building, the dumpsters and dumpster pads and the community signage.

4.1.3. Limited Common Elements: The driveways and parking spaces adjacent to each Unit, all patios, stoops, decks and balconies shall be limited common elements for the exclusive use of the Unit owner to which said limited common area appertains. Windows and doors are limited common elements. With respect to windows and doors, unit owners will have responsibility for breakage, but not replacement from deterioration.

4.2. Unit Boundaries. A Unit consists of an individual dwelling unit lying within the boundaries described in paragraphs 4.2.1 and 4.3.2.

##### 4.2.1. Horizontal Boundary: Upper and Lower Boundaries.

The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:

4.2.1.1. Upper Boundary: The horizontal plane formed by the lower surface of the unfinished ceiling material.

4.2.1.2. Lower Boundary: The horizontal plane existing within the perimetrical boundaries formed by the upper surface of the subfloor, the material lying immediately below any flooring material, such as tile, vinyl or carpet.

4.2.2. Perimetrical Boundary: The perimetrical boundaries of the Unit shall be the vertical planes of the inner surfaces of the undecorated walls bounding the Unit extended to intersections with each other and with the Upper and Lower Boundaries, provided, however, a Unit shall be deemed to include all pipes (not including water pipes), conduits, wiring, flues hot water heaters and HVAC equipment which serve only one Unit, wherever located.

4.2.2.1. Where there is an aperture in any perimetrical boundary, including, but not limited to, windows and doors, the vertical boundary shall be deemed not to include any window or door (including the frame therefor) in such aperture which shall be a Limited Common Element.

4.3. Right to Alter. The Declarant reserves the right to alter the interior design, boundaries and arrangements of all Units as long as the Declarant owns the Units so altered. Said alteration of boundaries shall be accomplished by an amendment to this Declaration, which need only be signed by the Declarant without the approval of any other party. The Declarant shall collaterally reapportion, if necessary, the shares of ownership in the Common Elements appurtenant to the Units concerned. Any such alteration shall be accomplished in compliance with Sections 55-79.69 through 55-79.71 of the Code of Virginia.

4.4 Maintenance Easement. There shall exist, as a Common Element, an easement through each Unit for the ducts, pipes, conduits, plumbing, wiring or other facilities for the furnishing of utility services to the Units, ties for the furnishing of utility services to the Units and the Common Elements, and for maintaining, repairing, servicing and replacing same. Any pipes, ducts, wires, conduits, electrical panels, plumbing, drains or other utility services serving only one Unit are appurtenant to such Unit and are not part of the Common Elements.

## **5. SUBDIVIDING OF UNITS; COMBINATION OF UNITS**

No Unit may be divided or subdivided into smaller Units. One or more Units may be combined upon obtaining the consent of the Board of Directors, which consent may not be unreasonably withheld, and upon the written agreement of the Unit owner of the affected units that all assessments will be made based on the original number of Units.

## **6. EASEMENTS; SIGNAGE.**

6.1. Perpetual Non-Exclusive Easement. The Common Elements are hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the Unit Owners in the Condominium for their use for all proper and normal purposes, including the providing of services for the benefit of one or more Units including units which may be created on additional land.

6.2. Easement for Unintentional and Non-Negligent Encroachments. In the event that any Unit or Common Element shall encroach upon any other Unit or Common Element for any reason other than the purposeful negligent act of any person, then an easement appurtenant to such shall exist for so long as such encroachment shall naturally exist.

6.3. Utility Easements. Utility easements are reserved and granted, by the Board of Directors on behalf of the Association through the Condominium Property as may be required for construction and maintenance of utility services in order to adequately serve the Condominium.

6.4. Ingress and Egress Easement. All unit owners shall have an easement for their benefit and that of all of their invitees to utilize such part as the common elements as are designated for vehicular traffic for ingress and egress to and from the Units.

6.5. Use. The use of any easement by a Unit Owner shall be subject to all of the provisions of this Declaration, as the same may exist from time to time.

6.6. Survey Exhibit - Easements. The Board of Directors shall have the right to create for others, or reserve unto itself, such easements as are necessary to accomplish the purposes referred to in this paragraph 6. Further, the Board of Directors shall have the unequivocal right, without the joinder of any other party, to grant such easements within the Common Elements (ingress, egress and maintenance) to such parties as the Declarant deems fit. If such easement is

granted, as of the date hereof, the portion thereof that falls within the confines of the Condominium Property shall be governed by the language thereon or may be created by separate document. The responsibility for the maintenance of such easements, if any, shall be as provided for therein, and if no such provision is made, the Association shall be responsible for the maintenance and care thereof. The Declarant, or its designee, shall have the right, but not the obligation, to enter the Condominium Property for the purpose of constructing, maintaining and repairing said easements and the equipment thereon. Should the Declarant grant additional easements which connect with or are intended to supplement, replace or relocate the easements, the same shall automatically be part of the easements provided herein as if originally set forth.

6.7. To Facilitate Sales. The Declarant and its duly authorized agents, representatives, employees, successors and assigns may maintain a sales office and model Unit in the Condominium Units, for the purpose of sales to third party purchasers. The sales office and/or model Unit may be located in any one of the unsold Condominium Units or elsewhere in a separate structure on the Common Elements and, if in an unsold Unit, shall consist of the entire Condominium Unit and may be relocated at any time to any other Condominium Unit held by the Declarant and then unsold. The Declarant further reserves for itself, its successors and assigns, the right to place signs on the Condominium to attract potential purchasers and facilitate the sale of Condominium Units, until all such Condominium Units have been sold to third party purchasers. In the event the Declarant or any of its duly authorized agents, representatives or employees damages any part of the Common Elements in the exercise of the foregoing right, the Declarant shall be responsible for the prompt repair of such damage.

6.8. Additional Easements. The Declarant reserves unto itself, or its designee, the unequivocal right to create additional easements over, upon or through the Condominium Property and the Additional Land shown on the Condominium Plat, at any time, during its period of control for any purpose, without the joinder of the Association or any Unit Owners whomsoever; provided, however, that said easements so created shall not cause a taking of all or any part of a Condominium Unit. However, if requested, the Association and the Unit Owners shall join in the creation thereof.

6.9. Easement for Access and Support.

6.9.1 Access. The Declarant reserves in favor of the Declarant and the managing agent and/or any other person authorized by the Board of Directors, the right of access to any Unit as provided in Section 55-79.79 of the Condominium Act. In case of emergency, such entry shall be immediate whether

or not the Unit Owner is present at the time. Further, until the expiration of the warranty period, such entry shall be permitted to perform warranty-related work (for the benefit of the Unit being entered, other Units or the Common Elements) whether or not the Unit Owner consents or is present at the time.

6.9.2 Support. Each Unit and Common Element shall have an easement for lateral and subjacent support from every other Unit and Common Element which provides lateral or subjacent support thereto.

## **7. COMMON EXPENSE; COMMON SURPLUS.**

Each Unit shall share in the Common Surplus and be liable for the Common Expenses in the same percentage as the percentage representing the undivided interest of each Unit in the Common Elements as shown on Exhibit C. The right to share in the Common Surplus does not include the right to withdraw or to require payment or distribution thereof except upon termination and dissolution of the Condominium.

## **8. ADMINISTRATION OF THE CONDOMINIUM; THE ASSOCIATION; MEMBERSHIP; REPORTS TO MEMBERS AND LENDERS; VOTING.**

8.1. The Association. The Association shall administer the operation and management of the Condominium Property and undertake and perform all acts and duties incident thereto in accordance with the provisions of this Declaration and the Condominium Act.

8.2. Membership. Each Unit Owner shall automatically become a member of the Association upon his acquisition of title to any Unit and said membership shall terminate automatically upon said Unit Owner being divested of title to such Unit, regardless of the means by which ownership may be divested. No person holding a lien, mortgage or other encumbrance upon any Unit shall be entitled, by virtue thereof, to membership in the Association or to any of the rights or privileges of such membership.

8.3. Powers of the Association and Board of Directors. The Board of Directors shall be empowered to take all actions on behalf of the Association except those actions reserved exclusively for the membership by the Condominium Act. In the administration of the Condominium, the Association through the Board of Directors shall have, and is hereby granted, the authority and power to enforce the provisions of this Declaration, levy and collect

assessments in the manner hereinafter provided, to adopt, promulgate and enforce such Rules and Regulations governing the use of the Units and Common Elements as the Board of Directors of the Association may deem to be in the best interest of the Condominium and such other powers and duties as are set forth in the Bylaws. The Association shall have all of the powers and duties set forth in the Condominium Act. Further, the Association shall have the right, when determined by the Board of Directors to be in the best interest of the Condominium Unit Owner, to grant non-exclusive licenses, easements, permits, leases or privileges to any individual or entity, including Non-Unit Owners, which affect the Common Elements, and to alter, add to, relocate or improve the Common Elements; provided, however, the Board of Directors shall not have the authority to contract for improvements to the common elements which will constitute upgrades in materials or provide new facilities which will cost in excess of five (5) percent of the current annual budget, without the written consent of the unit owners to which two-thirds (2/3) of the votes in the Association appertain.

#### 8.4. Reports to Lenders.

A. So long as an Institutional Lender of any Unit is the owner or holder of a mortgage or deed of trust encumbering a Unit in the Condominium the Association shall furnish said Institutional Lender with one (1) copy of the annual financial statement and report of the Association pertaining to the Unit upon which the mortgage is held, provided said Institutional Lender requests same.

B. A first mortgagee, upon request, will be entitled to written notification from the Association of any default in the performance by the individual Unit Owner of any obligation under the Condominium Instruments which is not cured within sixty (60) days.

8.5. Insurance Reporting. In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting it and the Unit Owners, the Association shall give notice of the exposure within reasonable time to all Unit Owners who may be exposed to the liability and they shall have the right to intervene and defend.

A copy of each insurance policy obtained by the Association shall be made available for inspection by Unit Owners at reasonable times.

