

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 13TH DAY OF JANUARY 2009, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. CALL TO ORDER**

**B. ROLL CALL**

James G. Kennedy, Chairman, Stonehouse District  
Mary Jones, Vice Chair, Berkeley District  
Bruce C. Goodson, Roberts District  
James O. Icenhour, Jr., Powhatan District  
John J. McGlennon, Jamestown District

Sanford B. Wanner, County Administrator  
Leo P. Rogers, County Attorney

**C. PLEDGE OF ALLEGIANCE** – Tiffani Sprouse, a seventh-grade student at James Blair Middle School, led the Board and citizens in the Pledge of Allegiance.

Mr. Goodson requested that the agenda be amended to allow for a presentation of the Annual Report of the Hampton Roads Partnership from Mr. Dana Dickens.

**D. PRESENTATION**

Mr. Dana Dickens, President of the Hampton Roads Partnership (HRP), gave a brief presentation on the HRP Board of Directors and regional interdependence in Hampton Roads. He thanked the Board for its support of the HRP. He spoke on efforts to strengthen the entire region through localities working together. He highlighted major regional issues addressed by the partnership, including transportation, early childhood education, growth and industry, the Port, and General Assembly caucus meetings. Mr. Dickens noted that the HRP Annual Report would be made available to the Board.

Mr. McGlennon thanked Mr. Dickens for his work with the HRP and the innovations that have been made through these partnerships.

**E. PUBLIC COMMENT**

Mr. Kennedy noted that the time limit for the two public comment segments is three minutes. He noted that the time limit for public hearings for individuals is five minutes and for a group or applicant the time limit is 15 minutes.

1. Mr. John Rhein, 3504 Hunters Ridge, spoke on behalf of the National Federation of the Blind (NFB) local Williamsburg Chapter and invited the Board to the NFB State Conference in November at the Williamsburg Hospitality House. He asked the Board to recognize White Cane Month in October. He requested that the Board oppose a coal-fired power plant in Surry County.

2. Mr. Ed Oyer, 139 Indian Circle, commented on traffic on Route 60 East; compost facility denial on the Southside due to odor; economic shortfalls; low enrollment in public schools; Board of Supervisors vote record for 2008; and Governor outlining administrator-staff relationship to schools.

**F. CONSENT CALENDAR**

Mr. Kennedy asked to pull Item 4 for separate consideration.

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

On a roll call vote, the vote was: AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY: (0).

- 1. Minutes – December 9, 2008, Regular Meeting
- 2. Grant Award – Virginia Department of Fire Programs – \$1,000

**RESOLUTION**

**GRANT AWARD – VIRGINIA DEPARTMENT OF FIRE PROGRAMS - \$1,000**

WHEREAS, the James City County Fire Department has been awarded a grant of \$1,000 through the Virginia Department of Fire Programs' VFIRS (Virginia Fire Incident Report System) Hardware Grant program; and

WHEREAS, the grant requires no match; and

WHEREAS, the funds are to be used for the purchase of computer hardware that will be used for VFIRS reporting.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the acceptance of this grant and the following appropriation amendment to the Special Projects/Grants Fund:

Revenue:

VFIRS	<u>\$1,000</u>
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Expenditure:

VFIRS	<u>\$1,000</u>
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3. Award of Contract – Heavy Rescue Vehicle Purchase – \$355,487

**RESOLUTION**

**AWARD OF CONTRACT – HEAVY RESCUE VEHICLE PURCHASE – \$355,487**

WHEREAS, funds are available in the FY 2009 Capital Improvement Program budget for purchase of a heavy rescue vehicle; and

WHEREAS, cooperative purchasing action is authorized by Chapter 1, Section 5 of the James City County Purchasing Policy and the Virginia Public Procurement Act, and the Town of Blacksburg issued a cooperative purchasing contract to Singer Associates as a result of a competitive sealed Invitation to Bid; and

WHEREAS, Fire Department and Purchasing staff determined the contract specifications meet the County's performance requirements for a heavy rescue vehicle and negotiated a price of \$355,487 with Singer Associates for a Saber Heavy Rescue NWI Vehicle.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes the County Administrator to execute a contract with Singer Associates for a heavy rescue vehicle in the amount of \$355,487.

4. Memorandum of Agreement between the United States Coast Guard and the County of James City, Virginia

Chief Emmett Harmon stated that at the last Police Chief's meeting, it was encouraged that any locality that did not already have a Memorandum of Agreement (MOA) for Mutual Aid with the U.S. Coast Guard (USCG) to do so. He stated that the USCG has been a good partnership the 2007 Commemoration events and that James City County was one of only two localities in Hampton Roads that did not have an MOA. He stated that this agreement would help the County's chances of getting grant funding in the future. He stated that he was unaware of any cost for this agreement aside from assistance during an emergency call, but that was usually done anyway. He stated that he felt it was beneficial for the County and requested approval.

Mr. Kennedy asked would the County be reimbursed if asked to assist the Coast Guard.

Chief Harmon stated that was not the case and this was treated as most other mutual-aid agreements.

Mr. Goodson made a motion to approve the resolution.

On a roll call vote, the vote was: AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY: (0).

