

AGENDA ITEM NO. G-1a

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 10TH DAY OF FEBRUARY, 2004, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Bruce C. Goodson, Chairman, Roberts District
 Michael J. Brown, Vice Chairman, Powhatan District
 John J. McGlennon, Jamestown District
 M. Anderson Bradshaw, Stonehouse District
 Jay T. Harrison, Sr., Berkeley District

Sanford B. Wanner, County Administrator
 Frank M. Morton, III, County Attorney

B. MOMENT OF SILENCE

Mr. Goodson requested the Board and citizens observe a moment of silence.

C. PLEDGE OF ALLEGIANCE

Chris Ford, a fifth-grade student at D. J. Montague Elementary School, led the Board and citizens in the Pledge of Allegiance.

D. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, stated that the fees and taxes citizens pay are excessive, and commented on the passing of Joe Kirby, a County employee.

E. CONSENT CALENDAR

Mr. McGlennon made a motion to adopt the items on the Consent Calendar.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5).
 NAY: (0).

1. Minutes --
 - a. January 24, 2004, Retreat
 - b. January 27, 2004, Work Session
 - c. January 27, 2004, Regular Meeting

2. Lower Skiffe's Creek Watershed Study Grant Award and Builders for the Bay Grant Award**RESOLUTION****LOWER SKIFFE'S CREEK WATERSHED STUDY GRANT AWARD AND****BUILDERS FOR THE BAY GRANT AWARD**

WHEREAS, the Department of Conservation and Recreation (DCR) has approved two grants totaling \$24,300 for the Builders for the Bay - James City County and the Lower Skiffe's Creek Watershed Management Plan project; and

WHEREAS, the grant requires a local match of \$24,300, which is available in the Capital Improvement Program (CIP) Operating Budget; and

WHEREAS, the grant will be administered by DCR with a grant period of February 10, 2004, through January 31, 2005, thus allowing any unexpended funds as of June 30, 2004, to be carried forward to James City County's next fiscal year.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the Special Project/Grants Fund:

Revenues:

From the Capital Projects Fund	\$24,300
Builders for the Bay Grant Award	5,000
Lower Skiffe's Creek Watershed Study Grant Award	<u>19,300</u>
Total	<u>\$48,600</u>

Expenditures:

Lower Skiffe's Creek Watershed Management Plan	\$38,600
Builders for the Bay	<u>10,000</u>
Total	<u>\$48,600</u>

3. James City County Road Construction Revenue Sharing Program – FY05**RESOLUTION****JAMES CITY COUNTY ROAD CONSTRUCTION REVENUE SHARING PROGRAM - FY 05**

WHEREAS, the James City County Board of Supervisors has decided to participate in the Virginia Department of Transportation (VDOT) Revenue Sharing Program for FY 2005-06; and

WHEREAS, VDOT requires written notification of the County's intent to participate by March 1, 2004.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the Chairman is authorized to notify VDOT of the County's intention to participate in the Revenue Sharing Program for FY 2005-06, with an amount not to exceed \$500,000.

F. PUBLIC HEARINGS

Mr. Goodson recognized Ms. Peggy Wildman, Planning Commission, in the audience.

1. Case Nos. Z-8-03/MP-9-03. Norge Neighborhood

Ms. Sarah Weisiger, Planner, stated that Mr. V. Marc Bennett, on behalf of Pete Henderson of Henderson, Inc., has submitted an application to rezone approximately 22.1 acres, zoned A-1, General Agriculture, and R-2, General Residential, at 7145 and 7147 Richmond Road, 75 Nina Lane, and 126 Rondane Place, further identified as Parcel Nos. (1-50), (1-49), (1-50C), and (1-51) on James City County Real Estate Tax Map No. (23-2).

Staff found the proposal, with proffered conditions, met the expectations outlined in the Comprehensive Plan for residential development and limited commercial development within areas designated Low-Density Residential on the Land Use Map.

At its meeting on January 12, 2004, the Planning Commission recommended approval of the rezoning and acceptance of the voluntary proffers by a vote of 6-1.

Staff recommended approval of the rezoning application with the proffered conditions.

Mr. Goodson opened the Public Hearing.

1. Mr. Vernon Geddy, III, representing the applicant, provided an overview of the proposal and requested the Board's approval of the project.

2. Mr. Ed Oyer, 139 Indian Circle, requested the Board deny the application based on the increase in proposed density.

As no one else wished to speak to this matter, Mr. Goodson closed the Public Hearing.

The Board and staff discussed the Adequate Public School Facilities Test and other policies that the Board may wish to reconsider for future applications, commented on the applicant's adherence to the established guidelines and meaningful contact with surrounding potential neighbors regarding the proposal, adequate affordable housing, and the proposed sidewalks on both sides of the street at the entrance to the project.

Mr. O. Marvin Sowers, Jr., Director of Planning, stated that during the review of the site plan, the Planning Office will review the sidewalks.

The Board discussed reviewing the financial implications of development on the County, and review of the applicability of the Adequate Public School Facilities Test.

Mr. Bradshaw made a motion to approve the resolution.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5).
NAY: (0).

RESOLUTION

CASE NOS. Z-8-03/MP-9-03. NORGE NEIGHBORHOOD SITE

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, and Section 24-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Zoning Case No. Z-8-03, for rezoning approximately 22.1 acres from A-1, General Agricultural, and R-2, General Residential, to MU, Mixed Use, with proffers; and

WHEREAS, the Planning Commission of James City County, following its public hearing on January 12, 2004, recommended approval of Case Nos. Z-8-03/MP-9-03, by a vote of 6 to 1; and

WHEREAS, the properties are located at 7145 and 7147 Richmond Road, 75 Nina Lane, and a portion of 126 Rondane Place as shown on the Master Plan MP-9-03 and further identified as Parcel Nos. (1-50), (1-49), (1-50C), and (1-51), on James City County Real Estate Tax Map No. (23-2).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case Nos. Z-8-03/MP-9-03 and accepts the voluntary proffers.

2. Case Nos. Z-13-03/MP-12-03/SUP-29-03. Michelle Point

Ms. Ellen Cook, Planner, stated that Jay Epstein of Health-E-Community Enterprises applied to rezone 38.58 acres, zoned A-1, General Agricultural, at 9001 Barhamsville Road and further identified as Parcel No. (1-3) on James City County Real Estate Tax Map No. (12-1).

Staff found the Master Plan and proffers to be consistent with surrounding development and zoning, and consistent with the Comprehensive Plan.

Staff found the proposal satisfactorily met the Zoning Ordinance criteria for granting a special use permit with regard to additional density, and the waiver request for the right-of-way buffer has been sufficiently supported by proffers.

At its meeting on January 12, 2004, the Planning Commission recommended approval of the project by a vote of 6-1, subject to the highway crossover issue being resolved, which it has now been.

Staff recommended the Board's approval of the rezoning, special use permit, and buffer waiver request.

Mr. Bradshaw inquired if the neighboring community's well water levels will be affected by the proposal.

Mr. Larry Foster, James City Service Authority (JCSA) General Manager, stated that there would not be a negative impact on the water table levels and that over time the neighborhood will see less of an impact on the well water levels.

Mr. Goodson opened the Public Hearing.

1. Mr. Vernon Geddy, III, representing the applicant, provided the Board with an overview of the proposal, commented on the project's benefits to the County, and requested approval of the proposal.

Mr. Bradshaw stated that at a public meeting held by Mr. Epstein, Mr. Epstein had commented that the County may offer a discount on the fees associated with water and sewer hook ups to make the housing affordable. The application does not indicate that occurred.

Mr. Geddy stated that the JCSA did not offer discounted fees on the hookup for water or sewer.

Mr. Bradshaw and the applicant discussed the method and proffer criteria for the affordable housing units to be offered through the County's Office of Housing and Community Development for its residents and those employed in the County.

2. Mr. Ken Wolf, 202 Highfield Drive, stated concern about the proposed access road through the field located near his backyard to a trail and playground area and that those features may encourage the neighborhood residents to wander through his property; stated concern that the bend near the entrance to the development may pose as a safety hazard; and stated concern that the development does not meet the Adequate Public Schools Facility test.

3. Mr. Ed Oyer, 139 Indian Circle, requested the Board deny the application based on the increase in proposed density and concern regarding the water table levels for residential wells.

4. Mr. Jim Salvatore, 101 Worplesdon, stated concern that the new landowners in the County are not properly advised of development proposals in surrounding areas; stated concern that should the proposed development impact the wells in the surrounding neighborhoods those neighbors may have to pay a hookup fee to water and sewer; and requested clarification on the size of trees to be planted as a buffer.

Mr. Brown stated that diameter of the trees to be planted will be 2.5 inches.

5. Mr. David Obert, 103 Halfpenny Drive, stated that he opposed the development and would like to see the land remain rural, and stated concern that the proposal failed the Adequate Public School Facilities test.

6. Ms. Rose Beckmann, 207 Highfield Drive, stated concern that not all the surrounding neighbors were notified of the proposal, requested the Board defer the item until the neighbors have an opportunity to speak to the matter, inquired about the second entrance to the development and its impact on the property owners adjacent to the access road, stated concern about the runoff from the development that will not be routed to the Best Management Practice (BMP), and that neighboring residents will not have a safety barrier separating them from the playground area.

As no one else wished to speak, Mr. Goodson closed the Public Hearing.

Mr. Brown requested the applicant address the pathway between the proposed development and Burnham Woods.

Mr. Epstein stated that as approved by the Fire Department, the pathway is for emergency use only by emergency vehicles.

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Mr. McGlennon inquired how the drainage issue would be addressed.