8.6. Voting. The voting of each Unit Owner shall be governed by the provisions of the By-Laws.



8.7. Declarant Control. The Declarant hereby reserves unto itself, or a managing agent or some other person or persons selected by the Declarant, the right to appoint and remove all of the officers of the Association and/or members of the Board of Directors thereof and to exercise the powers and responsibilities otherwise assigned by the Condominium Instruments and/or the Condominium Act to the Association, the officers or executive organization thereof, for a period of five (5) years from the date of settlement of the first Condominium Unit sold or until the Declarant has conveyed Units to which three-fourths (3/4) of the undivided interests in the Common Elements appertain, whichever occurs first. For the purposes of the preceding sentence only the calculation of the fraction of the undivided interests shall be based upon the total undivided interests assigned or to be assigned to all Units registered with the Virginia Real Estate Board pursuant to Section 55-79.92(b) of the Code of Virginia, 1950, as amended.

8.8. Management Agreement. The Association may enter into an agreement with any person, firm or corporation for the administration, maintenance and repair of the Condominium Property and may delegate to such contractor or manager such of the powers and duties of the Association as the Association and such person, firm or corporation shall agree.

Any agreement for professional management of the Condominium project, or any other contract providing for services of the developer, sponsor or builder, may not exceed two (2) years. Any such agreement must provide for termination by the Association without cause and without payment of a termination fee on ninety (90) days, or less, written notice.

## **9. USE AND OCCUPANCY, USE OF COMMON ELEMENTS**

9.1. Use and Occupancy; Leasing. Each Unit depicted on the Plans is hereby restricted to residential use as a single family residence by the owner or owners thereof, their immediate families, guests and invitees. No more than six (6) persons shall be permitted to occupy a three (3) bedroom unit. No Unit shall be leased for a period of less than one (1) year. No Unit Owner may lease less than the entire unit.

9.1.1. Ownership by Entity. In the event that other than a natural person is a Unit Owner, said entity shall, prior to the purchase of such Unit, designate the persons who are to be the permanent Occupant of such Unit. Such entity shall thereafter have the right to designate other persons as the Occupants of such Unit. All provisions of this Declaration shall apply to such designated Occupants as though they had title to such Unit and the entity owning such Unit

shall be bound thereby. These provisions of paragraph 9 of the Declaration shall not be applicable to the Declarant or to any corporation formed or controlled by the Declarant.

9.1.2. General Use Restriction. No person shall use the Condominium Property, or any part thereof, in any manner contrary to the Condominium Instruments. Home occupation use shall be permitted so long as the business conducted is not a nuisance to other unit owners and does not require employees.

9.1.3. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of any or all of the Condominium Property, and all laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the Condominium Property shall be the same as the responsibility for maintenance and repair of the property concerned.

9.1.4. Nuisances. No nuisance or any use or practice that is the source of unreasonable annoyance to other Unit Owners or which interferes with the peaceful possession and proper use of the Condominium Property by the Unit Owners is permitted provided. No Unit Owner or Occupant shall permit or suffer anything to be done or kept upon the Condominium Property or his Unit which will increase the rate of insurance on the Condominium.

9.1.5. Applicability to the Declarant. Neither the Unit Owners nor the Association, nor their use of the Condominium, shall interfere with the Declarant's completion and sale of the Condominium Units. Anything contained herein to the contrary notwithstanding, the Declarant may make such use of any unsold Unit and the Common Elements as may facilitate the sale or leasing of any Unit in the Condominium.

9.1.6. Time-Sharing Estates. A Unit Owner shall not permit his ownership interests to be divided among any type of time-sharing estate, which shall be defined to include all interests in which title, use, occupancy or possession circulates among owners of time shares according to a fixed or floating time schedule on a periodic basis occurring over any period of time; such prohibited time-sharing estates shall include, by way of example and without limitation, the following:

9.1.6.1. An "interval estate", meaning a combination of (i) an estate for years in a Condominium Unit, during the term of which title to the

Condominium Unit rotates among the time-sharing owners thereof, vesting in each of them in turn for periods established by a fixed recorded schedule, with the series thus established recurring regularly until the term expires, coupled with (ii) a vested undivided fee simple interest in the remainder in that Condominium Unit, the magnitude of that interest having been established by Declaration or by Deed creating the interval estate; and

9.1.6.2. A "time-span estate", meaning a combination of (i) an undivided interest in a present estate in fee simple in a Condominium Unit, the magnitude of that interest having been established by Declaration or by Deed conveying the time-span estate, coupled with (ii) the exclusive right to possession and occupancy of that Condominium Unit during a regularly recurring period designated by that Deed or by a recorded document referred to therein.

9.2. Rules and Regulations. All Unit Owners and other persons shall govern their conduct and use the Condominium Property in accordance with the Rules and Regulations promulgated by the Association and the provisions of this Declaration and the By-Laws of the Association.

## **10. MAINTENANCE AND REPAIR OF THE CONDOMINIUM PROPERTY; ALTERATIONS AND IMPROVEMENTS.**

10.1. Maintenance by Association. The Association, at its expense, shall be responsible for and shall maintain, repair and replace all of the Common Elements, Limited Common Elements and Assignable Limited Common Elements. Painting of the outside surface of exterior doors shall be the sole and exclusive responsibility of the Association.

10.2. Maintenance by Unit Owners. Each Unit Owner shall, subject to the other provisions of this Declaration, maintain, repair and replace, at his expense, all portions of his Unit including, but not limited to, all broken or damaged doors and windows, electric panels, electric wiring, electric outlets and fixtures, fireplaces, chimney, flues, refrigerators, dishwashers and other appliances, drains, plumbing fixtures and connections, interior surfaces of all walls, floors and ceilings, and all other portions of his Unit. Replacement of windows and doors due to casualty loss or deterioration shall be the responsibility of the Association. Doors or windows broken by reason of negligence or intentional acts of the Unit Owners or their invitees shall be the responsibility of the Unit Owner. The Unit Owners shall be financially responsible for the maintenance of the Limited Common Elements; however, all work shall be performed by the Association and assessed to the Unit Owners.

10.3. Liability of Unit Owner for damages. Should a Unit Owner undertake unauthorized additions and modification to his Unit, as specified above, or refuse to maintain and make repairs as required, or should a Unit Owner, by his negligent action or inaction, cause any damage to another Unit or the Common Elements, the Association may undertake such repairs, replacements or maintenance, and levy a special assessment for the cost thereof against said Unit Owner. In the event a Unit Owner threatens to or violates the provisions hereof, the Association shall also have the right to proceed in a court of equity for an injunction to seek compliance with the provisions hereof. Further, in the event that water damage is incurred in a Unit by reason of water from another Unit, the Unit from which the water originated shall be liable for payment of any deductible under the Master Policy. Each Unit owner shall be responsible for damage to his Unit caused by hot water heater failure, plumbing leaks, overflows or other appliance failure in his Unit or from another Unit.

10.4. Loss Prevention and Allocation of Responsibility.

10.4.1 The Unit Owners are required to maintain the interior of the Unit at all times in a manner which would prevent the development of mold, mildew or similar toxic growth. In the event that mold or mildew or other health-impairing microbial growths occur in the Unit, the Unit Owner shall take immediate action to remove the growths, and sterilize the unit, and the Unit Owner and/or occupant is to also immediately notify the Association. If mold or mildew or other growth causes damage to the portions of the Unit which are maintained by the Association, or to common elements, or to any other Unit, the costs of all repairs and remediation, other than that which is covered by such insurance as the Association may choose to obtain from time to time, will be borne by the Unit Owner of the unit from which the mold originated, unless the Unit Owner can establish that the damage was caused by the negligent failure of the Association to maintain the common elements. Repairs to the common elements shall be made by the Association, and the cost will be assessed against the Unit from which the mold or mildew originated, to the maximum extent allowed by law. The assessment will be secured by a lien to the maximum extent allowed by law, and if a lien is allowed then the amount due will be collected in the same manner as any other assessment under this Declaration. In any event the unit owner will be responsible for all costs and attorneys' fees incurred by the Association in connection with the performance of any maintenance or corrective action needed, and in connection with the collection of any amounts owed by the unit owner pursuant to this section of the Declaration.

10.4.2 Unit Owners are also required to inspect all appliances, and all related hoses and connections, on a regular basis in order to ensure that these

are all in proper working order, and in order to prevent any leaks or other incidents which could cause damage to the condominium property. The Association may also inspect appliances and related equipment at such times as the Board of Directors determines appropriate, and the Association is authorized to enter Units for this purpose, following reasonable notice, and may require owners to undertake maintenance deemed to be appropriate as a preventative measure.

10.4.3 When a Unit is expected to be vacant or unoccupied for a period of 72 hours or more, it shall be the responsibility of the Unit Owner to turn off the water supply to his or her Unit, including the water supply to the refrigerator, dishwasher and hot water heater during such period of time, and to turn off the electric power to the hot water heater. Additionally, the Unit Owner shall run the air conditioning unit during such time to maintain a proper humidity level during such absence, for the purpose of preventing the occurrence of mold or other toxic substances which could occur if moisture enters the Unit during such times. Further, the Unit Owner is to arrange to have someone visit and inspect any unoccupied Unit periodically (not less than monthly), in order to determine whether any leaks or damage has occurred. If any leak or damage is found, the owner and/or occupant shall notify the Association immediately.

10.4.4 Any Unit Owner causing damage to any property in the Condominium by reason of the installation, operation, or maintenance of any item or equipment located in his apartment (including fixtures), or by his or her failure to comply with the requirements of this section of the Declaration, shall be strictly liable to the owner of any other Unit damaged, and to the Association as to the common elements or any Unit components for which the Association is responsible, for all damages caused, without regard to the negligence or fault of the owner from whose Unit the cause of the damage originated.

10.5. Insurance Proceeds. Whenever any maintenance, repair or replacement of any items for which a Unit Owner is responsible is made necessary by any loss covered by insurance maintained by the Association, the proceeds of the insurance received by the Association, or the Insurance Trustee, shall be used for the purpose of accomplishing such maintenance, repair or replacement. The Unit Owner shall be required to pay all of the costs thereof that exceed the amount of the insurance proceeds.

10.6. Right of Entry by Association. Whenever it is necessary to enter any Unit for the purpose of inspection, including inspection to ascertain a Unit Owner's compliance with the provisions of this Declaration, or for performing any maintenance, alteration or repair to any portion of the Common Elements or Unit,

an authorized agent of the Association may enter such Unit, or to go upon the Common Elements; PROVIDED, that such entry shall be made only at reasonable times and with reasonable advance notice. In the case of emergency such as, but not limited to, fire or hurricane, entry may be made without notice or permission. The Unit Owners acknowledge that the Association may retain a master pass key to all Units in the Condominium. Each Unit Owner does hereby appoint the Association as his agent for the purposes herein provided.