## **RESOLUTION**

### **MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES COAST GUARD AND THE COUNTY OF JAMES CITY, VIRGINIA**

WHEREAS, the United States Coast Guard (the "USCG") has requested that James City County assist the USCG in the enforcement of maritime safety and security zones in both James City County and, where necessary, in the Hampton Roads area; and

WHEREAS, the USCG has proposed a Memorandum of Agreement which will set forth the assistance and enforcement procedures under which the USCG and James City County will operate; and

WHEREAS, such mutual cooperation and assistance will enhance the public health and safety of the residents of James City County.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute those documents necessary to enter into a Memorandum of Agreement with the United States Coast Guard to provide mutual assistance in the enforcement of maritime safety and security zones.

#### **G. PUBLIC HEARINGS**

##### **1. Pre-Budget Public Hearing – FY 2010 Budget**

Ms. Sue Mellen, Assistant Manager of Financial Management Services, stated that the purpose of this public hearing was to provide the first opportunity for public comment on the FY 2010 County Budget. She gave a timeline of the budget process: January 24, 2009, would be the Board's Budget Retreat; Public Hearing on April 14, 2009, on County Administrator's proposed budget; three work sessions in April; and the FY 2010 County Budget was scheduled for adoption on April 28, 2009.

She stated that no action was required on this item.

Mr. Kennedy opened the Public Hearing.

1. Mr. Ed Oyer, 139 Indian Circle, commented on the increases in the FY 2009 budget, with an average increase of 93 percent. He stated that due to the mortgage loan issues, he recommended reductions in spending, but this was not done.

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

##### **2. Case No. Z-0002-2008/SUP-0018-2008/HW-0004-2008. Williamsburg Landing Proffer Amendment**

Ms. Kate Sipes, Planner, stated Kaufman and Canoles PC, has applied on behalf of Williamsburg Landing, Inc. to amend the proffers and Special Use Permit (SUP) to allow an additional ten assisted living units and an additional ten nursing units on the property located at 5560 Williamsburg Landing Road. This property is also identified as James City County Parcel No. (48-2)(1-3).

Ms. Sipes stated that currently, the parcel contains assisted living, nursing, and independent units. Sixty assisted living units exist and another 26 assisted living units have been approved via an approved development plan. Under approved proffers and SUP conditions, 90 assisted living units are permitted; the applicant proposes to amend the limit to allow 100 assisted living units. Fifty-eight nursing units exist, with 90 currently permitted and this proposal is to raise the limit to 100 nursing units. Sixty-three independent units currently exist, with 100 currently permitted. The applicant proposes to reduce the number of independent living units permitted to 87.

Ms. Sipes stated that this proposal would result in a net increase of seven units overall, from a total of 280 to a total of 287 units. At this time 207 total units are either built or already approved per a valid site plan (181 built with an additional 26 approved). An SUP is required because nursing homes and facilities for the residence and/or care of the aged are specially permitted uses in the R-5, multi-family residential district.

Staff found the proposal to have minimum additional impacts and to be generally compatible with the 2003 Comprehensive Plan.

At its meeting on December 3, 2008, the Planning Commission recommended approval by a vote of 6-0, with one Planning Commissioner absent.

Staff recommended approval of the resolution.

Mr. Kennedy opened the Public Hearing.

1. Mr. Greg Davis, Kaufman and Canoles PC, on behalf of Williamsburg Landing, gave a brief overview of the application to adjust the types and numbers of previously approved units on the Williamsburg Landing site. He presented a conceptual plan to explain the changes in the types of units and elevations of the proposed buildings. He requested approval of the application.

Mr. Icenhour asked about the existing building and the proposed height.

Mr. Davis stated that was correct.

Mr. Icenhour asked if there was a height waiver for the existing building.

Mr. Davis stated that it did have a height waiver applied.

Mr. Icenhour asked how high the existing building stood.

Mr. Davis stated he was not aware of the height.

Mr. Icenhour stated that he did not see where there was a specified height for these buildings in the proffers or SUP.

Mr. Davis stated that the only limitation would be a three-story limitation, along with Building Code regulations to limit how high three stories would be.

Mr. Goodson stated that there was a significant tree buffer between Route 199 and the buildings.

Mr. Davis stated that there was tree cover and marshland around that area.

Mr. Goodson stated that he doubted that the buildings would be seen over the sound walls.

Mr. Davis stated that was the applicant's perspective as well.

2. Mr. Ed Oyer, 139 Indian Circle, commented that he supported this project at its inception at this time. He stated that he has only heard good comments about the facility. He stated that the issue of visibility was raised before the sound wall was erected and that now since it was in place, he doubted that there was significant visibility. He stated that he felt it was a worthwhile project.

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

Mr. Leo Rogers stated that in the resolution there was a height limitation maximum of 50 feet.

Mr. Goodson stated that this precluded another issue such as in New Town where the approved height limits were too low.

Mr. Goodson made a motion to adopt the resolution.

Mr. Icenhour stated that the 50-foot maximum was addressed in the resolution with an SUP condition allowing a maximum of three stories.

Mr. Rogers stated that this was correct.

Mr. Icenhour asked if the buildings that were already built were zoned R-5. He asked if there were no SUP conditions attached to those units.

Ms. Sipes stated that was correct.

Mr. Icenhour asked what limitations were present for redevelopment of that property under the current R-5 zoning by-right as they were not covered by the SUP.

Mr. Murphy stated that if there was any expansion of that development, they would need to come forward for an SUP.

Mr. Icenhour stated that for a future owner to redevelop that land, the density could be up to four units per acre.

Mr. Murphy stated that the density was unit-specific but would apply under the zoning.

Mr. Icenhour stated that the highlighted property had more limitations on it in the future for redevelopment as they would need to come forward to amend proffers or change the SUP.

