

PROFFERS

THESE PROFFERS are made this 29th day of April, 2005 by TIDEWATER PARTNERS PROPERTY & DEVELOPMENT, LLC, a Virginia limited liability company (together with its successors in title and assigns, the "Owner").

RECITALS

A. Owner is the owner of a tract or parcel of land located in James City County, Virginia, with an address of 3931 Longhill Road, Williamsburg, Virginia and being Tax Parcel 33-3-1-20 containing approximately 17.32, being more particularly described on Schedule A hereto (the "Property").

B. The Property is designated Low Density Residential on the County's Comprehensive Plan Land Use Map and is now zoned R-8. Owners have applied to rezone the Property from R-8 to R-2, General Residential District, with proffers.

C. Owners have submitted to the County a master plan entitled "Burlington Woods Master Plan" prepared by Bury + Partners - Virginia, Inc. dated December 23, 2004 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

D. Owners desire to offer to the County certain conditions on the development of the Property not generally applicable to land zoned R-2.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2298 of the

Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owners agree that they shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

CONDITIONS

1. **Master Plan.** The Property shall be developed generally in accordance with the Master Plan, with only minor changes thereto that the Development Review Committee determines do not change the basic concept or character of the development. There shall be a maximum of 26 lots on the Property.

2. **Owners Association.** There shall be organized an owner's association or associations (the "Association") in accordance with Virginia law in which all property owners in the development, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing each Association shall be submitted to and reviewed by the County Attorney for consistency with this Proffer. The Governing Documents shall require that each Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs, recreation areas, sidewalks, and all other common areas (including open spaces) under the jurisdiction of each Association, shall require each

initial purchaser of a lot to make a capital contribution to the Association for reserves in an amount equal to one-sixth of the annual general assessment applicable to the lot (but no less than \$100.00) and shall require that the Association (i) assess all members for the maintenance of all properties owned or maintained by the Association and (ii) file liens on members' properties for non-payment of such assessments. The Governing Documents shall grant each Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing Documents. If there is more than one Association created for the Property the Associations shall enter into a costs sharing agreement allocating responsibility for maintenance and expenses for common areas described above between the Associations.

3. Water Conservation. (a) The Association shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. The standards

shall be approved by the James City Service Authority prior to final subdivision or site plan approval.

4. Cash Contributions for Community Impacts. (a) A contribution of \$1,061.00 for each dwelling unit on the Property shall be made to the James City Service Authority ("JCSA") in order to mitigate impacts on the County from the physical development and operation of the Property. The JCSA may use these funds for development of alternative water sources or any project related to improvements to the JCSA water system 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.

(b) A contribution of \$484.75 for each dwelling unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including, without limitation, for emergency services, off-site road improvements, library uses, and public use sites.

(c) A contribution of \$2,454.25 for each dwelling unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation

of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including, without limitation, for school uses.

(d) The contributions described above shall be payable for each dwelling unit on the Property at the time of final subdivision plat approval for such unit.

(e) 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 Consumer Price Index, U.S. City Average, All Urban Consumers (CPI-U) All Items (1982-84 = 100) (the "CPI") prepared and reported monthly by the U.S. Bureau of Labor Statistics of the United States Department of Labor. In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in paragraphs (a) through (c) of this Section. The adjustment shall be made by multiplying the per unit contribution for the preceding year by a fraction, the numerator of which shall be the CPI as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the CPI as of December 1 in the preceding year, In the event a substantial change is made in the method of establishing the CPI, then the per unit contribution shall be adjusted based upon the figure that would have resulted had no

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

5. Longhill Road Community Character Buffer. There shall be a 150 foot buffer along the Longhill Road frontage of the Property generally as shown on the Master Plan. The buffer shall be exclusive of any lots or units. There shall be installed landscaping in the buffer of at least 125% of ordinance requirements, unless otherwise approved by the Director of Planning, pursuant to a landscape plan approved by the Director of Planning. With the prior approval of the Development Review Committee, trails, sidewalks, bike lanes, utilities, lighting, entrance features and signs may be located in the buffer. Dead, diseased and dying trees or shrubbery, invasive or poisonous plants, windfalls and deadfalls may be removed from the buffer area. The 35 foot perimeter buffer adjacent to Tax Parcel 3130100019 (Wallace parcel) and Tax Parcel 3130100020A (New Zion Baptist Church parcel) shall be landscaped in accordance with a landscape plan approved by the Director of Planning.

6. **Streetscape Guidelines.** The Owner shall provide and install streetscape improvements in accordance with the applicable provisions of the County's Streetscape Guidelines policy. The streetscape improvements shall be shown on development plans for that portion of the Property and submitted to the Director of Planning for approval during the development plan approval process.

7. **Recreation.** (a) Owner shall provide a tot lot, with play equipment, and parkland of approximately one acre prior to issuance of the first certificate of occupancy for a dwelling unit on the Property.