10.7. Alterations and Improvements. Any unit owner desiring to make any alterations or improvements to his unit shall apply to the board of directors for permission for same and consent shall not be unreasonably withheld. Permission shall not be withheld unless the alteration will adversely impact the structural integrity of the building or alter the exterior appearance of the building. The Board may require an opinion of a structural engineer of its choosing, the cost of which shall be borne by the requesting unit owner. No Unit Owner shall cause any improvements or changes to be made on the exterior of the building, including painting or other decoration, without the written permission of the Board of Directors and the Declarant (so long as the Declarant still owns any Units). No Unit Owner shall cause to be made any modification or installation of electrical wiring, whether inside or outside the Unit or in any manner change the appearance of any portion of the Condominium Property without the written permission of the Board of Directors and the Declarant, during its period of control. No Unit Owner may cause any material puncture or break in the boundaries of his Unit without the written permission of the Association and the Declarant, so long as Declarant owns any Unit.

## **11. APPORTIONMENT OF TAX OR SPECIAL ASSESSMENT IF LEVIED OR ASSESSED AGAINST THE CONDOMINIUM PROPERTY.**

11.1. Responsibility. If any taxing authority levies or assesses any tax or special assessment against the Condominium Property as a whole, and not the individual Units, the same shall be paid as a Common Expense by the Association and assessed to the Unit Owners. In such event, the amount due shall constitute a lien prior to all mortgages and encumbrances upon any Unit to the same extent as though such tax or special assessment had been separately levied by the taxing authority upon each Unit.

11.2. Personal Property Tax. All personal property taxes levied or assessed against personal property owned by the Association shall be paid by the Association and shall be a Common Expense.

## **12. INSURANCE PROVISIONS.**

The insurance which shall be purchased and maintained for the benefit of the Condominium shall be governed by the following provisions:

12.1. Purchase of Insurance. All insurance purchased pursuant to this paragraph 12 shall be purchased by the Association for the benefit of the Association, the Unit Owners and their respective mortgagees, as their interest may appear, and shall provide for the issuance of certificates of insurance and mortgagee endorsements to any or all of the holders of first mortgages. The policies shall provide that the insurer waives its rights of subrogation as to any claims against the Unit Owners and the Association, their respective servants, agents and guests. Each Unit Owner and the Association hereby agree to waive any claim against each other and against other Unit Owners for any loss or damage for which insurance hereunder is carried where the insurer has waived its rights of subrogation as aforesaid. All Institutional Lenders which hold first mortgages on Units totaling more than \$500,000.00 shall, if they so request, have to right to reasonably approve the amount of insurance. In the event the Association fails or refuses to provide the insurance herein provided, said Institutional Lenders shall have the right to pay for same and be subrogated to the lien rights of the Association as herein provided against all the Units on which they have deeds of trust in order to recover any such payments.

12.2. Cost and Payment of Premiums and Deductibles. The cost of obtaining all insurance hereunder, excluding only the insurance as may be purchased by individual Unit Owners, is declared to be a Common Expense, as are any other fees or expenses incurred which may be necessary or incidental to carry out the provisions hereof. In the event that the Master Policy provides coverage for the primary purpose of repairing or restoring one or more Units, the affected Unit Owners shall pay the deductible on a pro rata basis. If not paid within thirty (30) days from the date of settlement for same is rendered, such amount shall be a lien on the pertinent Unit.

12.3. Unit Owner's Responsibility. Each Unit Owner shall obtain insurance for his Unit, at his own expense, affording coverage upon his own Unit and its contents and for his own liability and living expenses as he deems advisable. A certificate evidencing such insurance shall be provided to the Secretary of the Association or managing agent. All such insurance shall contain the same waiver of subrogation that is referred to herein and shall waive any right to contribution. Reference is made to Section 10.3 herein which makes certain provisions for Unit Owner liability for repairs and damages to other Units and the Common Elements.

Any insurance deductible under the master casualty policy shall be paid by the unit owners' association as a common expense if the cause of the damage to or destruction of any portion of the condominium originated in or through the common elements or an apparatus located within the common elements. However, a unit owner shall pay such deductible if the cause of any damage to, or destruction of, any portion of the condominium originated in a unit or any component thereof without regard to whether the unit owner was negligent.

12.4. Coverage. The following coverage shall be obtained by the Association:

12.4.1. The buildings and all other insurable improvements upon the land shall be insured for loss destruction or damage by fire or other hazards with such coverages as shall be determined annually by the Association Board of Directors in consultation with such insurance advisors as they may deem necessary and appropriate, provided, however, such coverage for destruction of the building, or part thereof, shall be full replacement cost coverage. After such consultation, the Board of Directors shall have the authority to modify, add or delete any type of coverage or deductible associated therewith by Resolution and such changes shall be published to the members not less than thirty (30) days prior to the effective date. The master policy shall not cover the cost to repair or restore any portion of a Unit as defined herein. The master policy shall not provide coverage for losses described in paragraph 10.3 above regarding water damage in a Unit or any loss involving a Unit. In the event that, for any reason, the Master Policy pays a claim for damage to the common elements caused by water emanating from a unit, the deductible shall be paid by the owner of the unit from which the water originated.

12.4.2. Comprehensive general public liability and property damage insurance in such an amount and in such form as shall be required by the Association in limits of not less than \$500,000.00 for bodily injury or death to any person; not less than \$1,000,000.00 for bodily injury or death resulting from any one accident or occurrence, and not less than \$50,000.00 for property damage. Said coverage shall include, but not be limited to, water damage, legal liability, hired automobile, non-owned automobile, and off-premises employee coverage. All liability insurance shall contain cross liability endorsements to cover liabilities of the Unit Owner to another.

12.4.3. Worker's compensation policies shall be obtained to meet the requirements of law.



12.4.4. Fidelity Bond coverage for all persons responsible for the funds of the Association.

12.4.5. Such other insurance as the Board of Directors of the Association may determine to be necessary from time to time.

12.5. Insurance Trustee. All insurance policies purchased in accordance with Paragraph 13.4.a. shall provide that all proceeds payable to the Association as a result of any insured loss, except those specifically herein excluded, shall be paid to an incorporated management company managing the Association (so long as such company maintains fidelity bonding) or a bank doing business in James City County, Virginia, and having trust powers which shall be designated from time to time by the Association as Insurance Trustee, whose appointment is subject to the reasonable approval by the Institutional Lender holding the greatest dollar amount of first mortgages on the Units. The Insurance Trustee shall not be liable for payment of premium, the renewal of the policies, the sufficiency or content of the policies, or for failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive said proceeds, as paid, and to hold the same in trust for the benefit of the Association, the Unit Owners and their respective mortgagees, as follows:

12.5.1. Proceeds received on account of damage to Common Elements shall be held in the same proportionment as the share in the Common Elements which is appurtenant to each of the Units.

12.5.2. Proceeds on account of damage to the Units shall be held in the following manner in undivided shares:

12.5.2.1. Partial Destruction When the Damage is to be Restored: For the benefit of the Unit Owners of the damaged Units in proportion to the cost of restoring the same suffered by each damaged Unit, upon the request of the Insurance Trustee, the Association shall certify to the Insurance Trustee the appropriate proportions, each Unit Owner shall be bound thereby and the Insurance Trustee may rely upon said certification.

12.5.2.2. Total Destruction of the Building When the Damage is not to be Restored: For all Unit Owners the share of each being in the same proportion as the Unit Owner's undivided share in the Common Elements which is appurtenant to his Unit compared with the other Unit Owners. In the event a mortgagee endorsement has been issued hereunder, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interest may appear.

12.6. Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to, or for the benefit of, the Unit Owners (after first paying or making provision for payment of the expenses, including a reasonable fee for services rendered, of the Insurance Trustee) in the following manner:

12.6.1. If the damage for which the proceeds were paid is to be reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying said costs shall be distributed to the Association.

12.6.2. If it is determined that the damage for which the proceeds are paid shall not be reconstructed, the proceeds shall be distributed to the Unit Owners for whom it is being held and their mortgagees as their interest may appear.

12.6.3. In making distribution to Unit Owners and their mortgagees, the Insurance Trustee may rely upon a certificate provided by the Association as to the names of the Unit Owners and mortgagees and their respective shares of the distribution. Upon request of the Insurance Trustee the Association shall forthwith deliver said certificate.

12.7. Association as Agent. The Association is irrevocably appointed agent for each Unit Owner, for each owner of a mortgage upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

12.8. Determination to Reconstruct. If any part of the Condominium Property shall be damaged by casualty the determination as to whether or not it shall be reconstructed shall be made in the following manner:

12.8.1. Common Element. If the damage is only to a Common Element the damaged property shall be reconstructed.

12.8.2. Damage to Units:

12.8.2.1. If the damage is to Units and if Units to which more than 70% of the Common Elements are appurtenant are found by the Board of Directors to be untenable, then the damaged property will not be reconstructed and the Condominium will be terminated (without agreement as elsewhere provided), unless within sixty (60) days after the casualty Unit Owners

owning 75% or more of the Common Elements agree in writing to such reconstruction. The proceeds of insurance shall be distributed to the unit owners in proportion to their respective interests in the Common Elements.

12.8.2.2. If the damage is to Units, but Units to which more than 50% of the Common Elements are appurtenant are found by the Board of Directors to be tenantable, the damaged property shall be reconstructed unless within sixty (60) days after the casualty the Owners of Units which represent 80% or more of the Common Elements appurtenant to all the Units agree in writing not to reconstruct.

12.8.3. Certificate. The Insurance Trustee may rely upon a certificate of the Association executed by its President or Vice President and Secretary or Assistant Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

12.9. Responsibility. If the damage is restricted to those parts of a Unit for which the responsibility of maintenance and repair is that of the Unit Owner then the Unit Owner shall be solely responsible for administering the reconstruction after casualty. The Unit shall be repaired immediately. In all other instances, the responsibility of reconstruction after casualty shall be that of the Association. The placing of administrative responsibility upon the Unit owner is not intended to negate the insurance coverage set forth in paragraph 12.4.1 hereinabove; provided, however, the Unit owner shall be financially responsible for reconstruction costs in excess of the funds received from the insurance proceeds.