Mr. Murphy stated that was correct assuming that it was still a permitted use and consistent with the Comprehensive Plan.

Mr. Icenhour stated that he wanted to bring forward some problems with Continued Care Retirement Centers (CCRC). He stated that density is usually calculated excluding assisted living and skilled nursing care units. He stated that the zoning was not consistent with the Comprehensive Plan, though the development is consistent with the Comprehensive Plan density recommendation. He stated that the CCRC in Ford's Colony was considerably higher in density. He stated that he was willing to support this project due to the lower density and its access to Route 199. He stated that there was still no appropriate zoning or definition of CCRCs.

Mr. Murphy stated that the current Comprehensive Plan is silent on this matter. He stated that due to Williamsburg Landing property being less than 400 acres, R-4 was not an option.

On a roll call vote, the vote was: AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY: (0).

## RESOLUTION

CASE NO. Z-0002-2008/SUP-0018-2008/HW-0004-2008.

### WILLIAMSBURG LANDING EXPANSION

WHEREAS, Williamsburg Landing, LLC owns a parcel of property located at 5560 Williamsburg Landing Drive and further identified as Parcel No. (1-33) on the James City County Real Estate Tax Map No. (48-1) (the "Property"); and

WHEREAS, the Property is currently zoned R-5, Multi-family Residential with Proffers, and designated Low Density Residential on the 2003 Comprehensive Plan Land Use Map; and

WHEREAS, Kaufman and Canoles PC, has applied on behalf of Williamsburg Landing, LLC to amend the proffers; to obtain a Special Use Permit (SUP) to allow for an increase in assisted living units (not to exceed 100) and nursing units (not to exceed 100) and a decrease in independent living units (not to exceed 87); and to obtain a height limitation waiver to allow for the construction of two three-story buildings to house independent living units; and

WHEREAS, the proposed expansion is shown on a conceptual plan, entitled "Williamsburg Landing Conceptual Plan" prepared by RLPS Architects of Lancaster, Pennsylvania and dated November 7, 2008; and

WHEREAS, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled; and

WHEREAS, the Planning Commission of James City County, following its public hearing on December 3, 2008, recommended approval of cases Z-0002-2008 and SUP-0018-2008 by a vote of 6-0; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2003 Comprehensive Plan Land Use Map designation for this site; and

WHEREAS, the Board of Supervisors finds that the requirements of Section 24-314 (j) of the James City County Zoning Ordinance have been satisfied in order to grant a height limitation waiver to allow the erection of structures up to 50 feet.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, after a public hearing, does hereby approve the issuance of a height limitation waiver under Case No. HW-0004-2008.

BE IT FURTHER RESOLVED that Case No. Z-0002-2008 is approved and proffers accepted.

BE IT FURTHER RESOLVED that Case No. SUP-0018-2008 is approved with the following conditions:

1. Development of the site shall be generally in accordance with the above-referenced master plan as determined by the Development Review Committee (DRC) of the James City County Planning Commission. Minor changes may be permitted by the DRC, as long as they do not change the basic concept or character of the development.
2. If construction has not commenced on the project within 36 months from the issuance of the SUP, it shall become void. Construction shall be defined as obtaining permits for building construction and installation of footings and/or foundations.
3. This SUP shall be limited to the following specially permitted uses:
  - Single-family dwellings.
  - Nursing homes and facilities for the residence and/or care of the aged.

These specially permitted uses are in addition to those generally permitted uses specified in Proffer 1 of the Amended Proffers. Nursing home facilities shall be limited to one 100-bed nursing home. Assisted living units shall be limited to 100 units. Independent units shall be limited to 87 units.

4. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Mr. Kennedy recognized Mr. Reese Peck representing the Planning Commission in attendance.

3. Case No. SUP-0020-2008. Gilley Properties, LLC Duplexes

Mr. David German, Planner, stated that Mr. Gregory Davis of Kaufman and Canoles PC, has applied on behalf of Gilley Properties, LLC for an SUP to allow for the construction of three two-family dwellings (hereafter referred to as "duplexes") on the property located at 248 Neck-O-Land Road. The subject property is zoned R-2, General Residential, and is designated Low Density Residential on the James City County 2003 Comprehensive Plan Map.

Staff found that the proposal consistent with the Comprehensive Plan Land Use Map designation for the subject parcel. This application does not offer any means to mitigate potential impacts to schools, guarantee the rental affordability of the duplex units, or offset the increased impacts to the James City Service Authority (JCSA) systems. However, staff believes that with the proposed SUP conditions, a project will result in offers to increase public benefit to James City County over what might otherwise be developed "by-right."

At its meeting on December 3, 2008, the James City County Planning Commission recommended approval of the above-referenced case by a vote of 6-0 with one Planning Commission member absent.

Staff recommended approval of the resolution.

Mr. Icenhour stated that the staff report indicated that staff suggested that the applicant take measures to allow the units to be affordable through rezoning.

Mr. German stated that the applicant's counsel did not feel it would be financially feasible to go through the rezoning process to do this.

Mr. Icenhour stated that he did not understand why the applicant did not go forward with staff's suggestion.

Mr. German stated that the reason for staff's suggestion was to guarantee the rent to remain comparable to similar properties.

Mr. Kennedy opened the Public Hearing.

1. Mr. Chris Johnson, Kaufman and Canoles PC, spoke on behalf of the applicant giving a brief overview of the property and the proposal for in-fill development for workforce rental housing. He noted measures taken to preserve open space and environmental protection. He stated that the applicant is familiar with this type of development and that this type of facility and limited amenities allows for the housing to remain affordable. He requested approval of the application.

