

AT A JOINT WORK SESSION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, AND THE PLANNING COMMISSION, HELD ON THE 28TH DAY OF MARCH 2006, AT 4:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

*As adopted  
April 11 2006  
as amended*

**A. ROLL CALL**

Bruce C. Goodson, Chairman, Roberts District,  
John J. McGlennon, Vice Chairman, Jamestown District  
Jay T. Harrison, Sr., Berkeley District  
M. Anderson Bradshaw, Stonehouse District  
James O. Icenhour, Jr., Powhatan District

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

**B. DISCUSSIONS**

Mr. Goodson welcomed the members of the Planning Commission.

Mr. Fraley provided an overview of the topics to be discussed and requested a clear understanding and consensus from the Board on the items of discussion.

**1. Streamlining the Development Process - Establishment of Development Standards & Reducing Deferrals**

Mr. Fraley stated that based upon constituents proposals to streamline the process for proposal reviews, he has worked with staff and the Planning Commission members to identify specific procedural steps which has been presented to the Board for consideration and feedback.

Discussion was held regarding the Comprehensive Plan's role in guiding the development vision for the County, regarding the need to line-up the interpretations by members of staff, Planning Commission, and Board of Supervisors' on the standards with which the proposals are considered, and the number and nature of deferrals of proposals.

Discussion was held regarding residential, recreational, and traffic impact standards and the need to review them from a community standpoint not just a site-specific standpoint.

Discussion was held regarding the role of the staff, the Board of Supervisors, and the Planning Commission.

The Board directed staff and the Planning Commission to review the Residential Zoning Ordinances and identify possible amendments to strengthen the Ordinance.

2. Role of Adequate Public Facilities Policy and Fiscal Impact Studies in Planning Commission Decisions

Discussion was held on what happens with the Adequate Public Facility Policy number when developed, difficulty in accurately identifying public school population numbers prior to the build out, and projection consideration of turn-over in ownerships in out-years.

The Board directed staff to look at the data used for the Adequate Public Facilities, to consider the movement away from utilizing the Adequate Public Facilities numbers from a school district specific consideration to a school system-wide consideration of the impacts; look at possible future development numbers including by-rights; and consider a range for the Adequate Public Facilities standard rather than a specific number.

Staff cautioned about the possible added confusion in interpretation of a range.

3. Transportation Impact Studies - Process and Content Changes

Discussion was held on traffic study results, times that traffic studies are performed and how traffic flow in the County seems to be different than the Level of Service reported in the traffic studies. The Board directed staff to review the transportation impact studies that are incorporated into the process and if that item should be revised.

4. Other Matters of the Planning Commission and Board of Supervisors Interest

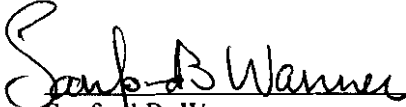
Discussion was held regarding direction from the Board regarding assessment of fiscal impacts of an application, benefits to the community in relation to fiscal impact, and fiscal impact not as a reason to approve an application but just another aspect for the Planning Commission to examine.

The Board directed the Planning Commission to provide further reasoning behind decisions to allow the Board to consider future applications fully.

Mr. Goodson thanked the Planning Commission for the discussions.

C. **RECESS**

At 6:10 p.m., the Board took a break until 7 p.m.

  
Sanford B. Wanner  
Clerk to the Board

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 28TH DAY OF MARCH 2006, 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  
John J. McGlennon, Vice Chairman, Jamestown District  
Jay T. Harrison, Sr., Berkeley District  
James O. Icenhour, Jr., Powhatan District  
M. Anderson Bradshaw, Stonehouse District

*As adopted  
on APRIL 11 2006*

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

**B. MOMENT OF SILENCE**

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

**C. PLEDGE OF ALLEGIANCE**

Michael Favret, an eighth-grade student at Williamsburg Christian Academy, led the Board and citizens in the Pledge of Allegiance.

**D. PRESENTATION**

**1. Volunteer Recognition - Third Quarter - FY 06**

Mr. Goodson and Ms. Carol A. Schenk, Human Resource Specialist, recognized John T. P. Horne as the volunteer of the third quarter for his leadership and service to Housing Partnerships and housing assistance to needy members of the community.

**E. HIGHWAY MATTERS**

Mr. Jim Brewer, Williamsburg Residency, Virginia Department of Transportation (VDOT), gave an overview of work on Greensprings Trail and Capital Trail. Mr. Brewer stated bids were received for the Ironbound Road and Monticello Avenue project for roughly \$1.9 million. He stated the Department of Transportation was continuing to patch potholes as well. He stated he would report back when he received information regarding Mr. Icenhour's speed limit request. Mr. Brewer also said stonework in Chickahominy Haven should be completed in the next week, per Mr. Bradshaw's request.

Mr. McGlennon asked about road repairs on Lake Powell Road. Mr. McGlennon also mentioned debris and trash deposited near 4-H Club Road toward Jamestown Road and asked that it be cleaned. He thanked Mr. Brewer for work at Brandon Circle.

Mr. McGlennon mentioned blue directional signs to commercial establishments on Jamestown Road and Route 199. He inquired if VDOT allowed for protection of historic areas to remove these signs. Mr. McGlennon stated they counteract the previous efforts to remove unsightly billboards.

Mr. Brewer stated that he was unable to find any regulation that would disallow the signs.

Mr. McGlennon stated that he did not believe the funds received from placement of these signs would justify the negative impacts.

Mr. Bradshaw asked about the status of Old Stage Road between Route 30 and Merry Oaks and speeding near the Library.

Mr. Goodson stated concern about traffic signal work and land disturbance at Routes 60 E and 199. Mr. Goodson inquired about the time frame to complete the project.

Mr. Brewer stated he would look into the matter and report back to the Board.

## **F. PUBLIC COMMENT**

1. Mr. William Ferguson, 310 The Maine West, stated concern about the rate of development in the County. Mr. Ferguson stated residents objected to new development due to traffic impacts, increased taxes, and increased crime, yet the County is looking at where to locate a fourth high school when the third high school was not complete.

2. Mr. Richard Bradshaw, Commissioner of the Revenue, clarified the criteria for real estate exemption: at least one owner/resident had to be 65 years or older and/or permanently totally disabled, total income needed to be less than \$35,000 a year, and total assets less than \$200,000, excluding the value of the home. Mr. Bradshaw stated the benefits include the exemption of the first \$100,000 of the value of the home. He stated a resident of the City of Williamsburg would not qualify because the City had a real estate deferral system. He urged anyone who may qualify to contact him by phone or come by Building B in the Government Complex to file for an exemption.

3. Mr. Ed Oyer, 139 Indian Circle, stated financial advisors have no stake in James City County's future; the assessment is fluid, not static, and advisors offer the best guess on any situation involving money; the County should decide how much to spend before the land value is determined, then put away extra money or put toward capital projects; ordinances are needed for off-street parking and removal of idle vehicles; he toured the new location for fire administration and training, and though it looked like a functional building and a good investment, he would suggest building a joint police and fire administration building.

## **G. CONSENT CALENDAR**

Mr. Bradshaw asked to pull Item No. 2, Homeless Intervention Program Application, from the Consent Calendar. Mr. McGlennon made a motion to adopt the remaining items on the Consent Calendar including the amended minutes of March 14, 2006.

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

1. Minutes - March 14, 2006, Regular Meeting - as amended

3. Appropriation of Grant Funds - NIMS Training

**RESOLUTION**

**APPROPRIATION OF GRANT FUNDS - NIMS TRAINING**

WHEREAS, James City County applied for and received a grant in the amount of \$5,000 for the purpose of reimbursing expenses related to the County government training costs related to the National Incident Management System (NIMS); and

WHEREAS, the grant requires no local matching funds.

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

Revenue:

HRPDC NIMS Training \$5,000

Expenditure:

HRPDC NIMS Training \$5,000

4. Ironbound Elderly Housing Project - Community Development Block Grant Appropriation of Additional Grant Funds

**RESOLUTION**

**IRONBOUND ELDERLY HOUSING PROJECT - COMMUNITY DEVELOPMENT BLOCK**

**GRANT APPROPRIATION OF ADDITIONAL GRANT FUNDS**

WHEREAS, James City County has been notified by the Virginia Department of Housing and Community Development (VDHCD) of award of an additional \$84,000 of Community Development Block Grant (CDBG) funds for the Ironbound Elderly Housing Project and has completed all actions required by VDHCD prior to entering into an agreement to receive the CDBG funds.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby amends the Budget, as adopted for the fiscal year ending June 30, 2006, as follows:

Revenue:

Ironbound Elderly Housing Community  
Development Block Grant \$84,000

Expenditure:

Ironbound Elderly Housing Project \$84,000

BE IT FURTHER RESOLVED that the appropriation of funds for the CDBG Project be designated a continuing appropriation to carry beyond FY 2006 until the Ironbound Elderly Housing Project is completed.

