

## PROFFER STATEMENT

### KINGSTOWNE RESIDENTIAL OWNERS CORPORATION

PCA C-448-33  
PCA 85-L-101-05

May 5, 2010

Pursuant to Section 15.2-2303 (A) of the Code of Virginia (1950, as amended) and Sect. 18-204 of the Zoning Ordinance of Fairfax County (1978, as amended), the property owners and applicant, for themselves and their successors and/or assigns (collectively referred to as the "Applicant"), in this proffered condition amendment ("PCA"), proffer that the development of the parcels under consideration and shown on the Fairfax County Tax Maps as Tax Map 81-4 ((38)) Parcel 74, Tax Map 91-2 ((1)) Parcel 29B, Tax Map 91-3 ((1)) Parcels 63D and 64B, Tax Map 91-3 ((11)) Parcels 7 and 9, Tax Map 91-4 ((1)) Parcel 1H, Tax Map 91-4 ((9)) Parcel 10, and Tax Map 91-4 ((9)) (30) Parcel G1 (collectively, the "Property") shall be in accordance with the following conditions if, and only if, PCA 84-L-020-24 and PCA 85-L-101-05 (collectively, the "Application") are approved by the Board of Supervisors.

The Property is zoned PDH-4 under the Zoning Ordinance and is subject to the previously approved proffers associated with RZ C-448 and RZ 85-L-101 for Kingstowne, including all applicable proffer condition amendments (the "Prior Proffers"). The Applicant, on behalf of itself and its successors in interest, hereby voluntarily proffers (the "Proffers"), pursuant to the said Section 15.2-2303, that the Property shall be developed in substantial conformance with the Prior Proffers and in addition, the Proffers set forth below. In the event that any of the Prior Proffers are inconsistent with these Proffers, the inconsistency shall be resolved in favor of these Proffers. Exhibits referenced are attached and incorporated by reference. In the event that this Application is denied, these Proffers shall be immediately null and void and shall have no further force or effect on the Property.

#### GENERAL

1. Proffer Condition Amendment Plat. The Property has been developed with various stormwater management facilities and shall remain in substantial conformance with the plat entitled "Proffered Condition Amendment Plat – Kingstowne Residential Owners Corporation" dated July 28, 2008 as revised through March 25, 2010, prepared by BC Consultants, consisting of seven (7) sheets (the "Plat").

#### STORMWATER MANAGEMENT FACILITY MAINTENANCE

2. Maintenance Responsibility. The Applicant shall cede to Fairfax County Department of Public Works and Environmental Services ("DPWES") the maintenance responsibilities for the stormwater management facilities more particularly described in the Plat as Basin 1, Basin 2, Basin 3, Basin 5, and Basin 6 (the "Stormwater Management Facilities"). These maintenance responsibilities shall be determined by DPWES consistent with

Fairfax County policies for maintenance of stormwater management facilities. The Applicant shall cede maintenance responsibilities to DPWES upon certification by DPWES that the Stormwater Management Facilities comply with the following conditions:

- A. Ownership of the Property shall remain vested in the Applicant, its successors and assigns.
- B. The Applicant shall convey to the Board of Supervisors such easements as may be required under the 2001 Fairfax County Public Facilities Manual (“PFM”), as amended through January 1, 2010, including but not limited to stormwater management easements and maintenance access easements. Furthermore, the Applicant shall prepare all necessary easement plats, obtain approval from DPWES, and record all necessary easement documents in the Fairfax County land records.
- C. Prior to transfer of any maintenance responsibility for the Stormwater Management Facilities to DPWES, the Applicant shall complete, to the satisfaction of the Maintenance and Stormwater Management Division (MSMD), DPWES, all required maintenance items identified in the inspection reports of the Stormwater Management Facilities attached hereto and dated October 19, 2009, as updated through December 7, 2009, including but not limited to:
  - i. Remove sediment from the existing pond floors to restore volume and functionality.
  - ii. Mow all dam embankments and remove all trees and woody vegetation, or provide a private maintenance agreement acceptable to the County for proffered landscape trees and select screening trees.
  - iii. Provide a report by a professional engineer stating the dam heights and storage volumes, and, if necessary, obtain state certification for regulated dams.
  - iv. Provide graded accessways with standard gates or other acceptable access to pond inlet/control structures.
  - v. If deemed necessary by MSMD, repair any storm sewer, BMP control device, outfall structure, emergency spillway, dam appurtenance, or downstream receiving channel.
- D. The Applicant shall perform and submit to MSMD the results of video camera inspections of the principal spillway pipes pursuant to Virginia Department of Transportation (“VDOT”) standard format for each of the Stormwater Management Facilities to be transferred to the County at least 45 days prior to the date of inspections to determine the completion of improvements required under Proffer 2C. MSMD may elect to incorporate any deficiencies identified by these inspections into Attachment 1 as an addendum.

- E. Subject to MSMD approval, the Applicant may elect to maintain selected street trees or other features of the Stormwater Management Facilities via execution of a private maintenance agreement with the County.