12.10. Nature of Reconstruction. Any reconstruction after a casualty loss shall be substantially in accordance with the plans and specifications of the original building, or as the building was last constructed, subject to modification to conform with the then current governmental restrictions and codes, if required, or as may otherwise be agreed upon by the Association and all Institutional Lenders.

12.11. Estimates. In all instances hereunder, immediately after a casualty causing damage to the property for which the Association has the responsibility of maintenance and repair, the Association shall obtain a reliable, detailed estimate of the cost to reconstruct. Such cost may include professional fees and premiums for such bonds as the Board may desire or those required by any Institutional Lender involved.

12.12. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction by the Association, or if, at any time

during reconstruction or upon completion of reconstruction, the funds for the payment of the costs of reconstruction are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such assessments against Unit Owners for damage to Units shall be in proportion to the cost of reconstruction of their respective Units. Such assessments on account of damage to Common Elements shall be in accordance with each unit's percentage interest in the Common Elements. If, prior to commencement of any reconstruction, the insurance proceeds are not sufficient to defray the estimated costs of reconstruction, the special assessments against Unit Owners as herein provided must be paid in full before any of said insurance proceeds may be disbursed as hereinafter provided, so as to ensure there are sufficient funds currently available to complete said reconstruction. This requirement may be waived by the Association, but only upon approval by all Institutional Lenders.

12.13. Disposition of Proceeds. The proceeds of insurance and any special assessments, if any, collected on account of a casualty and deposited with the Insurance Trustee by the Association shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction in the following manner:

12.13.1. That portion of insurance proceeds representing damage for which the responsibility of reconstruction lies with the Unit Owner: to such contractors, suppliers, and personnel for work done, materials supplied or services required for such reconstruction. Payments shall be in such amounts and at such times as the Unit Owners may direct, or if there is a mortgagee endorsement, to such payee as the Unit Owner and the mortgagee direct. Nothing contained herein shall be construed to limit or modify the responsibility of the Unit Owner to make such reconstruction.

12.13.2. If the amount of the estimated cost of reconstruction is less than \$25,000.00, and is the responsibility of the Association: The construction fund shall be disbursed directly to the Association in payment of such costs and upon the Association's order, provided, however, that upon the request of a mortgagee which is a beneficiary of the insurance policy, the construction fund shall be disbursed as the Association and such mortgagee may properly direct.

12.13.3. If the amount of the estimated cost of reconstruction is more than \$25,000.00, and is the responsibility of the Association, then the reconstruction funds shall be applied by the Insurance Trustee to the payment of such costs and shall be paid for the account of the Association, from time to time, as the work progresses. Said Trustee shall make payments upon the written

request of the Association accompanied by an appropriate certificate signed by both an officer of the Association and by the architect or engineer in charge of the work, setting forth:

12.13.3.1. That the sum then requested either has been paid by the Association or is justly due and certifying that the sum requested does not exceed the value of the services and materials described in the certificate.

12.13.3.2. That except for the amounts stated in said certificate to be due as aforesaid, there is no outstanding indebtedness known which may become the basis of vendor's, mechanic's or materialman's liens.

12.13.3.3. That the cost, as estimated, or work remaining to be done subsequent to the date of said certificate, does not exceed the amount of funds remaining in the hands of the Insurance Trustee after the payment of the sum so requested.

12.13.4. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction shall be from insurance proceeds and shall first be applied to reconstruction of the Common Elements and then to the Units. If there is a balance in a construction fund after the payment of all costs of reconstruction, said balance shall be distributed to the Association.

12.13.5. Payment for any reconstruction shall be made by the Insurance Trustee and the Unit Owner, or the Association, only upon presentation of bills for materials in place, and upon supplying or furnishing labor, services and materials or work covered and included in such statements for which failure to pay might result in a lien on the Common Elements.

12.14. Effect of Mortgage Endorsements Concerning Insurance Proceeds. In the event a mortgagee endorsement has been issued relative to any Unit, the share of the Unit Owner shall be held in trust for the mortgagee as heretofore provided; provided, however, that no mortgagee shall have the right to determine or participate in the determination as to whether or not the damaged property shall be reconstructed, and no mortgagee shall have the right to apply, or have applied to, the reduction of its mortgage debt any insurance proceeds except distributions of such proceeds made to the Unit Owner and mortgagee where the responsibility for reconstruction is that of the Unit Owner. All mortgagees agree to waive the rights to said proceeds if the same are used pursuant to the provisions of this Declaration to pay for the restoration of such damage. The provisions hereof shall not affect the rights of the mortgagee, if any, to require any surplus proceeds to be distributed to it, over and above the

amounts actually used for such restoration. All covenants contained herein for the benefit of any mortgagee may be enforced by such mortgagee. Nothing contained herein, however, shall be construed as relieving the Unit Owner from his duty to reconstruct damage to his Unit as heretofore provided.

12.15. Authority of Association; Board of Directors. In all instances herein, except when a vote of the membership of the Association is specifically required, all decisions, duties and obligations of the Association with regard to insurance matters may be made by the Board of Directors. The Association and its members shall jointly and severally be bound thereby.

### **13. ASSESSMENTS; LIABILITY FOR COMMON EXPENSES, LIENS AND ENFORCEMENT; CONDEMNATION**

13.1. General Authority. The Association through its Board of Directors shall have the power to make, levy and collect regular and special assessments for Common Expenses and such other assessments as are provided for by the Condominium Act and the provisions of this Declaration and all other expenses declared by the Directors of the Association to be Common Expenses from time to time.

13.2. Unit Owner's General Liability-Off-site Amenities; Cable Television. Except as herein specified to the contrary, all assessments levied against Unit Owners and Units shall be on a uniform basis in the same proportion as the percentages of the undivided shares in the ownership of the Common Elements. Should the Association be the owner of any Unit(s), the assessment, which would otherwise be due and payable to the Association by the owner of such Unit(s), shall be a Common Expense. Any Common Expenses paid or incurred in making available the same off-site amenities or paid subscription television service to some or all of the Unit Owners shall be assessed equally against the condominium Units involved. Any Common Expenses paid or incurred in provided metered utility services to some or all of the Units shall be assessed against each condominium Unit involved based on its actual consumption of such services.

13.3. Payment. The assessment levied against the Unit Owner and his Unit shall be considered an annual obligation payable in such installments, and at such times, as may be determined by the Board of Directors of the Association.

13.4. Emergencies. If assessments levied are, or may prove to be insufficient to pay the costs of operation and management of the Condominium,

or in the event of emergencies, the Board of Directors shall have the authority to levy such additional assessment or assessments as it shall deem necessary.

### 13.5. Reserves.

13.5.1.1. Reserve Fund. The Board of Directors of Association in assessing for Common Expenses shall include therein a sum to be collected as a reserve fund for replacement of Common Elements for the purpose of enabling Association to replace Common Elements and mechanical equipment for which it has the responsibility to maintain and repair, as well as the replacement of personal property which may be a portion of the Condominium Property.

13.5.1.2. Operating Reserve Fund. The Board of Directors of the Association in assessing for Common Expenses may include therein a sum to be collected and maintained as a general operating reserve which shall be used to provide a measure of financial security during periods of special stress. Such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of assessment by Unit Owners or as a result of emergencies.

13.6. Separate Property. All monies collected by the Association shall, unless the same is collected for the benefit of others, be the separate property of the Association. Such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of the provisions of this Declaration. All monies received from assessments may be commingled with other monies held by the Association. No unit owner shall have the right to assign, hypothecate, pledge or in any manner transfer his interest therein, except as an appurtenance to his Unit. Such funds shall not be subject to attachment or levy by a creditor or judgment creditor of a Unit Owner. When the owner of a Unit shall cease to be a member of the Association by the divestment of his ownership of such Unit by whatever means the Association shall not be required to account to such owner of any share of the funds or assets of the Association.

13.7. Default. The payment of any assessment or installment thereof due to the Association shall be in default if such payment is not paid to the Association when due. If in default for in excess of ten (10) days, the delinquent assessment, or delinquent installments thereof shall bear interest at the rate equal to the maximum rate then allowed to be charged to individuals in the Commonwealth of Virginia. In the event that any Unit Owner is in default in payment of any assessments or installments thereof, owed to the Association, said Unit Owner shall be liable for all costs of collecting the same, including

reasonable attorney's fees and court costs. Additionally, the Association may accelerate the payment of the balance of the assessment for the current year.

13.8. No Waiver. No Unit Owner may exempt himself from liability for any assessment levied by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit for which the assessments are made or in any other manner.

13.9. Lien. The Association is hereby granted a lien upon each Condominium Unit, together with a lien on all tangible personal property located within said Unit (except that such lien upon the aforesaid tangible personal property shall be subordinate to prior bona fide liens of record), which lien shall secure the payment of monies from the Unit Owner for which he is liable to the Association, including all assessments, interest and expenses provided for in this Declaration and sums advanced on behalf of the Unit Owner in payment of his obligations as set forth in the Condominium Instruments and reasonable attorney's fees incurred as an incident to the enforcement of said lien. The lien granted to the Association may be foreclosed as provided in the Condominium Act. The lien granted to the Association shall further secure such advances for taxes and payments on accounts of Institutional Lenders, liens or encumbrances which may be advanced by the Association in order to preserve and protect its lien. The lien shall be effective, have priority, and be collected as provided by the Condominium Act.

13.10. Late Charge. If any monies from a Unit Owner, including assessments, are not paid within ten days from their due date there shall automatically be assessed a late charge equal to ten percent (10%) or \$25.00, whichever is greater, of such monies due, for each thirty days during which such monies are not paid. Additionally, at such time as the assessments become thirty (30) days past due, interest shall accrue on the unpaid balance at the rate equal to the maximum rate then allowed to be charged to individuals in the Commonwealth of Virginia on an annual basis.