5. Appropriation - Williamsburg Area Transport

**RESOLUTION**

**APPROPRIATION - WILLIAMSBURG AREA TRANSPORT**

WHEREAS, Williamsburg Area Transport (WAT) is facing a projected deficit of \$179,500 for FY 06; and

WHEREAS, WAT has requested that the three localities approve a supplemental appropriation to WAT based upon the current funding allocation to maintain the existing level of service; and

WHEREAS, James City County's share is equal to \$86,160.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves an appropriation \$86,160 from Contingency to Williamsburg Area Transport in the FY 06 budget.

6. Declaration of a Local Emergency - as amended

**RESOLUTION**

**DECLARATION OF A LOCAL EMERGENCY**

WHEREAS, the Board of Supervisors of James City County, Virginia, does hereby find that due to the recent lack of rain, coupled with windy conditions, the County faces dangerous conditions of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship, or suffering threatened or caused thereby, including an immediate prohibition on open burning; and

WHEREAS, a condition of extreme peril of life and property necessitated the declaration of the existence of an emergency; and

WHEREAS, due to exigent circumstances, the Board of Supervisors was unable to convene to consent to the declaration of a local emergency.

NOW, THEREFORE BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that, pursuant to Section 44-146.21 of the *Code of Virginia*, 1950, as amended, the Declaration of a Local Emergency dated March 15, 2006, by Sanford B. Wanner, Director of Emergency Management for James City County, be, and the same hereby is, confirmed.

BE IT FURTHER RESOLVED that the Director of Emergency Management and the Emergency Operations Division of the James City County Fire Department shall exercise those powers, functions, and duties as prescribed by state law and the ordinances, resolutions, and approved plans of James City County in order to mitigate the effects of said emergency.

2. Homeless Intervention Program Application

Mr. Rick Hanson, Housing and Community Development Administrator, gave an overview of the Homeless Intervention Program (HIP) application. Mr. Hanson stated that the HIP program assists individuals or families who are homeless or are in temporary housing to find affordable permanent housing.

Mr. Bradshaw asked if the need is greater than the allocation.

Mr. Hanson responded that initially the program ran out of funds, but in recent years the funds have been sufficient. He also stated that the criteria of the program is fairly precise in the individuals and families it assists.

Mr. Bradshaw stated the importance of this program in assisting the homeless.

Mr. Bradshaw made a motion to approve the resolution

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

**RESOLUTION**

**HOMELESS INTERVENTION PROGRAM APPLICATION**

WHEREAS, the Commonwealth of Virginia Department of Housing and Community Development, has issued a competitive application and requested applications under the Homeless Intervention Program (HIP); and

WHEREAS, assistance is needed to effectively and adequately address the housing needs of low-income and homeless persons served by James City County in our service areas of James City County, Williamsburg, and Upper York County with a Williamsburg address; and

WHEREAS, HIP application for a grant under this Program has been prepared; and

WHEREAS, the County Administrator can act on behalf of James City County and will sign all necessary documents required to complete the grant transaction.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to apply for and accept the grant and enter into a grant agreement with the Department of Housing and Community Development and to perform any and all actions and responsibilities in relation to such Agreement.

## H. PUBLIC HEARING

Mr. Goodson recognized Mr. Jack Fraley, Chairman of the Planning Commission, in attendance.

1. Case No. Z-17-05/MP-14-05. Greensprings Master Plan Amendment (continued from March 14, 2006)

Ms. Kathryn Sipes, Planner, stated that Mr. Christopher Basic, AES Consulting Engineer, has applied on behalf of Jamestown LLC to amend the Greensprings Master Plan and Proffer Agreement for property located at 4200 Longview Landing, further identified as Parcel No. (1-24) on James City County Real Estate Tax Map No. (36-3). The property is currently zoned R-4, Residential Planned Community, with proffers, and would be rezoned to R-4, Residential Planned Community, with amended proffers.

The amendments include increasing the number of single-family detached dwelling units in the proposed Phase VII of the Greensprings West subdivision. The applicant is proposing an additional 30 units, making Phase VII 47 lots and bringing the total in Land Bay S-1 to 398. The total dwelling units in the Master Plan area would increase from 1,505 to 1,535, taking gross residential density from 1.07 dwelling units/acre to 1.10 dwelling units/acre.

At its meeting on February 6, 2006, the Planning Commission recommended approval of the amended proffers by a vote of 4-3.

Staff found the proposal generally consistent in character with the previously approved master plan and has determined that the additional units proposed will not have an appreciable impact.

Staff recommended the Board approve the application.

Mr. Bradshaw asked staff if the land use was rezoned as low-density residential.

Ms. Sipes stated that was correct.

Mr. Bradshaw asked when the land-use designation was made rural land.

Ms. Sipes responded that in 1989 the boundary was not necessarily the dividing line between rural lands and low-density residential land.

Mr. Sowers stated that the Primary Service Area (PSA) line was hardened, but during the original rezoning the property was outside of the line. He also stated that recently it had become a parcel-specific assessment, but this particular property was outside of the PSA designated as rural lands.

Mr. Bradshaw inquired that staff verify this property was outside the PSA and designated as rural lands.

Mr. Sowers confirmed the rural lands designation and stated that a small corner of the property was recognized as outside the PSA.

Mr. Goodson opened the Public Hearing.

1. Mr. Vernon M. Geddy, III, on behalf of the applicant, Jamestown LLC, stated that the proposed increase density was 0.03 dwelling units per acre. Mr. Geddy presented a map of the area and outlined the proposed development. Mr. Geddy stated that this would not open up a new area to development because it was an area that will be developed. Mr. Geddy outlined cash proffers for water, sewer, schools, off-



site schools, off-site environmental, etc., turf management proffer, recreation, and generators for grinder pumps. He stated that the amendments meet with the requirements of the County's Master Plan and Comprehensive Plan, offer public benefits and the PSA includes Greensprings West. Mr. Geddy urged the Board to approve the Master Plan amendments. He stated the developer has addressed every possible issue, and to counteract the increase of only 0.03 dwelling units per acre, there are significant cash proffers.

Mr. McGlennon inquired about the possibility of incorporating low-impact design (LID) and asked why that was not possible.

Mr. Geddy stated that this was not possible because in order for low-impact design to work, there needed to be a certain soil type; rather than put LID here, the applicant opted to contribute more value for the dollar with cash proffers off-site.

Mr. Icenhour asked if Mr. Geddy would verify that once the rezoning was redone, it would be approved with a 1,505 cap limit.

Mr. Icenhour and Mr. Geddy discussed the use and quantity of grinder pumps in the land bay.

Mr. Icenhour inquired if the number of grinder pumps decreased because subsequent lots were fit into the area to connect the developments.

Mr. Geddy stated Mr. Icenhour was correct, and with this Master Plan, the original lot cap was essentially a best guess.

Mr. Icenhour stated that essentially the best guess fluctuates when lots are worked into a development plan.

Mr. Geddy stated that when they got to a certain area, the number of lots that were available to be developed changed.

Mr. Icenhour stated that near the lake the land drops off, the developer cannot use sewer, and remarked that they planned to have over 21 grinder pumps in this area.

Mr. Geddy stated that it would be to the depth that the existing sewer line was built.

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

The Board discussed the merits of the proposed development and the concerns regarding the negative impacts to the community and public services.

Mr. Geddy requested the Board defer the case before a vote.

Mr. Goodson asked if any member would like a deferral.

Mr. Bradshaw stated he did not object to a deferral, but changing the plan would not address the problem of his concern.

Mr. Harrison asked if the number of units would be the issue that would be changed during the deferral.

Mr. Goodson stated that he did not feel comfortable with deferring this application.

Mr. McGlennon made a motion to deny the resolution.

On a roll call vote, the vote was AYE: Icenhour, McGlennon, Bradshaw, (3). NAY: Harrison, Goodson (2).

## **I. BOARD CONSIDERATIONS**

### **1. Board of Supervisors Code of Ethics**

Mr. Sanford B. Wanner, Clerk to the Board, provided a brief overview of the proposed Code of Ethics.

Mr. Goodson stated that this did not originate from any need or issue, it was initiated by a member of the Board.

