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PROFFERS

FOR

JENNINGS WAY

MARCH 22, 2006

## PROFFERS

THIS PROFFERS are made this 22<sup>nd</sup> day of March, 2006, by Myrtle H. **Jennings** and Sandra Kay H. Kelley (together with their successors and assigns, the "Owner") and Jay Epstein (Developer).

## RECITALS

WHEREAS, Owner is the record title owner of two contiguous tracts or parcels of land located in James City County, Virginia; one with an address of 7375 Richmond Road, Williamsburg, Virginia, and being Tax Parcel 2320100030, the second with an address of 7345 Richmond Road, **Williamsburg**, Virginia, and being Tax Parcel **2320100030A** (together, the "Property").

WHEREAS, Jay Epstein, **and/or** assigns (Developer), has contracted to purchase the property conditioned upon a rezoning and special use **permit** in accordance with developer plans and specifications.

WHEREAS, the **property** is designated Low Density Residential on the County's Comprehensive Land Use Plan and is now zoned **B-1** and R-2. Owner and Developer have applied to rezone the Property to **B-1** and R-2, with proffers and for a special use permit for a residential cluster development.

WHEREAS, the Owner and Developer desire to offer to the County certain conditions on the development of the Property upon rezoning not generally applicable to land **rezoned B-1** and R-2.

NOW, THEREFORE, for and in consideration of the approval of the requested development plans and conditional approval, and pursuant to Section 15.2-2297 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees

that it shall meet and comply with all of the following conditions in developing the Property. If the requested application and conditions are not granted by the County, these proposals shall be null and void.

#### PROFFERED CONDITIONS

1. Master Plan. The Property shall be subdivided and developed generally as shown on the Master Plan dated December 27, 2005, with only minor changes thereto that the Development Review Committee determines, which do not change the basic concept or character of the development.

2. Owners Association. There shall be organized an owner's association (the "Association") in accordance with Virginia law in which all property owners in the development, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing the Association shall be submitted to and reviewed by the County Attorney for consistency with the conditions and application. The Governing Documents shall **require** that the Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management, **BMPs**, recreation areas, private road and parking areas ("**Reserve**"), and shall require that the Association (i) assess all members for the maintenance of all properties owned or maintained by the association and (ii) file liens on members' properties for non-payment of such assessments. The Governing Documents shall grant the Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the **Governing** Documents. Owner shall maintain all common areas on the Property until 90% of the **lots/units** on the Property have been sold to minimize Association dues during that period so as to not adversely affect purchaser's ability to

qualify for a home mortgage. At the time Owner's maintenance obligation under this Section ends, there shall be at least \$11,205.00 in the Reserve and Owner shall supply evidence of the mechanism to secure the same to the Planning Director prior to final subdivision approval.

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

4. Affordable Housing. A minimum of 5 of the lots with townhouse dwelling units shall be reserved and offered for sale at a net sales price to buyer at or below \$135,000 subject to adjustment as set forth herein (hereinafter referred to as "submarket affordable housing units"). James City County Housing may be assigned a second deed of **trust** for the difference of the appraised value of the townhouse, which shall be prepared for review prior to closing and assigned at the time of closing, utilizing appropriate approved procedures and identifying the net sales price paid by the purchaser of the Townhouse for the 5 townhouses sold through James City County for \$135,000 or less. The second deed of trust will be prepared by the Owner as a 15 year forgivable loan in a form approved by Housing and Community Development, the County Attorney, and Virginia Housing Development Authority. A minimum of 5 of the lots with townhouse dwelling units shall be reserved and offered for sale at a price at or below \$160,000

subject to adjustment as set forth herein (hereinafter referred to as "Restricted Units"). The maximum prices set forth herein shall be adjusted annually, on January 1st of each year, by increasing such prices by the cumulative rate of inflation as measured by the Consumer Price Index – Urban, U.S. City Average annual average change for the period from January 1, 2007 until January 1 of the year in question. The **annual** increase shall not exceed five percent (5%). The Director of Planning shall be provided with a copy of the settlement statement for each sale at a price at or below the maximum prices set forth above. Owner shall consult with and accept referrals of, and sell to, potential qualified buyers from the James City County Office of Housing and Community Development on a **non-commission** basis.