13.11. Proviso Regarding Foreclosure. In the event that any person or Institutional Lender shall acquire title to any Unit by virtue of either foreclosure of a first mortgage or deed of trust, or a deed in lieu thereof, such acquirer of title, his successors and assigns, shall not be liable for the share of Common Expenses or assessments by the Association pertaining to the Condominium Unit or chargeable to the former Unit Owner or to the Unit which became due prior to acquisition of title as a result of the foreclosure, unless the share is secured by a claim of lien for assessments that is recorded prior to the recording of the foreclosed mortgage or deed of trust. Nothing herein contained shall be



construed as releasing the party liable for such delinquent assessments from the payment thereof or the enforcement of collection of such payment by means other than foreclosure. Following said acquisition, all Unit Owners of any nature, including, without limitation, a purchaser at a judicial sale or Institutional Lender, shall be liable for all assessments coming due while he is the Unit Owner.

13.12. Certificate of Status of Assessments. Any Unit Owner, mortgagee or lienholder may require the appropriate certificate as set forth in Section 55-79.84(h) of the Condominium Act. The Association may charge a fee for such certificate as allowed by the Condominium Act.

13.13. Succession of Delinquent Assessments. The common expenses assessed against any Unit, with interest, costs and reasonable attorney's fee shall be in lien upon such Unit in accordance with applicable law. Each such assessment, together with interest, costs and attorney's fee, shall also be the personal obligation of the person who was the owner of such Unit at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them.

13.14. No Election of Remedies. The institution of a suit at law for collection of any delinquent assessment may be maintained without waiving the lien securing the same or the right to proceed by foreclosure to attempt to effect such collection or suit at law for collection of the same. All Unit Owners do hereby waive pleading the theory of "elections of remedies" in any such proceedings.

13.15. Liens-Mechanics. The creation and enforcement of mechanic's and other liens against the Units and Condominium Property, except those created by this Declaration, shall be governed by the provisions of the Condominium Act.

13.16. Condemnation. Section 55-79.44 of the Virginia Condominium Act sets forth various provisions regarding condemnation. In the event of any condemnation award, first mortgagees shall share pro rata in the award based upon the reduction in value, if any, of their respective security and shall be made whole before distribution to any other interested party of the condemnation proceeds. The Unit Owners' Association shall have the authority to retain legal counsel in the event condemnation proceedings are instituted or anticipated which affect directly or indirectly any part of the property subject to this Declaration. Legal fees may be assessed by the Unit Owners' Association against Unit Owners if reasonably incurred in connection with such proceedings. The President of the Association, upon resolution of the Board of Directors, shall have the authority as attorney-in-fact for the Unit Owners to convey title to any

portion of the Common Elements (not including Limited Common Elements) which may be subjected to a condemnation proceeding or for which an offer is made for compensation in lieu of a condemnation proceeding.

13.17. Restraints on Alienation. No Unit shall be subject to any unreasonable restraints on alienation which would adversely affect the title or marketability of the Unit, or the ability of the mortgage holder to foreclose its first mortgage lien and thereafter to sell or lease the mortgaged Unit.

#### **14. TERMINATION.**

The Condominium may be terminated in the following manner:

14.1. Destruction. If it is determined because of the circumstances and in the manner provided in Paragraph 12.8 that the Condominium Property shall not be reconstructed, the Condominium will be terminated.

14.2. Agreement. The Condominium may be terminated at any time by the approval in writing of all Unit Owners and all record owners of mortgages on Units.

If the proposed termination is submitted to a meeting of the Association, and if the approval of the owners of not less than 80% of the Common Elements and their Institutional Lenders is obtained, in writing, not later than sixty (60) days from the date of such meeting, then the approving Unit Owners (through the Association), shall have an option to buy all of the Units of the disapproving Unit Owners for the period of one hundred twenty (120) days from the date of such meeting. The vote of those Unit Owners approving the termination shall be irrevocable until the expiration of the option. Any Unit Owner voting against termination, or not voting, may, within fifteen (15) days from the date the vote was taken, change or cast his vote in favor of termination by delivering written notification thereof to the Secretary of the Association. The option shall be upon the following terms:

14.2.1. Exercise of Option: The option shall be exercised by delivery, or the mailing by registered mail, of an agreement to purchase, signed by the Association, to each of the Unit Owners of the Units voting against termination. The agreement shall be subject to the purchase of all Units owned by Unit Owners not approving the termination.

14.2.2. Price. The sale price for each Unit shall be the fair market value as determined between the Unit Owner and the Association within thirty (30) days from the delivery of said agreement. In the absence of agreement on

the price of any Unit, the price shall be determined by an appraiser appointed by the Chairman of the local Board of Realtors. A judgment of specific performance of the sale, at the price determined by the appraiser, may be entered in any court of competent jurisdiction.

14.2.3. **Payment.** The purchase price shall be paid in cash.

14.2.4. **Form.** The contract shall be in the form of the Contract for Sale and Purchase then in use in James City County, Virginia.

14.2.5. **Closing.** The sale of all Units shall be closed simultaneously and within thirty (30) days following the determination of the sale price of the last Unit to be purchased.

14.3. **Certificate.** The termination of the Condominium shall be evidenced by a certificate of the Association executed by its President and Secretary certifying the fact of the termination, which shall become effective upon the certificate being recorded in the Clerk's Office of the Circuit Court of James City County, Virginia.

14.4. **Shares of Owners After Termination.** After termination of the Condominium the Unit Owners shall own the Condominium Property and all assets of the Association as tenants in common of undivided shares in the Common Elements appurtenant to the Units prior to termination so that the sum total of the ownership shall equal one hundred (100%) percent.

14.5. **Exclusive Rights Extinguished by Termination.** All exclusive rights of use of Common Elements shall be extinguished by virtue of the termination of the Condominium.

14.6. **Amendment.** This Paragraph 14 concerning termination cannot be amended without written consent of all Unit Owners and all record owners of mortgages upon the Units.

## **15. AMENDMENTS.**

An amendment may be proposed by either a majority vote of the Board of Directors of the Association, or by a 66 2/3% vote of the members present at a duly called and noticed meeting. The proposed amendment shall be distributed to the members along with a notice of the date, time, and place of the meeting at which the amendment will be discussed. Notice shall be given in a manner provided for in the Bylaws. The meeting shall be informational only; no vote shall be taken at the

meeting and no quorum is required. The proposed amendment shall be approved in writing by the unit owners of the units to which two thirds of the votes in the Association appertain pursuant to §55-79.71 of the Code of Virginia. As required by §55-79.71E of the Virginia Condominium Act, no amendment shall alter a Unit Owner's percentage in the Common Elements, alter the boundaries of any unit, alter his proportionate share in the Common Expense or Common Surplus, change a Unit Owner's voting rights, or alter the basis for apportionment of assessment which may be levied by the Association against a Unit Owner without the written consent of the Unit Owner, unless permitted by another section of the Condominium Act.

## **16. REMEDIES.**

16.1. Relief. Each Unit Owner and the Association shall be governed by and shall comply with the provisions of the Condominium Instruments as they may exist from time to time. A violation thereof shall entitle the appropriate party to the following relief: An action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, or any other action available pursuant to the Condominium Act or law. Suit may be brought by the Association, the managing agent, if any, Declarant, or, if appropriate, by one or more Unit Owners and the prevailing party shall be entitled to recover reasonable attorney's fees. Each Unit Owner acknowledges that the failure to comply with any of the provisions of the Condominium Instruments shall or may constitute an injury to the Association, the managing agent, if any, Declarant or the other Unit Owners, and that such injury may be irreparable.

16.2. Costs and Attorney's Fees. In any proceeding arising because of an alleged default, act, failure to act, or violation by the Unit Owner or Association, including the enforcement of any lien granted pursuant to this Instrument or its exhibits, the Association shall be entitled to recover the costs of the proceedings, (including expert witness costs) and reasonable attorney's fees for services of its attorney beginning with any attempts to gain compliance prior to the initiation of any legal proceeding and including all legal proceedings both trial and appellate. In any action by or against Declarant, where Declarant is the prevailing party, arising out of or concerning the Condominium Instruments or Declarant's obligations thereunder, Declarant shall be entitled to recover all costs of the proceedings, including reasonable attorney's fees at all levels including the trial and appellate level.

16.3. No Waiver. The failure of the Association, the managing agent, if any, a Unit Owner, or the Declarant to enforce any right, provision, covenant, or condition created or granted by the Condominium Instruments shall not constitute

a waiver of the right of said party to enforce such right, provision, covenant or condition in the future.

16.4. Rights Cumulative. All rights, remedies and privileges granted to the Association, the managing agent, if any, Declarant, or Unit Owner pursuant to any of the provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional right, remedies, or privileges as may be available to such party at law or in equity. Each Unit Owner agrees in any proceeding brought pursuant to the provisions hereof not to plead or defend the same on the theory of "election of remedies".

16.5. Venue; Waiver of Trial By Jury. Every Unit Owner or Occupant and all persons claiming any interest in a Unit do agree that in any suit or proceeding brought pursuant to the provisions of this Declaration, such suit shall be brought in the Circuit Court in and for James City County, Virginia, as the same is now constituted or any court in the future that may be the successor to the court contemplated herein. All such parties, except the Declarant, do further waive the right to trial by jury and consent to a trial by the court without a jury.

16.6. Appointment of Agent: Proviso. In the event Registered Agent has resigned, should suit be instituted, the Unit Owners or Occupants do hereby irrevocably appoint the Secretary of the Commonwealth of the Commonwealth of Virginia as their Agent for the acceptance of service of process should, at the time of such service of process, any such person not be residing in this Condominium and if service cannot be accomplished in any other reasonable fashion. The provisions hereof shall not be applicable to service upon the Declarant.

## **17. MISCELLANEOUS RIGHTS OF DECLARANT.**

17.1. Conflict of Interests. No representative of the Declarant serving on the Board of Directors of the Association shall be required to disqualify himself upon any vote upon any management contract, lease, or other matter between the Declarant, or managing agent, if any, and the Association where Declarant, or managing agent, if any, may have a pecuniary or other interest. Declarant, as a member of Association, shall not be required to disqualify itself in any vote which may come before the membership of the Association upon any management contract, lease, or other matter where Declarant may have a pecuniary or other interest, nor shall any conflict of interests be a cause of partial or total invalidity of

the matter voted upon whether or not such vote was necessary for the adoption, ratification, or execution of the same.