Mr. Icenhour stated that the issue of a Code of Ethics arose during his campaign. An individual came to him and stated that the Board did not have one. Mr. Icenhour looked at information available and stated that this is a tool that would be utilized. This was not brought forward by any necessity. County staff provided six Virginia County codes which were utilized in the creation of this Code. Mr. Icenhour stated the Code of Ethics was to be used to enhance the way the government serves the community. He also extended his appreciation for the work of staff and his fellow Supervisors.

Mr. Icenhour made a motion to adopt the resolution.

Members of the Board thanked Mr. Icenhour for this initiative, noted that Board members have been conducting themselves in accordance with the proposed Code of Ethics, and stated support for the standard for conduct.

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

### **2. Personal Property Tax Relief Act - Setting the Reimbursement Percentage**

Ms. Ann Davis, Treasurer, stated that last November the Board passed an ordinance to comply with the Code of Virginia regarding personal property tax relief. Ms. Davis stated that based on the amount of reimbursement, personal use vehicles valued at \$1,000 dollars or less would receive 100 percent relief. She said vehicles valued at \$1,001 to \$20,000 would be eligible for 61 percent, and vehicles valued at \$20,001 or more would receive 61 percent on first \$20,000 dollars of value.

Mr. Bradshaw clarified that the Board is not reducing the relief, but distributing it among the citizens.

Ms. Davis confirmed the clarification and stated that the State has frozen the relief, and the appropriate allocation would set the percentage at 61 percent.

Mr. McGlennon inquired if the personal property tax rate remains the same.

Ms. Davis stated that the tax rate could remain the same. Ms. Davis emphasized that the only change was the percentage, which was 70 percent last year, being reduced to 61 percent this year.

Mr. Goodson stated the Board could have assessed taxes on a vehicle less than \$1,000, but chose to give 100 percent relief on vehicles under \$1,000 dollars.

Ms. Davis presented a tax bill to be sent to citizens, which included a highlighted paragraph that stated the tax bill has been reduced by 61 percent for the first \$20,000 dollars of value. If qualifying vehicle was less than \$1,000 in value, the Board of Supervisors had eliminated the tax.

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

**RESOLUTION**

**PERSONAL PROPERTY TAX RELIEF ACT -**

**SETTING THE REIMBURSEMENT PERCENTAGE**

WHEREAS, the Personal Property Tax Relief Act of 1998, Va. Code §§58.1-3523 et seq. ("PPTRA"), has been substantially modified by the enactment of Chapter 1 of the Acts of Assembly, 2004 Special Session I (Senate Bill 5005) and the provisions of Item 503 of Chapter 951 of the 2005 Acts of Assembly, being the 2005 revisions to the 2004-2006 Appropriations Act ("the 2005 Appropriations Act"); and

WHEREAS, these legislative enactments require the County to take affirmative steps to provide for the computation and allocation of relief provided pursuant to the PPTRA as revised; and

WHEREAS, these legislative enactments provide for the appropriation to the County of a fixed sum to be used exclusively for the provision of tax relief to owners of qualifying personal use vehicles that are subject to local personal property tax on such vehicles.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, in accordance with the requirements set forth in Va. Code §58.1-3524(C)(2) and §58.1-3912(E), as amended by Chapter 1 of the Acts of Assembly (2004 Special Session 1) and as set forth in Item 503 of the 2005 Appropriations Act, that any qualifying vehicle having situs within the County during the tax year which begins on January 1, 2006, shall receive personal property tax relief in the following manner:

1. Personal use vehicles valued at \$1,000 or less will be eligible for 100% tax relief.
2. Personal use vehicles valued at \$1,001 to \$20,000 will be eligible for 61% tax relief.
3. Personal use vehicles valued at \$20,001 or more shall receive 61% tax relief only on the first \$20,000 of value.
4. All other vehicles which do not meet the definition of "qualifying" (business use vehicles, farm use vehicles, motor homes, etc.) will not be eligible for personal tax relief under PPTRA.

**J. PUBLIC COMMENT - None**

**K. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Wanner stated that this was the last night for Ms. Jody Puckett as Acting County Administrator. He stated that she had been an excellent assistant.

Mr. Wanner recommended the Board adjourn to 7 p.m. on April 11, 2006, following Williamsburg

Area Transport and James City Service Authority Board of Directors meetings, and a Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia consideration of personnel matters, the appointment of individuals to County boards and/or commissions in reference to the Business Climate Task Force, and Section 2.2-3711(A)(7) of the Code of Virginia, to consult with legal counsel and staff members (or consultants) pertaining to probably litigation.

**L. BOARD REQUESTS AND DIRECTIVES**

Mr. McGlennon requested staff draft a resolution regarding the Board's opposition to privatization of Eastern State Hospital for next meeting.

Mr. McGlennon stated he would like it to be communicated to applicants in land use cases that while the Board would entertain proffers for certain specific purposes, when funding is proffered, it should be proffered to the County for allocation rather than to private entities.

Mr. Bradshaw stated his appreciation for landscaping projects on Route 199 and Richmond Road.

Mr. Goodson asked if the County would report back addressing an earlier comment regarding off-street parking.

At 8:24 p.m. Mr. Goodson recessed the Board of Supervisors for a Williamsburg Area Transport Board of Directors meeting and a James City Service Authority Board of Directors meeting.

Mr. Goodson reconvened the Board of Supervisors at 8:31 p.m.

**M. CLOSED SESSION**

Mr. McGlennon made a motion to go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia, consideration of personnel matters, the appointment of individuals to County boards and/or commissions in reference to the Business Climate Task Force and Section 2.2-3711(A)(7) of the Code of Virginia, to consult with legal counsel and staff members (or consultants) pertaining to probable litigation.

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

At 8:32 p.m. Mr. Goodson convened the Board into Closed Session.

At 8:35 p.m. Mr. Goodson reconvened the Board to Open Session.

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

On a roll call vote, the vote was AYE: Harrison, Icenhour, McGlennon, Bradshaw, Goodson (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.

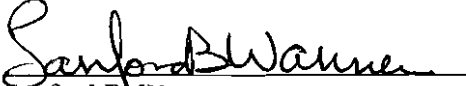
NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this 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)(1), to consider personnel matters, the appointment of individuals to County boards and/or commissions; and Section 2.2-3711(A)(7), to consult with legal counsel and staff members (or consultants) pertaining to probable litigation.

**N. ADJOURNMENT**

Mr. Harrison made a motion to adjourn until 7 p.m. on April 11, 2006.

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

At 8:50 p.m. Mr. Goodson adjourned the Board until 7 p.m. on April 11, 2006.

  
Sanford B. Wanner  
Clerk to the Board

**JAMES CITY COUNTY, VIRGINIA**

**DECLARATION OF LOCAL EMERGENCY**

WHEREAS, the Director of Emergency Management for James City County, Virginia (the "Director"), is empowered by Section 44-146.21 of the Code of Virginia, 1950, as amended, (the "Virginia Code") to declare local emergencies; and

WHEREAS, James City County (the "County") has not received a significant amount of rain for an extended period of time; and

WHEREAS, the James City County Fire Chief has determined that recent dry, windy weather has allowed vegetation and other debris in the County to become extraordinarily combustible, thereby creating a condition where the County is in immediate danger of fire; and

WHEREAS, the Director does hereby find that due to the immediate threat of fire, conditions of extreme peril to life and property necessitates the proclamation of the existence of a local emergency; and

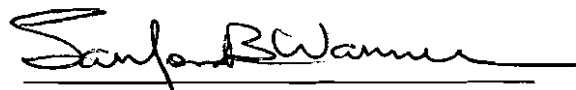
WHEREAS, due to the exigent circumstances, the Board of Supervisors of James City County cannot convene to approve such a declaration and will instead do so at its regular meeting on March 28, 2006.

NOW, THEREFORE, BE IT RESOLVED that based on these findings the Director hereby declares a local emergency and orders the immediate prohibition of all open burning in the County; and

BE IT FURTHER RESOLVED THAT the Emergency Management Division of the James City County Fire Department shall exercise those powers, functions, and duties as permitted by the Virginia Code and the ordinances, resolutions, and approved plans of James City County in order to mitigate the effects of said emergency; and

BE IT FURTHER RESOLVED THAT this declaration shall be transmitted to the local media and posted on the County website and about the County buildings.