(b) There shall be provided on the Property other recreational facilities, if necessary, such that the overall recreational facilities on the Property meet the standards set forth in the County's Recreation Master Plan or in lieu of such additional facilities Owner shall make cash contributions to the County in amount determined pursuant to the County's Recreation Master Plan (with the amount of such cash contributions being determined by escalating the amounts set forth in the Recreation Master Plan from 1993 dollars to dollars for the year the contributions are made using the formula in Section 4(e)) or some combination thereof. All cash contributions proffered by this Proffer 7 shall be used by the County for recreation capital improvements or for any other 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. The exact locations of the facilities proffered hereby and the equipment to be provided at such facilities shall be subject to the approval of the Development Review Committee.

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

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

9. **Sidewalks**. There shall be sidewalks five feet in width installed along one side of all streets within the Property generally as shown on the Master Plan. Owner shall either (i) install a sidewalk along the Longhill Road frontage of the Property or (ii) in lieu thereof, make a payment to the County for sidewalk improvements included in the County's capital improvements plan in an amount acceptable to the Director of Planning based on the estimated costs of construction of the sidewalk.

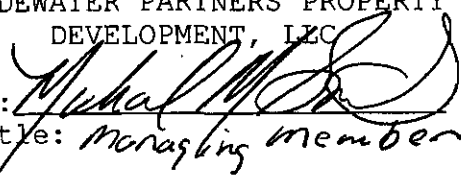
10. **Taper**. If required by the Virginia Department of Transportation, there shall be installed or bonded in form acceptable to the County Attorney prior to final subdivision plat

approval a 100 foot right turn taper from Longhill Road into the entrance to the Property.

11. Environmental. The Property is located within Subwatershed 204, Catchment 204-101-1 of the Powhatan Creek watershed. Pursuant to the County's Comprehensive Plan and the goals of the Powhatan Creek Watershed Management Plan, Owner shall incorporate on-site stormwater management strategies and on-lot practices to reduce stormwater run-off and pollutant loading into the stormwater management system for the Property as approved by the Director of Environmental Division. These practices shall include, but are not limited to, rain gardens, bio-retention cells and infiltration swales and shall compliment but not replace traditional stormwater management practices.

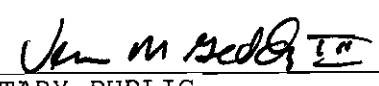
WITNESS the following signatures.

TIDEWATER PARTNERS PROPERTY &
DEVELOPMENT, LLC

By: 
Title: Managing Member

STATE OF Virginia
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 2nd
day of May, 2005, by Michael M. Smith, as Managing Member
of TIDEWATER PARTNERS PROPERTY & DEVELOPMENT, LLC on behalf
of the company.


NOTARY PUBLIC

My commission expires: 12/31/09.

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

EXHIBIT A

All that certain piece or parcel of land situate in Berkeley Magisterial District, James City County, Virginia, containing 17.32 acres, more or less and being shown and designated as 20.4 acres "Theodore Wallace" on that certain plat entitled "Wallace - Taylor, Plat showing division of Property Situated near Centerville, Jamestown Magisterial District, James City County, Va." dated March 7, 1952, made by R. V. Carter, Certified Land Surveyor, recorded in the Clerk's Office of James City County along with a partition deed between Theodore Wallace and Pearl Wallace Taylor dated April 21, 1952, and recorded in the Clerk's Office May 6, 1952, in Deed Book 47, page 326. The said property is bounded on the North by State Highway No. 612, on the East by the property now or formerly of Elizabeth (Lizzie) Lee and New Zion Baptist Church, on the South by the property formerly owned by Siggarr Bradby and on the West by the property of Pearl Wallace Taylor and James Melvin Wallace and Betty W. Wallace. Being a part of Parcel B conveyed to Theordore Wallace and Lillian B. Wallace by deed dated April 21, 1952, recorded in the Clerk's Office of James City County, Virginia in Deed Book 47, page 328, SAVE AND EXCEPT a portion of the property containing 1.0796 acres which was conveyed to James Melvin Wallace and Betty W. Wallace by Deed dated January 9, 1970, from Theodore R. Wallace and Lillian B. Wallace, recorded in Deed Book 125, at page 39, LESS AND EXCEPT a portion of the property containing 0.99 acres, more or less, which was conveyed to New Zion Baptist Church by Deed dated September 8, 1997, from Thomas B. Wallace, recorded as instrument number 970016355, LESS AND EXCEPT a portion of the property containing 1.00 acres, more or less, which was conveyed to Geneva Wallace, James Jackson, Sr., Willie Brown, Elvin Jones, and Robert Kenneth Taylor, Sr., Trustees of the New Zion Baptist Church dated November 12, 2001, from Thomas B. Wallace, recorded as instrument number 010021684.

Together with all and singular the buildings and improvements thereon, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Subject, however, to all easements, conditions, and restrictions of record affecting said property.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 3 June 05
at 10:00 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