17.2. Right to Use Facilities. Notwithstanding any Provisions of this Declaration to the contrary, the Declarant shall have the right to use and occupy any unsold Unit and the Common Elements, the exclusive use of which have not been assigned, for the purpose of a Sales Office or for any other purpose.

## **18. NOTICES.**

Whenever notices are required to be sent hereunder, the same may be delivered to Unit Owners, either personally or by mail, at their place of residence in the Condominium. Notices to the Association shall be delivered or mailed to the Secretary of the Association, or in case of the Secretary's absence, then to the President of the Association at their residence address as listed in the records of the Association.

Notices to the Declarant shall be made by delivery to Declarant at: The Futura Group, L.L.C., 116 Landmark Square, Suite 102, Virginia Beach, Virginia 23452.

## **19. CONSTRUCTION.**

All of the provisions of this Declaration shall be construed in accordance with the Laws of the Commonwealth of Virginia.

## **20. GENDER.**

Unless the contrary appears to have been intended, words in the plural number shall include the singular and words in the singular shall include the plural, and words of the male gender shall include the female gender and the neuter gender.

## **21. CAPTIONS.**

The captions to the paragraphs of this Declaration are intended for convenience only and are not deemed to be all inclusive as to the matters contained in such paragraphs or considered in connection with the construction of any of the provisions of this Declarant.

## **22. SEVERABILITY.**

If any term or provision of this Declaration, or the application thereof to any person or circumstance, shall, to any extent, be determined to be invalid or unenforceable, the remainder of this Declaration, or the application of such term or provisions to persons or circumstances other than those to which such term may be held invalid or unenforceable, shall not be affected thereby and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

## **23. ASSIGNMENT.**

The Declarant may, upon conveyance of all or a portion of the Units it owns, prior or subsequent to any such conveyance, designate the grantee thereof as a successor Declarant or Declarant who shall then be deemed to have all rights granted and reserved to Declarant herein.

## **24. MORTGAGEE RIGHTS.**

A. During the Declarant control period: (i) the declarant must provide a copy of all amendments to VA; and (ii) the association may not make any Material Amendments or take any Extraordinary Actions as defined in subparagraphs B and C below without the approval of VA. The following rights and protections (including notice and approval rights) are granted to only those mortgagees who have provided written notice to the board of directors of their interest and requested rights under the association documents ("Eligible Mortgagee.") Rights granted to Eligible Mortgagees are as follows:

1. Right to inspect association documents and records on the same terms as the members;
2. Notice of all Material Amendments to the association documents;
3. Notice of any Extraordinary Actions of the association;
4. Notice of any property loss, condemnation or eminent domain proceeding affecting the common areas resulting in losses greater than 10 percent of the annual budget or any unit

insured by the association in which the mortgagee has an interest;

5. Notice of any termination, lapse or material modification of an insurance policy held by the association;
6. Notice of any default by an owner of a unit subject to a mortgage held by the eligible mortgagee in paying assessments or charges to the association which remains unsecured for sixty consecutive days;
7. Notice of any proposal to terminate the declaration or dissolve the association at least 30 days before any action is take;
8. Right of a majority of the eligible mortgagees to demand professional management; and
9. Right of a majority of the eligible mortgagees to demand an audit of the association's financial records.

B. A Material Amendment includes adding, deleting or modifying any provision regarding the following:

1. Assessment basis or assessment liens;
2. Any method of imposing or determining any charges to be levied against individual unit owners;
3. Reserves for maintenance; repair or replacement of common area improvements;
4. Maintenance obligations;
5. Allocation of rights to use common areas;
6. Any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on units;
7. Reduction of insurance requirements;
8. Restoration or repair of common area improvements;



9. The addition, annexation or withdraw of land to or from the project;
10. Voting rights;
11. Restrictions affecting leasing or sale of a unit; or
12. Any provision which is for the express benefit of mortgagees.

C. An Extraordinary Action includes:

1. Merging or consolidating the association (other than with another nonprofit entity formed for purposes similar to the subject association);
2. Determining not to require professional management if that management has been required by the association documents, a majority of eligible mortgagees or a majority vote of the members;
3. Expanding the association to include land not previously described as additional land which increases the overall land area of the project or number of units by more than 10 percent;
4. Abandoning, partitioning, encumbering, mortgaging, conveying selling or otherwise transferring or relocating the boundaries of common areas (except for (i) granting easements which are not inconsistent with or which do not interfere with the intended common area use; (ii) dedicating common area as required by a public authority; (iii) limited boundary-line adjustments made in accordance with the provisions of the declaration or (iv) transferring common area pursuant to a merger or consolidation with a nonprofit entity formed for purposes similar to the subject association);
5. Using insurance proceeds for purposes other than construction or repair of the insured improvements; or
6. Making capital expenditures (other than for repair or replacement of exiting improvements) during any period of 12 consecutive months costing more than 20 percent of the annual operating budget.)

All amendments of the types mentioned in Subparagraph C above shall require the approval of Eligible Mortgages who represent at least 51.0% of the votes of the unit estates that are subject to mortgages held by the Eligible Mortgagees (FNMA Requirement).

Any person or entity which holds a mortgage executed by Declarant, either prior to or subsequent to the recordation of this Declaration, encumbering any part or all of the Condominium Property, shall be deemed to be an Institutional Lender for the purposes of this Declaration and shall have all rights and privileges appertaining thereto.

**IN WITNESS WHEREOF**, the Declarant has executed this Declaration on this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

THE FUTURA GROUP, LLC

By: \_\_\_\_\_  
A. R. Gregor, Jr.  
Managing Member

**COMMONWEALTH OF VIRGINIA,**  
**CITY OF \_\_\_\_\_, to-wit:**

GIVEN under my hand this \_\_\_ day of \_\_\_\_\_, 2005, by A. R. Gregor, Jr., Managing Member of The Futura Group, L.L.C., a Virginia limited liability company.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

MEMORANDUM

DATE: July 26, 2005  
TO: The Board of Supervisors  
FROM: O. Marvin Sowers Jr., Planning Director  
SUBJECT: 2005 Traffic Count Summary

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Attached for your review are the 2005 traffic counts, a comparative spreadsheet showing the available counts from 1992, 1994, 1998, 1999, 2000, 2001, 2002, 2003 and 2005 as well as the percentage increase from 1998 to 2005, 2000 to 2005, and 2003 to 2005. The attached traffic count information is also available on the County website.

Below are some highlights of the count:

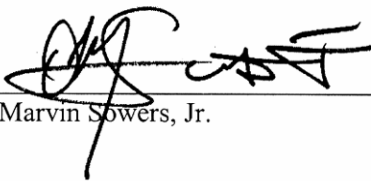
- The completion of Monticello Avenue in 2001 continues to alleviate traffic on John Tyler Highway (Route 5). Virtually every portion of Monticello Avenue has seen marked increases in traffic levels in the past two years, while almost every section of John Tyler has seen flat or decreased traffic during the same time. Overall, traffic on John Tyler Highway has decreased substantially since 2000, with some sections seeing decreases of greater than one-third.
- The completion of Route 199 has produced significant reductions in traffic on Richmond Road between Lightfoot Road and Airport Road. Traffic on Richmond Road to the northwest of Route 199, however, has not changed significantly since 2000. Traffic levels northwest of Forge Road remain well below those on Richmond Road between Route 199 and Airport Road.
- While traffic on most portions of Jamestown Road has remained relatively steady, traffic between Ironbound Road and Sandy Bay Road increased by more than 22 percent since 2003.
- Traffic levels on Pocahontas Trail continued their general stable or downward trend following the opening of the Grove Interchange. Since the late 1990s, traffic has generally decreased on all sections of Pocahontas Trail studied. In the last two years, only the section of Pocahontas between the Newport News corporate limit and Blow Flats Road increased.
- After a significant decrease following the opening of Route 199 in 2000, traffic on Olde Towne Road between Longhill Road and King William Drive has increased by about 30 percent, including a 13-percent increase in the last two years. If this trend continues, traffic on Olde Towne will surpass the peak levels measured in 1998.
- Traffic along Longhill Road from Centerville Road to Olde Towne Road has doubled since 2000. Notably, even though traffic on Longhill between Olde Towne and Route 199 is up more than a third since 2000, there has been a drop of almost 14 percent in this area during the last two years. Traffic along the Longhill Connector has decreased by more than one-third since 2000 with the opening of Route 199.
- Since the substantial drop in traffic that resulted from the completion of Route 199 in 1999, traffic on Centerville Road has increased significantly, with the largest increase closest to Richmond Road. Every section of Centerville Road experienced increases in traffic of greater than 35 percent from 2000

to 2005. If current trends continue, traffic on Centerville Road will return to 1999 levels in the next four years. While direct comparisons are not possible because of reconfigured count stations for 2005, it is clear that traffic on Centerville Road in some areas between Route 5 and News Road has increased since 2003.

The 2003 Comprehensive Plan provides traffic volume information to generally gauge road capacity (see table below). Actual capacity is a function of traffic volumes and other criteria such as road geometrics. Based on traffic volumes alone, the following road sections are over capacity: Longhill Road between Season's Trace and Route 199 and Jamestown Road between Winston Drive and Olde Colony Lane. Using this single criterion, the following roads are approaching capacity: Ironbound Road north of Five Forks and Route 5 between Cooley Road and Duer Drive.

# LANES	DESCRIPTION	DAILY CAPACITY
2	COLLECTOR	13,000
3	COLLECTOR WITH LEFT TURN LANES	14,000
4	MINOR ARTERIAL WITH TURN LANES	30,000
4+	ARTERIAL WITH MANAGED ACCESS	44,000
4++	CONTROLLED ACCESS FREEWAY	80,000
6	ARTERIAL WITH MANAGED ACCESS	60,000
6+	CONTROLLED ACCESS FREEWAY	168,000

Table T-2. Source: Kimley-Horn and Associates.




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O. Marvin Sowers, Jr.