3/16/06  
Date

  
Sanford B. Wanner  
Director of Emergency Management

SIXTH AMENDMENT TO AMENDED AND RESTATED  
GREENSPRINGS PROFFER AGREEMENT

This Sixth Amendment to the Amended and Restated Greensprings Proffer Agreement is made this 17th day of March, 2006, by JAMESTOWN, LLC, a Virginia limited liability company ("Owner"), to be indexed as Grantor; and provides as follows:

RECITALS:

A. In 1989 Greensprings Plantation, Inc. ("Greensprings") applied for and James City County ("County") granted a rezoning of certain real property then owned by Greensprings and being described in the Original Proffer Agreement and on Exhibit A hereto (defined below) from Limited and General Agricultural Districts, A-2 and A-1 to Residential Planned Community District, R4, with a master plan (the "Master Plan") and proffered conditions as set forth in that certain Greensprings Proffer Agreement dated February 6, 1989 and recorded in the Clerk's Office in James City County Deed Book 427, page 466 (the "Original Proffer Agreement").

B. The Original Proffer Agreement and the Master Plan for the Property were amended by the Amended and Restated Greensprings Proffer Agreement dated April 30, 1992 and recorded in the Clerk's Office in James City County Deed Book 562, page 794.

C. The Original Proffer Agreement and the Master Plan were further amended by that certain document entitled "First Amendment to Amended and Restated Greensprings Proffer Agreement" dated September 29, 1993 and recorded in the Clerk's Office in James City County Deed Book 652, page 765.

D. The Original Proffer Agreement and the Master Plan were further amended by that certain document entitled "Second Amendment to Amended and Restated Greensprings Proffer Agreement" dated July 6, 1998 and recorded in the Clerk's Office as James City County Instrument No. 980013306.

E. The Original Proffer Agreement and the Master Plan, were further amended by that certain document entitled "Third Amendment to Amended and Restated Greensprings Proffer Agreement" dated June 2, 1999 and recorded in the Clerk's Office as James City County Instrument No. 990015761.

F. The Original Proffer Agreement and the Master Plan, were further amended by that certain document entitled "Fourth Amendment to Amended and Restated Greensprings Proffer Agreement" dated October 29, 1999 and recorded in the Clerk's Office as James City County Instrument No. 990025600.

G. The Original Proffer Agreement and the Master Plan, were further amended by that certain document entitled "Fifth Amendment to Amended and Restated Greensprings Proffer

Agreement" dated May 24, 2002 and recorded in the Clerk's Office as James City County Instrument No. 040011407.

H. The Original Proffer Agreement, as amended and restated as set forth in these Recitals, is hereinafter called the "Proffers".

I. By Deed dated March 5, 2003 and recorded in the Clerk's Office as Instrument No.030003788, Greensprings conveyed a portion of the property subject to the Proffers generally known as Greensprings West and being more particularly described on Exhibit B hereto to Owner (the "Property").

J. Owner has applied to the County to amend the Master Plan with respect to the Property and to amend the Proffers as set forth herein and to restate the Proffers in their entirety.

NOW, THEREFORE, this Sixth Amended and Restated Greensprings Proffer Agreement provides as follows:

#### REVISED PROVISIONS:

1. Number of Dwelling Units: Land Bay S-1. The number of dwelling units permitted within Land Bay S-1 as shown on the amended Master Plan submitted herewith shall be 398. The 30 additional lots are hereinafter referred to as the "Additional Lots".

2. County Cash Contributions. (a) A contribution of \$1,093.00 for each Additional Lot 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. 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) Owner has approval from the County for the use of 21 grinder pumps on the Property. While Owner intends to utilize gravity sewer wherever feasible, if Owner must utilize more than the 21 approved grinder pumps, a contribution of \$2,700.00 for each grinder pump used on the Property over and above 21 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 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 \$5,400.00 for each Additional Lot 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, off-site road improvements, library uses, and public use sites.



(d) A contribution of \$4,011.00 for each Additional Lot 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 school uses.

(e) A contribution of \$1,000.00 for each Additional Lot 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 environmental improvements in the Powhatan and Shellbank Creek watersheds, including in the Saint George's Hundred development.

(f) A contribution of at least \$1,000.00 for each Additional Lot 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 the provision of affordable housing.

(g) A contribution of at least \$1,000.00 for each Additional Lot 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 historic preservation of the Green Spring plantation site and surrounding park.

(h) The contributions described above in paragraphs (a), (c), (d), (e), (f) and (g) shall be payable for each Additional Lot on the Property at the time of final subdivision plat or site plan approval, whichever is sooner, for such Additional Lot unless the County adopts a written policy or ordinance calling for payment of cash proffers at a later date in the development process. The contributions described in Paragraph (b) above shall be payable upon the issuance of the sewer permit for the lot in question.

(i) The per unit contribution(s) paid in each year pursuant to this Section shall be adjusted annually beginning January 1, 2006 to reflect any increase or decrease for the preceding year in the Marshall and Swift Building Costs Index (the "Index"). In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in paragraphs (a) through (f) 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 Index as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the Index as of December 1 in the preceding year, in the event a substantial change is made in

the method of establishing the Index, 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 Index. In the event that the Index is not available, a reliable government or other independent publication evaluating information heretofore used in determining the Index (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the per unit contribution to approximate the rate of annual inflation in the County.

3. HOA Contribution. To mitigate potential impacts on recreational facilities from the development of the Additional Lots, Owner shall make a contribution to or for the benefit of the Greensprings West Homeowners Association (“HOA”) in the amount of \$30,000.00 for a specific physical improvement project or projects selected by the HOA. This amount shall be payable to the HOA prior to final subdivision plat approval for the Additional Lots if, as of such date, the HOA has obtained final approval of the site plan for the project by the County. If as of the date Owner receives final subdivision plat approval for the Additional Lots the HOA has not obtained final site plan approval for the project, such amount shall be paid to the County. The County shall hold such funds and pay them to the HOA if the HOA obtains final approval of the site plan for the project within a period of five years from the date of payment to the County. If the HOA does not obtain final site plan approval for the project within the five year period, the HOA shall have no further right to the funds and 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 Additional Lots, including, without limitation, for recreation uses. Owner shall have no obligation with respect to the planning or construction of the project(s).

4. Recreation. Prior to the County being obligated to grant preliminary approval of the development plans for Phase VII, Owner shall install the tot lot and play area currently proffered under Section C, Proffer 4 (a) of these Amended and Restated Proffers. Prior to the County being obligated to grant final approval of the development plans for Phase VII, the new open play field of approximately one acre in the general location shown on the Master Plan shall be cleared, graded, sodded, and in useable condition. Prior to the County being obligated to grant final subdivision plat approval for the Additional Lots, Owner shall complete the recreational trail located on the north side of Monticello Avenue on the Property in the general location shown on the Master Plan. on the Master Plan.

5. Greenway Easement. Prior to the County being obligated to grant final subdivision plat approval for the Additional Lots, Owner shall grant the County a greenway easement 35 feet in width immediately adjacent to Centerville Road in the general location shown on the Master Plan.

6. Environmental. (a) The HOA shall be responsible for developing and implementing a turf management plan ("Turf Management Plan") for the maintenance of common areas on the Property in an effort to limit nutrient runoff into Shellbank Creek and its tributaries. The Turf Management Plan shall include measures necessary to manage and limit yearly nutrient

application rates to turf. The Turf Management Plan shall be prepared by a landscape architect licensed to practice in Virginia and submitted for review to the County Environmental Division for conformity with this proffer. The Turf Management Plan shall include terms permitting enforcement by either the HOA or the County. The Turf Management Plan shall be approved by the Environmental Division prior to final subdivision plat approval of the Additional Lots. The HOA shall also provide a copy of the Plan to all Lot owners in Land Bay S-1 and shall encourage owners to restrict nutrient applications on their Lots to an amount equal to or less than that specified in the Plan.

(b) Prior to the County issuing a land-disturbing permit for the Additional Lots, Owner shall perform analyses and evaluation of the Master Stormwater Management Plan to ensure compliance is achieved with the County's 10-point BMP system. The County Environmental Division must review and approve the analyses and evaluation prior to issuance of a Land-Disturbing permit for the Additional Lots area. If 10-point compliance is effectively demonstrated, there will be no further action required beyond preparation of the plan of development for the Additional Lots. If 10-point compliance is not effectively demonstrated, then additional action will be required to achieve overall stormwater management compliance, including, but not limited to, placement of additional BMPs or natural open space in the Additional Lots area. Alternatively, Owner may perform an analysis and evaluation of the stormwater facilities in Greensprings West to demonstrate compliance is achieved with the County's 10-point BMP system for that area independent of the remainder of the Master Stormwater Management Plan area.

7. Generators. The home on any Lot within Land Bay S-1 served by a grinder pump shall be required to have a fixed mount, backup generator installed to provide electrical power to the grinder pump in the event of a power failure. The generator shall (i) be fueled by natural gas or propane, (ii) have an automatic transfer switch, (iii) have one of its dedicated circuits wired to the grinder pump and (iv) be installed prior to the County being obligated to release the final electrical permit for the house.