Mr. McGlennon stated that this was a good proposal for this parcel of property. He thanked Mr. Gilley for his efforts to use rain barrels and the reduction in impervious cover. He asked about the removal of the current gravel roads.

Mr. Johnson stated that is likely and that staff has investigated stormwater and drainage issues on the property.

Mr. McGlennon stated that he understood that the debris on the property would be removed and his appreciation for that. He stated that he read this project would not contribute to drainage issues in this area, but he understood that there were drainage problems all around.

Mr. William Cain, Environmental Engineer, stated that Neck-O-Land Road was the midpoint between runoff areas.

Mr. McGlennon stated that he felt flooding came from both directions.

Mr. Cain stated that Neck-O-Land Road was a 100-year flood plain and there would be flooding between Mill Creek and Powhatan Creek in the event of intense rainfall. He stated this was not going to be addressed very easily and that both watersheds contribute to the flood plain. He stated that intensive investigation would be required to resolve the flooding issues in that area.

Mr. Icenhour asked about the proposal's low calculation of generation of school children.

Mr. Johnson stated that the size and location of these units were a factor in calculating the generation of school children.

Mr. Goodson stated that the school proffer policy was triggered by rezoning rather than this type of redevelopment.

Mr. German stated that was correct.

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

Mr. McGlennon made a motion to adopt the resolution.

Mr. McGlennon stated that he felt this project would bring some benefit to environmental cleanup and impervious cover.

Mr. Icenhour stated his support and noted that at the Planning Commission meeting several neighbors came out in support of this item.

Mr. Goodson noted that the rezoning required to guarantee affordable rental rates would trigger the school proffer policy.

Mr. McGlennon noted that affordability warranted provisions that would waive all or part of the proffers.

On a roll call vote, the vote was: AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY: (0).

## RESOLUTION

### CASE NO. SUP-0020-2008. GILLEY PROPERTIES, LLC DUPLEXES

WHEREAS, Mr. Gregory Davis of Kaufman and Canoles PC, on behalf of Gilley Properties, LLC., has applied for a Special Use Permit (SUP) to allow for the construction of three two-family dwellings (“duplexes”) on the subject parcel; and

WHEREAS, the subject parcel may be identified as James City County Real Estate Tax Map Parcel No. 4740100040C. The 4.74-acre parcel is zoned R-2, General Residential, and is located at 248 Neck-O-Land Road; and

WHEREAS, the proposed development is shown on a binding Master Plan, entitled “Special Use Permit Exhibit for Gilley Properties, LLC. Duplexes,” prepared by LandTech Resources, Inc., and dated November 14, 2008; and

WHEREAS, Section 24-253 of the James City County Zoning Ordinance provides that two-family dwellings may be constructed on property zoned R-2 only with an approved SUP from the Board of Supervisors; and

WHEREAS, the Planning Commission of James City County, following its public hearing on December 3, 2008, recommended approval of this application by a vote of 6-0.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0020-2008 with the following conditions:

1. *Master Plan and Use:* This SUP shall be valid for the construction of three duplex

Neck-O-Land Road, further identified as James City County Real Estate Tax Map No. 4740100040C (the "Property"). Development of the site shall be generally in accordance with, and as depicted on, the "Proposed Development" sheet (Sheet 2 of 2) of the SUP exhibit entitled "Special Use Permit Exhibit For Gilley Properties LLC Duplexes," prepared by LandTech Resources, Inc., and dated November 14, 2008, (and hereafter referred to as "the Master Plan"), as determined by the Planning Director of James City County ("Planning Director"). This includes subdivision of the Property into five lots, removal of structures, and removal of gravel, as depicted on the Master Plan. Minor changes may be permitted by the Planning Director, as long as they do not change the basic concept or character of the development;

2. **Terms of Validity:** Construction shall commence on the Project within 36 months from the date of approval of this SUP by the Board of Supervisors, or the SUP shall become void. For purposes of this SUP condition, "construction" shall be defined as the owner/developer having received final approval of the proposed five-lot subdivision, and having obtained building permits for, and passed inspection of, footings and/or foundation for at least one of the three proposed duplexes;
3. **Junk Removal:** The owner/developer shall remove all junk from the Property prior to final site plan approval. For purposes of this SUP condition, "junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, wood, lumber, concrete or construction debris, pallets, tires, waste, junked, dismantled, or wrecked automobiles, inoperable equipment, machinery, or appliances, construction vehicles or tractors, or parts thereof, iron, steel, and other old scrap ferrous or nonferrous material. This junk shall be properly disposed of in a State-approved facility, or moved into an appropriate offsite enclosed storage building or facility. The James City County Zoning Administrator ("Zoning Administrator") shall verify, in writing, that all junk has been properly removed from the Property. No new junk, (as defined by this condition), may be brought to or stored on the Property;
4. **RPA Building Setback:** The owner/developer shall establish a 25-foot building setback line from the Resource Protection Area (RPA) boundary, as depicted on the Master Plan. The location of the RPA boundary and the 25' building setback line shall be subject to the approval of the Director of the Environmental Division. No structures or parts thereof shall be permitted to encroach into this setback;
5. **Rain Barrels:** The owner/developer shall provide and install rain barrels for all residences (new and existing) on the parcel;
6. **Shared Driveway:** The owner/developer shall install a single shared driveway to be used to provide access to the five new lots (Lots 3-A, 3-B, 3-C, 3-D, and 3-E) subdivided in conjunction with this SUP, as well as the duplex on existing Lot 4. This shared driveway shall be paved, constructed to a minimum standard of 3 inches of asphalt over 6 inches of compacted #21A or B stone and no less than 12 feet in width, to be verified and approved by the County Engineer. The owner/developer shall prepare and record documents in a form approved by the County Attorney that set forth: 1) the provisions made for the permanent care and maintenance of the shared driveway and its associated easement, including bonds where required by the County, and 2) the method of assessing each individual property for its share of the cost of adequately administering, maintaining, and replacing such shared driveway in the event the lots of the subdivision ever come under

separate ownership. The driveway shall be located as generally depicted on the Master Plan, as determined by the Planning Director and subject to the approval of the Virginia Department of Transportation (VDOT);