Mr. Mark Rinaldi, LandMark Design Group, stated that drainage would be coming off Burnham Woods onto Michelle Point, and not the other way around, and at the engineering phase, the developer will be responsible for managing the drainage.

Mr. Harrison inquired if the land will be elevated or enhanced to help the drainage issue.

Mr. Rinaldi stated that an opportunity to alleviate the drainage problem would be presented.

Mr. McGlennon inquired if neighborhood wells fail, will owners be required to hookup to County water and sewer.

Mr. Morton stated that citizens outside the Primary Service Area would not be required to hook into the JCSA utilities if the wells fail.

Mr. McGlennon inquired if the opportunity would be provided if they want to connect.

Mr. Foster stated that the water system to serve the proposed Michelle Point has been designed to be expanded in the event of an emergency requiring such service.

Mr. Epstein stated that screening and fencing will be provided on the playground.

Mr. McGlennon inquired about the specific site to be fenced and the type of screening to be provided for neighbors.

Mr. Epstein and Mr. Geddy stated the fencing will be around the area for small children and that screening will be consistent with typical screening requirements.

Mr. McGlennon inquired if the new notification process within the Planning Department will contact nearby neighbors.

Mr. O. Marvin Sowers, Jr., Director of Planning, stated that the notification process adheres to the Virginia State Code requirements and he would review the process.

Mr. Bradshaw made a motion to adopt the resolution approving the permit.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5). NAY: (0).

RESOLUTION

CASE NOS. Z-13-03/MP-12-03. MICHELLE POINT

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, and Section 24-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Zoning Case No. Z-13-03 for rezoning 38.58 acres from A-1, General Agricultural, to R-5, Multifamily Residential, Cluster, with proffers; and

- WHEREAS, the Planning Commission of James City County, following its Public Hearing on January 12, 2004, recommended approval of Case Nos. Z-13-03/MP-12-03, by a vote of 6 to 1; and
- WHEREAS, the proposed residential cluster is shown on the Master Plan prepared by LandMark Design Group, Inc., dated January 5, 2004, and entitled "Michelle Point: A "Green Community of Mixed Cost Housing"; and
- WHEREAS, the property is located at 9001 Barhamsville Road and further identified as Parcel No. (1-3) on James City County Real Estate Tax Map No. (12-1).
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case Nos. Z-13-03/MP-12-03 and accepts the voluntary proffers.

RESOLUTION

CASE NO. SUP-23-03. DAVID A. NICE BUILDERS OFFICE EXPANSION

- WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a special use permit process; and
- WHEREAS, Mr. Mike Suerdieck has applied on behalf of the David A. Nice Builders, Inc., for a special use permit to add a second floor to an existing addition on a contractor's office located at 4575 Ware Creek Road. The proposed 797-square-foot addition will increase the size of the structure to approximately 4,415 square feet; and
- WHEREAS, the property is located on land zoned A-1, General Agricultural, and can be further identified as Parcel No. (1-15B) on James City County Real Estate Tax Map No. (14-1); and
- WHEREAS, the Planning Commission, following its public hearing on January 12, 2004, voted 7-0 to recommend approval of this application.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. 23-03 as described herein with the following conditions:

1. If construction has not commenced on the project within twelve months from the issuance of the special use permit, the permit shall become void. Construction shall be defined as obtaining permits for building construction and a final framing inspection of the addition.
2. The addition shall not exceed 800 square feet in size and shall be designed and constructed as a second-story addition only as shown in the attached drawings prepared by Mike Suerdieck, and entitled "Office 2nd Level Addition," Sheets T-1, A-1, and A-2, dated December 14, 2001.
3. There shall be no more than 20 persons employed on the property.
4. The building materials and colors of the addition shall match those of the existing office building. The colors and building materials for the addition shall be submitted to and approved by the Planning Director prior to final site plan approval.

5. This special use permit is not severable. The invalidation of any word, phrase, clause, sentence, or paragraph shall not invalidate the remainder.

3. Case No. SUP-23-03. David A. Nice Builders Office Expansion

Ms. Sarah Weisiger, Planner, stated that Mike Suerdieck has applied for a special use permit to construct a second floor addition to an existing contractor's office on .93 acres zoned A-1, General Agriculture, located at 4785 Ware Creek Road, and further identified as Parcel No. (1-15B) on James City County Real Estate Tax Map No. (14-1).

Staff found the unique zoning history coupled with the physical aspects of the proposed addition would mitigate the impacts of this use within an area designated Rural Lands on the Comprehensive Plan Land Use Map.

At its meeting on January 12, 2004, the Planning Commission recommended approval of the application by a vote of 7-0.

Staff recommended approval of the Permit with conditions.

Mr. Goodson opened the Public Hearing.

1. Mr. Mike Suerdieck, applicant, concurred with staff's report of the proposal.

As no one else wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. Harrison made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5). NAY: (0).

RESOLUTION

CASE NO. SUP-23-03. DAVID A. NICE BUILDERS OFFICE EXPANSION

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a special use permit process; and

WHEREAS, Mr. Mike Suerdieck has applied on behalf of the David A. Nice Builders, Inc., for a special use permit to add a second floor to an existing addition on a contractor's office located at 4575 Ware Creek Road. The proposed 797-square-foot addition will increase the size of the structure to approximately 4,415 square feet; and

WHEREAS, the property is located on land zoned A-1, General Agricultural, and can be further identified as Parcel No. (1-15B) on James City County Real Estate Tax Map No. (14-1); and

WHEREAS, the Planning Commission, following its public hearing on January 12, 2004, voted 7-0 to recommend approval of this application.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. 23-03 as described herein with the following conditions:

1. If construction has not commenced on the project within twelve months from the issuance of the special use permit, the permit shall become void. Construction shall be defined as obtaining permits for building construction and a final framing inspection of the addition.
2. The addition shall not exceed 800 square feet in size and shall be designed and constructed as a second-story addition only as shown in the attached drawings prepared by Mike Suerdieck, and entitled "Office 2nd Level Addition," Sheets T-1, A-1, and A-2, dated December 14, 2001.
3. There shall be no more than 20 persons employed on the property.
4. The building materials and colors of the addition shall match those of the existing office building. The colors and building materials for the addition shall be submitted to and approved by the Planning Director prior to final site plan approval.
5. This special use permit is not severable. The invalidation of any word, phrase, clause, sentence, or paragraph shall not invalidate the remainder.

4. Case No. AFD-12-86. Gospel Spreading Church AFD – 2004 Gilley Addition

Ms. Sarah Weisiger, Planner, stated that Robert E. Gilley applied to add approximately 71.33 acres, zoned R-8, Rural Residential, to the Gospel Spreading Church Agricultural and Forestal District. The parcel is located along the west side of Mill Creek from an area adjacent to 223 Gatehouse Boulevard extending approximately two miles downstream to the Colonial Parkway and can be further identified as Parcel No. (1-42) on James City County Real Estate Tax Map No. (48-3).

Staff found the proposed addition met the minimum area and proximity requirements for inclusion into the Agricultural and Forestal District.

At its meeting on December 16, 2003, the Agricultural and Forestal District Advisory Committee recommended approval by a vote of 5-0.

At its meeting on January 12, 2004, the Planning Commission voted 7-0 to recommend approval of the application.

Staff recommended approval of the addition to the District subject to the conditions of the existing District as listed in the resolution.

Mr. Bradshaw inquired if there are structures on the site.

Ms. Weisiger stated that there are no structures on the parcel.

Mr. Goodson opened the Public Hearing.

As no one wished to speak to the matter, Mr. Goodson closed the Public Hearing.

Mr. McGlennon made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5). NAY: (0).

ORDINANCE NO. _____

AFD-12-86. GOSPEL SPREADING CHURCH AGRICULTURAL AND FORESTAL DISTRICT

2004 GILLEY ADDITION

WHEREAS, an Agricultural and Forestal District has been established in the Gospel Spreading Church Area; and

WHEREAS, in accordance with Section 15.2-4305 of the Code of Virginia, property owners have been notified, public notices have been filed, public hearings have been advertised, and public hearings have been held on the application for an addition to the Gospel Spreading Church Agricultural and Forestal District; and

WHEREAS, the Agricultural and Forestal Districts Advisory Committee at its meeting on December 16, 2003, recommended approval of the application by a vote of 5-0; and

WHEREAS, the Planning Commission, following its public hearing on January 12, 2004, recommended approval of the application by a vote of 7-0.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that:

- 1. The Gospel Spreading Church Agricultural and Forestal District is hereby amended by the addition of the following parcel:

Mr. Robert E. Gilley	(48-3) (1-42)	71.33 acres
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- 2. That pursuant to the Virginia Code, Section 15.2-4312 and 15.2-4313, as amended, the Board of Supervisors requires that no parcel in the Gospel Spreading Church Agricultural and Forestal District be developed to a more intensive use without prior approval of the Board of Supervisors. Specifically, the following restrictions shall apply:
 - a. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of communications towers and related equipment provided: a) The subdivision does not result in the total acreage of the District to drop below 200 acres; and b) The subdivision does not result in a remnant parcel of less than 25 acres.
 - b. No land outside the Primary Service Area (PSA) and within the Agricultural and Forestal District may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land inside the PSA

and within the Agricultural and Forestal District may be withdrawn from the District in accordance with the Board of Supervisors' policy pertaining to Withdrawal of Lands from Agricultural and Forestal Districts Within the Primary Service Area, adopted September 24, 1996.

- c. No special use permit shall be issued except for agricultural, forestal, or other activities and uses consistent with the State Code Section 15.2-4301 et. seq. which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue special use permits for wireless communications facilities on AFD properties which are in accordance with the County's policies and ordinances regulating such facilities.

