



**PUBLIC NOTICE**  
**WILLIAMSBURG PLANNING COMMISSION**

The Williamsburg Planning Commission will hold a public hearing on March 16, 2016, 3:30 P.M. in the Council Chambers of the Stryker Center, 412 North Boundary Street, to consider the following:

**PCR #16-003:** Approval of the Port Anne Declaration of Covenants, Conditions and Restrictions, and waiving certain ongoing requirements of the Development Plan. City Council is currently required to approve the covenants, conditions and restrictions as part of the initial approval in 1985. This case approves this document and revises the original conditions so City Council approval and City enforcement of the covenants, conditions and restrictions is not required in the future, as is the case with new Planned Developments.

Additional information is available at [www.williamsburgva.gov/publicnotice](http://www.williamsburgva.gov/publicnotice) or at the Planning Department (757) 220-6130, 401 Lafayette Street. Interested citizens are invited to attend this hearing and present their comments to Planning Commission.

If you are disabled and need accommodation in order to participate in the public hearing, please call the Planning Department at (757) 220-6130, (TTY) 220-6108, no later than 12:00 noon, Wednesday, March 9, 2016.

A handwritten signature in black ink that reads "Reed T. Nester".

Reed T. Nester  
Planning Director



**CITY OF WILLIAMSBURG**  
MEMORANDUM

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**TO: Planning Commission**

**DATE: February 10, 2016**

**SUBJECT: PCR #16-003**

**Approval of the Port Anne Declaration of Covenants, Conditions and Restrictions, and waiving certain ongoing requirements of the Development Plan**

The Port Anne Owners Association, Inc., has adopted amended Declarations of Covenants, Conditions and Restrictions and have submitted those to the City for approval by City Council.

Port Anne is a Planned Unit Development, approved in 1985. The Zoning Ordinance then in effect required the developer to create and obtain approval for a development plan, for which restrictive covenants were a requirement. Sec. 30-49 *et. seq.* of the then current zoning required the developer and subsequently the Port Anne Owner's Association to obtain approval prior to making changes to the development plan, and so since 1985 any changes to the restrictive covenants have required obtaining approval from City Council.

Port Anne is the only development in the City subject to this requirement, and since its creation the Zoning Ordinance was amended in 1991 to remove the PUD district zoning category. Sec. 21-485 of the current zoning ordinance however, continues to impose the requirements of the 1985 development plan on the development.

City staff has reviewed the proposed amended Covenants, Conditions and Restrictions and finds that are acceptable and consistent with Virginia Law and do not negatively affect the City's rights and interests in the development or easements granted to the City therein.

Staff believes that adequate zoning regulations exist to protect the City's interest in the now 30 year old development, and it is no longer necessary for the City to approve these and future changes to the restrictive covenants.

Further, the Zoning Ordinance in effect that time Port Anne was approved required the developer to include a provision in the restrictive covenants to allow the City to enforce the restrictive covenants as a condition of approval. This is a right that, to the best of staff's information and belief, the City has never exercised. Further, as indicated above, the City's interests in the development are more than adequately protected by exercise of the City's Zoning Ordinance, as provided in the approved development plan, and are

the more appropriate method participation in any enforcement action by the City. Staff believes that disputes regarding the contractual obligations of the residents of Port Anne are a private matter between the residents and the Association in which the City plays no role.

The attached ordinance approves the amended Covenants, Conditions, and Restrictions for Port Anne, and waives the requirement that future amendments to the development plan be approved by City Council, and further, also waives the requirements that such amendments include a provision which permits the City to enforce the restrictive covenants.

No other provisions of the development plan or requirements thereto are amended by the Ordinance and all other obligations of the development plan as approved by City Council and as subsequently amended remain in effect.

**PUBLIC HEARING DATE**

A public hearing is scheduled for the regular Planning Commission meeting on March 16 in the Council Chambers at the Stryker Center.



Christina Shelton  
City Attorney

**ORDINANCE NO. 16-\_\_**  
**PROPOSED ORDINANCE No. 16-\_\_**

**AN ORDINANCE TO APPROVE THE PORT ANNE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND TO WAIVE CERTAIN ONGOING REQUIREMENTS OF THE DEVELOPMENT PLAN**

**WHEREAS**, the Port Anne Planned Unit Development, Phases I, II, and III was approved by City Council on November 14, 1985 pursuant to Section 30-49 *et seq.* of the Williamsburg City Code, Planned Unit Development District PUD, and which Article, while no longer in the Williamsburg City Code, remains applicable to Port Anne pursuant to Section 21-485 of the Zoning Ordinance; and

**WHEREAS**, the approved development plan requires Port Anne to maintain Declarations of Covenants, Conditions and Restrictions regarding the development and further, to obtain council's approval for any amendments to the development plan, which includes amendments to the restrictive covenants previously approved by council; and

**WHEREAS**, Port Anne Owners Association, Inc., has adopted amended Declarations of Covenants Conditions and Restrictions and has submitted those to council for approval, and which amended Covenants are acceptable to council; and

**WHEREAS**, Port Anne was developed and remains in compliance with the approved development plan and council deems it appropriate, in future, to discontinue the practice of requiring council approval for such amendments; and

**WHEREAS**, pursuant to Section 30-52, restrictive covenants for PUD's were also required to contain a provision which allowed such restrictive covenants to be enforced by the City, which provision still is still applicable to Port Anne; and

**WHEREAS**, council also no longer deems it necessary to continue such requirement, as existing zoning requirements are adequate to protect the interest of the City and further, Port Anne Owner's Associates, Inc. is authorized to enforce the restrictive covenants on behalf of the residents of Port Anne, and such rights are adequate to protect their interests under existing Virginia law.