7. **Water Conservation Standards:** The owner/developer shall be responsible for developing and enforcing water conservation standards, which shall be submitted to and approved by the James City Service Authority (JCSA) prior to final site plan approval. The standards shall include, but not be limited to, such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials including the use of drought-resistant native and other adopted low-water-use landscaping materials and warm-season turf where appropriate, and the use of water-conserving fixtures and appliances to promote water conservation and minimize the use of public water resources;
8. **Severance Clause:** This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

## H. BOARD CONSIDERATIONS

### I. Initiation of Consideration to Revise Chapter 24, Zoning, Article II, Special Regulations, of the James City County Code – Location of Vehicles for Sale in Rights-of-Way Under Certain Circumstances

Ms. Melissa Brown, Deputy Zoning Administrator, stated that staff has prepared a resolution for consideration that would initiate review of the Zoning Ordinance in relation to location of vehicles for sale in rights-of-way under certain circumstances. She stated that staff would specifically address times and locations during which vehicle sales would not be permitted. She requested any additional guidance for staff on this matter.

Mr. Kennedy stated that he felt this was a serious issue and noted that there were vehicles back in the areas that were discussed at the Board's recent work session. He stated that citizens have raised this issue in several areas of the County and that he could support this initiating resolution.

Mr. McGlennon stated that the definitions would not be easy and that when flexibility for interpretation comes into play, the problem becomes more difficult. He stated that the only guidance he could provide would be that he was interested in seeing what alternatives were utilized by comparable communities. He stated he felt that was the best approach at this point. He said that discussion was held about determining the number of sales during a certain time period or who was able to have a sale on a parcel of property. He stated that he was not aware how to best convey that through an ordinance, but that those were still criteria he was interested in including in any revisions.

Mr. Kennedy stated that he has experience where citizens would acquire a permit to have a sale on a property. He stated this limited the availability of sales.

Mr. Rogers stated that was impeded by the Dillon Rule in Virginia and that the County would need authority from the General Assembly to take that kind of action.

Mr. Icenhour stated that an alternative would be to consolidate the vehicles, but that he was not aware of a location to have these sales.

Mr. Icenhour asked what other jurisdictions have done and asked what has been successful. He stated that he would like to see the track record of the alternatives.

Ms. Jones stated that she would be interested in this information as well and that there were particular zoning districts where cars were permitted to be parked on vacant parcels.

Mr. Goodson made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY: (0).

## **RESOLUTION**

### **INITIATION OF CONSIDERATION TO REVISE CHAPTER 24, ARTICLE II,**

#### **SPECIAL REGULATIONS, OF THE JAMES CITY COUNTY CODE**

WHEREAS, the Board of Supervisors of James City County, Virginia, is authorized by Virginia Code § 15.2-2286 to initiate amendments to the Zoning Ordinance; and

WHEREAS, the Board of Supervisors is of the opinion that the public necessity, convenience, general welfare, and good zoning practice warrant the consideration of the proposed Zoning Ordinance amendment.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby initiate consideration of amendments to Chapter 24, Article II, Special Regulations, of the Code of James City County to prohibit the location of vehicles for sale along rights-of-way in certain circumstances.

2. **Initiation of Consideration to Revise Chapter 24, Zoning, Article II, Special Regulations, of the James City County Code – Alternative Lighting Styles for Signage in Community Character Areas and Along Community Character Corridors**

Ms. Melissa Brown, Zoning Officer, stated that staff has been requested to draft an initiating resolution to examine the sign ordinance. Staff requested guidance.

Mr. Goodson stated that he would like to provide for changes in lighting technology for signage.

Ms. Jones stated that she agreed with examination of new technology and that a specific limitation for gas stations would be to limit the number of characters that may be illuminated. She stated that she has received all positive comments about existing signage in Five Forks.

Mr. McGlennon stated that he would prefer not to move forward on this item. He stated that he was unsure the technology was very different from the past and that the current technology is not necessarily

less visible. He stated his concern to initiating a review of the zoning ordinance to protect Community Character Corridors (CCC) due to a staff error in interpretation. He stated that if the sign was in conformance with the existing ordinance, there would be no issue. He asked if there would be a standard maintained in CCC and what the standard would be. He stated that the Board should not react to a particular instance.

Mr. Goodson stated that was the only way it came to the Board's attention.

Mr. McGlennon stated that the owner was unhappy that the sign was approved, but was later found to be non-conforming.

Mr. Goodson stated that he felt the ordinance did not provide for new technology.

Mr. McGlennon stated that he disagreed with that and that the CCC need to be given an added level of protection.

Mr. Goodson stated that the zoning ordinance should be given examples of technology that is available.