#### RESTATEMENT OF PREEXISTING PROFFERS:

A. Amendment to Proffers made by Greensprings by "Fifth Amendment to Amended and Restated Greensprings Proffer Agreement" dated May 24, 2002 and recorded in the Clerk's Office as James City County Instrument No. 040011407:

1. Amendment to Condition 17. Condition 17 under the Heading "Restatement of Balance Preexisting Proffers" below is hereby amended by the addition of the following sentence at the end thereof:

The foregoing restrictions notwithstanding, in Land Bay M-9 stealth communications towers up to 120 feet in height as defined and governed by the James City County Zoning Ordinance shall be permitted.

2. Ratification. Except as expressly amended hereby, the terms and provisions of the Original Proffer Agreement, as modified by the amendments described herein are hereby ratified and confirmed.

3. Restatement Terms. The Restatement of Preexisting Proffers below is made in conformity with the County proffer policy and restates but does not amend the preexisting proffers set forth below.

B. Restatement of Proffers made by Riverside Health Care Association, Inc. ("RHCA") by "Fourth Amendment to Amended and Restated Greensprings Proffer Agreement" dated October 29, 1999 and recorded in the Clerk's Office as James City County Instrument No. 990025600 applicable to the property described on Exhibit B hereto:

1. Number of Dwelling Units: Land Bay M-10. The number of residential units within Project Land Bay M-10 as shown on the Master Plan for the Greensprings Property (now the RHCA Property), as amended October 7, 1999 and submitted herewith shall be as follows:

<u>Project Land Bay</u>	<u>R-4 Master Plan Designation</u>	<u>Maximum Number of Dwelling Units</u>
M-10	A	24
M-10	B	76
M-10	C	56
M-10	D	144
M-10	Nursing Home	120 Beds

2. Master Plan Acreage. The Greensprings Property as defined in the Original Proffer Agreement shall be corrected hereby to reflect 1396.5 acres +/-.

3. Revised Master Plan. The Master Plan shall be amended in accordance with that certain plat or plan entitled: "Master Plan for Greensprings, a development by Greensprings Plantation, Inc., a Virginia corporation" revised October 7, 1999, which is incorporated herein by reference.

4. Screening. Landscaped areas shall be created as a part of future development of the RHCA Property under the Conceptual Plan, so as to create an evergreen buffer and visual screening between buildings one (1) through four (4) inclusive shown on the Conceptual Plan and the Greensprings Plantation National Historic Site ("Historic Site") as shown on the Master Plan. The landscaping and plantings within such areas shall be subject to approval by the County Director of Planning prior to final site plan approval.

5. Building Materials. Exterior building/siding materials employed in buildings one (1) through six (6) inclusive shown on the Conceptual Plan shall be of brick or other non-glossy materials which are dark, naturally occurring colors, on such surfaces which front upon, face or

are visible from the Historic Site. Samples of such building materials and colors shall be approved by the County Director of Planning prior to final site plan approval. Trim colors shall not be subject to this restriction.

6. Changes in Conceptual Plan. RHCA may from time to time in final plats or site plans submitted to the County relocate the specific uses shown on the Conceptual Plan provided (a) that such uses are permitted by the County Zoning Ordinance, the Master Plan and these Proffers, and (b) that the County Director of Planning determines that such relocations do not alter the basic concept or character of the development shown on the Conceptual Plan.

7. Severability/Partial Invalidity. Should any term or provision of this Agreement be determined to be invalid, illegal, or unenforceable, in whole or in part, the validity of the remaining part of such term or the validity of any other term of this Proffer Agreement shall not be in any way affected.

8. Definition of Terms. Unless otherwise defined above, all terms used herein shall be defined as set forth in the James City County Zoning Ordinance in effect on the date hereof..

9. Effect of Restatement. This Fifth Amendment to Amended and Restated Greensprings Proffer Agreement shall not be read to require RHCA to undertake, perform, fund or comply with any obligation (a) arising under amendment(s) to the Original Proffer Agreement made after February 9, 1995, or (b) not expressly undertaken by RHCA in paragraphs one (1) through eight (8) above or in any other written proffer agreement executed by RHCA.

C. Restatement of Balance of Pre-existing Proffers Applicable to the Entire Greensprings Plantation Project:

1. Number of Dwelling Units. The number of residential units shall be limited in relation to the areas as designated on the Amended Master Plan submitted herewith last revised July 6, 1998 and made by Rickmond Engineering (the "Amended Master Plan") as follows:

<u>Project Land Bay</u>	<u>R-4 Master Plan Designation</u>	<u>Maximum Number of Dwelling Units</u>
S-1	A	368
S-2	Eliminated	
S-3	A	172
S-4	Eliminated	
M-5	D	218
M-6	D	282
M-7	Eliminated	
M-8	D	0
M-9	D	165

2. Route 5 Greenbelt. Owner shall designate 150-foot greenbelt buffers along the Property's Route 5 frontage measured from the existing Route 5 right-of-way. The greenbelt buffers shall be exclusive of any lots and, except as set forth below, shall be undisturbed. Utilities, drainage improvements, community entrance roads as shown generally on the Amended Master Plan (limited to one entrance for relocated Route 614, one entrance to Land Bay M-10, and one entrance to each of the public use sites shown on the Amended Master Plan), pedestrian/bicycle trails and signs as approved by the Development Review Committee. In the portions of the greenbelt buffer located within 250 feet of the intersection of Route 5 and Legacy Drive, Owner may (i) engage in select hand clearing and trimming of trees and other plants with a caliper of three inches or less; (ii) may engage in select hand clearing or trimming of trees and plants with a caliper of more than three inches with the prior specific approval of the Director of Planning on a case by case basis on the condition such trees or plants with a caliper in excess of three inches so cleared are replaced with new trees or plants with a caliper in excess of three inches; (iii) may plant enhanced landscaping, including trees and shrubs; and (iv) install fencing, all in accordance with a landscape plan approved by the Development Review Committee and the Director of Planning. The goal of the preceding sentence is to allow Owner to create a more attractive buffer than currently exist that allows partial visibility (but not an unobstructed view) of the development in adjacent Landbays comparable to the visibility provided by the greenbelt buffer along the Route 5 frontage of the Governor's Land at Two Rivers development. Unless otherwise approved by the Director of Planning, buildings constructed after the date hereof adjacent to the portions of the greenbelt buffer located within 250 feet of the intersection of Route 5 and Legacy Drive shall utilize materials (other than roofing materials) of brick and/or earth tone (from cream to tan) colors except doors, trim and shutters may be of any color from the City of Williamsburg approved color palette.

3. Golf Facilities. The areas on the Amended Master Plan designated as golf courses, clubhouse, and practice range shall be used only for those purposes or such areas shall be left as Major Open Space and subject to Condition 14 hereof. If golf facilities are constructed on the Property, all owners of lots in areas with a Master Plan Area designation "A" and owners of units in Land Bays M-5 through M-7 shall have the right to use the aforementioned golf facilities upon payment of any applicable fees and subject to the other rules and regulations governing use of such facilities as in effect from time to time. Development of golf courses on the Property shall be subject to the following conditions:

(a) All disturbed slopes steeper than 25% shall be sodded immediately after clearing and grubbing associated with cut and fill operations. The sod shall be staked into place, as necessary, and temporary fill diversions shall be constructed to minimize water flow over slopes, until sod has become fixed to the slope by establishment of root structure. Owner acknowledges that disturbance of slopes steeper than 25% requires an exception under the County's Chesapeake Bay Preservation Ordinance, Chapter 23 of the County Code.

(b) All disturbed slopes exceeding 10% shall be stabilized immediately upon reaching final grade with sod or excelsior blanket and seed, or other approved erosion control matting at vertical increments not exceeding 10 feet, or at the end of the work day, should a fill greater than

10 feet occur during that period.

(c) A construction phasing plan shall be provided as part of the site plan to be approved by the Environmental Director. That plan will divide the construction into four or five phases. Land disturbance beyond the first phase shall be permitted based upon the demonstrated adequacy of erosion and sedimentation control measures installed in prior phases.

(d) Grass depressions and catchment areas shall be used throughout the construction area as a means of runoff detention and Best Management Practices.