**NOW THEREFORE, BE IT ORDAINED** that the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Port Anne, submitted to the City on January 6, 2016, is hereby approved as provided.

**BE IT FURTHER ORDAINED** that the Port Anne development plan is hereby amended as follows: the City hereby waives the requirement that council approve future amendments to the Port Anne Declaration of Covenants, Conditions and Restrictions, and further, council waives the requirement that future amendments to the Port Anne Declaration of the Covenants, Conditions and Restrictions contain a condition that such restrictive covenants be enforceable by the City, as provided in Sections 30-52 and 30-54 of the City of Williamsburg City Code of 1985.

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Clyde A. Haulman, Mayor

Attest: \_\_\_\_\_  
Gerry S. Walton, Deputy Clerk

# TARLEY ROBINSON

ATTORNEYS & COUNSELLORS AT LAW

Tarley Robinson, PLC  
4808 Courthouse Street, Suite 102  
Williamsburg, Virginia 23188

Telephone (757) 229-4281  
Facsimile (757) 229-7439

Susan B. Tarley  
starley@tarleyrobinson.com

January 6, 2016

Christina Shelton, City Attorney  
City of Williamsburg  
Municipal Building  
401 Lafayette Street  
Williamsburg, Virginia 23185

RE: Port Anne

Dear Chris:

As discussed, our firm represents Port Anne Owners Association, Inc. with respect to a recent amendment of the Declaration of Covenants, Condition and Restrictions for Port Anne.

The current Declaration requires that any amendment be approved by City Council. We have already submitted the amended Declaration to the owners for approval and have received the percentage required by the Declaration for approval. The current Declaration also gives enforcement power to the City of Williamsburg.

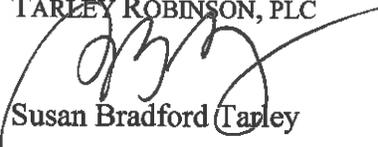
It is my understanding that the City no longer imposes these requirements when approving neighborhoods, therefore, we request that the City delete the requirement that amendments be approved by City Council, and delete the City's power to enforce the Declaration.

Because we have already obtained the approval of the owners on our amendment, we request that City Council approve our current amendment, and delete the approval requirement for any future amendment.

I am enclosing a copy of the amendment for review. Should you have any questions, please do not hesitate to contact me. Thank you for your cooperation in this regard.

Sincerely,

TARLEY ROBINSON, PLC

  
Susan Bradford Tarley

SBT/tbm

Tax Map Numbers: See Exhibit A

AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PORT ANNE

THIS AMENDED AND RESTATED DECLARATION OF RESTRICTIONS, made this \_\_\_ day of \_\_\_\_\_, 2015, by PORT ANNE OWNERS ASSOCIATION, INC., a Virginia nonstock corporation (“Association”) and the Owners listed on Exhibit A (collectively, the “Grantors”) of the following described real property (the “Existing Property”), to-wit:

SEE EXHIBIT B FOR LEGAL DESCRIPTION

WHEREAS, Port Anne Associates (“Declarant”) subjected certain real property to a Declaration of Covenants, Conditions and Restrictions for Port Anne dated June 19, 1986 and recorded June 25, 1986 in the Circuit Court Clerk’s Office of the City of Williamsburg (the “Clerk’s Office”) in Deed Book 75, at page 77; and

WHEREAS, the Declarant extended the Original Declaration to additional property by virtue of a Supplementary Declaration of Covenants, Conditions and Restrictions for Port Anne dated August 14, 1987 and recorded September 29, 1987 in the Clerk’s Office in Deed Book 81, at page 237; and

WHEREAS, the Declarant extended the Original Declaration to additional property by virtue of a Supplementary Declaration of Covenants, Conditions and Restrictions for Port Anne dated July 18, 1989 and recorded July 21, 1989 in the Clerk’s Office in Deed Book 88, at page 792; and

WHEREAS, various Affidavits were recorded to bind the land and all Owners to the provisions of the City of Williamsburg Ordinance 803, including, Affidavit dated August 1, 1989 and recorded August 24, 1989 in the Clerk’s Office in Deed Book 89, at page 140, Affidavit dated August 1, 1989 and recorded August 24, 1989 in the Clerk’s Office in Deed Book 89, at page 144, Affidavit dated August 1, 1989 and recorded August 24, 1989 in the Clerk’s Office in Deed Book 89, at page 151; and

WHEREAS, the Original Declaration was amended by that certain Amendment to Covenants, Conditions and Restrictions dated May 21, 1996 and recorded June 17, 1996 in the Clerk’s Office in Deed Book 119, at page 719; and

WHEREAS, the Original Declaration was amended by that certain Amendment to Declaration of Covenants, Conditions and Restrictions dated November 29, 2010 and recorded December 2, 2010 in the Clerk’s Office as Instrument No. 102067; and

WHEREAS, pursuant to Section 3 of Article X as amended in the Amendment recorded in Deed Book 119, at page 719, the Original Declaration may be amended by an instrument signed by Members entitled to cast not less than two-thirds (2/3) of the votes in each class of membership; and

WHEREAS, the only present class of membership in the Association is the Class A members which are all Owners as defined in Article III of the Original Declaration; and

WHEREAS, the requisite percentage of Class A members have approved this amendment as evidenced by the signature pages attached hereto.