**MISCELLANEOUS**

3. Severability. Pursuant to Section 18-204 of the Zoning Ordinance, any portion of the Property may be the subject of a PCA without joinder and/or consent of the owners of the other portions of the Property, provided that such PCA does not adversely affect the other phases. Previously approved zoning applications applicable to the balance of the Property that is not the subject of this PCA shall otherwise remain in full force and effect.
4. Successors and Assigns. These Proffers will bind and inure to the benefit of the Applicant and his successors and assigns. Each reference to “Applicant” in this proffer statement shall include within its meaning and shall be binding upon Applicant’s successor(s) in interest and/or developer(s) of the site or any portion of the site.
5. Counterparts. These Proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and all of which taken together shall constitute but one and the same instrument.

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KINGSTOWNE RESIDENTIAL OWNERS CORPORATION, INC.  
a Virginia non-stock corporation

A handwritten signature in cursive script that reads "Kathleen Horgan Snyder". The signature is written in black ink and extends across the width of the page. Below the signature, the text "By: Kathleen Horgan Snyder" and "Its: President" is printed in a standard serif font.

By: Kathleen Horgan Snyder  
Its: President

KINGSTOWNE OWNER LLC

By: Kingstowne Mezz I LLC, its Member

By: BREF Stellar, LLC, its Member

By: Brookfield Financial, LLC Series B, its Member

By: Brookfield Real Estate Financial Partners LLC, its Manager

By:   
Theresa A. Hoyt, Authorized Representative

**Attachment 1**  
**Kingstowne SWM Pond Inspections**  
**MSMD 10-19-09, revised 12-7-09**

**Basin 1 (ID# DP0238)**

1. 2005 MSMD inspection items that need to be satisfactorily addressed:
  - a. Remove all sediment from the pond floor and restore the facility to the approved as-built grade. Based on a visual estimate only this appears to be approximately 2 to 3 foot depth over a 2-acre area, which is about 8000 cy. This could cost on the magnitude of \$800,000 to remove.
  - b. Remove all trees and woody vegetation including stumps and roots from the dam embankment out to 25 feet (due to apparent state-regulation) from the upstream and downstream toe and all groin areas. The tree removal cost could be on the magnitude of \$50,000 and may involve zoning approval.
  - c. Install the BMP control device per site and as-built plans.
2. Additional punchlist items that need to be satisfactorily addressed prior to transfer of maintenance to MSMD based on state dam requirements and/or practical maintenance needs:
  - a. Obtain state regulated dam certification including all necessary formal inspections and submittals including but not limited to hydrological and hydraulic analysis, breach zone determination, emergency action plan, and operation and maintenance plan.
  - b. To facilitate maintenance activity, provide maintenance access roads to the upstream pond area and downstream outfall with entrance aprons and locked gates consistent with PFM standards.
  - c. Mow both dam faces to 25 feet from the upstream and downstream toe and all groin areas, and establish thick tall fescue grass cover. Fill any animal burrow holes (vegetative cover prevented close inspection of the dam faces at certain locations).
  - d. Correct the drainage problem resulting in the soggy grassed area on the dam downstream of the entrance feature at Ashby Lane. This may be an irrigation system leak.
  - e. For adjacent pedestrian safety, install non-climbable VDOT standard railing along the entire downstream principal spillway pipe (PSP) outfall endwall and wings.
  - f. Tail out the outfall channel downstream of the PSP endwall to ensure positive drainage.
  - g. Restore damaged slope along access road/trail on the downstream face of dam near Kingstowne Village Pkwy.
  - h. Pipe outfall at the East abutment along the downstream groin – regrade for positive drainage and stabilize.



### **Basin 2 (ID# DP0237)**

1. 2005 MSMD inspection items that need to be satisfactorily addressed:
  - a. Remove all trees and woody vegetation including stumps and roots from the dam embankment out to 10 feet from the upstream and downstream toe and all groin areas.
  - b. Add supplemental 21A stone on the access road, 1.5" minimum depth.
  - c. Mow both dam faces to 10 feet from the upstream and downstream toe and all groin areas, and establish thick tall fescue grass cover. Fill any animal burrow holes (vegetative cover prevented close inspection of the dam faces).
  - d. Install BMP control device if missing. Note: at the time of the inspection, the pond was full of water, so the control was not observed.
  - e. Stabilize the stream bank erosion downstream of the PSP outfall on the West side of the channel downstream to approximately 70' to 100'. Approximately \$15,000 order of magnitude cost.
2. Additional punchlist items that need to be satisfactorily addressed prior to transfer of maintenance to MSMD based on practical maintenance needs:
  - a. Pond floor was not visible, however, as applicable, remove any sediment from the pond floor and restore the facility to the approved as-built grade.
  - b. Install a PFM standard gate on the access road at the existing fence line in place of the fence gate.
  - c. Provide a maintenance access road spur to the PSP outfall per PFM with an adequate cleared access route to the outfall.
  - d. Mow the access road out to 10 feet from the centerline on each side.
  - e. Repair all sloughing around the PSP Endwall. Repair any pipe separation, place compacted CL or ML material, and establish grass cover.
  - f. Remove the concrete debris North of the access road near the power lines from the site.