5. Case Nos. SUP-22-03/HW-2-03. Busch Gardens Oktoberfest Expansion

Ms. Ellen Cook, Planner, stated that Ronnie Orsborne of LandMark Design Group applied on behalf of Busch Entertainment Corporation for a special use permit to allow the construction of an approximately 40,000 square-foot pre-manufactured metal building to be located within Busch Gardens; and applied for a height limitation waiver to construct themed elements up to 80 feet tall that would be added to the exterior of the proposed building to enhance guest experience.

Staff found the proposal would have minimal impact on the surrounding areas due to its location within Busch Gardens and well below the height of existing adjacent amusement attractions.

At its meeting on January 12, 2004, the Planning Commission recommended approval of the application by a unanimous vote.

Staff recommended approval of the proposal with conditions.

Mr. Goodson opened the Public Hearing.

- 1. Mr. Larry Giles, representing the applicant, concurred with staff's report.

Mr. McGlennon inquired if the 36-month time-frame is adequate for Busch Gardens to move forward with the project.

Mr. Giles stated that would be adequate.

As no one else wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. Harrison made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5). NAY: (0).

RESOLUTION

CASE NO. SUP-22-03. BUSCH GARDENS OKTOBERFEST EXPANSION

- WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a special use permit process; and
- WHEREAS, Mr. Ronnie Orsborne has applied on behalf of Busch Entertainment Corporation for a special use permit to allow for the construction of an approximately 40,000-square-foot pre-manufactured metal building; and
- WHEREAS, the proposed building is shown on the plan prepared by Landmark Design Group, dated November 10, 2003, and entitled "BGW Oktoberfest Expansion: Sight Lines"; and
- WHEREAS, the property is located on land zoned M-1, Limited Business/Industrial District, and can be further identified as Parcel No. (1-9) on James City County Real Estate Tax Map No. (51-4); and
- WHEREAS, the Planning Commission, following its public hearing on January 12, 2004, voted 7-0 to approve this application.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. 22-03 as described herein with the following conditions:

1. This special use permit shall be limited to the construction of an approximately 40,000-square-foot building, which is generally located as shown on "BGW Oktoberfest Expansion: Sight Lines" prepared by LandMark Design Group, dated November 10, 2003, with minor changes approved by the Development Review Committee (DRC).
 2. A lighting plan shall be submitted to, and approved by, the Planning Director or his designee prior to the issuance of a final Certificate of Occupancy. The plan shall indicate no glare outside the property lines: "Glare" shall be defined as more than 0.1 footcandle at the Busch Gardens property line.
 3. All elements of this building shall be limited to a maximum height of 80 feet above grade.
 4. Construction on this project shall commence within thirty-six months from the date of approval of this special use permit or this permit shall be void. Construction shall be defined as obtaining permits for building construction.
 5. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.
6. Case Nos. SUP-25-03/26-03/27-03. James City County Communications Towers

Mr. Matthew D. Arcieri, Planner, stated that Richard M. Miller, Fire Chief, applied for special use permits to construct three communications towers at the Virginia Peninsula Regional Jail located off

Merrimac Trail, Landfill off Jolly Pond Road, and the Hankins Industrial Park located at 129 Industrial Boulevard; zoning of R-8, Rural Residential, at the Virginia Peninsula Regional Jail; zoning of A-1, General Agriculture, at the Landfill; and M-2, General Industrial, at the Hankins Industrial Park; and can be further identified as Parcel Nos. (1-11), (1-4), and (1-62A) on James City County Real Estate Tax Map Nos. (60-1), (30-1), and (12-4).

Staff found the proposals are generally consistent with the County's Performance Standards for Wireless Communications Facilities and generally consistent with the 2003 Comprehensive Plan.

At its meeting on January 12, 2004, the Planning Commission recommended approval by a vote of 7-0 for the Virginia Peninsula Regional Jail and the Landfill towers.

At its meeting on February 2, 2004, the Planning Commission recommended approval by a vote of 7-0 for the Hankins Industrial Park tower.

Staff recommended approval of the permits with conditions.

Mr. McGlennon inquired if the County's Performance Standards for Wireless Communications Facilities permitted co-location of towers at the Hankins Industrial Park site without setting a precedence for future cases.

Mr. Morton stated that staff has reviewed the location and the Policy.

Mr. Bradshaw stated that he concurred with Mr. McGlennon and that public safety is paramount and understood the necessity for the arrangement.

Mr. Bradshaw stated that the towers could accommodate two additional antennas and inquired if the towers could handle additional antennas.

Chief Miller stated that the number of antennas is dependent upon the tower's ability to handle additional weight and structure.

Mr. Goodson opened the Public Hearing.

As no one wished to speak to this item, Mr. Goodson closed the Public Hearing.

Mr. Brown made a motion to adopt the resolutions.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5). NAY: (0).

RESOLUTION

CASE NO. SUP-25-03. JAMES CITY COUNTY COMMUNICATIONS TOWER -

MERRIMAC TRAIL

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a special use permit process; and

WHEREAS, communication towers over 35 feet in height are a specially permitted use in the R-8, Rural Residential, zoning district; and

WHEREAS, the Planning Commission of James City County, following its public hearing on January 13, 2004, recommended approval of Case No. SUP-25-03 by a 7-0 vote to permit the construction and operation of a 280-foot-tall communication tower as part of the James City County 800-MHz trunked radio system at the Virginia Peninsula Regional Jail on 9320 Merrimac Trail and further identified as Parcel No. (1-11) on James City County Real Estate Tax Map No. (60-1).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. 25-03 as described herein with the following conditions:

1. This special use permit shall be valid for a total of one tower. The maximum height of the tower shall not be greater than 280 feet. The property shall be developed generally in accordance with the site layout titled "Special Use Permit Plan for Existing Cellular Tower Modification at Virginia Peninsula Virginia Peninsula Regional Jail" dated December 1, 2003, with minor changes approved by the Director of Planning.
2. Existing trees on the Virginia Peninsula Regional Jail site shall be preserved to the maximum extent possible as determined by the Director of Planning.
3. Final building design, location, orientation, and construction materials for any supporting structures, such as equipment sheds and huts, shall be approved by the Director of Planning prior to final site plan approval.
4. A final Certificate of Occupancy from the James City County Codes Compliance Division shall be obtained within 24 months of approval of this special use permit or the permit shall become void.
5. Within 30 days of the issuance of a final Certificate of Occupancy by the James City County Codes Compliance Division, certification by the manufacturer, or an engineering report by a Virginia-registered structural engineer, shall be filed by the applicant indicating the tower height, design, structure, installation, and total anticipated capacity of the structure, including number and type of antennas, which could be accommodated, demonstrating to the satisfaction of the building official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.
6. The tower shall have a finish that is gray in color as approved by the Director of Planning. No additional lighting beyond the minimum required by the FAA or FCC shall be allowed on the tower.
7. No advertising material or signs shall be placed on the tower.
8. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

RESOLUTION**CASE NO. SUP-26-03. JAMES CITY COUNTY COMMUNICATIONS TOWER -****JOLLY POND ROAD**

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a special use permit process; and

WHEREAS, communication towers over 35 feet in height are a specially permitted use in the A-1, General Agricultural, zoning district; and

WHEREAS, the Planning Commission of James City County, following its public hearing on January 13, 2004, recommended approval of Case No. SUP-26-03 by a 7-0 vote to permit the construction and operation of a 380-foot-tall communication tower as part of the James City County 800-MHz trunked radio system at the James City County Landfill on 1204 Jolly Pond Road and further identified as Parcel No. (1-4) on James City County Real Estate Tax Map No. (30-1).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. 26-03 as described herein with the following conditions:

- A. This special use permit shall be valid for a total of one tower. The maximum height of the tower shall not be greater than 380 feet. The property shall be developed generally in accordance with the site layout titled "Special Use Permit Plan for 380' Cellular Tower James City County Landfill" dated December 1, 2003, with minor changes approved by the Director of Planning.
- B. The tower shall be located on the site in a manner that maximizes the buffering effects of the existing trees and minimizes tree clearing as determined by the Director of Planning. Access drives shall be designed in a manner that minimizes off-site view of the tower's base or related facilities as determined by the Director of Planning. A minimum existing tree buffer of 300 feet shall be maintained around the tower. This buffer shall remain undisturbed except for the access drive, guy wires, and necessary utilities for the tower.
- C. Final building design, location, orientation and construction materials for any supporting structures, such as equipment sheds and huts, shall be approved by the Director of Planning prior to final site plan approval.
- D. A final Certificate of Occupancy from the James City County Codes Compliance Division shall be obtained within 24 months of approval of this special use permit or the permit shall become void.
- E. Within 30 days of the issuance of a final Certificate of Occupancy by the James City County Codes Compliance Division, certification by the manufacturer, or an engineering report by a Virginia-registered structural engineer, shall be filed by the applicant indicating the tower height, design, structure, installation, and total anticipated capacity of the structure, including number and type of antennas, which could be accommodated, demonstrating to the satisfaction of the building official that all structural requirements and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.