NOW, THEREFORE, the Grantors do hereby declare, give notice and ratify that the Existing Property is subject to the following limitations, restrictions, conditions, covenants, reservations, liens and charges and uses, as amended from time to time, to which the Existing Property constituting said subdivisions may be put, hereby specifying that this Amended Declaration shall constitute covenants to run with the land, as provided by law, and shall be binding upon all parties and all persons claiming under and through the Declarant. This Amended Declaration is put to record for the benefit of and to impose limitations upon all future owners of lots in said subdivisions. This Amended Declaration has the express purpose of keeping said subdivisions desirable as a residential community, and uniform in architectural design so as to be suitable for use as herein specified.

For the purpose of ensuring the continued operation of the Property as a residential community of superior standards, and subject to the foregoing provisions, the following limitations, restrictions, conditions and covenants are imposed on the use of the Existing Property, which subdivisions jointly comprise the subdivision known as "Port Anne".

#### ARTICLE I DEFINITIONS

Section 1. "Articles of Incorporation" or "Articles" shall mean the Articles of Incorporation for Port Anne Owners Association, Inc.

Section 2. "Association" shall mean and refer to Port Anne Owners Association, Inc., its successors and assigns.

Section 3. "Board of Directors" or "Board" shall mean the body of elected or appointed directors vested with management of the affairs of the Association.

Section 4. "Bylaws" shall mean the Bylaws of the Association, as amended from time to time.

Section 5. "City" shall mean and refer to the City of Williamsburg, Virginia.

Section 6. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 7. "Governing Documents" shall mean the Declaration, the Articles of Incorporation, the Bylaws, and Rules and Regulations, as amended from time to time.

Section 8. "Improvement" shall mean, without limitation, all buildings, residences, landscaping, lighting, hardscaping, retaining and other walls, driveways, walkways, paths, decks, patios, and any other structure of any kind.

Section 9. "Lot" shall mean and refer to any numbered lot of land shown on the aforesaid plats of Port Anne but shall not include any lot otherwise designated or any of the Common Area.

Section 10. "Member" shall mean and refer to those persons or entities described in the first sentence of Article II, Section 2 hereof.

Section 11. "Owner" shall mean and refer to the record owner, one or more persons or entities, of a fee simple title to any Lot, which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 12. "Properties" shall mean and refer to the real property hereinbefore described.

## ARTICLE II PORT ANNE OWNERS ASSOCIATION, INC.

Section 1. Association. Port Anne Owners Association, Inc. is a Virginia nonstock corporation, organized to provide for the management, maintenance, operation and architectural control of the real estate commonly known as Port Anne, located in the City of Williamsburg, Virginia, to further and promote the common interests of Owners in Port Anne, and to administer the affairs of the Association. The Association shall have such powers and duties in the furtherance of its purpose as set forth in the Governing Documents.

Section 2. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot, which is subject by this Amended Declaration to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

Section 3. Voting. Voting members shall be all those Owners as defined in Article II, Section 2 above. Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Lot, all such persons shall be members, and the vote or votes for such Lot shall be exercised as the majority of such persons among themselves determine (at any meeting of the members, a representation by any of such persons that a majority of such persons have agreed as to the vote or votes for such Lot shall be conclusive unless another of such persons contests such representation at such meeting prior to the casting of such vote or votes).

### ARTICLE III PROPERTY RIGHTS; COMMON AREA

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the Governing Documents and the following provisions:

(a) the right of the Association to control the use and operation of the Common Area and to limit the number of guests of Members;

(b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(c) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage (which term shall include a deed of trust) said Common Area, but the rights of such mortgagee (which term shall include the beneficiary of a deed of trust) in said Common Area shall be subordinate to the rights of the Members;

(d) the right of the Association to suspend the voting rights and/or the Owner's right to use or benefit from any of the Common Areas for any period during which any assessment, charges, fees, or dues are more than 60 days past due, subject to any limitations in the Property Owners' Association Act (Va. Code Ann. § 55-508, *et seq*);

(e) to suspend an Owner's right to use or benefit from any of the Common Areas for any period during which any other infraction of this Amended Declaration, the Bylaws or Rules and Regulations of the Association by the Owner remains uncorrected after the last day of the period established for correction by the Board;

(f) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast more than two-thirds (2/3) of the votes has been recorded, agreeing to such dedication or transfer, and unless a certificate of

the Secretary of the Association be also recorded stating that written notice of the proposed action was sent to every Member not less than thirty (30) days in advance of such effective date of such dedication or transfer.

Section 2. Delegation of Use. Any Member may delegate his or her right of enjoyment to the Common Area and facilities to the members of his or her family, his or her tenants, or contract purchasers who reside on the Lot, and during any period of such delegation, the Member shall not have the right of enjoyment to the Common Area and facilities.

Section 3. Damage or Destruction of Common Area. In the event any Common Area is damaged or destroyed by an Owner, his or her tenants, guests, licensees, agents, or members of the Owner's family, the Association may repair such damage at the Owner's expense. The Association may repair such damage in a good and workmanlike manner in conformance with the original plans and specifications of the Common Area involved, or as the Common Area may have been modified or altered, at the sole discretion of the Board. The costs of such repairs shall become an individual assessment upon the Lot of such Owner, and shall constitute a lien on the Owner's Lot and be collectible in the same manner as other assessments set forth in Article IV herein.

Section 4. Eminent Domain; Condemnation. Whenever all or any portion of the Common Area is taken or damaged under the power of eminent domain, the proceedings, rights and responsibilities of the Association and the Owners shall be determined by Va. Code Ann. § 55-516.2.