Ms. Jones stated that staff should look into the Five Forks study and that she did not see analysis of new technologies as a negative action. She stated that usually when ordinance reviews come forward, it is a result of a citizen inquiry.

Mr. McGlennon stated that the issue in this case was that the applicant spent money while under the impression that the sign was in conformance, but later found it was not.

Ms. Jones stated that was correct and that was what caused these types of inquiries.

Mr. Icenhour asked what the sign ordinance allowed.

Ms. Brown stated that the permitted signage in the CCC and within 150 feet of the CCC, the allowed internally illuminated signage was back-lit or channel letters. She stated that those signs needed to be approved by the Planning Director and that other than that, the only illuminated signage permitted in this area was ground-mounted lighting hidden by landscaping.

Mr. McGlennon stated that the gas station at Five Forks was partially conforming.

Ms. Brown stated that the type of sign with illuminated numbers would be permitted in other parts of the County, but the CCC guidelines were very specific to this matter.

Mr. McGlennon stated that he understood that the illuminated signage should be directional, for store identification, or a logo for the business rather than advertising. He stated that he felt that gas prices were considered advertising.

Ms. Jones stated that there were frequent price changes for gas stations. She stated that she understood Mr. McGlennon's point, but she personally would like to see gas prices quickly and easily.

Mr. Goodson stated that by the reasoning of only illuminating store logos, the prices could not be presented.

Mr. McGlennon stated that he felt the prices should not be illuminated.

Mr. Goodson stated that it was a channel illumination.

Mr. McGlennon stated that the channel illumination was to identify the store or logo.

Ms. Brown stated that the intention was to buffer the lighting on the signage so it would not be as extreme as in urban areas.

Ms. Jones stated that the number of gas stations in one area would be limited also.

Mr. McGlennon asked if this was going to apply only to gasoline stations.

Ms. Brown stated that staff was suggesting to narrow the scope to address signage for gasoline stations.

Mr. Goodson made a motion to adopt the resolution.

Mr. Icenhour stated that he was in the area and that two gas stations near each other had different lighting techniques. He stated that the only difference that he noted was the intensity. He stated that he would support the resolution, but that he would like to keep the lighting at the same level of intensity.

Mr. Murphy stated that was staff's intention through narrowing the scope.

Mr. Kennedy stated that he has been critical of the sign ordinance for some time and that he has had difficulty with the fact that service stations have advertisement and other displays that may or may not be considered signage. He stated that an illuminated vending machine has more square footage than many businesses are allowed. He stated that there are signs on roadways and medians that need to be addressed. He stated his support for evaluating this.

On a roll call vote, the vote was: AYE: Goodson, Jones, Icenhour, Kennedy (4). NAY: McGlennon (1).

## **RESOLUTION**

### **INITIATION OF CONSIDERATION TO REVISE CHAPTER 24, ZONING, ARTICLE II,**

#### **SPECIAL REGULATIONS, OF THE JAMES CITY COUNTY CODE**

WHEREAS, the Board of Supervisors of James City County, Virginia, is authorized by Virginia Code § 15.2-2286 to initiate amendments to the Zoning Ordinance; and

WHEREAS, the Board of Supervisors is of the opinion that the public necessity, convenience, general welfare, and good zoning practice warrant the consideration of the proposed Zoning Ordinance amendment.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby initiate consideration of amendments to Chapter 24, Article II, Special Regulations, of the Code of James City County to review alternative lighting styles for signage in Community Character Areas and along Community Character Corridors.

3. Initiation of Consideration to Amend Chapter 24, Zoning, Article II, Special Regulations, Division 2, Highways, Streets, Parking and Loading, of the James City County Code – Calculation of Off-Street Parking Requirements for Commercial Uses

Ms. Kate Sipes, Planner, stated that this was a Board initiated request addressing how non-retail space should be considered when calculating off-street parking requirements for commercial uses. She stated that staff requested guidance on addressing this issue.

Mr. Goodson stated that if the ordinance was changed, there was a provision that if a building design shows more than 20 percent storage space, it would be adjusted in parking calculations.

Mr. Murphy stated that there was a case-specific interpretation in those cases.

Mr. Goodson stated that there was a provision for primarily storage facilities.

Mr. Murphy stated staff would make the best conservative interpretation for the particular case. He stated that in the case of retail matters, staff has been fairly consistent, though case-specific.

Mr. Goodson stated that the ordinance as it was currently written gave staff flexibility to request parking that is appropriate.

Mr. Murphy stated he felt that the concern that was raised was there was not a specific reference to the retail floor area in the case of outlet malls. He stated that the demand generator was more directly related to retail space. He stated that it made more sense to go forward with the information in other parts of the ordinance. He noted that there was an absence of the word "retail" in the portion of the ordinance specifically related to outlet malls.

Mr. Goodson asked if staff was supportive of the change.

Mr. Murphy stated that staff was supportive of making the ordinance clearer and easier to apply.

Mr. Icenhour stated that the intent was to clarify retail space in the language of the ordinance. He stated that it needed to be explicit and that his position on the adequacy of the parking did not prevail in the case of Prime Outlets. He stated that he would like the ordinance to reflect the intent and that he understood that the average of 20 percent was used in the case of Prime Outlets since it would be too time-intensive for staff to measure each unit.

Mr. Murphy stated that staff would devise a typical calculation for the proposed units and experience with existing units. He stated that they found a norm for Prime Outlets.

Mr. Icenhour stated that was applied to retail space.

Mr. Murphy stated that was correct.

