

140011375

Tax Parcel: 5040100010

Prepared By: Vernon M. Geddy, III, Esquire (VSB No: 21902)  
Geddy, Harris, Franck & Hickman  
1177 Jamestown Road  
Williamsburg, VA 2318

PROFFERS

THESE PROFFERS are made this 5<sup>th</sup> day of MAY, 2014 by KINGSMILL RESORT DEVELOPMENT, LLC, a Delaware limited liability company (together with its successors in title and assigns, the "Owner").

RECITALS

A. Owner is the owner of a parcel of land located in James City County, Virginia, being Tax Parcel No. 5040100010, containing approximately 2.99 acres, more or less, and 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-4 and is subject to the approved Master Plan for Kingsmill. Owner has applied to change the Master Plan area designation applicable to the Property and, in connection therewith to rezone the Property from R-4 to R-4, Residential Planned Community District, with proffers, for the sole purpose of offering the proffered conditions on the development of the Property set forth below.

C. Owner has submitted to the County a master plan entitled "Kingsmill Proposed Master Plan Amendment" prepared by AES Consulting Engineers dated September 3, 2009 (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-4 in the form of the following Proffers.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

#### CONDITIONS

1. **Cash Contributions.** (a) A one-time contribution shall be made to the County of \$19,528.22 for each single family detached residential dwelling unit constructed on the Property. Such contributions shall be used by the County for school uses.

(b) A one-time contribution shall be made to the County of \$61.00 for each dwelling unit constructed on the Property. Such contributions shall be used by the County for library uses.

(c) A one-time contribution shall be made to the County of \$71.00 for each dwelling unit constructed on the Property. Such contributions shall be used by the County for fire/EMS uses.

(d) Such per unit contributions shall be paid to the County after completion of the final inspection and prior to the time of the issuance of any certificate of occupancy for the unit in question. For units for which a certificate of occupancy has been issued as of the date of the final, non-appealable approval of the requested rezoning and Master Plan amendment, the per unit contributions shall be paid within 30 days of the date of the final, non-appealable approval of the requested rezoning and Master Plan amendment.

(e) The per unit contribution amounts shall consist of the amounts set forth in paragraphs (a) through (c) plus any adjustments included in the Marshall and Swift Building Costs Index, Section 98, Comparative Cost Multipliers, Regional City Averages (the "Index") from 2014 to the year a payment is made if payments are made after on or after January 1, 2015. The per unit contribution amount shall be adjusted once a year with the January supplement of the Index of the payment year. In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in the preceding paragraphs of

this Section. 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.

2. **Housing Opportunity**. Development of the Property shall be done in a manner consistent with the criteria established by the Housing Opportunities Policy adopted by the Board of Supervisors on November 27, 2012 and in effect as of the date of approval of the requested rezoning to provide affordable and workforce housing opportunities at different price ranges to achieve the greater housing diversity goal of the 2009 Comprehensive Plan; provided, however, that affordable and workforce housing units provided need not be located on the Property but may be located anywhere within the Kingsmill planned residential community in areas designated for residential development and, with the prior approval of the Director of Planning, affordable and workforce housing units provided in accordance with the policy may be released from the price/rental rate restrictions provided the same number of housing units in the same price/rental band are made subject to the price/rental rate restrictions set forth in the Policy such that at all times the requisite number of affordable and workforce housing units are being provided. With respect to affordable/workforce rental units, at the time such units are provided in accordance with this Proffer a notice in form approved by the County Attorney shall be recorded in the County land records providing notice that the units are subject to the County's Housing Opportunities Policy adopted by the Board of Supervisors on November 27, 2012 and in effect as of the date of approval of the requested rezoning. If the Director of Planning approves the release of units from the Policy and the substitution of other units, the notice will be released from the released units and recorded against the substituted units. Affordable and

workforce housing units may be provided by Owner or an affiliate of Owner. The County shall not be obligated to issue certificates of occupancy for more than 6 dwelling units on the Property until two of the required affordable and workforce units have been provided in compliance with the Housing Opportunity Policy. The County shall not be obligated to issue certificates of occupancy for more than 12 dwelling units on the Property until all four of the required affordable and workforce units have been provided in compliance with the Housing Opportunity Policy. With respect to affordable and workforce rental units provided pursuant to this proffer, Owner shall submit an annual report for each year of the required 30 year term to the County identifying the location of the units and the rental rates charged demonstrating such rates are within the specified affordable and workforce housing income range. With respect to for sale affordable and workforce units provided pursuant to this proffer, a soft second mortgage meeting the requirements of the Housing Opportunity Policy or other instrument approved in advance by the County Attorney shall be executed by the initial purchaser thereof and recorded against the unit to assure the unit continues to meet the requirements of the Housing Opportunity Policy. In addition, each deed to an affordable or workforce for sale unit shall include a right of first refusal in favor of the County in the event a subsequent owner desires to sell the unit. All affordable or workforce units provided pursuant to this Proffer shall be rented or sold to persons whose incomes fall within the qualifying income ranges used to determine the prices/rental rates under the Housing Opportunities Policy.

3. Development Plan. Development of the Property shall be generally consistent with the approved site plan for the Property, SP-0096-2011, approved by the Planning Division on May 10, 2013.

WITNESS the following signature.

KINGMILL RESORT DEVELOPMENT, LLC

By: *Gordon Taylor*  
Title: *Vice President*

STATE OF COLORADO  
CITY/COUNTY OF ARAPAHOE, to-wit:

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of MAY, 2014, by GORDON TAYLOR as VICE PRESIDENT of Kingsmill Resort Development, LLC, a Delaware limited liability company, on behalf of the company.

*Lisa K. Czelania*  
NOTARY PUBLIC



My commission expires: JUNE 1, 2015  
Registration No. 20034013503

Schedule A

Property Description

That certain piece or parcel of land located in James City County, Virginia consisting of 2.9892 acres shown and set out as "Parcel R-2A" on the plat entitled "Cottages on the James, Parcel R-2A, Being a Subdivision of Tax Parcel 5040100001, Property of Xanterra Kingsmill, LLC" made by Vanasse Hangen Brustlin, Inc. dated January 15, 2013 and recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City (the "Clerk's Office") as Instrument No. 130004299.

**VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY**  
This document was admitted to record on 7-28-2014  
at 12:22 /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