#### ARTICLE IV COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a Deed of Bargain and Sale therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments. Such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with late fees, interest, attorney's fees, court costs and costs of collection thereof, as hereinafter provided, shall be a continuing lien and charge upon each Lot against which each such assessment is made and sale or transfer of any such Lot shall not affect the assessment lien. Each such assessment, together with such late fees, interest, courts costs, costs of collection and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his or her successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the

residents in the Properties through the ownership, improvement, operation and maintenance of the Common Area and the facilities thereon. In addition, the assessments shall be used to meet the Association's responsibility to operate, maintain, improve, repair and replace those areas and to provide the services set forth in the Deed of Dedication dated December 9, 1999 and recorded in the Clerk's Office on March 7, 2000 as Instrument No. 000260, as amended from time to time.

Section 3. Basis and Maximum of Annual Assessments. The amount of annual assessments shall be based on the annual budget adopted by the Board of Directors pursuant to the Bylaws. Effective January 1, 2016, any increase in excess of ten percent (10%) in the aggregate of the annual assessments shall require the affirmative vote of two-thirds (2/3) of the Members voting at a duly called meeting at which a quorum is present as set forth below.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Board of Directors may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures, personal property, storm drainage system, streets, curbs, gutters, street signs and street lights, related thereto, or for the purpose of a non-capital expense for which the Association has responsibility, provided that any such assessment in an amount exceeding Five Hundred and no/100 Dollars (\$500.00) shall have the assent of more than two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Rates of Assessment. Each Lot upon which there has been erected a living unit, which is certified for occupancy by the City of Williamsburg, shall be assessed at a uniform rate. All other Lots which have been conveyed to an Owner shall be assessed at a uniform rate not to exceed one hundred percent (100%) of the rate for Lots upon which there are living units certified for occupancy.

Section 6. Quorum for Any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of Members or of proxies entitled to cast two-thirds (2/3) of all the votes shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth in Section 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Adjustment of Annual Assessments: Due Dates. Subject to Section 3 hereof, the Board of Directors of the Association shall fix the amount of the annual assessment

against each Lot at least thirty (30) days in advance of each annual assessment period; but in the absence of such action by the Board of Directors the annual assessment shall be in the amount last fixed. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall incur a late fee, as set by the Board of Directors from time to time, and bear interest from the due date at a rate established by the Board of Directors from time to time not to exceed eighteen percent (18%) per annum, and interest, late fees, court costs, costs of collection, and reasonable attorneys' fees incurred shall be added to the amount of such assessment. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his or her Lot, or by vacating the Lot line between adjoining Lots. Attorney fees shall be incurred and added to the Owner's assessment at the time the account is referred to the attorney for collection.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on any Lot. Foreclosure of any such first mortgage or first deed of trust shall extinguish such lien for assessments due prior to such foreclosure, but such lien shall attach to any excess proceeds of the foreclosure, and no such foreclosure shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all portions of the Properties dedicated to and accepted by a local public authority; and (b) the Common Area.

## ARTICLE V ARCHITECTURAL CONTROL

Section 1. Architectural Review Committee. The Board shall appoint an Architectural Review Committee ("ARC") for the purpose of reviewing and approving or disapproving all plans and specifications submitted by Owners in accordance with this Article and any Architectural Guidelines or Standards adopted or amended by the Board. The ARC shall perform its functions consistent with this Declaration, the committee charter adopted by the Board, and any Architectural Guidelines or Standards.

Section 2. Architectural Approval. The Owner or occupant of each Lot covenants and agrees that all Improvements, landscaping and hardscaping, and all alterations to the exterior appearance of any Lot, Improvement or the landscaping and hardscaping shall be submitted to the ARC for written approval prior to any construction, installation, reconstruction, or alteration of the Improvement, landscaping or hardscaping. The Owner or occupant of the Lot shall submit the plans, specifications and a site plan in duplicate to the ARC. If approved, the ARC shall retain one set of the submitted documents. Construction, installation, reconstruction, or alteration of the Improvement, landscaping or hardscaping shall conform strictly to the written approval of the ARC. The ARC may refuse approval of plans and specifications for any reason, including purely aesthetic grounds, which determination shall be in the sole discretion of the ARC. Nothing herein shall be construed to relieve any Owner from obtaining all necessary approvals of the City for said plans and specifications in conformance with any Planned Unit Development document approved for the Properties. The Association may charge a reasonable fee for the review of any plans, specifications or site plan.

Should the ARC fail to approve or disapprove the plans and specifications submitted to it by the Owner of a Lot or Lots within thirty (30) days after written request for such approval, then such approval shall not be required; however, in any event, no building or other structure shall be erected or be allowed to remain on any Lot which violates any of the covenants or restrictions herein contained.

The foregoing plans, specifications, and site plan shall include, but not be limited to the following information:

- A. Material and color selection for all exterior items exposed to view such as roofing, siding, windows, doors (including storm doors and windows), brick, shutters, flashing, louvers and vents, equipment, fencing, and any other visible item implied but not specifically mentioned herein.
- B. The site plan shall dimensionally locate the building, driveway, and fencing, and shall show or be accompanied by a separate plan locating and specifying all lot clearing and grading, plantings, trees, shrubs, and turf.
- C. The building plans shall clearly show all dimensions and configurations of all parts of the structure including roof slopes, decks, etc.
- D. The plans shall include a drainage plan showing the proposed drainage for any Improvement, landscaping or hardscaping, and that drainage from the Lot will not adversely affect any neighboring Lots, Common Areas, or any roadways.