Mr. Icenhour asked for verification that the numbers would not typically change, but that there was flexibility to calculate the percentage even in the event of significant storage space.

Mr. Murphy stated that was correct.

Mr. Icenhour made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY: (0).

## **RESOLUTION**

### **INITIATION OF CONSIDERATION TO AMEND CHAPTER 24, ZONING,**

### **ARTICLE II, SPECIAL REGULATIONS, DIVISION 2, HIGHWAYS, STREETS,**

### **PARKING AND LOADING, OF THE JAMES CITY COUNTY CODE**

WHEREAS, the Board of Supervisors of James City County, Virginia, is authorized by Virginia Code § 15.2-2286 to initiate amendments to the Zoning Ordinance; and

WHEREAS, the Board of Supervisors is of the opinion that the public necessity, convenience, general welfare, and good zoning practice warrant the consideration of the proposed Zoning Ordinance amendment.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby initiate consideration of amendments to Chapter 24, Zoning, Article II, Special Regulations, Division 2, Highways, Streets, Parking and Loading, of the Code of James City County to determine how non-retail space will be considered when calculating off-street parking requirements for commercial uses.

## **I. PUBLIC COMMENT**

1. Mr. Ed Oyer, 139 Indian Circle, commented on the economy; unkempt property on Indian Circle; financial prudence of government; fire at Ball Metal and emergency services; auctioning of new materials by the County; property on Route 60 in York County full of debris; and precedent of Maui County Council in Hawaii by which developers require proof of long-term water supply availability.

## **J. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Wanner stated that on Monday January 19, 2009, the County offices would be closed for the Martin Luther King, Jr. holiday. He stated that he delivered a check for Local Aid to the State to the Deputy State Treasurer on behalf of the County and other localities. He stated that when the Board completed its business, it would adjourn to 9 a.m. on January 24, 2009, for the Board's Budget Retreat. He stated that this year some experts from the community would give presentations prior to the staff presentations.

He stated that representatives from the banking and realtor communities, a representative from the Chamber and Tourism Alliance, and two noted economists from the College of William and Mary would be present to give an overview of what was happening in the Greater Williamsburg area.

Mr. Wanner noted that the next meeting after the Retreat would be a work session meeting beginning at 4 p.m. on January 27, 2009, followed by a regular meeting at 7 p.m.

Mr. McGlennon asked if a photograph was available from his trip to Richmond.

Mr. Wanner stated that photos were taken by representatives from the Virginia Municipal League (VML) and the Virginia Association of Counties (VACo), but he had not yet received them.

Mr. McGlennon asked if the photos would be distributed to local media.

Mr. Wanner stated that he would do so.

#### **K. BOARD REQUESTS AND DIRECTIVES**

Mr. Kennedy asked to discuss the Request for Proposals (RFP) for Executive Search Services for the successor to the County Administrator.

Mr. Icenhour stated that he was called to Richmond on January 12, 2009, for a meeting of the State Water Commission. He noted the Chair and Vice Chair and highlighted comments from the Department of Environmental Quality (DEQ) water quality improvement and water policy and decisions. He stated that there was a good deal of interest by members of the General Assembly. He stated that Mr. Larry Foster attended as well. He noted that no County money was spent on this trip.

Mr. McGlennon commented on issues on Route 5 that State Homebuilders Association may be seeking legislation to extend the time period for SUPs and asked how difficult it would be to evaluate how many SUPs and site plans have not yet begun that might be subject to a State mandated extension of the 36-month deadline. He stated that there is a visible project that has ceased construction at Five Forks and asked if the County was monitoring sites where construction began and was stopped to see if this was an issue that needed to be addressed.

Mr. Goodson stated that on January 12, 2009, the Metropolitan Planning Organization (MPO) met with Mr. Pierce Homer to discuss potential proposals for changes at the Hampton Roads Bridge Tunnel. He stated that this would be reviewed again next week at the MPO meeting to discuss potential expansions in the same right-of-way.

Mr. Wanner stated that he provided the Board a recommended draft RFP for Executive Search Services. He recommended seeking outside services to assist the Board with outlining search criteria and that the Board would authorize the advertisement and allow staff to move forward. He stated that the Board would have a series of checkpoints within the process.

Mr. Goodson stated that he supported the RFP. He stated that the Board would need a professional to correspond with prospects and that the Board did not have facilities to do this; that the appropriate cost of this is about a one-month salary; and that it was worthwhile. He stated his support.

Mr. McGlennon stated that he supported the RFP and that the professional experience and guidance would be pertinent. He made a motion to authorize the County Administrator to issue the RFP.

On a roll call vote, the vote was: AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY: (0).

Mr. Kennedy stated that there would be a Joint Meeting of the Schools and the City of Williamsburg on February 17, 2009, at 9 a.m.

Mr. Wanner stated that the agenda has not yet been developed, but would be developed by the School Liaison at their January meeting.

Mr. Wanner stated that at the conclusion of the Board Requests and Directives, the Board needed to hold a Closed Session for consideration of a personnel matter, the appointment of individuals to County boards and/or commissions pursuant to Section 2.2-3711(A)(1) of the Code of Virginia, specifically the Social Services Advisory Board, the Planning Commission, and the Historical Commission and for consultation with legal counsel and staff members pertaining to actual or probable litigation, pursuant to Section 2.2-3711(A)(7) of the Code of Virginia.

Mr. Goodson asked if there was a location for the joint meeting.

Mr. Wanner stated that would be decided at the School Liaison meeting and that he has offered two County sites and two school sites within the County.