OMS/gb  
TrafficCt05.mem

Attachment:

1. Traffic Count Summary

**James City County  
Traffic Count Summary  
1992, 1994, 1998, 1999, 2000, 2001, 2002, 2003 and 2005**

Count Station	Road	Approximate		# of Lanes	1992	1994	1998	1999	2000	2001	2002	2003	2005	% Change from 1998 to 2005	% Change from 2000 to 2005	% Change from 2003 to 2005
		From	To													
1	<b>Richmond Road Route 60)</b>	New Kent CL	Barnes Road (Route 601)	4	4,274	4,427	4,921	4,617	4,513	5,242	5,167	5,054	5,708	16.00%	26.48%	12.95%
1 East					na	na	na	na	na	na	na	2,601	2,872	na	na	10.40%
1 West					na	na	na	na	na	na	na	2,452	2,836	na	na	15.64%
2		Barnes Road (Route 601)	Barhamsville Road (Route 30) -- Anderson's Comer	4	5,242	5,156	6,065	5,401	5,032	5,010	5,756	5,816	5,836	-3.78%	15.98%	0.34%
2 East					na	na	na	na	na	na	na	2,983	2,923	na	na	-2.00%
2 West					na	na	na	na	na	na	na	2,833	2,913	na	na	2.81%
3		Route 30	Forge Road (Route 610)	4	9,013	9,247	12,313	10,106	9,522	9,526	10,024	9,555	9,966	-19.06%	4.66%	4.31%
3 East					na	na	na	na	na	na	na	4,580	4,935	na	na	7.74%
3 West					na	na	na	na	na	na	na	4,974	5,031	na	na	1.14%
4		Forge Road (Route 610)	Croaker Road (Route 607)	4	13,353	14,528	14,276	14,911	14,357	13,703	13,889	18,184	15,211	6.55%	5.95%	-16.35%
4 East					na	na	na	na	na	na	na	7,543	7,546	na	na	0.04%
4 West					na	na	na	na	na	na	na	10,641	7,665	na	na	-27.97%
5		Croaker Road (Route 607)	Lightfoot Road (Route 646)	4	16,932	16,919	22,773	19,948	17,703	18,818	19,389	18,828	18,770	-17.58%	6.03%	-0.31%
5 East					na	na	na	na	na	na	na	9,199	9,218	na	na	0.21%
5 West					na	na	na	na	na	na	na	9,629	9,552	na	na	-0.80%
5A		Lightfoot Road (Route 646)	Centerville Road	4	27,665	23,951	na	na	na	na	24,255	23,703	24,883	na	na	4.98%
5A East					na	na	na	na	na	na	na	11,819	10,755	na	na	-9.00%
5A West					na	na	na	na	na	na	na	11,885	14,128	na	na	18.88%
6	<i>place this count station near Route 199 on northside</i>	Lightfoot Road (Route 646)	Olde Towne Road (Route 658)	4	na	na	16,122	21,109	20,673	22,629	22,818	28,372	23,288	44.45%	12.65%	-17.92%
6 East					na	na	na	na	na	na	na	15,269	12,517	na	na	-18.02%
6 West					na	na	na	na	na	na	na	13,103	10,771	na	na	-17.80%
7	<i>place this count station near Route 199 on southside</i>	Lightfoot Road (Route 646)	Olde Towne Road (Route 658)	4	na	na	15,802	23,370	19,175	17,886	17,856	17,041	18,106	14.58%	-5.57%	6.25%
7 East					na	na	na	na	na	na	na	8,626	9,813	na	na	13.76%
7 West					na	na	na	na	na	na	na	8,415	8,293	na	na	-1.45%
8		Olde Towne Road (Route 658)	Airport Road (Route 645)	4	23,821	24,298	28,445	27,961	24,871	22,883	22,812	22,175	20,608	-27.55%	-17.14%	-7.07%
8 East					na	na	na	na	na	na	na	10,984	10,246	na	na	-6.72%
8 West					na	na	na	na	na	na	na	11,191	10,362	na	na	-7.41%
9	<b>Croaker Road (Route 607)</b>	Richmond Road (Route 60)	Route 760 - entrance to Mirror Lakes Park & Ride	4	6,320	7,394	9,287	8,357	7,986	8,303	8,356	8,434	8,652	-6.84%	8.34%	2.58%
10		Mirror Lakes		2	na	na	na	na	8,261	8,456	8,063	8,722	9,002	na	8.97%	3.21%
10 North					na	na	na	na	na	na	na	4,487	4,545	na	na	1.30%
10 South					na	na	na	na	na	na	na	4,235	4,457	na	na	5.24%
11		Cedar Point Lane (Route 609 north)	Moss Side Lane (Route 609)	2	na	na	1,893	1,195	1,079	3,762	3,621	3,564	3,770	99.15%	249.40%	5.77%
12		Woodland Road (Route 1601)	Massena Drive (Route 1575)	2	na	na	817	na	na	1,215	1,220	1,193	1,112	36.11%	na	-6.76%
13	<b>Centerville Road (Route 614)</b>	Route 60	Route 678 (Ruth Lane)	2	5,831	6,005	9,840	12,144	7,069	9,154	8,933	9,279	10,364	5.33%	46.61%	11.70%
14		Jolly Pond Road (Route 611)	Route 1507 (Forest Glen subdivision)	2	4,800	na	8,760	11,888	6,555	7,766	7,078	8,281	8,935	2.00%	36.31%	7.90%
15		Longhill Road (Route 612)	News Road (Route 613)	2	2,981	3,122	4,068	9,552	4,644	5,429	4,759	5,073	6,400	57.33%	37.81%	26.16%
16	<i>Note: Station 16 was split into three stations for 2005</i>	News Road (Route 613)	John Tyler Highway (Route 5)	2	na	na	5,163	4,355	3,354	3,662	3,344	4,844				
16 A		John Tyler Highway (Route 5)	Monticello Avenue (Route 321)		na	na	na	na	na	na	na	na	3,531	na	na	na
16 B		Monticello Avenue (Route 321)	Brick Bat Road		na	na	na	na	na	na	na	na	5,060	na	na	na
16 C		Brick Bat Road	News Road (Route 613)		na	na	na	na	na	na	na	na	5,719	na	na	na
17	<b>Longhill Road (Route 612)</b>	Centerville Road (Route 614)	Route 1530 (entrance to Season's Trace subdivision)	2	4,892	4,924	7,500	9,255	4,496	6,572	6,342	9,361	10,215	36.20%	127.20%	9.12%
18		Route 1530	Olde Towne Road (Route 658)	2	12,306	12,701	10,730	13,468	9,644	15,599	16,344	16,937	19,095	77.96%	98.00%	12.74%
19		Olde Towne Road (Route 658)	Route 199	2	12,748	14,389	11,773	9,786	15,497	16,188	18,098	24,259	20,916	77.66%	34.97%	-13.78%
20	<i>this count is on Longhill Connector Road</i>	Route 199	Ironbound Road (Route 615)	2	na	na	11,712	13,648	10,018	5,425	7,700	6,037	6,294	-46.26%	-37.17%	4.25%
21	<b>Ironbound Road (Route 615)</b>	Hickory Signpost Road (Route 629)	John Tyler Highway (Route 5)	2	4,986	5,565	8,432	7,730	7,227	7,553	7,746	8,336	8,219	-2.53%	15.35%	-1.40%
22		John Tyler Highway (Route 5)	News Road (Route 613)	2	7,451	9,844	12,326	12,686	12,324	12,959	10,796	11,183	12,483	1.27%	-9.26%	11.62%
23		Route 199	Monticello Avenue (Route 321)	2	10,025	10,787	15,663	na	na	1,796	1,958	2,107	2,034	-87.01%	na	-3.45%
24		Monticello Avenue (Route 321)	Watford Lane (Route 763)	2	15,471	16,983	20,439	17,353	9,601	9,015	10,332	10,287	10,157	-50.31%	7.14%	-1.26%
25		Magazine Road (Route 762)	Tewning Road (Route 747)	2	15,430	17,511	12,589	17,809	10,002	9,291	10,664	10,860	10,764	-14.50%	8.57%	-0.88%