- F. The tower shall have a finish that is gray in color as approved by the Director of Planning. No additional lighting beyond the minimum required by the FAA or FCC shall be allowed on the tower.
- G. No advertising material or signs shall be placed on the tower.
- H. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

RESOLUTION

CASE NO. SUP-27-03. JAMES CITY COUNTY COMMUNICATIONS TOWER -

INDUSTRIAL BOULEVARD

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a special use permit process; and

WHEREAS, antennas and towers in excess of 60 feet in height are a specially permitted use in the M-2, General Industrial, zoning district; and

WHEREAS, the Planning Commission of James City County, following its public hearing on February 2, 2004, recommended approval of Case No. SUP-27-03 by a 7-0 vote to permit the construction and operation of a 380-foot-tall communication tower as part of the James City County 800-MHz trunked radio system on 129 Industrial Boulevard and further identified as Parcel No. (1-62A) on James City County Real Estate Tax Map No. (12-4).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. 27-03 as described herein with the following conditions:

1. This special use permit shall be valid for a total of one tower. The maximum height of the tower shall not be greater than 380 feet. The property shall be developed generally in accordance with the site layout titled "Special Use Permit Plan for 380' Cellular Tower on the Nice Commercial Properties LLC" dated December 1, 2003, with minor changes approved by the Director of Planning.
2. Final building design, location, orientation, and construction materials for any supporting structures, such as equipment sheds and huts, shall be approved by the Director of Planning prior to final site plan approval.
3. A final Certificate of Occupancy from the James City County Codes Compliance Division shall be obtained within 24 months of approval of this special use permit or the permit shall become void.
4. Within 30 days of the issuance of a final Certificate of Occupancy by the James City County Codes Compliance Division, certification by the manufacturer, or an engineering report by a Virginia-registered structural engineer, shall be filed by the applicant indicating the tower height, design, structure, installation, and total anticipated capacity of the structure, including number and type of antennas, which could be accommodated, demonstrating to the satisfaction of the building official that all structural requirements

and other safety considerations set forth in the 2000 International Building Code, or any amendment thereof, have been met.

5. The tower shall have a finish that is gray in color as approved by the Director of Planning. No additional lighting beyond the minimum required by the FAA or FCC shall be allowed on the tower.
6. No advertising material or signs shall be placed on the tower.
7. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

G. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, stated that the Board approved two cases for development and increased density despite the Board's ability to limit growth as granted by the State Code, and requested the Board not make comments about its inability to limit growth.

H. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner commented that on February 11, 2004, at the Croaker Library, the FEMA Hazard Mitigation meeting will be held with the affected property owners in Chickahominy Haven.

Mr. Powell stated that the meeting begins at 6:00 p.m. with a staff presentation at 6:30 p.m. for the meeting on February 11, 2004.

I. BOARD REQUESTS AND DIRECTIVES

Mr. McGlennon made a motion to reappoint David B. Powell, Jr., and Thomas Belden to the Purchase of Development Rights (PDR) Committee for three-year terms, terms to expire on February 12, 2007; and to appoint Richard H. Jones to the Water Conservation Committee to an unexpired term on the Water Conservation Committee, term to expire on June 24, 2005.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5). NAY: (0).

J. RECESS

Mr. Harrison made a motion to recess until 12:00 p.m. on February 12, 2004.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5). NAY: (0).

At 9:00 p.m., Mr. Goodson recessed the Board until 12:00 p.m. on February 12, 2004, for the Board to attend the Virginia Association of Counties/Virginia Municipal League Legislative Day to be held at the Omni Hotel in Richmond, Virginia.

Sanford B. Wanner
Clerk to the Board

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PROFFERS

THESE PROFFERS are made this 5th day of January, 2004 by Evelyn H. Anderson, individually and as co-executor of the estate of Frederick A Hoar, Marie A. Hovland, as co-executor of the estate of Frederick A Hoar and George Ford and Sharyn Ford, husband and wife (together with their respective successors in title and assigns, the "Owner") and Littlefeet, LLC, a Virginia limited liability company ("Buyer").

RECITALS

A. Evelyn H. Anderson, individually and as co-executor of the estate of Frederick A Hoar, Marie A. Hovland, as co-executor of the estate of Frederick A Hoar are the owners of three contiguous tracts or parcels of land located in James City County, Virginia, one with an address of 7147 Richmond Road, Williamsburg, Virginia and being Tax Parcel 2320100049, the second with an address of 7145 Richmond Road, Williamsburg, Virginia and being Tax Parcel 2320100050, and the third with an address of 75 Nina Lane, Williamsburg, Virginia and being Tax Parcel 2320100050C (the "Hoar Property").

B. George Ford and Sharyn Ford, husband and wife are the owners of a tract or parcel of land located in James City County, Virginia, with an address of 126 Rondane Place, Williamsburg, Virginia and being Tax Parcel 2320100051 (the "Ford Property").

Prepared by:

Vernon M. Geddy, III, Esquire
Geddy, Harris, Franck & Hickman, LLP
1177 Jamestown Road
Williamsburg, VA 23185
(757) 220-6500

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B. Buyer has contracted to purchase the Hoar Property and a portion of the Ford Property as shown on the Master Plan (defined below) conditioned upon the rezoning of the Property.

C. The Hoar Property is now zoned A-1. The Ford Property is now zoned R-2. The Hoar Property and the portion of the Ford Property shown on the Master Plan are hereinafter called the "Property". Owner and Buyer have applied to rezone the Property from A-1 and R-2 to MU, Mixed Use District, with proffers.

D. Buyer has submitted to the County a master plan entitled "Master Plan for Rezoning of Norge Neighborhood Site" prepared by AES Consulting Engineers dated September 17, 2003 and revised October 13, 2003 and November 17, 2003 and December 29, 2003 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

E. Owner and Buyer desire to offer to the County certain conditions on the development of the Property not generally applicable to land zoned MU.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2297 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

CONDITIONS

1. **Density.** There shall be no more than 82 residential dwelling units on the Property, consisting of no more than two single family dwelling units located in the portion of the Property with a Master Plan area designation of "A" and no more than 80 multi-family dwelling units located in the portion of the Property with a Master Plan area designation of "B". All multi-family units on the Property shall be developed as a condominium project pursuant to the Virginia Condominium Act. The residential portions of the Property shall have an overall density of no more than four dwelling units per acre. The portion of the Property with a Master Plan area designation of "E, G" (the "Commercial Parcel") shall have a total maximum building coverage of 20%, no single building shall have a footprint of more than 3,000 square feet unless otherwise approved by the Director of Planning based on building architecture with varied roof lines, wall articulations, window placements and other features to reduce the mass and unbroken building lines that may occur in certain standard commercial building designs and no structure shall exceed two and one-half stories and 45 feet in height. There shall be no more than one restaurant on the Commercial Parcel and any restaurant shall contain no more than 3,000 square feet of floor area.

2. **Condominium Owners Association.** There shall be organized a condominium owner's association as required by the Virginia Condominium Act (the "Association") in accordance with Virginia law in which all condominium unit owners in the Property, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and condominium declaration (together, the "Governing Documents") creating and governing the Association shall be submitted to and reviewed by the County Attorney for consistency with this Proffer. The Governing Documents shall require that the Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs, recreation areas, private roads and parking areas, sidewalks, and all other common elements (including open spaces) and shall require that the association (i) assess all members for the maintenance of all properties owned or maintained by the association and (ii) file liens on members' properties for non-payment of such assessments. The Governing Documents shall grant the Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing Documents. The Association and the owner of the Commercial Parcel and/or a property owners association formed for the Commercial Parcel shall enter into a costs sharing agreement setting forth the responsibilities of the respective parties with respect to the

maintenance of the portion of the private driveways and stormwater maintenance facilities utilized by both properties. Such agreement shall be subject to the approval of the County Attorney and shall not be amended without the prior approval of the Planning Director.

3. Water Conservation. Water conservation standards for the Property shall be submitted to and approved by the James City Service Authority and Owner and/or the Association shall be responsible for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. The standards shall be approved by the James City Service Authority prior to final site plan or subdivision approval.

4. Sewer Service. The County shall not be obligated to issue any building permits for structures on the Property until either: (i) the developer of the Colonial Heritage project and the County and/or the James City Service Authority ("JCSA") have entered into an agreement providing for the construction of proposed Regional Lift Station 9-9 and its associated cross country gravity sewer lines and the removal of Lift Stations 6-3 and 6-5 and construction has commenced; or (ii) a detailed

capacity analysis of existing Lift Station 6-5 accounting for flows reserved by the Colonial Heritage project and identifying the upgrades necessary to serve the development of the Property is submitted to and approved by the JCSA and Owner makes the necessary upgrades to existing Lift Station 6-5 at its expense.

5. Cash Contributions for Community Impacts. (a) A contribution of \$750.00 for each dwelling unit on the Property shall be made to the JCSA in order to mitigate impacts on the County from the physical development and operation of the Property. The JCSA may use these funds for development of alternative water sources or any project related to improvements to the JCSA water system, the need for which is generated in whole or in part by the physical development and operation of the Property.

(b) A contribution of \$427.00 for each dwelling unit on the Property shall be made to the James City Service Authority ("JCSA") in order to mitigate impacts on the County from the physical development and operation of the Property unless Owner, at its expense, upgrades an existing Lift Station 6-5 as provided in Section 4(ii) above to serve the Property in which case no additional contribution shall be required. The JCSA may use these funds for development of sewer system improvements or any project related to improvements to the JCSA sewer system, the

need for which is generated in whole or in part by the physical development and operation of the Property.

(c) A contribution of \$750.00 for each dwelling unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including, without limitation, for emergency services, school uses, off-site road improvements, library uses, and public use sites.

(d) Owner shall make a contribution to the County of \$250.00 for each residential lot or unit shown on a final development plan for the Property for use by the County for recreation capital improvements.

(e) The contributions described above, unless otherwise specified, shall be payable for each dwelling unit on the Property at the time of subdivision or site plan approval for such unit.