5. Sidewalk Connections. There shall be two sidewalk connections from the internal sidewalks in the development to the sidewalk adjacent to Route 60 generally as shown on the Master Plan. Sidewalks may be installed in phases as residential units are constructed. Sidewalks shall be installed or bonded in form satisfactory to the County Attorney prior to **final** subdivision plat approval.

6. Pedestrian Trail. There shall be a soft surface walking trail at least six feet in width installed on the Property generally in the locations shown on the Master Plan. The **final** design and location of the trail shall be subject to approval by the Director of Planning. The trail shall either be installed or bonded in form satisfactory to the County Attorney prior to final subdivision plat approval.

7. Architectural Elevations. The architecture and exterior elevations of the **dwelling** units on the Property shall be generally consistent with the revised Proposed Typical Elevations for Jennings Way dated December 24, 2005, as determined by the Director of Planning.

8. Cash Contributions for Community Impacts.

(a) A contribution of \$1,275 for each Restricted 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 use.

(b) A contribution of \$425 for each Restricted Unit on the Property shall be made to the County in order to mitigate impacts on the County **from** the physical development and operation of the Property. The County may use these **funds** for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including without limitation, for emergency services, school uses, off-site road improvements, library uses, and public use sites.

(c) A contribution of \$4,011 for each dwelling unit other than an Affordable Unit or Restricted 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 use.

(d) A contribution of \$1,000 for each dwelling unit other than an Affordable Unit or Restricted Unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital

improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including, without limitation, for emergency services, school uses, off-site road improvements, future water needs, library uses, and public use sites. No contributions shall be required for the submarket affordable housing units.

(e) A contribution of \$1,093 for each dwelling unit other than an Affordable Unit or Restricted 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 or the James City Service Authority 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 of the Property, including without limitation for water system improvements.

(f) The contributions described above, unless otherwise specified, shall be payable at the time of recordation of the subdivision plat for such unit.

(g) **The** per unit **contribution(s)** paid in each year pursuant to this Section shall be adjusted annually beginning January 1, 2007 to reflect any increase or decrease for the preceding year in the Marshall and Swift Build Costs Index (the "Index") 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 (e) 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 year preceding the calendar year most

currently expired. 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.

9. Sewer Improvements. A contribution shall be made to James City Service Authority to offset James City Service Authority's direct costs associated with the construction of the Colonial Heritage Pump Station and Sewer System Improvements in the amount of \$34,425.00 to be paid at the time of final subdivision plat approval.

10. Turf Management Plan. The Association shall be responsible for developing and implementing a turf management plan ("Turf Management Plan") for the maintenance of lawns and landscaping on the Property in an effort to limit nutrient runoff from the Property. 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 Nutrient Management Plan shall include terms permitting enforcement by either the Association or the County. The Turf Management Plan shall be approved by the Environmental Division prior to final subdivision or site plan approval.

11. Energy Efficient Homes. All the town homes and single-family homes shall be certified by a HERS rater to meet or exceed the Energy Star Certification. A



HERS rating is an evaluation of the energy **efficiency** of a home, compared to a computer-simulated reference house of identical size and shape as the rated home that meets minimum requirements of the Model Energy Code (MEC). The HERS rating results in a score between **0** and 100; with the reference house assigned a score of 80. From this point, each 5% reduction in energy usage (compared to the reference house) results in a one point increase in the HERS score. Thus, an ENERGY STAR qualified new home, required to be significantly more energy-efficient than the reference house, must achieve a HERS score of at least **86**.