No dwelling house or other improvement shall exceed three (3) stories in height, in addition to any basement. All garages, porte cocheres, storage areas, tool cabins, garden houses, or similar structures, must be attached to said dwelling house and be constructed so as to

constitute one (1) building only. Said dwelling house shall occupy a floor area of actually and fully enclosed building, including attached garage or porch or porte cochere, of not less than one thousand eight hundred (1,800) square feet. In computing such minimum areas, the area of porches and garages shall not be given credit, under any circumstances, in excess of two hundred (200) square feet. The maximum lot coverage permitted is as set forth in Ordinance 803 as referenced in Section 3 below.

Crawl space vents (if used) shall appear to be made of wood. All plumbing and roof stacks will be located in the rear of the house. All flashing (unless copper) around roof stacks, etc., will be of a color similar to roof. All mechanical equipment such as compressors, etc., shall be screened in a manner approved by Association so as to exclude it from being visible from neighboring streets and Lots. All windows that can be seen from the street will have window muntins or mullions. The approved color chart, if any, of the City's Architectural Review Board, or its successor, shall be used to select colors for the exterior of the house or other structure constructed on any Lot.

Section 3. Ordinance 803. All improvements of any kind on a Lot are subject to being compliant with the terms of Ordinance 803 which is attached hereto as Exhibit C and incorporated herein by reference.

Section 4. Drainage. In the event that an Owner fails to comply with the approved drainage plan, the Owner shall, at his or her expense, make all corrections or modifications as required by the ARC. No Owner shall interfere unreasonably with the drainage of surface water from his or her Lot to the detriment of any other Lot, Common Area or roadways. If drainage of surface water from an Owner's Lot is adversely affecting a neighboring Lot, Common Area or roadway, the Owner shall promptly correct the issue at his or her sole expense. Drainage disagreements between neighboring Lots shall be resolved by the respective Owners unless such issue is caused by non-compliance with the ARC's approved drainage plan for the Lot. When drainage from an Owner's Lot adversely affects the Common Area or any roadway, the Association may require the Owner to correct the drainage from the Owner's Lot at the Owner's expense, and the Association may require the Owner to obtain the services of a professional at the Owner's expense to provide a plan of correction or if the Association finds it necessary to engage the services of a professional to review any proposed correction, the Owner shall reimburse the Association for such expense.

Section 5. Architectural Guidelines and/or Standards. The Board shall have the authority to adopt, amend, implement, and enforce such modifications, additions, and deletions to the Architectural Guidelines and/or Standards.

Section 6. Limitation of Liability. The ARC's approval of any plans, specifications, site plan, drainage plan or landscaping plan or requirement that the plans, specifications, site plan, drainage plan, or landscaping plan be modified shall not constitute a warranty or representation

by the ARC or the Association or the Board of the adequacy, technical sufficiency, or safety of the improvements described in such plans, as the same may be modified; and the Association, Board and the ARC shall have no liability whatsoever for the failure of the plans or the improvements to comply with applicable building codes, laws, and ordinances or to comply with sound engineering, architectural, or construction practices. In no event shall the Association, its Board or the ARC have any liability whatsoever to any Owner, a Mortgagee, a Contractor, or any other party for any costs or damages, consequential or otherwise, that may be incurred or suffered on account of the ARC's approval, disapproval, or conditional approval of any plans, specifications, site plan, drainage plan or landscaping plan.

## ARTICLE VI USE RESTRICTIONS

Section 1. Residential Use. The Lots shall be used exclusively for residential purposes. No building shall be erected or allowed to remain on any Lot except one (1) single family dwelling house, for the use and occupancy of one (1) family and domestic attendants.

Section 2. Subdivision of Lots. No Lot shall be subdivided without the express written consent of the Association.

Section 3. Home-based business. No Lot shall be used for any business, commercial, manufacturing, mercantile, storing, vending, or any other non-residential purpose; however, an Owner may maintain an office in the dwelling constructed on such Owner's Lot if (i) the occupation or activity is conducted entirely within the dwelling house; (ii) the occupation requires no external alterations or the use of outdoor storage or machinery or equipment that creates noise, odor, smoke, dust or glare or is dangerous or otherwise detrimental to persons residing in the home or on adjacent properties; (iii) no exterior evidence of the occupation or activity exists; (iv) no articles are displayed or otherwise offered for sale upon the Lot; (v) there is no equipment or process inside that may disrupt neighboring dwellings; and (vi) such office generates no significant increase in traffic by clients, customers, or other person related to the business.

Section 4. Signs. No sign of any kind shall be displayed to the public view on any Lot except one (1) sign of not more than six (6) square feet advertising the Lot for sale or rent, or a sign used by a builder to advertise the Lot during the construction and sales period. The ARC may adopt guidelines to permit signs advertising an open house when the home is for sale, or to permit signs for yard sales which shall be subject to the requirements of the ARC. No Owner may place any signage on the Common Areas or roadways.

Section 5. Nuisance; Compliance with Laws. Nothing shall be done on any Lot that may be or become an annoyance or nuisance to the neighborhood. No improper, offensive, or unlawful use shall be made of the Property or any part thereof. All valid laws, zoning ordinances,

orders, rules, regulations, or requirements of a governmental agency having jurisdiction thereof shall be complied with, by, and at the sole expense of the Owner, or the Association, whichever party shall have the obligation for the maintenance of such portion of Property, and if the Association, the cost of such compliance shall be included in the annual budget to be part of the annual assessments, or it may be levied as a special assessment as set forth herein.