(f) The per unit contribution(s) paid in each year pursuant to this Section shall be adjusted annually beginning January 1, 2005 to reflect any increase or decrease for the preceding year in the Consumer Price Index, U.S. City Average, All Urban Consumers (CPI-U) All Items (1982-84 = 100) (the "CPI") prepared

and reported monthly by the U.S. Bureau of Labor Statistics of the United States Department of Labor. In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in paragraphs (a) and (b) of this Section. The adjustment shall be made by multiplying the per unit contribution for the preceding year by a fraction, the numerator of which shall be the CPI as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the CPI as of December 1 in the preceding year, In the event a substantial change is made in the method of establishing the CPI, then the per unit contribution shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing CPI. In the event that the CPI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the CPI (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the per unit contribution to approximate the rate of annual inflation in the County.

6. **Streetscapes**. The Owner shall provide and install streetscape improvements along both sides of the internal streets and the shared private driveway and on one side of the pedestrian/emergency access shown on the Master Plan in

accordance with the County's Streetscape Guidelines Policy. The streetscape improvements shall be shown on development plans for the Property and submitted to the Director of Planning for approval during the site plan approval process. Streetscape improvements shall be either (i) installed within six months of the issuance of a certificate of occupancy for any residential units in adjacent structures or, in the case of the streetscape improvements along one side of the pedestrian emergency access, within six months of the construction thereof or (ii) bonded in form satisfactory to the County Attorney prior to the issuance of a certificate of occupancy for any residential units in adjacent structures or, in the case of the streetscape improvements along one side of the pedestrian emergency access, at the time of completion of the construction thereof.

7. **Commercial Design Review.** Prior to the County being obligated to grant final development plan approval for any of the buildings on the Commercial Parcel, there shall be prepared and submitted to the Director of Planning for approval conceptual site plan, including dumpster locations, architectural and landscaping plans, including architectural elevations, for the Director of Planning to review and approve for general consistency with the architectural character of the Norge Community Character Area and the provisions of Section 24-370 (c) and 24-96 (d) (1) of the Zoning Ordinance as in effect on the

date hereof. The Director of Planning shall review and either approve or provide written comments settings forth changes necessary to obtain approval within 45 days of the date of submission of the plans in question. Final plans and completed buildings shall be consistent with the approved conceptual plans.

The design of the entrance into the Commercial Parcel from the main entrance drive into the Property shall be subject to the review for traffic safety and approval by the Director of Planning prior to final site plan approval.

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

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

9. **Environmental Protections.** (a) The Owner and/or the owners association shall grant, free of charge, to a County approved land conservation entity and/or the County a conservation easement with terms consistent with these Proffers over the area designated on the Master Plan as Conservation Area generally in the locations shown on the Master Plan. The exact boundaries of the Conservation Area shall be shown on subdivision plats and/or site plans of the Property. The conservation easement over the Conservation Area shown on each individual

subdivision plat or site plan shall be granted at the time of final approval thereof by the County. The Conservation Area shall remain undisturbed and in its natural state, preserving indigenous vegetation except as set forth below. With the prior approval of the County Engineer or his designee on a case by case basis, (i) dead, diseased and dying trees or shrubbery and invasive or poisonous plants may be removed from the Conservation Area; (ii) select hand clearing and pruning of trees shall be permitted in the Conservation Area to permit sight lines or vistas, (iii) utilities, pedestrian paths, trails and bridges may intrude into or cross the Conservation Area, (iv) stream restoration work shall be permitted in the Conservation Area and (v) stormwater BMPs may be located in the Conservation Area but shall not be located in nor impact the channel flow of perennial streams unless specifically approved by the Environmental Division. If vegetation is removed from the Conservation Area by development activities it shall be replaced by indigenous vegetation that is equally or more effective in retarding runoff, preventing erosion and filtering nonpoint source pollution. Except for existing utilities and to the extent reasonably feasible, new utility crossings shall be generally perpendicular through the Conservation Area and Owner shall endeavor to design utility systems that do not intrude into the Conservation Area. The Conservation Area shall be maintained by Owner unless the

County approved land conservation entity or the County assumes responsibility therefor under its easement or the Conservation Area is conveyed to an owners association, at which time the association shall assume responsibility for its maintenance. The Conservation Area shall be exclusive of lots or dwelling units.

(b) In order to achieve superior environmental protection, Owner shall utilize some combination of (i) an on-site infiltration/recharge BMP(s), and/or (ii) upgrading and using the existing BMP pond on the adjacent Williamsburg Dodge property as a regional facility and/or (iii) save existing onsite Hydrologic Soil Group A and B soils in the stormwater management system for the Property. The foregoing items shall be in addition to and shall not preclude use of an on-site BMP pond. The stormwater management plan for the Property shall be subject to the approval of the Director of the Environmental Division.

(c) Owner shall submit a streambed stabilization plan for the area shown on the Master Plan as "Area of Streambed Restoration" for review and approval by the Environmental Division prior to land disturbing activities for buildings 11 through 14 as shown on the Master Plan. The approved streambed stabilization plan shall either be (i) implemented or (ii) bonded in form satisfactory to the County Attorney prior to issuance of any land disturbing permits for buildings 11 through 14.

10. **Entrance/Taper.** Except as provided below, there shall be one entrance into the Property to and from Route 60 in the general location shown on the Master Plan. The Commercial Parcel shall not have direct access to Route 60 unless due to the unique nature of a proposed use or uses on the Commercial Parcel the Director of Planning and Virginia Department of Transportation approve a direct access. The portion of the Property with a Master Plan designations of "A" shall be served by a private shared driveway off Nina Lane as shown on the Master Plan. A eastbound right turn taper 200 feet in length on Route 60 shall be constructed at the entrance to the Property from Route 60. The taper proffered hereby shall be constructed in accordance with Virginia Department of Transportation standards and shall be completed prior to the issuance of the first certificate of occupancy. All signage along the Route 60 frontage of the Property shall be subject to review and approval of the Director of Planning in accordance with provisions of Section 24-69 of the Zoning Ordinance.

11. **Sidewalk Connections.** There shall be sidewalks on the Property generally in the locations shown on the Master Plan, including the internal sidewalk connection to the Commercial Parcel and to Nina Lane and along the Nina Lane frontage of the Property. Sidewalks along the entrance road shall be installed at the time of road construction. Otherwise, sidewalks shall be

installed prior to issuance of certificates of occupancy for adjacent dwelling units. There shall be no fence, gate, sign or structure to restrict pedestrian access to any of such sidewalks.

12. Pedestrian Path/Emergency Access. There shall be a multi-use path at least 12 feet in width, six feet paved and six feet of soil - reinforced earth shoulders, installed on the Property generally as shown on the Master Plan to provide pedestrian access and emergency vehicular access to and from the Property and Nina Lane. The path shall be located on property owned by the Association and shall be maintained by the Association. The path shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney prior to the issuance of any certificates of occupancy for any residential units in the adjacent buildings.

13. Private Streets. All streets on the Property shall be private and shall conform to VDOT construction standards. Owner shall deposit into the maintenance reserve fund maintained by the Association the amount of \$8,500.00 and shall provide evidence of such deposit to the Director of Planning at the time of final site plan or subdivision approval.

14. Commercial Uses. Except as further limited below, uses on the Commercial Parcel shall be limited to those uses permitted by right in the B - 1 zoning district under the James City County Zoning Ordinance as in effect as of the date of these proffers.

The following uses, otherwise permitted by right in the B - 1 zoning district, shall not be permitted on the Commercial Parcel:

- automobile service station
- fast food restaurant
- hotels, motels, tourists homes and convention centers
- indoor sports facilities
- indoor theaters
- lumber and building supply
- machinery sales and service
- marinas, docks, piers, yacht clubs, boat basins, and servicing, repair and sales facilities for the same
- marine or waterfront businesses to include the receipt, storage and transshipment of waterborne commerce or seafood receiving, packing or distribution
- public billiard parlors, arcades, pool rooms, bowling alleys, dance halls and other indoor centers of amusement
- radio and television stations and accessory antenna or towers and tower mounted wireless communications facilities
- retail food stores
- telephone exchanges and telephone switching stations
- wholesale and warehousing

If any use is proposed to locate on the Commercial Parcel with a materially higher trip generation based on ITE trip generation figures than the specialty retail (ITE Code 814) use used in the traffic impact study submitted herewith performed by DRW Consultants, Inc., then Owner shall submit with its proposed site plan an updated traffic impact study to the Director of Planning and VDOT based on the proposed use for their review and approval and shall implement the recommendations of the approved updated study prior to issuance of certificate of occupancy for the Commercial Parcel.

15. Landscaped Berm. There shall be a landscaped berm from two to six feet in height located between the multi-family

development on the Property and the Kristiansand subdivision, with the location and dimensions of the berm and the landscaping to be located thereon to be consistent with the detail and notes provided on the Master Plan and to be shown on development plan for the Property to be reviewed and approved in the plan review process.

16. **Lighting.** Street light poles at the Route 60 entrance and along the access drive extending the depth of the Commercial Parcel shall not exceed 20 feet in height. All other street light poles on the Property shall not exceed 15 feet in height. All building mounted external lights along the backs of the buildings on the Property shall be recessed fixtures with no globe, bulb or lens extending below the casing or otherwise unshielded by the case so that the light source is visible from the side of the fixture. These lights shall be shown on a lighting plan to be submitted to and approved by the Director of Planning and shall indicate that no glare defined as 0.1 footcandle or higher is cast off the Property onto adjacent properties.

17. **Shared Driveway.** There shall be a shared driveway at least 10 feet in width with at least a four inch stone base and one and one-half inches of asphalt serving the two single family residential lots on the Property generally as shown on the Master Plan with the design of the shared driveway to be approved by the

Director of Planning. The shared driveway shall be installed before the earlier of (i) final subdivision plat approval for the two single family lots or (ii) issuance of 40 certificates of occupancy for more than 40 multi-family units. Prior to final approval and recordation of the subdivision plat for those lots, Owner shall submit an instrument to the County Attorney for approval, setting forth provisions (i) creating the necessary easements for the shared driveway, (ii) for the permanent care and maintenance of the shared driveway, and (iii) establishing the method of assessing each lot for its share of the costs of administering, maintaining and replacing the shared driveway. The approved instrument shall be recorded with the final subdivision plat.