(e) An operation and maintenance plan, including an integrated pest management plan, shall be submitted as part of the site plan submittal for approval by the Environmental Director before final site plan approval. The integrated pest management plan shall require the recordation of the application of all fertilizers, herbicides, pesticides, insecticides and/or other chemicals applied to the golf courses. A copy of the application records shall be kept on site and shall be made available, upon request, for review by the Environmental Division of the Code Compliance Department. Additionally, a copy of the records shall be submitted to the Environmental Director annually from the date of approval of the golf course site plan, for review and approval. The Environmental Director may require the submittal of a new integrated pest management plan if the review of these records show the plan to be inadequate.

(f) The golf course and driving range will not be illuminated for use after dark.

(g) Water for irrigation of the golf courses shall be provided from surface water collection or withdrawn from Powhatan Creek.

#### 4. Neighborhood Recreational Facilities.

(a) Single-Family Neighborhood Recreation Centers. The Single-Family Neighborhood Recreation Center ("SNRC") shown on the Amended Master Plan in Land Bay S-3 and labeled "SNRC" shall be located generally as shown on the Amended Master Plan. The SNRC shall contain at least one 25 meter swimming pool and one wading pool with a total water surface area of at least 4,000 square feet, one community center/bath house of at least 2,000 square feet, two hard surface, regulation size tennis courts and one tot lot with playground equipment. In Land Bay S-1 there shall be a single-family neighborhood recreation center containing at least one 25 meter swimming pool and one wading pool with a total water surface area of at least 4,000 square feet, one community center/bath house of at least 2,000 square feet, two hard surface, regulation size tennis courts, one tot lot with playground equipment, an additional play area with playground equipment, and an open play area of a minimum of one-half acre, all in locations approved by the Development Review Committee. These facilities shall be completed or bonds in a form acceptable to the County Attorney for their completion posted with the County before the County is obligated to grant final subdivision approval for any lots in Land Bay S-1. Owner shall maintain the SNRC and the additional recreational areas and facilities preferred above until such time as it is conveyed to an owners association, at which time such association shall assume

responsibility for its maintenance.

(b) Multi-Family Neighborhood Recreation Centers. (i) Unless Owner elects to construct a single central multi-family neighborhood recreational center pursuant to subparagraph (ii) below, before the County shall be obligated to issue Certificates of Occupancy for more than 50 units in Land Bays M-5 through M-9 shown on the Amended Master Plan, residents of each of those Land Bays shall have access to at least one Multi-Family Neighborhood Recreation Center ("MNRC") serving (but not necessarily located in) that Land Bay. There shall be recreational facilities which comply with requirements of the Zoning Ordinance located within Land Bay M-10 with the type and location of such facilities to be determined by Owner following consultation with the residents of Land Bay M-10. The recreational facilities shall be shown on site plans of Land Bay M-10 and subject to the approval of the Development Review Committee. The MNRCs for all multi-family Land Bays in the aggregate shall be provided with swimming pools with a total minimum water surface area of 5,000 square feet with no single pool having a minimum water surface area of less than 750 square feet and a total of at least six regulation size, hard surface tennis courts. The MNRCs in Land Bay M-5, M-6, M-8, and M-9 shall have an open play area of at least one-fourth an acre and a tot lot with playground equipment. The pools and tennis courts shall be distributed as follows:

<u>Land Bay</u>	<u>Minimum Facilities</u>
M-5	2 pools, 2 tennis courts
M-6	to be determined by Owner
M-9	1 pool, 1 tennis court

Each MNRC shall be open for use by owners of units within the Land Bay(s) which it serves subject to the provisions of any applicable restrictive covenants and rules and regulations adopted thereunder.

(c) Trail System. Owner shall provide a central pedestrian/bicycle trail system along one side of realigned Route 614, and along one side of Monticello Avenue when and if such road is constructed. Owner shall provide a soft surface pedestrian trail along its Route 5 frontage. Such trail system shall be located in or adjacent to the road right-of way of the roads listed above and shall be constructed when the adjacent road is constructed or, in the case of the trail adjacent to Route 5, prior to completion of development of the Land Bay adjoining the segment of the trail in question. The portions of the central pedestrian/bicycle trail system located outside the VDOT right-of-way shall be maintained by Owner until the area containing the trail is conveyed to an owners association, at which time the association shall assume responsibility for its maintenance. Internal trails shall be provided in each Land Bay in accordance with the County's Sidewalk Policy or as shown on the Amended Master Plan. The internal trails shall be connected with the central trail system. Before the County is obligated to grant final approval of a site plan for Land Bay M-9, Owner shall submit to the County a feasibility study of providing pedestrian access from Land Bay M-9 to the Neighborhood Commercial Center.



5. Neighborhood Commercial Center. (a) The Neighborhood Commercial Center shall be located generally as shown on the Amended Master Plan and shall contain no more than 50,000 square feet of Gross Floor Area (as defined in the County Zoning Ordinance). Within the Neighborhood Commercial Center no more than one retail establishment shall have a Gross Floor Area of more than 8,500 square feet. The one retail establishment which may exceed 8,500 square feet shall have a Gross Floor Area of no more than 12,000 square feet. No building within the Neighborhood Commercial Center shall have a height in excess of 35 feet from grade unless otherwise approved by the Planning Commission..

(b) Within the Neighborhood Commercial Center the following uses, otherwise permitted within the R-4 zoning district, shall not be permitted: any office use with outdoor equipment storage; and hotel/motel/tourist homes/convention centers.

6. Archaeological Sites. A Phase I Archaeological Study of the Property meeting the guidelines set forth in the Virginia Department of Historic Resource's Guidelines for Preparing Archaeological Resource Management Reports and conducted under the supervision of a qualified archaeologist who meets, at a minimum the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards shall be prepared and submitted for approval to the Director of Planning. Owner shall undertake a Phase II and/or, subject to the following sentence, a Phase III study of archaeological sites identified in the Phase I study, if identified by the Phase I study heretofore submitted as warranting Phase II or Phase III study, and shall submit such studies to the County for review and approval prior to any land disturbing on or adjacent to such sites. Owner may at its option leave undisturbed an archaeological site planned for development in lieu of performing a Phase III study thereon. The recommendations of such studies shall be incorporated into the plan of development for the site and the clearing, grading or construction activities thereon. If as a result of a Phase II study of a site, the County determines the site is eligible for inclusion in the National Register of Historic Places based on the criteria established by the Department of the Interior, Owner shall develop and implement a plan for inclusion of the site on the National Register of Historic Places and for the mitigation of potential adverse impacts on the site. All sites to be left undisturbed or upon which a Phase III study is to be conducted shall be protected from development activities by temporary fencing until development activities adjacent to the site or the Phase III study, as the case may be, is complete.

If a previously unidentified archeological site is discovered during land disturbing activities, all construction work involving subsurface disturbance will be halted in the area of the site and in the surrounding area where further subsurface remains can reasonably be expected to occur and Owner will immediately notify the County of the discovery. The County, or an archeologist approved by it, will immediately inspect the work site and determine the area and the nature of the affected archeological site and its potential eligibility for inclusion on the National Register of Historical Places. Construction work may then continue in the project area outside the archeological site. Within 15 working days of the original notification of discovery, the County shall determine the National Register eligibility of the site. The County may extend this working day period for determining the National Register eligibility one time by an additional 5 working days by written notice to Owner prior to the expiration date of said 15

working day period.

If the site is determined to meet the National Register Criteria (36 CFR Part 60.0), Owner shall prepare a plan for its avoidance, protection, recovery of information, or destruction without data recovery. The plan shall be approved by the County prior to implementation. Work in the affected area shall not proceed until either (a) the development and implementation of appropriate data recovery or other recommended mitigation procedures, or (b) the determination is made that the located remains are not eligible for inclusion on the National Register.

7. Nature/Conservation Park. At the request of the County Administrator, the Owner and/or the owners association shall grant, free of charge, an easement to the County or its assignee over the area designated on the Amended Master Plan as Nature/Conservation Park generally in the locations shown on the Amended Master Plan. The Nature/Conservation Park shall remain undisturbed and in its natural state except as set forth below, preserving indigenous vegetation to the maximum extent possible. 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 Nature/Conservation Park; (ii) select hand clearing and pruning of trees shall be permitted in the Nature/Conservation Park to permit sight lines or vistas and (iii) utilities (including the irrigation intake shown on the Amended Master Plan), stormwater best management practices, roads, pedestrian and golf cart paths, trails and bridges may intrude into or cross the Nature/Conservation Park. If vegetation is removed from the Nature/Conservation Park it shall be replaced by vegetation that is equally or more effective in retarding runoff, preventing erosion and filtering nonpoint source pollution. Utility crossings shall be generally perpendicular through the Nature/Conservation Park and Owner shall endeavor to design utility systems that do not intrude into the Nature/Conservation Park. The Nature/Conservation Park shall be maintained by Owner unless the County assumes responsibility therefor under its easement or the Park is conveyed to an owners association, at which time the association shall assume responsibility for its maintenance.