#### **L. CLOSED SESSION**

Mr. Goodson made a motion to go into Closed Session for consideration of a personnel matter, the appointment of individuals to County boards and/or commissions pursuant to Section 2.2-3711(A)(1) of the Code of Virginia, specifically the Social Services Advisory Board, the Planning Commission, and the Historical Commission and for consultation with legal counsel and staff members pertaining to actual or probable litigation, pursuant to Section 2.2-3711(A)(7) of the Code of Virginia.

On a roll call vote, the vote was: AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY: (0).

At 8: 53 p.m. Mr. Kennedy recessed the Board into closed session.

At 9:42 p.m., Mr. Kennedy reconvened the Board into open session.

Mr. McGlennon made a motion to adopt the Closed Session resolution.

On a roll call vote, the vote was: AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY: (0).

## RESOLUTION

### CERTIFICATION OF CLOSED MEETING

WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(I) of the Code of Virginia, to consider a personnel matter, the appointment of individuals to County boards and/or commissions; and Section 2.2-3711 (A)(7) of the Code of Virginia, to consult with legal counsel and staff members pertaining to actual or probable litigation.

Mr. McGlennon made a motion to reappoint Ms. Stephanie Luton to the Historical Commission as the Board's liaison, term to expire on December 31, 2009, and to appoint Ms. Clara Brown to a term on the Social Services Advisory Board, term to expire on December 31, 2012.

On a roll call vote, the vote was: AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY: (0).

**M. ADJOURNMENT** to 9 a.m. on January 24, 2009.

Mr. Goodson made a motion to adjourn.

On a roll call vote, the vote was: AYE: Goodson, Jones, McGlennon, Icenhour, Kennedy (5). NAY: (0).

At 9:44 p.m., Mr. Kennedy adjourned the Board to 9 a.m. on January 24, 2009.

  
Sanford B. Wanner  
Clerk to the Board

**AMENDED AND RESTATED  
PROFFER AGREEMENT**

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

**RECITALS**

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

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

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

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

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

E. WLI desires to offer to James City County certain conditions on the development of the Property not generally applicable to land zoned Multi-Family Residential District (R-5) for the protection and enhancement of the community and to provide for the high quality and orderly development of the Property.

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

NOW, THEREFORE, for and in consideration of the approval of this Application and acceptance by the County of this amended and restated proffer agreement and the approval of the amendment to the Existing SUP, WLI agrees that it will meet and comply with all of the following conditions in developing the Property. In the event both of the Application and the amendment to the Existing Special Use Permit are not granted by the County, these amended and restated proffers shall thereupon become null and void.

**CONDITIONS**

1. The use of the Property shall be limited to accessory buildings or structures, apartments, community recreation facilities, off street parking, accessory restaurants, retail shops associated with community recreation facilities, signs, single-family dwellings contained within a cluster development, two-family dwellings, townhouses, three-family dwellings all of which are to be used as facilities for the residence and/or care of the aged; and, with the special use permit, single-family dwellings, nursing homes and facilities for the residence and/or care of the aged.

2. The aggregate number of generally and specifically permitted living units over and above the sum of one hundred (100) nursing beds and one hundred (100) assisted living units shall not exceed eighty-seven (87) dwelling units.

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

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

5. If not previously conducted, a Phase I Archaeological Study for the area to be disturbed on the Property shall be submitted to the Director of Planning for his review and approval prior to land disturbance. A treatment plan shall be submitted to and approved by the Director of Planning for all sites that are, in the Phase I study, recommended for a Phase II evaluation and/or identified as being eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken such a study shall be approved by the Planning Director and a treatment plan for said sites shall be submitted to and approved by the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If, in the Phase II study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study area. All Phase

I, Phase II and Phase III studies shall meet the Virginia Department of Historic Resource's Guidelines for Preparing Archaeological Resources Management Reports and the Secretary of the Interior's Standard and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the site and the clearing, grading or construction activities thereon.

6. No building on the Property shall be erected closer than 100 feet to the existing right-of-way of Lake Powell Road, Brookwood Drive and/or Route 199. Areas between buildings and these roads shall be left in their existing natural wooded states, except for utility crossings, construction road entrances, signs and storm water management facilities each of which must be approved by the Development Review Committee of James City County Planning Commission. Notwithstanding the aforesaid, dead, diseased or dying trees or trees weakened by age, storm or other injury and dead, diseased or dying shrubbery and noxious weeds may be removed.

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

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

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

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

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

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

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

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

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

12. If any clause, sentence, paragraph, section or subsection of these Proffers shall be adjudged by any Court of competent jurisdiction to be invalid for any reason, including a declaration that it is contrary on the Constitution of the Commonwealth or of the United States, or if the application thereof to the Owner or to any government agency or circumstance is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence,

paragraph, section or subsection hereof or the specific application thereof, directly involved in the controversy in which the judgement or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or subsection hereof, or affect the validity of the application thereof to the Owner or to any other government agency, person or circumstance.

WITNESS the following signature, thereunto duly authorized:

**[SIGNATURES ARE LOCATED ON THE FOLLOWING PAGE]**

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

By: SH Montgomery (SEAL)  
President/CEO

STATE OF VIRGINIA

CITY/COUNTY OF James City to wit:

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

Mary L Morgan  
NOTARY PUBLIC

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

WMB\620653113



VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 18 Feb. 09  
at 8:54 AM/PM. The taxes imposed by Virginia Code  
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

STATE TAX LOCAL TAX ADDITIONAL TAX  
\$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

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