18. Recreation. Owner shall install a shelter/gazebo generally as shown on the Master Plan prior to issuance of a certificate of occupancy for any of the condominium units on the Property.

19. Landscaped Setbacks. The 35 foot landscaped setback shown on the Master Plan parallel to the entrance road and adjacent to the Williamsburg Dodge property shall contain the equivalent amount of landscaping as if the setback was fifty feet in width. The 35 foot landscaped setback adjacent to buildings 19 and 20 shall contain enhanced landscaping consisting of 125% of the landscaping otherwise required by the Zoning Ordinance and

clearing of the trees between 35' and 50' shall be the minimum necessary to properly install the buildings and appurtenances.

WITNESS the following signatures.

Evelyn H. Anderson *by Susanna B. Hickner*
her attorney in fact

Evelyn H. Anderson, individually and as co-executor of the estate of Frederick A Hoar

Marie A. Hovland *by Susanna B. Hickner*
her attorney in fact

Marie A. Hovland, as co-executor of the estate of Frederick A Hoar

George Ford *by [Signature] HER ATTORNEY IN FACT*

George Ford

Sharyn Ford *by [Signature] HER ATTORNEY IN FACT*

Sharyn Ford

Littlefeet, LLC

By: [Signature]
Title: Member

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

The foregoing instrument was acknowledged this 5th day of January, 2004, by Evelyn H. Anderson, individually and as co-executor of the estate of Frederick A Hoar, by Susanna B. Hickman, her attorney in fact

[Signature]
NOTARY PUBLIC

My commission expires: 12/31/04.

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

The foregoing instrument was acknowledged this 5th day of January, 2004, by Marie A. Hovland, as co-executor of the estate of Frederick A Hoar, by Susanna B-Hickman, her attorney in fact

Vern M Dobby III
NOTARY PUBLIC

My commission expires: 12/31/04.

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

The foregoing instrument was acknowledged this 5th day of January, 2004, by George Ford and Sharyn Ford, husband and wife, by John Wilson, then attorney in fact.

Vern M Dobby III
NOTARY PUBLIC

My commission expires: 12/31/04.

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

The foregoing instrument was acknowledged this 5th day of January, 2004, by John Wilson, as member of Littlefeet, LLC on behalf of the company.

Vern M Dobby III
NOTARY PUBLIC

My commission expires: 12/31/04.

Schedule A

Parcel 1

All that lot, piece or parcel of land situate, lying and being in the County of James City Virginia, known and designated as Lot 1, containing 3.2168 acres, more or less, together with 50' right of way all as shown on that certain plat entitled, "PLAT OF SUBDIVISION & BOUNDARY LINE VACATION ON PROPERTY STANDING IN THE NAME OF FREDERICK A. HOAR BEING 20.4349 ACRES LOCATED JAMES CITY COUNTY, VIRGINIA", dated June 7, 1988, revised August 19, 1988, made by Spearman & Associates, Inc., Land Surveying, and duly of record in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia in Plat Book 49 at page 88.

BEING a portion of the same property conveyed to Frederick A. Hoar by deed dated January 20, 1948, of record in the said Clerk's Office in Deed Book 41 at page 171. Frederick A. Hoar died testate. June 14, 1994. His will is recorded in Will File 3717, and is dated September 23, 1988, devising Lot 1 to Evelyn A. Anderson in Article I, Paragraph B.

Parcel 2

That certain piece or parcel of land situate in Powhatan Magisterial District, James City County, Virginia, containing 1 acres by survey, but being sold in gross and not by acre, which said parcel is shown and designated as Lot No. 3 on a plat entitled, "Plat Showing Survey for F. A. Hoar," made February, 1948 by V. D. McManus, a copy of said plat is recorded in Plat Book 11 page 15.

Said parcel of land being bounded and described as follows:

Commencing at an iron rod driven in the ground on the right of way of State Highway No. 60 at the corner of the property this day conveyed to Rustad and running thence South 13° 30' East the distance of 170.7 feet to an iron rod driven in the ground at the corner of Lot No. 2; thence South 76° 30' West the distance of 255.2 feet to an iron rod; thence North 13° 30' West the distance of 170.7 feet to an iron rod at the corner of Lot No. 4; thence 76° 30' East the distance of 255.2 feet to the point of beginning.

BEING the same property conveyed to Evelyn Hoar Anderson and George Braxton Anderson, husband and wife, tenants by the entireties with the right of survivorship, by deed dated March 10, 1948, recorded in Deed Book 40 at page 446. George Braxton Anderson died September 22, 1996, leaving Evelyn Hoar Anderson surviving

Parcel 3

All that certain lot, piece or parcel of land, together with the buildings and improvements thereon and appurtenances thereunto belonging, situate, lying and being in the County of

~~1 of 2~~

21922

James City, Virginia, and known, numbered and designated as "Parcel A, a Plat of a Survey of Two Parcels of Land Located in Powhatan District, James City County, Virginia, dated February 10, 1975 , made by Deward M. Martin & Associates, Inc. , and recorded in the Clerk's Office of the Circuit Court of the County of James City, Virginia in Deed Book 161, page 393.

Commencing at a point, on the southerly right-of-way line of Rondane Place, said point marking the intersection of said right-of-way line and the line dividing Lot 51 and Lot 52, Kristiansand Section 2, thence along said dividing Line, S26°40'05"E 150.00' to a point, said point marking the intersection of the line dividing Lot 51 and Lot 52, Kristiansand Section 2 and the line of Norge Neighborhood, LLC; thence, along the line Dividing Norge Neighborhood, LLC and Kristiansand Subdivision, S63°19'55"W 40.88' to the point of beginning, said point marking the intersection of the line dividing Norge Neighborhood, LLC, Kristiansand Subdivision and George C. Ford, Jr. and Sharyn L. Ford, the point of beginning thus established; thence, leaving the line of Kristiansand Subdivision along the line of Norge Neighborhood, LLC, S09°27'16"W 227.35' to a point; thence, N42°18'49"E 106.58' to a point; thence, S26°01'28"W 69.96' to a point; thence, S02°03'42"W 151.80' to a point; thence, S16°30'39"W 77.83' to a survey point, thence, continuing along said line S16°30'39"W 4.98' to the centerline of a stream, said stream being the dividing line between the parcel herein described, Norge Neighborhood, LLC, and Colonial Heritage, L.L.C.; thence, returning to said survey point, along a survey line only, the centerline of the stream is the property line, N63°42'21"E 25.81' to a survey point; thence, S84°00'24"W 326.65' to a survey point; thence, N11°03'55"W 53.94' to a survey point; thence, N59°56'41"W 64.93' to a survey point along the centerline of the stream, the centerline of the stream is the property line; thence, leaving said stream, along a proposed line through the property of George C. Ford, Jr. and Sharyn L. Ford N73°30'26"E 357.32' to a point, a proposed corner; thence, N04°30'26"E 91.31' to a point, a proposed corner; thence, N14°56'09"E 97.85' to a point, a proposed corner; thence, N63°15'03"E 91.11' to a point, a proposed corner; thence, N26°44'57"W 123.68' to a point, a proposed corner; thence, N63°19'55"W 202.78' to the point of beginning; said parcel containing ± 2.30acres.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 25 June 04
at 9:12 AM/PM: The taxes imposed by Virginia Code
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

STATE TAX	LOCAL TAX	ADDITIONAL TAX
_____	_____	_____
\$ _____	\$ _____	\$ _____

TESTE: BETSY B. WOOLRIDGE, CLERK
BY: Betsy B. Woolridge Clerk

040016083

LIMITED POWER OF ATTORNEY

We, Evelyn H. Anderson, individually and as Co-Executor of the Estate of Frederick A. Hoar and Marie A. Hovland, as Co-Executor of the Estate of Frederick A. Hoar do hereby appoint, SUSANNA B. HICKMAN, as our true and lawful attorney-in-fact ("my attorney"). We authorize our attorney to act for us as follows:

To sign on our behalf proffered conditions in connection with the rezoning of our property known as 7145 Richmond Road, 19.3 ± acres.

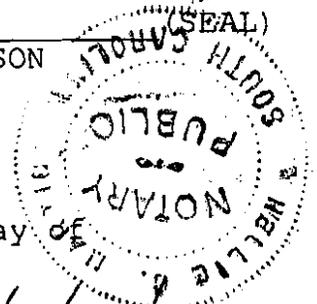
This Limited Power of Attorney shall terminate upon the final rezoning of the above referenced property.

Any person, firm, or corporation shall be fully protected in relying upon this power of attorney unless and until actual notice of its revocation or actual notice of the death of the undersigned is received. I hereby ratify and confirm all actions which may be taken by my Agent under this power of attorney. This power of attorney shall not terminate upon my disability.

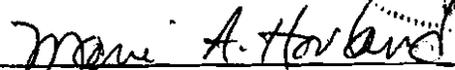
WITNESS my signature and seal this 10 day of October, 2003.



EVELYN H. ANDERSON



October, WITNESS my signature and seal this 10 day, 2003.



MARIE A. HOVLAND

STATE OF S.C. AT LARGE
CITY/COUNTY OF Greenville, to-wit:

The foregoing instrument was acknowledged before me
this 10 day of October, 2003, by EVELYN H. ANDERSON.