Section 6. Pets; Animals. No horses, cattle, swine, goats, poultry or fowl, reptiles, or any other animal not customarily a household pet, shall be kept on any Lot. Household pets shall not be kept, bred or maintained for commercial purposes. Household pets shall not become a nuisance to other Owners or residents, and shall be kept under the control of their owner.

Section 7. Trash; Rubbish. No trash, litter, refuse or bulk materials, shall be allowed to accumulate on any Lot or the Common Area so as to be unsightly or to be a detriment to the area or a fire hazard. No recycling or trash bin shall be visible from the street, except on the day of collection.

Section 8. Maintenance of Lot. Each Owner shall maintain his or her Lot, whether occupied or not, and the exterior of any dwelling house, the landscaping, and any other improvements located on the Lot, in a neat, orderly and clean manner, and shall not permit the appearance to be unsightly, unsanitary, or hazardous. In the event that any Owner or occupant shall fail or refuse to keep his or her Lot free of weeds, underbrush, refuse, or other unsightly growth or objects, or fail to maintain the landscaping, the exterior of the dwelling house, or any improvements on the Lot, in a neat, orderly and clean condition, the Association, after fourteen (14) days written notice to the Owner, shall have the right but not the obligation to enter upon said Lot(s) and correct and rectify the same at the expense of the Owner. Such entry by the Association shall not be a trespass. In the event that such action is taken by the Association, the Owner shall pay the expenses incurred by the Association within ten (10) days of being invoiced. If the Owner fails to pay, such expense shall be treated as an individual assessment and be subject to Article IV.

Section 9. Parking. The use of any carport, driveway, parking area or street which may be in front of, adjacent to, or a part of any Lot in said subdivision as a parking place for commercial vehicles is prohibited. The use of any driveway, parking area or street which may be in front of, adjacent to, or a part of any Lot as a parking place for boats or trailers of any kind is prohibited. The parkway, if any (that area between the pavement and the Lot line) of each Lot shall not be used for the parking of private or commercial vehicles, boats or trailers. The term "commercial vehicles" shall include all motor vehicles and vehicular equipment which shall bear signs or shall have printed thereon reference to any commercial undertaking or enterprises, and all trucks. Notwithstanding the foregoing, a trailer, camper, recreational vehicle or boat may be parked temporarily on a driveway or street to facilitate loading, and unloading, or to accommodate a visiting guest for a period not to exceed twenty-four (24) hours in any one (1) week.

Section 10. Temporary Structures. No trailer, tent, shack, garage, barn, or other outbuildings erected on any Lot shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

Section 11. Satellite Dishes; Antennas. Satellite dishes of one meter or less in diameter and antennae are permitted subject to the following recommendations and guidelines: rooftop antennae are permitted although attic installation is encouraged. Antennae and Satellite Dish supports are limited to a maximum of 12 feet above the roofline per FCC recommendations. All wiring for permitted antennae and satellite dishes must be properly secured and in some instances may need to be concealed. The color options, if available for a satellite dish, should complement the basic colors of the dwelling following the same guidelines as exterior painting. Otherwise, the color should remain as originally purchased in neutral colors, i.e. black, gray or tan. There shall be no commercial advertising on the satellite dish other than the brand name. Based on the required positioning to receive transmissions, antennae and satellite dishes shall be placed in an inconspicuous location and shall not be placed in areas where it would constitute a safety hazard. Antennae and satellite dishes shall not be placed on any Common Areas. No transmitting equipment or communication equipment shall be operated from the Lot that will in any manner interfere with standard electronic equipment, radio or television reception used in adjoining residences with the subdivision.

Section 12. Statues; Monuments. No statues, monuments, bric-a-brac, or symbols, other than a house number and name of the resident, may be displayed from that portion of the Lot or home observable from the adjoining street.

Section 13. Docks; Bulkheads. No docks, bulkhead, or boathouses shall be permitted on any Lot.

Section 14. Driveway Construction. No driveway shall be constructed so as to interfere with the normal drainage of the street on which the Lot fronts. Location and materials shall be reviewed and approved by the Association.

Section 15. Additional Facilities. The Association reserves unto itself the right to construct, or permit construction of, operate, and maintain other facilities, such as recreational areas, etcetera, on the other real property owned by it, not included in the Lots referred to hereinabove, provided such other facilities be approved by the Planning Commission of the City or other appropriate municipal authority, if approval is required by said authority, and provided further that such other facilities are not inconsistent with the development of quality residential community upon the remaining land included in the Properties. Any person acquiring any interest in the Properties shall, by acceptance thereof, be deemed to have consented thereto.

Section 16. Review Fee. A review fee shall be paid to Association upon the sale or transfer of the Lot if the Association is required to complete or provide information for

completion of a form required by the Owner's lender in order to assure that Lot being transferred is in conformance with the Declaration.

Section 17. Clearing; Grading. No clearing or grading of natural vegetation (except the removal of diseased vegetation and the enhancement of screen planting) will be permitted in any Common Area except that which complies with the then-current zoning requirements of the City and which has been approved by the Association, provided that foot paths, gazebos, fitness trails, picnic areas and guest parking areas may be constructed in said Common Area, provided that they also comply with the then-current zoning requirements.

Section 18. Solar Devices. No artificial or man-made device which is designed or used for collection of, or heating by, solar energy or other similar purposes, shall be placed, allowed, or maintained upon any portion of the Properties, including a dwelling house, or any other improvement on a Lot, without the written consent of the Board.