**James City County  
Traffic Count Summary  
1992, 1994, 1998, 1999, 2000, 2001, 2002, 2003 and 2005**

Count Station	Road	From	To	# of Lanes	1992	1994	1998	1999	2000	2001	2002	2003	2005	% Change from 1998 to 2005	% Change from 2000 to 2005	% Change from 2003 to 2005		
26	<b>Jamestown Road (Route 31)</b>	Winston Drive (Route 706)	Olde Colony Lane (near Nationsbank)	4	na	na	15,605	16,426	15,888	18,080	18,703	15,466	15,201	-2.59%	-4.32%	-1.71%		
27		Oxford Road (Rt. 727 - Kingswood)	Rich Neck Road (Route 1410)	2	na	na	12,480	11,990	10,912	11,502	11,294	10,606	10,723	-14.08%	-1.73%	1.11%		
27A		Ironbound Road (Route 615)	Neck O'Land Road (Route 682)	2	5,546	6,623	na	na	na	na	8,615	8,954	9,297	na	na	3.83%		
28		Ironbound Road (Route 615)	Sandy Bay Road (Route 681)	2	na	na	9,222	9,280	7,860	8,372	7,813	8,244	10,100	9.52%	28.50%	22.52%		
29	<b>Pocahontas Trail</b>	Cardinal Acres Drive	4-H Club Road (Route 680)	2	na	na	8,292	8,065	8,174	7,540	6,956	7,242	7,072	-14.72%	-13.48%	-2.34%		
30		Skiffes Creek (County/NN Line)	Plantation Road (Route 1301)	2	na	na	12,686	9,397	10,480	10,721	8,963	9,244						
30	**The location of this station changed for 2005	Skiffes Creek (County/NN Line)	Blow Flats Road (Route 1305)	2	na	na	na	na	na	na	na	na	10,402	-18.00%	-0.74%	16.06%		
31		Plantation Road (Route 1301)	Church Street (Route 655)	2	na	na	12,079	12,133	12,833	12,281	10,619	12,625	10,806	-10.54%	-15.80%	-14.41%		
32		Church Street (Route 655)	Howard Drive (Route 648)	2	na	na	11,920	15,940	12,055	12,222	10,536	10,989	10,537	-11.60%	-12.59%	-4.11%		
33	33 East	Kingsmill Entrance on Route 60	0.3 miles south of the Kingsmill Entrance	na	na	na	16,577	16,234	22,905	14,808	16,383	13,372	na	-17.63%	-18.38%			
33 West				na	na	na	na	na	na	na	na	8,241	6,257	na	na	-24.07%		
34	<b>Olde Towne Road (Route 658)</b>	Longhill Road (Route 612)	King William Drive (Route 1513)	2	8,798	11,116	12,067	11,400	8,418	9,433	9,721	9,688	10,958	-9.19%	30.17%	13.11%		
35		King William Drive (Route 1513)	Chisel Run Road (Route 1514)	2	9,503	10,938	11,790	12,372	8,973	10,102	10,688	10,472	9,671	-17.98%	7.78%	-7.65%		
36	<b>News Road (Route 613)</b>	Centerville Road (Route 614)	Springhill Subdivision	2	993	1,674	1,284	2,897	3,147	3,611	2,830	3,168	3,323	158.73%	5.59%	4.89%		
37		Springhill Subdivision	Powhatan Secondary (Route 1471)	2	984	1,108	1,528	3,863	4,603	5,918	4,871	4,207	6,096	298.95%	32.44%	44.90%		
37A	37A East	37A West	Monticello Avenue	Old News Road	Monticello Avenue	4	na	na	na	na	5,991	6,775	8,173	8,979	na	na	9.86%	
37B				na	na	na	na	na	na	na	na	na	4,462	4,105	na	na	-8.01%	
37B East	37B West		Ironbound Road	na	na	na	na	na	na	na	na	3,711	4,874	na	na	31.35%		
37B West				na	na	na	na	na	na	na	na	na	na	5,570	5,869	na	na	5.36%
38	<b>Sandy Bay Road (Route 681)</b>	Jamestown Road	Ironbound Road	2	3,513	3,711	6,283	5,684	5,578	5,889	5,916	6,551	5,977	-4.87%	7.15%	-8.76%		
39	<b>John Tyler Highway (Route 5)</b>	Brickbat Road	Centerville Road (near Shellbank Creek east of Gov. Land)	2	3,223	3,875	9,111	8,013	5,947	9,090	3,927	3,699	3,770	-58.62%	-36.61%	1.92%		
40		Ironbound Road	St. George's Hundred Subdivision	2	6,458	9,009	13,888	14,534	14,697	14,425	10,689	10,821	10,336	-25.58%	-29.67%	-4.48%		
41		Ironbound Road	Westray Downs Subdivision	2	na	na	13,616	14,969	14,594	13,187	11,566	11,808	11,529	-15.33%	-21.00%	-2.36%		
42	42A New	Cooley Road (Route 666)	Duer Drive (Route 653)	2	10,851	12,987	13,498	13,310	15,086	14,842	13,142	13,364	12,864	-4.70%	-14.73%	-3.74%		
43		Centerville Road (Route 614)	Greensprings Plantation Drive	2	na	na	na	na	na	na	7,368	7,950	6,346	na	na	-20.18%		
43A	<b>Greensprings Road (Route 614)</b>	Route 5	Berkeley's Green Subdivision	2	na	na	na	5,002	4,492	4,284	4,287	4,852	4,647	na	3.45%	-4.23%		
43B		Mott Lane	4-H Club Road	2	na	na	na	na	na	3,890	3,860	4,088	3,749	na	na	-8.29%		
45	<b>Monticello Avenue (Alternate Route 5)</b>	4-H Club Road	Jamestown Road	2	na	na	na	na	na	1,111	1,096	1,319	1,235	na	na	-6.37%		
45 East	45 East	45 West	Ironbound Road	Route 199	Route 199	4	na	na	na	na	20,353	16,158	18,844	19,927	23,662	na	16.26%	18.74%
45 West				na	na	na	na	na	na	na	na	na	9,926	11,725	na	na	18.12%	
44	44 East	44 West	Route 199	News Road	News Road	4	na	na	na	na	na	na	10,001	11,937	na	na	19.36%	
45A				na	na	na	na	na	na	na	na	na	17,151	18,932	na	na	10.39%	
45A East	45A West	News Road	Powhatan Secondary	na	na	na	na	na	na	na	na	16,832	17,616	na	na	4.66%		
45A West				na	na	na	na	na	na	na	na	na	na	10,095	11,349	na	na	12.42%
45D New	(Opened 12/7/01)	Powhatan Secondary	Greensprings Plantation Drive	2	na	na	na	na	na	na	na	6,753	8,738	10,003	na	na	14.48%	
45B	45C New	Greensprings Plantation Drive	Centerville Road	2	na	na	na	na	na	na	1,460	5,472	6,555	6,608	na	na	0.81%	
45C New		(Count near Route 5)	Centerville Road (Route 614)	Route 5	2	na	na	na	na	na	na	3,346	4,277	4,237	na	na	-0.94%	

**James City County  
Traffic Count Summary  
1992, 1994, 1998, 1999, 2000, 2001, 2002, 2003 and 2005**

Count Station	Road	From	To	# of Lanes	1992	1994	1998	1999	2000	2001	2002	2003	2005	% Change from 1998 to 2005	% Change from 2000 to 2005	% Change from 2003 to 2005
46	Greensprings Plantation Drive	Route 5	Monticello Avenue	2	na	na	na	na	na	2,193	5,454	3,429	4,059	na	na	18.37%
47	4-H Club Road	Greensprings Road (Route 614)	Jamestown Road (Route 31)	2	na	na	na	na	na	2,973	2,745	2,709	2,734	na	na	0.92%
48	Ashbury Road	Longhill	0.01 Mi North of Longhill Connector	2	na	na	na	na	na	2,306	680	3,197	746	na	na	-76.67%
49		First Drive	0.03 Mi North of First Drive	2	na	na	na	na	na	529	1,029	916	965	na	na	5.35%
50	Colonial Parkway	Jamestown	Mill Creek Bridge		na	na	na	na	na	na	na	na	1,728	na	na	na

**Note:** All traffic counts are 24 hour, non-directional traffic counts. James City County conducts traffic counts at all of the count stations listed above in the Spring of each year except 2001. In 2001, the traffic counts was conducted in June. If you have questions, please call the Planning Division at 253-6685 or e-mail us at [planning@james-city.va.us](mailto:planning@james-city.va.us).

Monticello Avenue Extension - Route 5 to News Road - Opened 12/7/01  
 Monticello Avenue Extension - Greensprings Plantation Dr. to Powhatan Dr. - Opened 12/7/01  
 Route 199 from Route 5 to I-64 (Lightfoot) - Opened 8/6/99  
 Route 199 widening from Pocahontas Trail to South Henry Street - Opened 11/23/04  
 Route 199 at Jamestown Road - All new turn lanes opened 5/20/05  
**Grove Interchange:**  
**1st opening March 25, 2001**  
 Route 60 entrance/exit to Busch Gardens  
 Eastbound exit ramp from Busch Gardens to Eastbound I-64  
 Eastbound exit ramp from eastbound I-64 to Busch Gardens  
**2nd Opening March 22, 2002**  
 Westbound exit ramp from Busch Gardens to Westbound I-64  
 Westbound exit ramp from Busch Gardens to Westbound I-64

## M E M O R A N D U M

DATE: July 26, 2005  
TO: The Board of Supervisors  
FROM: Sanford B. Wanner, County Administrator  
SUBJECT: Cash Management Action Plan

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The following is an update from the group of employees, working with the County's independent auditors, to update the County's Cash Handling Policy by reexamining current procedures and practices as they relate to the following:

1. Acceptance and transmittal of cash donations, memorials, rebates, refunds, restitutions, reimbursements, and any other cash collection that is not generated by a County billing.

**We have acquired court orders from Judge Powell and Judge Fairbanks and in the future all checks remitted by those courts will be made out to the "Treasurer, James City County" and sent directly to the Treasurer's Office.**

**Fire Department has established procedures to record, acknowledge, and transmit all donations sent directly to them.**

2. Document and evaluate the need and procedures for every point in the organization where cash is collected with a focus on proper internal controls, possible elimination/consolidation, and the use of credit cards or checks as the only payment options. Post instructions at each cash collection point that checks must be made out to the "Treasurer of James City County." Where cash must be collected – ensure that appropriate internal controls are in place.

**Cash collection points have been identified and the task of flow charting cash flows is in progress. Once completed, internal controls will be reviewed as well as process improvements for greater efficiencies.**

**All points have been posted instructing citizens to make their check payable to the "Treasurer of James City County."**

**Alternative payment options are an objective targeted for review later.**

3. Document all cash and/or non-personal bank accounts available to County employees and agencies using the County's Employer Identification Number and/or name including all accounts where cash is held in trust for an individual or for a nonprofit community group – evaluate internal controls, signature authority, and the legislative action creating these accounts – consolidate as much as possible under the oversight of the County Treasurer. To that end, the Treasurer has contacted every County employee in a supervisory role about the existence of any other bank accounts not under the management of her office.

**All "supervisors" have been contacted and have responded to a survey requesting bank account information. No new account information was uncovered.**



4. Evaluate existing administrative regulations and procedures that document the authorized signatory approvals required for expenditures of public funds, payments made to or on behalf of County employees, and/or outside agencies and community groups – amend and expand as needed to ensure proper oversight.

**The group is reviewing the current procedures for establishing Administrative Regulations. We are looking at this as a repository for financial policy easily accessed by departments to be used in the development of individual department procedures. The group may be developing a recommendation for Board consideration.**

**The group is reviewing the current process for submitting expense reimbursements. It is anticipated that some process improvements will result from this review.**

5. Evaluate the need/usefulness of an internal auditor – charged with all evaluating all elements of the County's cash receipts/disbursement functions as well as revenue billings/collection systems for internal control weaknesses, compliance, enhancements, and improvements.

**The group surveyed other jurisdictions and determined that those localities with internal auditor positions are traditional in nature and report to the County Administrator.**

In addition to the tasks proposed above, we are also working with the Commonwealth Attorney, the State Police, and the County Treasurer to determine exactly how much of the public's money has been stolen or misused by the County's former Fire Chief. Staff is working to recover every single cent using the authority granted to the Treasurer, the Courts, and the County's employee dishonesty coverage through VML. We have obtained details of all spending and all deposits involving the Flower Fund bank account and are examining each item individually.

**In progress.**

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Sanford B. Wanner

SBW/gb

CashPlan\_update.mem