(AFFIX SEAL)

Nelli C. Matz
NOTARY PUBLIC

My commission expires: April 22, 2007

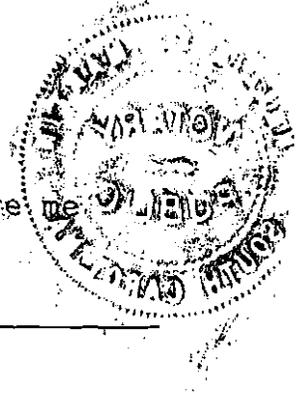
STATE OF S.C. AT LARGE
CITY/COUNTY OF Greenville, to-wit:

The foregoing instrument was acknowledged before me
this 10 day of October, 2003, by MARIE A. HOVLAND.

(AFFIX SEAL)

Nelli C. Matz
NOTARY PUBLIC

My commission expires: April 22, 2007



VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 25 June 04
at 9:14 AM/PM. The taxes imposed by Virginia Code
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

STATE TAX LOCAL TAX ADDITIONAL TAX
\$ _____ \$ _____ \$ _____
TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B. Woolridge Clerk

040016084

LIMITED POWER O-F ATTORNEY

We, George Ford and Sharyn Ford, husband and wife, do hereby appoint, JOHN WILSON, as our true and lawful attorney-in-fact ("our attorney"). We authorize our attorney to act for us as follows:

To sign on our behalf preferred conditions in connection with the rezoning of the portion of our property known as 126 Rondone Place, Williamsburg, Va. (Tax Parcel 2320100051) shown on the plan entitled "Master Plan for Rezoning of Norge Neighborhood Site" prepares by AES Consulting Engineers.

This limited Power of Attorney shall terminate upon the final rezoning of the above referenced property.

Any person, firm, or corporation shall be fully protected in relying upon this power of attorney unless and until actual notice of its revocation or actual notice of the death of the undersigned is received. We hereby ratify and confirm all actions which may be taken by our Agent under this power of attorney. This power of attorney shall not terminate upon our disability.

WITNESS our signatures and seals this 24TH day of October, 2003.

George C. Ford (SEAL)
GEORGE FORD

Sharyn Ford (SEAL)
SHARYN FORD

STATE OF Virginia AT LARGE
CITY/COUNTY OF New Kent, to wit:

The foregoing instrument was acknowledged before me this 24 day of October, 2003,
by George Ford and Sharyn Ford, husband and wife.

Cynthia D. Javel
NOTARY PUBLIC

My commission expires: June 30, 2007



VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 25 June 04
at 9:15 AM/PM. The taxes imposed by Virginia Code
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

STATE TAX	LOCAL TAX	ADDITIONAL TAX
\$ _____	\$ _____	\$ _____

TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B. Woolridge Clerk

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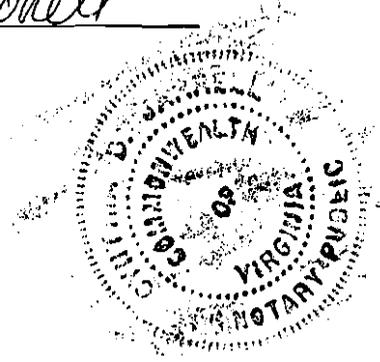
STATE OF Virginia AT LARGE

CITY/COUNTY OF New Kent, to wit:

The foregoing instrument was acknowledged before me this 24 day of October, 2003, by George Ford and Sharyn Ford, husband and wife.

Cynthia D Jamell
NOTARY PUBLIC

My commission expires: June 30, 2007



VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 25 June 04
at 9:15 AM/PM. The taxes imposed by Virginia Code
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

STATE TAX LOCAL TAX ADDITIONAL TAX
\$ _____ \$ _____ \$ _____
TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B Woolridge Clerk

040018582

PROFFERS

THESE PROFFERS are made this 28th day of January, 2004 by MICHELLE POINT, LLC, a Virginia limited liability company (together with his successors and assigns, the "Owner").

RECITALS

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

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

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

E. Owner desires to offer to the County certain conditions on the development of the Property not generally applicable to land zoned R-5.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2297 of the Code of Virginia, 1950, as amended, and the County Zoning

Prepared by:

Vernon M. Geddy, III, Esquire
Geddy, Harris, Franck & Hickman, LLP
1177 Jamestown Road
Williamsburg, VA 23185
(757) 220-6500

1 of 13

Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

CONDITIONS

1. **Master Plan**. The Property shall be subdivided and developed generally as shown on the Master Plan, with only minor changes thereto that the Development Review Committee determines do not change the basic concept or character of the development.

2. **Owners Association**. There shall be organized an owner's association (the "Association") in accordance with Virginia law in which all property owners in the development, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing the Association shall be submitted to and reviewed by the County Attorney for consistency with this Proffer. The Governing Documents shall require that the Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs, recreation areas, private roads and parking areas ("Reserve"), and shall require that the association (i) assess all members for the maintenance of all properties owned or maintained by the association and (ii) file liens on members' properties for non-payment of such assessments.

The Governing Documents shall grant the Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing Documents. Owner shall maintain all common areas on the Property until 90% of the lots/units on the Property have been sold to minimize Association dues during that period so as to not adversely affect purchasers ability to qualify for a home mortgage. At the time Owner's maintenance obligation under this Section ends, there shall be at least \$14,850.00 in the Reserve and Owner shall supply evidence of the same to the Director of Planning.

3. **Water Conservation.** Water conservation standards shall be submitted to and approved by the James City Service Authority and Owner and/or the Association shall be responsible for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. The standards shall be approved by the James City Service Authority prior to final site plan or subdivision approval.

4. **Affordable Housing.** A minimum of 11 of the lots with single-family detached dwelling units shall be reserved and offered for sale at a price at or below \$110,000.00 subject to

adjustment as set forth herein. A minimum of 11 of the lots with townhouse dwelling units shall be reserved and offered for sale at a price at or below \$99,300.00 subject to adjustment as set forth herein. The maximum prices set forth herein shall be adjusted annually as of January 1 of each year by increasing such prices by the cumulative rate of inflation as measured by the Consumer Price Index - Urban, U.S. City Average annual average change for the period from January 1, 2004 until January 1 of the year in question. The annual increase shall not exceed five percent (5%). The Director of Planning shall be provided with a copy of the settlement statement for each sale at a price at or below the maximum prices set forth above. Owner shall consult with and accept referrals of, and sell to, potential qualified buyers from the James City County Office of Housing and Community Development on a non-commission basis.

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

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

6. Environmental Protections. The Owner shall grant, free of charge, to a County approved land conservation entity and/or the County a conservation easement with terms consistent with

these Proffers over the area generally delineated on the Master Plan as "Approx. Limits of 25% Slopes (Undevelopable) Wetlands and Floodplain Areas Contained Within Limits" generally in the locations shown on the Master Plan (the "Conservation Area"). The exact boundaries of the Conservation Area shall be shown on subdivision plats and/or site plans of the Property. The conservation easement over the Conservation Area shown on each individual subdivision plat or site plan shall be granted at the time of final approval thereof by the County. The Conservation Area shall remain undisturbed by Owner and in its natural state, except as set forth below. Dead, diseased and dying trees or shrubbery and invasive or poisonous plants may be removed from the Conservation Area. With the prior approval of the Environmental Director utilities may intrude into or cross the Conservation Area and clearing and construction activities necessary therefor may take place in the Conservation Area. Pedestrian paths, trails and bridges generally as shown on the Master Plan or included in these Proffers may intrude into or cross the Conservation Area and clearing and construction activities necessary therefor may take place in the Conservation Area. Stormwater BMPs may be located in the Conservation Area but shall not be located in nor impact the channel flow of perennial streams unless specifically approved by the

Environmental Division. The Conservation Area shall be exclusive of lots or dwelling units.

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

8. **Streetscapes.** Streetscape improvements shall be provided and installed along both sides of the internal streets shown on the Master Plan in accordance with the County's Streetscape Guidelines Policy. The streetscape improvements shall be shown on development plans for the Property and submitted to the Director of Planning for approval and may be installed in phases as residential units are constructed. Streetscape improvements shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney within six months of the issuance of a certificate of occupancy for adjacent residential units.

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

approval and installed prior to issuance of certificates of occupancy for adjacent dwelling units.

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

11. **Route 30 Buffer.** There shall be a variable width buffer along the Route 30 frontage of the Property ranging from 90 to 150 feet in width generally as shown on the Master Plan. The buffer shall be exclusive of any lots or units and shall be undisturbed, except for the entrance, taper and the trails as shown generally on the Master Plan, and with the approval of the Development Review Committee, for utilities, sidewalks, trails, lighting, entrance features and signs. Dead, diseased and dying trees or shrubbery, invasive or poisonous plants, windfalls and deadfalls may be removed from the buffer area. In areas where the buffer is less than 150 feet, supplemental landscaping

consisting of at least 125% of Zoning Ordinance requirements shall be installed between the townhouses and Route 30 and adjacent to any pump station located in the buffer to create a visual screen that partially but not completely blocks the view of the townhouses from Route 30 in accordance with a plan approved by the Director of Planning prior to final approval of development plans.

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

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

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

(b) All cash contributions proffered by this Proffer 13 shall be used by the County for recreation capital improvements, the need for which is caused in whole or in part by the development of the Property. The exact locations of the facilities proffered hereby and the equipment to be provided at

such facilities shall be subject to the approval of the Development Review Committee. All recreational facilities proffered hereby shall be conveyed to and maintained by the Association and shall be open to all members of the association in good standing.