8. Historic Site Buffer. There shall be a 50-foot buffer (undisturbed and exclusive of any lots) along the eastern and western boundaries of the Greensprings National Historic Site subject only to appropriate stormwater management and utility improvements/easements as approved by the Development Review Committee.

9. Water Lines. In addition to any other conditions to subdivision or site plan approval, before the County is obligated to grant final approval of any subdivision plat or site plan for single family lots, multi-family units or the Neighborhood Commercial Center (but not for site plans for roads or the golf facilities), the Owner shall contract to complete the James City Service Authority water line system loop from the Ford's Colony area to Route 5, connecting to the existing JCSA water line adjacent to St. George's Hundred.

10. Monticello Avenue Right-of-Way. There shall be preserved a 120' road right of-way for the construction of Monticello Avenue in the locations shown on the Amended Master Plan as "Monticello Avenue Right-of-Way". Owner shall convey the "Monticello Avenue Right-of-

Way", free of charge, to the County for dedication to VDOT at the request of the County Administrator. Where construction limits may require additional right-of-way beyond 120' feet, such additional right-of-way shall also be dedicated, free of charge, to the County for dedication to VDOT upon the request of a the County Administrator. The obligation to dedicate right-of-way pursuant to this Proffer shall not adversely affect Owner's right to reimbursement from the County or the Route 5 Transportation Improvement District for costs incurred by Owner based on any change in alignment of Monticello Avenue from that shown on the Master Plan approved most recently in 1997.

11. Realigned Route 614 and Future Right-of-Way Greenbelt. The Owner shall designate a greenbelt buffer along realigned Route 614 and along the right-of-way shown on the Amended Master Plan as Monticello Avenue measured from a line 60 feet from the center line of realigned Route 614 and Monticello Avenue. Such line shall hereinafter be called the "Greenbelt Line". No structure except the road and related improvements in Land Bay S-3 shown on the Amended Master Plan and the existing maintenance facility located in Land Bay M-8, together with any expansions thereof so long as any such expansion is located no closer to the Greenbelt Line than the existing maintenance facility and any road or cart paths necessary for access from the facility to Legacy Drive and the timeshare buildings and development within the M Land Bays may be located within 150 feet of the Greenbelt Line. Where the road in Land Bay S-3 parallels realigned Route 614, the greenbelt buffer shall be no less than 115 feet from the Greenbelt Line of realigned Route 614. Where golf course fairways abut relocated Route 614 or Monticello Avenue, the greenbelt buffer shall have a minimum width of 75 feet. Where tee boxes or the putting surface of greens are located within 100 feet of the Greenbelt Line, enhanced landscaping approved by the Development Review Committee in the golf course site plan review process shall be provided between the tee or green and the 75 foot greenbelt buffer. In all other areas, a minimum 150 foot buffer shall be maintained. Where golf course fairways abut realigned Route 614 or Monticello Avenue, selective hand thinning of trees (but no removal of stumps) shall be permitted as a part of a landscaping plan approved by the Development Review Committee. Within this greenbelt the land shall be exclusive of any lots and undisturbed except for approved utilities, stormwater management improvements, entrance roads to Land Bays as shown generally on the Amended Master Plan, pedestrian/bicycle trails, golf cart path crossings and tunnels and project signs as approved by the Development Review Committee. No signs other than project signs and those requested by VDOT and/or the County shall be allowed. In the portions of the greenbelt buffer located within 250 feet of the intersection of Route 5 and Legacy Drive, Owner may (i) engage in select hand clearing and trimming of trees and other plants with a caliper of three inches or less; (ii) may engage in select hand clearing or trimming of trees and plants with a caliper of more than three inches with the prior specific approval of the Director of Planning on a case by case basis on the condition such trees or plants with a caliper in excess of three inches so cleared are replaced with new trees or plants with a caliper in excess of three inches; (iii) may plant enhanced landscaping, including trees and shrubs, and (iv) install fencing, all in accordance with a landscape plan approved by the Development Review Committee and the Director of Planning. The goal of the preceding sentence is to allow Owner to create a more attractive buffer than currently exist that allows partial visibility (but not an unobstructed view) of the development in adjacent Landbays comparable to the visibility provided by the greenbelt

buffer along the Route 5 frontage of the Governor's Land at Two Rivers development. Unless otherwise approved by the Director of Planning, buildings constructed after the date hereof adjacent to the portions of the greenbelt buffer located within 250 feet of the intersection of Route 5 and Legacy Drive shall utilize materials (other than roofing materials) of brick and/or earth tone (from cream to tan) colors except doors, trim and shutters may be of any color from the City of Williamsburg approved color palette.

12. Entrances. The number of entrances and driveways to the project off of Route 5, realigned Route 614 and, if constructed, Monticello Avenue shall be limited to those shown on the Amended Master Plan.

13. Owners Association. All property owners at Greensprings by virtue of ownership of their lot or unit shall become members of an incorporated owners association although there may be different associations for different Land Bays. Each owners association shall adopt an annual budget for maintenance of all common open space, recreation areas, sidewalks, parking, private streets, if any, and other privately owned but common facilities serving the portion of the Property in question and owned or maintained by the association in question.

14. Major Open Space. Areas shown on the Amended Master Plan as "Major Open Space" and areas within subdivisions or sites shown on the subdivision plat or site plan as greenspace areas shall be exclusive of any lots and undisturbed, except as provided 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 such areas; (ii) select hand clearing and pruning of trees shall be permitted in such areas to permit sight lines or vistas; and (iii) utilities, stormwater best management practices, roads, pedestrian and golf cart paths, trails and bridges may intrude into or cross such areas. If vegetation is removed from such areas it shall be replaced by vegetation that is equally or more effective in retarding runoff, preventing erosion and filtering nonpoint source pollution. Utility crossings shall be generally perpendicular through such areas and Owner shall endeavor to design utility systems that do not intrude into such areas. All such Major Open Space and greenspace areas and other common areas shall be maintained by Owner until conveyed by Owner to an owners association, at which time the association shall assume responsibility for such maintenance.

15. Road and Intersection Improvements. (a) The Owner shall provide roadway and intersection improvements in accordance with the schedule set forth below. Each of such improvements shall be commenced and bonds approved by the County Attorney for completion of the improvements shall be posted as provided in the schedule set forth below, including, in addition any other road improvements that may be necessary for these proffered improvements to function at a minimum level of service of "C".

<u>Proffered Improvement</u>	<u>Timing</u>
1. Commence construction of	Before approval of

realigned Route 614 from existing Route 5 to northern boundary. A 120 right-of-way (or such wider right-of-way as may be necessary to accommodate required drainage structures) shall be dedicated to allow for future improvements. As part of this construction the following intersection improvements shall be made:

any subdivision plat or site plan, other than golf course

- a. Realigned Route 614 shall be four lanes from existing Route 5 through the intersection with Land Bay M-9 and the Neighborhood Commercial Center. The remainder of realigned Route 614 shall be built as two lanes, offset within the right-of-way to allow for future widening. Realigned Route 614 shall be constructed in accordance with the standards set forth on Exhibit C hereto.
- b. At Brick Bat Road: The intersection of Brick Bat Road and Route 614 shall be relocated and part of Brick Bat Road reconstructed so that Brick Bat intersects Route 614 at approximately 90 degrees. Relocated Brick Bat Road shall have a separate left turn lane. North and southbound left turn lanes and a southbound right turn lane shall be built on Route 614.
- c. At Old Route 614 at North Boundary of Historical Site: A "T" intersection with a northbound right turn lane,

a southbound left turn lane and westbound right and left turn lanes shall be constructed.

d. At Entrance to Land Bay M-5:  
A "T" intersection with a northbound left turn lane, an eastbound right turn lane and an eastbound left turn lane. The first 50 feet of the entrance to Land Bay M-5 shall be constructed with adequate width for southbound right and through lanes.

e. At existing Route 5:  
An eastbound left turn lane and a westbound right turn lane on existing Route 5. Southbound right and left turn lanes and one through lane shall be constructed as part of realigned Route 614.

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| 2. | Construct northbound and southbound left turn lanes into Land Bay M-9 and Neighborhood Commercial Center.                     | Prior to issuance of Certificate of Occupancy in Area M-9 or the Neighborhood Commercial Center. |
| 3. | Construct northbound right turn lane, westbound left and right turn lanes and one west bound through lane                     | Prior to issuance of Certificate of Occupancy in Neighborhood Commercial Center.                 |
| 4. | Construct southbound right turn lane and eastbound left and right turn lanes, and one eastbound through lane at Land Bay M-9. | Prior to issuance of Certificate of Occupancy in Land Bay M-9.                                   |
| 5. | Construct southbound left turn lane, northbound right turn lane, westbound combined left and through lanes, and westbound     | Prior to issuance of Certificate of Occupancy in Land Bay M-8.                                   |

right turn lane at Land Bay M-8.