Section 19. Outdoor Play Equipment. The ARC may adopt guidelines, standards and requirements governing the construction and installation of playground equipment and basketball backboards.

Section 20. Leasing. All leases shall be for an initial term of twelve (12) consecutive months. No portion of any Lot, other than the entire Lot, shall be leased for any period. No Lot shall be used for transient or hotel purposes.

## ARTICLE VII EASEMENTS AND UTILITIES

Section 1. Ingress/Egress. An easement is hereby granted within any Common Areas shown as roadways or streets to the Members for pedestrian and vehicular ingress and egress, and to the Association and the City for emergency vehicular ingress and egress, and for installation, repair, and maintenance of streets, utilities, sidewalks and landscaping. The roadways in Port Anne were dedicated to the City of Williamsburg by Deed of Dedication dated December 9, 1999 and recorded on March 7, 2000 in the Clerk's Office as Instrument No. 000260. Such Deed of Dedication was amended by a Supplemental Deed of Dedication dated September 30, 2008 and recorded October 16, 2008 in the Clerk's Office as Instrument No. 082449.

Section 2. Utility/Drainage. The Association herein reserves for itself a five (5) foot easement along the side and rear lines of each Lot, unless a greater width is shown on the plat of subdivision, for public utility or drainage purposes, and any other reasonable purpose, with the right to assign the same for such uses as deemed by it necessary for the development and service of said Lots or adjoining Lots.

Section 3. Underground Wire Requirement. No lines or wires for communication or for the transmission of current or any other purposes shall be constructed, placed, or permitted to be placed upon any Lot unless the same shall be contained in underground conduits, and unless permission for installation of same has been specifically granted by the Association to the party who intends to install same, through a duly recorded grant or easement.

## ARTICLE VIII GENERAL PROVISIONS

Section 1. Enforcement. The Association, the City or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, the City or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The costs incurred in taking such action and the attorney's fees incurred therein shall constitute an individual assessment against the defaulting Owner's Lot, and shall be collectible in the manner provided in Article IV herein.

Section 2. Property Owners' Association Act. The Board shall have the power to (i) suspend an Owner's right to use facilities or services, including utility services, provided directly through the Association for nonpayment of Assessments which are more than 60 days past due, to the extent that access to the Lot through the Common Areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any Owner, tenant, or occupant; and (ii) assess charges against any Owner for any violation of the Declaration or Rules and Regulations for which the Owner or his or her family members, tenants, guests, or other invitees are responsible, provided, that the Board of Directors complies with the procedure set forth in Va. Code Ann. § 55-513, as amended. The Covenants Committee is designated as the tribunal for purposes of Va. Code Ann. § 55-513.

Section 3. Election of Remedies. All rights, remedies and privileges granted to the Association or to any Owner pursuant to the Governing Documents or by law shall be deemed to be cumulative and the exercise of any one or more shall not be deemed an election of remedies, nor shall it preclude the party exercising the same from exercising any other additional rights, remedies or privileges as may be available to such party.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by statute, ordinance or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5. Interpretation. Whenever any conflict occurs among the Governing Documents, the Amended Declaration shall control, then the Articles of Incorporation, then the

Bylaws, except in those cases where the Governing Documents may be found to be in conflict with a statute, then the statute shall control.

Section 6. Complementarity of Governing Documents. The Governing Documents shall be construed together and shall be deemed to incorporate one another. Any requirements as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the other. Any provision of any Governing Documents referenced in any other Governing Document with the intent to incorporate the provision of the Governing Documents shall be deemed incorporated therein as if set forth in full.

Section 7. Compliance. All Owners or persons occupying or residing on a Lot or dwelling house on a Lot, shall comply with the Governing Documents pertaining to the Properties. Owners shall be responsible for the conduct of their family members, guest, tenants and their tenant's family members and guests.

Section 8. Limitation on Liability. To the extent that the Association, its Board or any of its committees undertake certain voluntary functions to enhance the quality of life in Port Anne, including, but not limited to (i) implementing plans to make Port Anne safer or maintaining lists of those who need assistance in the event of a disaster; or (ii) performing other services to enhance the safety, health and welfare of its Owners; or (iii) coordinating clubs and groups, and social functions, such undertaking(s) shall not create a duty on the Association to perform such functions, and the Association, its Board, its committees, and its Members shall have no liability whatsoever to any Owner, lender, contractor, occupant or resident, or any other party for any costs or damages, consequential or otherwise, that may be incurred or suffered.

## ARTICLE IX AMENDMENT

Section 1. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the City or the Owner of any of the Properties, his or her respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date the original Declaration was recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended by an instrument signed by Members entitled to cast not less than two-thirds (2/3) of the votes. Any amendment must be recorded, and shall become effective only upon approval by the City Council.

Section 2. Amendment by Board of Directors. This Declaration may be amended unilaterally at any time, and from time to time, by the Board, with notice to the Owners, if (i) such amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict

therewith; (ii) such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Properties; or (iii) such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Properties; provided, however, that any such amendment shall not adversely affect the title to any Owner's Lot unless such Owner shall consent in writing.

SIGNATURES PAGE FOLLOWS

IN WITNESS WHEREOF, the Association has caused this Amendment to be executed by Gregory M. Baker, Acting President of Port Anne Owners Association, Inc. and attested by, the Secretary, who certify that two-thirds (2/3) or more of the Owners voted in favor of this Amendment as evidenced on the written ballots or consent pages submitted at the duly called meeting of the members on \_\_\_\_\_, 2015.