### **Basin 3 (ID# DP0239)**

1. Since the dam height appears to be 27.7 feet per the approved plans, obtain state regulated dam certification including all necessary formal inspections and submittals including but not limited to hydrological and hydraulic analysis, breach zone determination, emergency action plan, and operation and maintenance plan.
2. 2005 MSMD inspection items that need to be satisfactorily addressed:
  - a. Remove all trees and woody vegetation including stumps and roots from the dam embankment out to 25 feet [revised 12-7-09] from the upstream and downstream toe including the PSP outfall and all groin areas. Note: the downstream dam face may extend as far West as the adjacent basketball court. Based on a visual estimate only, this appears to be approximately 2 acres plus



- individual landscape trees, which could cost on the magnitude of \$30,000 to remove.
- b. Mow both dam faces to 25 [revised 12-7-09] feet from the upstream and downstream toe and all groin areas, and establish thick tall fescue grass cover. Fill any animal burrow holes (vegetative cover prevented close inspection of the dam faces in certain areas).
  - c. Remove all kudzu from the dam in the area indicated above.
  - d. Install the BMP control device per the approved plan and as-built.
  - e. Remove all debris from the BMP trash rack.
  - f. Provide a locked access hatch in the riser top.
  - g. Remove all sediment from the pond floor and restore the facility to the approved as-built grade. Based on a visual estimate only this appears to be approximately 1 to 2 foot depth over a 1-acre area, which is about 2500 cy. This could cost on the magnitude of \$250,000 to remove.
  - h. Outfall channel erosion was not visible due to kudzu and tree growth. Stabilize outfall channel as needed.
3. Additional punchlist items that need to be satisfactorily addressed prior to transfer of maintenance to MSMD based on practical maintenance needs:
- a. To facilitate maintenance activity, provide maintenance access roads to the upstream pond area and downstream outfall with entrance aprons and locked gates consistent with PFM standards.

### **Basin 5 (ID# DP0266)**

Punchlist items that need to be satisfactorily addressed prior to transfer of maintenance to MSMD based on practical maintenance needs:

1. Remove all trees and woody vegetation including stumps and roots from the dam embankment out to 10 feet from the upstream and downstream toe including the PSP outfall and all groin areas. This includes landscape trees. Order of magnitude cost to remove, \$10,000.
2. To facilitate maintenance activity, provide maintenance access roads to the upstream pond area and downstream outfall with entrance aprons and locked gates consistent with PFM standards.
3. Applies mainly to the downstream face: mow both dam faces to 10 feet from the upstream and downstream toe and all groin areas, and establish thick tall fescue grass cover. Fill any animal burrow holes (vegetative cover prevented close inspection of the dam faces in certain areas).



## Basin 6 (ID# DP0515)

Punchlist items that need to be satisfactorily addressed prior to transfer of maintenance to MSMD based on practical maintenance needs:

1. Remove all trees and woody vegetation including stumps and roots from the dam embankment out to 10 feet from the upstream and downstream toe including the PSP outfall and all groin areas. Order of magnitude cost to remove, \$5,000.
2. Re-establish maintenance access road by adding 1.5" minimum depth of 21A stone. Provide an entrance apron and locked gate consistent with PFM standards.
3. Applies mainly to the downstream face: mow both dam faces to 10 feet from the upstream and downstream toe and all groin areas, and establish thick tall fescue grass cover. Fill any animal burrow holes (vegetative cover prevented close inspection of the dam faces in certain areas).
4. Trim all vegetation within the riser structure to ensure adequate functionality.
5. Fill two large eroded holes adjacent to the trickle ditches at the East end of the pond and establish grass cover.
6. Develop a geotechnical engineering study of the soggy area at the East end of the pond including underdrains or other drainage solutions. Subject to MSMD review and approval, implement corrective action. Are there springs in this area? It may also be sump pump discharges from the uphill townhouses.
7. Repair cracks in the concrete trickle ditches and repair any undermining condition.
8. To ensure stability upon activation, install a four foot wide band of Class II riprap along the concrete emergency spillway extending outward from the eastern edge.
9. Seal all cracks on the concrete emergency spillway with appropriate grout.
10. Fill in the settled areas on the top of dam East and West of the emergency spillway. Ensure that the top of dam elevation slopes to the concrete spillway edges without low points.
11. Subject to MSMD review and approval, repair the five foot high headcut in the outfall channel about 10 feet downstream of the PSP end section. The channel must be stable and able to withstand the spillway design flood. Gabion mattress steps coupled with Class II riprap may be acceptable if designed adequately.
12. Remove trees and vegetation from all inflow pipes to the pond out to 5 to 10 feet from the pipe centerline on each side.