14. Cash Contributions for Community Impacts. (a) A contribution of \$750.00 for each dwelling unit on the Property other than the 22 units whose prices are restricted pursuant to Proffer 4 above shall be made to the James City Service Authority ("JCSA") in order to mitigate impacts on the County from the physical development and operation of the Property. The JCSA may use these funds for development of alternative water sources or any project related to improvements to the JCSA water system, the need for which is generated in whole or in part by the physical development and operation of the Property.

(b) A contribution of \$750.00 for each dwelling unit on the Property other than the 22 units whose prices are restricted pursuant to Proffer 4 above shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including, without

limitation, for emergency services, school uses, off-site road improvements, library uses, and public use sites.

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

(d) The per unit contribution(s) paid in each year pursuant to this Section shall be adjusted annually beginning January 1, 2005 to reflect any increase or decrease for the preceding year in the Consumer Price Index, U.S. City Average, All Urban Consumers (CPI-U) All Items (1982-84 = 100) (the "CPI") prepared and reported monthly by the U.S. Bureau of Labor Statistics of the United States Department of Labor. In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in paragraphs (a) and (b) of this Section. The adjustment shall be made by multiplying the per unit contribution for the preceding year by a fraction, the numerator of which shall be the CPI as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the CPI as of December 1 in the preceding year, In the event a substantial change is made in the method of establishing the CPI, then the per unit contribution shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing CPI. In the event that the CPI is not available, a reliable government or other independent publication

evaluating information heretofore used in determining the CPI (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the per unit contribution to approximate the rate of annual inflation in the County.

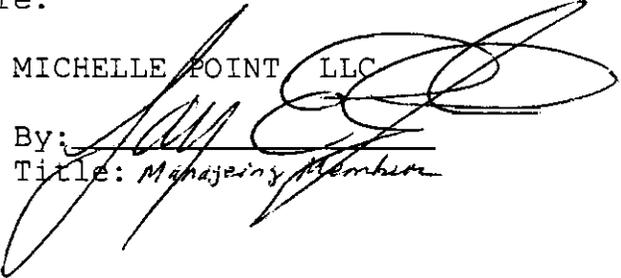
15. County Trail Easement. Owner shall grant at the request of the County Administrator an easement 12 feet in width within the existing Virginia Power easement in the buffer along Route 30 for a greenway trail, with the exact location of the easement to be subject to the approval of the Owner, which approval shall not be unreasonably withheld. The County shall be entitled to construct a trail, including necessary bridges, if any, through the easement area and to install passive amenities such as benches, tables, gazebos, educational or descriptive markers or individual fitness stations.

16. Sewer Service. If, as of March 1st 2004, JCSA has acquired all necessary easements to provide access for gravity sewer lines from the Property to the existing Fenwick Hills pump station, the Owner shall utilize such gravity sewer to the Fenwick Hills pump station. If, as of March 1st 2004, JCSA has not acquired all necessary easements to provide access for gravity sewer lines from the Property to the existing Fenwick Hills pump station, the Owner shall utilize an on-site pump

station feeding into the Hampton Roads Sanitation District force main along Route 30. Should an on-site pump station feeding into the Hampton Roads Sanitation District force main along Route 30 be used, the owner shall make a contribution of \$2000.00 per unit for the first fifty units to the James City Service Authority to mitigate maintenance costs. Such contribution shall be payable for each unit prior to final subdivision plat approval.

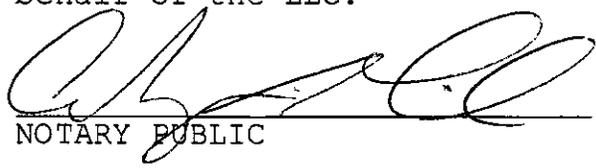
17. **Emergency Crossover.** Prior to the issuance of any certificates of occupancy for residential units on the Property, there shall be a gravel surface emergency access crossover on Route 30 at the entrance to the Property, with signage to indicate emergency use only and with the design of the crossover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

WITNESS the following signature.

MICHELLE POINT LLC
By: 
Title: *Managing Member*

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

The foregoing instrument was acknowledged this 28th day of January, 2004, by Jay E. Epstein, as Managing Member of MICHELLE POINT, LLC on behalf of the LLC.


NOTARY PUBLIC

My commission expires: 11-30-05.

PROPERTY DESCRIPTION

MICHELLE POINT

All that certain lot, piece or parcel of land situate, lying and being in James City County, Virginia, consisting of 38.583 acres, more or less, as shown on that certain plat entitled "A SURVEY FOR CONVEYANCE TO GLODON CORP. THE REMAINDER OF PARCEL 'H' JAMES CITY COUNTY, VIRGINIA" made by L. V. Woodson & Associates, Inc., Engineers, Surveyors & Planners, dated January 20, 1988, recorded in the Clerk's Office, Circuit Court, James City County, Virginia, in Plat Book 47, page 52. Reference is here made to the plat for a complete and accurate description of the land conveyed.

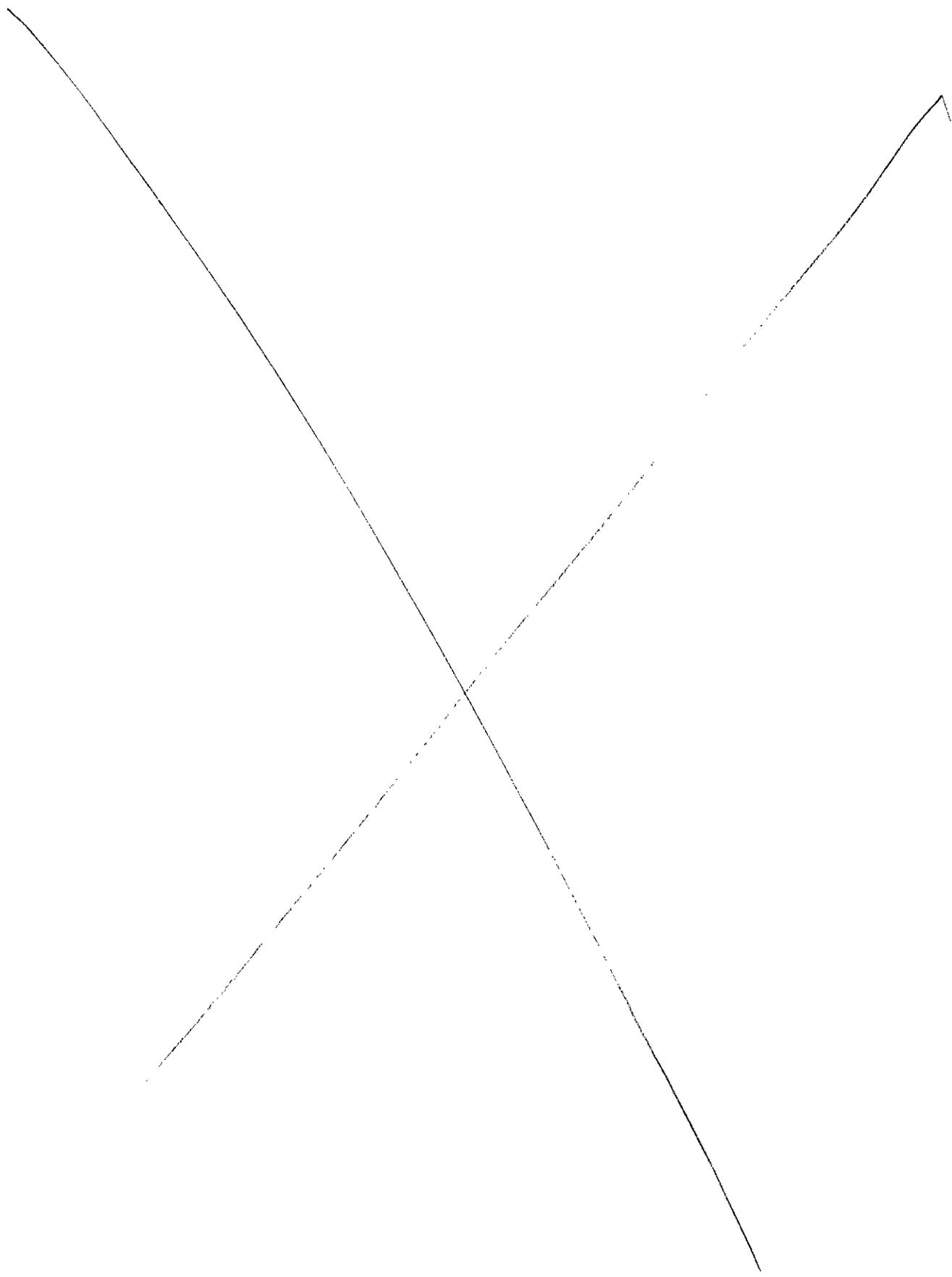
VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
 This document was admitted to record on 26 July 04
 at 9:56 AM/PM. The taxes imposed by Virginia Code
 Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

STATE TAX	LOCAL TAX	ADDITIONAL TAX
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\$ _____ \$ _____ \$ _____

TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B. Woolridge Clerk



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withdrawn from the District in accordance with the Board of Supervisors' policy pertaining to Withdrawal of Lands from Agricultural and Forestal Districts Within the Primary Service Area, adopted September 24, 1996.

- c. No special use permit shall be issued except for agricultural, forestal, or other activities and uses consistent with the State Code Section 15.2-4301 et. seq. which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue special use permits for wireless communications facilities on AFD properties which are in accordance with the County's policies and ordinances regulating such facilities.



Bruce C. Goodson
Chairman, Board of Supervisors

ATTEST:



Sanford B. Wanner
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
BRADSHAW	AYE
HARRISON	AYE
BROWN	AYE
MCGLENNON	AYE
GOODSON	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 10th day of February, 2004.

afd-12-86.res