6. Construct southbound right turn lane, eastbound combined left turn lane and through lane, and eastbound right turn lane at Land Bay M-7. Prior to issuance of Certificate of Occupancy in Land Bay M-7.
7. Construct eastbound right turn lane, westbound left turn lane, and separate northbound left and right turn lanes at Land Bay M-6. Prior to issuance of Certificate of Occupancy in Land Bay M-6.
8. Construct northbound and southbound left turn lanes, northbound right turn lane, westbound left turn lane, and right turn lane at clubhouse. Prior to issuance of Certificate of Occupancy for Clubhouse.
9. Construct southbound right turn lane, eastbound and combined eastbound left and through lane and eastbound right turn lane at southern entrance to Land Bay S-1. Prior to recordation of subdivision plat for Land Bay S-1 turn utilizing the southern entrance.
10. Construct northbound left turn, southbound right turn lane, eastbound right turn lane and combined eastbound through and left turn lanes at northern entrance to Land Bay S-1. Prior to recordation of subdivision plat for Land Bay S-1 utilizing the northern entrance.
10. Construct northbound left turn, southbound right turn lane, eastbound right turn lane and combined eastbound through and left turn lanes at northern entrance to Land Bay S-1. Prior to recordation of subdivision plat for Land Bay S-1 utilizing the northern entrance.

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| 11. | Construct northbound right turn lane into western portion of Land Bay S-3.   | Prior to recordation of subdivision plat for western portion of Land Bay S-3.     |
| 12. | Construct northbound right turn lane, westbound right turn lane and combined westbound left turn and through lane at Land Bay S-3. | Prior to recordation of subdivision plat for the eastern portion of Land Bay S-3. |
| 13. | Construction or payment for construction of a traffic signal at the intersection of Realigned Route 614 and existing Route 5.      | When warranted by MUTCD and requested by VDOT                                     |

16. Restrictions on Timeshares. Owner shall not create or operate a "timeshare project" as defined in the Virginia Real Estate Time-Share Act, Va. Code, §§55360 et. set. in Land Bays S-1, S-3, M-9 or M-10.

17. Height Limitations. In Land Bays M-9 and M-10 any structure within 600 feet from the centerline of Route 5 (John Tyler Highway) shall not exceed 35 feet in height. In Land Bays M-9 and M-10 any structure located in that area in between 600 feet from the centerline of Route 5 (John Tyler Highway) and 900 feet from the centerline of Route 5 (John Tyler Highway) shall not exceed a maximum height of 45 feet.

18. Turn Lanes into Land Bay M-10. Prior to the issuance of a certificate of occupancy for any structure on Land Bay M-10, a right turn lane from westbound Route 5 and a left turn lane from eastbound Route 5 into the entrance to Land Bay M-10 shall have been constructed or construction commenced and completion bonds or other surety acceptable to the County Attorney posted to assure completion of the turn lanes.

19. Commercial Uses in Land Bay M-10. Any accessory commercial uses located in Land Bay M-10, such as bank offices, beauty salons and barbershops, shall be located and designed to serve residents of Land Bay M-10. Commercial uses shall not be advertised from any public right-of-way.

20. Residency Agreement. Prior to the start of construction in Land Bay M-10, Owner shall submit to the County a copy of the agreements between Owner and the future residents of Land Bay M-10 which agreements shall provide that permanent residents under the age of 18 (or such higher age determined by Owner) shall not be permitted in Land Bay M-10.

21. Maintenance Facility. The area shown on the Amended Master Plan as "Fire Station



& Maintenance Facility" shall be used only as a golf course maintenance facility; project maintenance, storage and office facility; construction storage, maintenance and office facilities; recreational vehicle storage area and a County fire station and related uses as determined by the Fire Chief. Any outdoor storage areas within the Fire Station & Maintenance Facility shall be screened with a fence approved by the Development Review Committee.

22. Public Use Site. Within 60 days of the request of the County Administrator, the Owner shall convey to the County, free of charge a public use site of at least 10 acres in the location shown on the Amended Master Plan, accessible from a public road.

WITNESS the following signature and seal.

JAMESTOWN, LLC, a Virginia limited liability company

By: 

Title: Manager

STATE OF VIRGINIA

CITY/COUNTY OF WILLIAMSBURG, to-wit:

The foregoing instrument was acknowledged before me by C. Lewis Waltrip, II,  
as Manager of Jamestown, LLC., on behalf of the company this 17th day of  
March, 2006.

  
NOTARY PUBLIC

My commission expires: 12/31/09

EXHIBIT A

All those certain tracts, pieces, or parcels of land situate, lying and being in James City County, Virginia, and shown as Parcel "B", containing 916.77 acres, and Parcel "D", containing 572.50 acres, all as shown on that certain plat entitled, "Plat Showing a Portion of Green Springs," dated July 24, 1965, made by S. U. Camp, III, & Associates, Certified Land Surveyor, Courtland, Virginia, a copy of which said plat is recorded in the Clerk's Office of the City of Williamsburg and County of James City, in Plat Book 24, pages 28A and 28B.

LESS AND EXCEPT property conveyed by deed recorded June 3, 1986 in James City County Deed Book 304, Pages 31, to Jorge Luna and Laticia Luna, husband and wife;

LESS AND EXCEPT property conveyed by deed recorded June 3, 1986 in James City County Deed Book 304, Page 37, to Herman Zamora and Josefina Zamora, husband and wife;

LESS AND EXCEPT property subject to a certain Option On Real Estate recorded July 24, 1986 in James City County Deed Book 309, Page 646, to Jorge Luna and Laticia and Herman Zamora and Josefina Zamora, or their assigns;

LESS AND EXCEPT property conveyed by deed recorded April 14, 1986 in James City County Deed Book 299, Page 534, to the Commonwealth of Virginia;

LESS AND EXCEPT property conveyed by deed recorded January 11, 1978 in James City County Deed Book 181, Page 533, to the United States of America;

LESS AND EXCEPT certain property under contract to be conveyed to John M. Smith and Sonda J. Smith, husband and wife, which property is more particularly described as being "Parcel 4", 20.35 Ac.+1-, on a certain plat entitled, "A SUBDIVISION OF PART OF THE GREEN SPRINGS TRACT", James City County, Virginia," dated November, 1986, and made by Lynn D. Evans, Certified Land Surveyor, a copy of which plat is to be recorded in the Clerk's Office of the City of Williamsburg and County of James City;

LESS AND EXCEPT any and all property in the said "Parcel B" east of Powhatan Creek.

## EXHIBIT B

All that certain lot, piece or parcel of land located in the Berkeley District of the County of James City, and more particularly shown On the plat entitled "Plat of Subdivision, A Parcel Containing 89.404 Ac. Being a Portion of the Property Owned by Greensprings Plantation, Inc.", dated November 22, 1994, and made by AES, Consulting Engineers, Williamsburg, Virginia, of record in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City in Plat Book 60, page 100.

## EXHIBIT C

The two-lane roadway to be constructed in the right-of-way shown on the Amended Master Plan as Future Road "A" and realigned Route 614 shall be constructed in accordance with VDOT, Road and Bridge Standards, that are in effect at the time construction is to commence, standard GS-6, Geometric Design Standards for Urban Minor Arterial Street System. Under this standard, the design will be in accordance with "Streets With Shoulder Design", rolling terrain.

These standards are stated as follows:

Design Speed - M.P.H.	50
Maximum Degree of Curvature	6°
Maximum Percent of Grade	7%
Stopping Sight Distance	Des. 475'; Min. 400'
Width of Lane	12' - two lanes to be constructed
Width of Shoulder	Fill 13'(*); Cut 10'
Ditch Width	6' (ditch slopes to be 4:1)
Slopes	2:1 (grading for two lanes)
Right-of-Way Width	120'
Operating Speed	50 M.P.H.
Clear Zone Width	Fill: 25' Cut: 19'

{\*} Shoulder width may be reduced by 3' when guardrail is not required and recoverable areas are not being provided.

Pavement thickness shall be designed in accordance with the table entitled "Thickness Equivalency Values for Material for Primary, Interstate and Arterial Roads" from "Recommended Design Method for Flexible *Pavements* in Virginia" by N. K. Vaswani, revised 1974.