12. Recreation. (a) The following recreational facilities shall be provided: (i) approximately **1.64** acres of parkland shown on the Master Plan; (ii) one playground (tot lot) with playground equipment for four to six activities; (iii) one paved tether ball court; and (iv) approximately 0.55 miles of **trails/paths**. 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.

(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 as determined by the Director of Planning or in lieu of such additional facilities Owner shall make cash contributions to the County in an 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 8(f) or some **combination** thereof. All cash contributions proffered by this Proffer **12** shall be used by the County for recreation capital improvements. 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.

(c) The recreational facilities proffered under this Section shall be installed or bonded in form satisfactory to the County Attorney prior to the County being obligated to issue more **than** 20 certificates of occupancy for dwelling units on the Property.

**13. Archaeology.** A Phase I Archaeological Study for the Property shall be submitted to the Director of Planning for his review and approval prior to land disturbance. A treatment plan shall be submitted to, and approved by, the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation, **and/or** identified as being eligible for inclusion on the National Register of Historic Places. If a Phase II study **is** undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning **for** sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase II study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination **of the site** to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study area. All Phase I, Phase II and Phase III studies shall meet the Virginia Department of Historic Resources' Guidelines for Preparing Archaeological **Resource** Management Reports and the Secretary of the Interior's Standard and **Guidelines** for Archaeological Documentation, as applicable, and shall be conducted under the **supervision** of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All

approved treatment plans shall be incorporated into the plan of development for the site and shall **be** adhered to during the clearing, grading and construction activities thereon.

14. Streetscape Improvements. The owner shall provide and install streetscape improvements along both sides of all streets in accordance with the applicable provisions of the County's Streetscape **Guidelines** Policy. The streetscape improvements shall be shown on the plan of development and submitted for approval to the Director of Planning.

15. Anderson – Hughes House. The Anderson – Hughes House located on the portion of the Property zoned B-1 shall be retained in a manner that preserves the existing residential **appearance** of the building.

16. Townhouses. The townhouses shown on the Master Plan shall be oriented to present the front **façade** to Richmond Road and an internal sidewalk shall be located in front of the buildings generally as shown on the Master Plan.

17. Water and Sewer Master Plan. A water and sewer master plan for the **Property** shall be submitted to and approved by the James City Service Authority prior to the County being obligated to grant final subdivision plat approval.

18. Entrance Configuration. The entrance into the Property shall be configured with one ingress lane and two egress lanes ( a shared **through/left** turn lane and a dedicated right **turn** lane) and the entrance shall have an increased radius of approximately 50 feet.

19. Stream Restoration. A contribution of \$129,000.00 shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property to be paid at the time of final subdivision plat approval. 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 stream restoration or other environmental improvements in the Yarmouth Creek watershed.**

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

WITNESS the following signatures:

OWNER:

OWNER:

By: Myrtle H. Jennings  
Myrtle H. Jennings

By: Sandra Kay H Kelley  
Sandra Kay H Kelley

DEVELOPER:

By: Jay Epstein  
Jay Epstein

Commonwealth of Virginia  
CITY/COUNTY OF James City, to wit:

The foregoing instrument was acknowledged this 23rd day of March, 2006, by Myrtle H. Jennings.

Julia B. Davis  
NOTARY PUBLIC

My commission expires: 2/28/2010

Commonwealth of Virginia  
CITY/COUNTY OF James City, to wit:

The foregoing instrument was acknowledged this 23rd day of March, 2006, by Sandra Kay H. Kelley.

Julia B. Davis  
NOTARY PUBLIC

My commission expires: 2/28/2010

Commonwealth of Virginia  
CITY/COUNTY OF James City, to wit:

The foregoing instrument was acknowledged this 22nd day of March, 2006, by Jay Epstein.

Julien B Davis  
NOTARY PUBLIC

My commission expires: 2/28/2010

(367733)

Prepared by:  
Vernon M. Geddy, III, Esquire  
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VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 16 April 06  
at 3:44 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