PORT ANNE OWNERS ASSOCIATION, INC.

By: \_\_\_\_\_

Gregory M. Baker, Acting President

ATTEST:

\_\_\_\_\_  
Evelyn Spicer, Secretary

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF JAMES CITY, to-wit:

Gregory M. Baker, Acting President of Port Anne Owners Association, Inc. on behalf of the corporation, acknowledged the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for Port Anne before me this \_\_ day of \_\_\_\_\_, 2015.

My commission expires:

\_\_\_\_\_  
Notary Public

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF JAMES CITY, to-wit:

The foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for Port Anne was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2015 by Evelyn Spicer, Secretary of Port Anne Owners Association, Inc. on behalf of the corporation.

My commission expires:

\_\_\_\_\_  
Notary Public

## EXHIBIT B

Those certain lots and parcels of land set out and shown as: Lots 1-20, inclusive and Lots 46-58, inclusive and all areas labeled "Common Area", and all roadways described as "Captains Court", "Chanteraine Close", "William Way", "St. Simone Court", "Hague Close", "Majesties Mews", and "Corbin Close", on plats entitled "SUBDIVISION OF PORT ANNE – PHASE ONE, WILLIAMSBURG, VIRGINIA," made by Talbot & Associates, Ltd., consisting of five (5) sheets dated September 20, 1985 and recorded in Plat Book 42 at pages 87-112 in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City.

Those certain lots and parcels of land set out and shown as: Lots 21-45, inclusive (but excluding the Pump Station Site) and all areas labeled "Common Area," and all roadways described as "The Palisades" and "William Way," on plats entitled "SUBDIVISION OF PORT ANNE – PHASE II-A, WILLIAMSBURG, VIRGINIA," (the "Subdivision Plat") made by Talbot & Associates, Ltd., consisting of three (3) sheets dated January 6, 1987, and recorded in Plat Book 46 at pages 29-31 in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City and further shown as the aforesaid lots, common areas and roadways on plats entitled "CONSTRUCTION PLANS OF PORT ANNE, WILLIAMSBURG, VIRGINIA – PHASES TWO & THREE," made by Talbot & Associates, Ltd., bearing the latest revision date of March 10, 1987, and recorded in Plat Book 46 at pages 32-56, but there are not included any lots, common areas or roadways other than those shown on the Subdivision Plat described above.

Those certain lots and parcels of land set out and shown as: Lots 59-77, inclusive and all areas labeled "Common Area," and all roadways on the plat entitled "SUBDIVISION OF PORT ANNE – PHASE II-B, WILLIAMSBURG, VIRGINIA", consisting of two (2) sheets dated June 13, 1989, and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and James City County, Virginia, in Plat Book 51 at pages 10-11.

Those certain lots and parcels of land set out and shown as: Lots 78-112, inclusive and all areas labeled "Common Area," and all roadways on the plat entitled "SUBDIVISION OF PORT ANNE – PHASE THREE, WILLIAMSBURG, VIRGINIA", consisting of three (3) sheets dated June 13, 1989, and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and James City County, Virginia, in Plat Book 51 at pages 12-14.

EXHIBIT C

**Ordinance Number 803  
An Ordinance Amending The Port Anne  
Planned Unit Development**

**(PCR #3-89)**

**WHEREAS, The Port Anne Planned Unit Development, Phases I, II, and III, was approved by City Council on November 14, 1985 (Ordinances 707 and 708, PCR numbers 18-84 and 13-85); and**

**WHEREAS, application has been made by Port Anne Associates to amend the planned unit development, described more fully below; and**

**WHEREAS, notice of said application has been published as required by Section 15.1-431 of the Code of Virginia, 1950, as amended; and**

**WHEREAS, after holding a duly advertised public hearing and reviewing the plans submitted by the developer and the recommendations of the City Planning Commission, the Williamsburg City Council is of the opinion that amendments as submitted comply with the intent of the original approval on all applicable requirements of the City's Zoning Ordinance; and**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILLIAMSBURG that the Port Anne Planned Unit Development be amended as follows:**

1. Eliminate the requirement that houses be of an approved prototype design, and require instead that all houses be designed to meet the Port Anne Architectural Guidelines dated May 5, 1989, and on file at the Williamsburg Planning Department. The Board of Architectural Consultants, or its equivalent in the event that the Zoning Ordinance is amended, will evaluate individual proposals and determine whether or not the proposals comply with the Architectural Guidelines.

2. Replace the existing requirements designating footprint area, total floor area and deck area, as noted on the approved site plan with the following:

A. Maximum building footprint area and lot coverage shall not exceed the following:

Lot Size	Maximum Footprint Area	Maximum Lot Coverage
Less than 9,000 sf	2,100 sf	2,400 sf
9,000 - 11,000 sf	2,200 sf	2,500 sf
11,001 - 20,000 sf	2,300 sf	2,600 sf
more than 20,000 sf	No Limit	No Limit

**B. Open decks shall not encroach into required side yards, but may encroach 12 feet into required rear yards. Unenclosed porches and balconies shall not project into any required yard areas.**

**C. Building height shall be as required in Residence District B, or its equivalent in the event that the Zoning Ordinance is amended.**

**D. Construction limits for individual buildings shall be 5.0 feet off the roof line and 5.0 feet off the edge of any deck.**

**E. The following definitions shall apply:**

**Building footprint area:** All ground area covered by a building, excluding unenclosed porches and open decks.

**Lot coverage:** The sum of the building footprint area, open deck area, and unenclosed porch area.

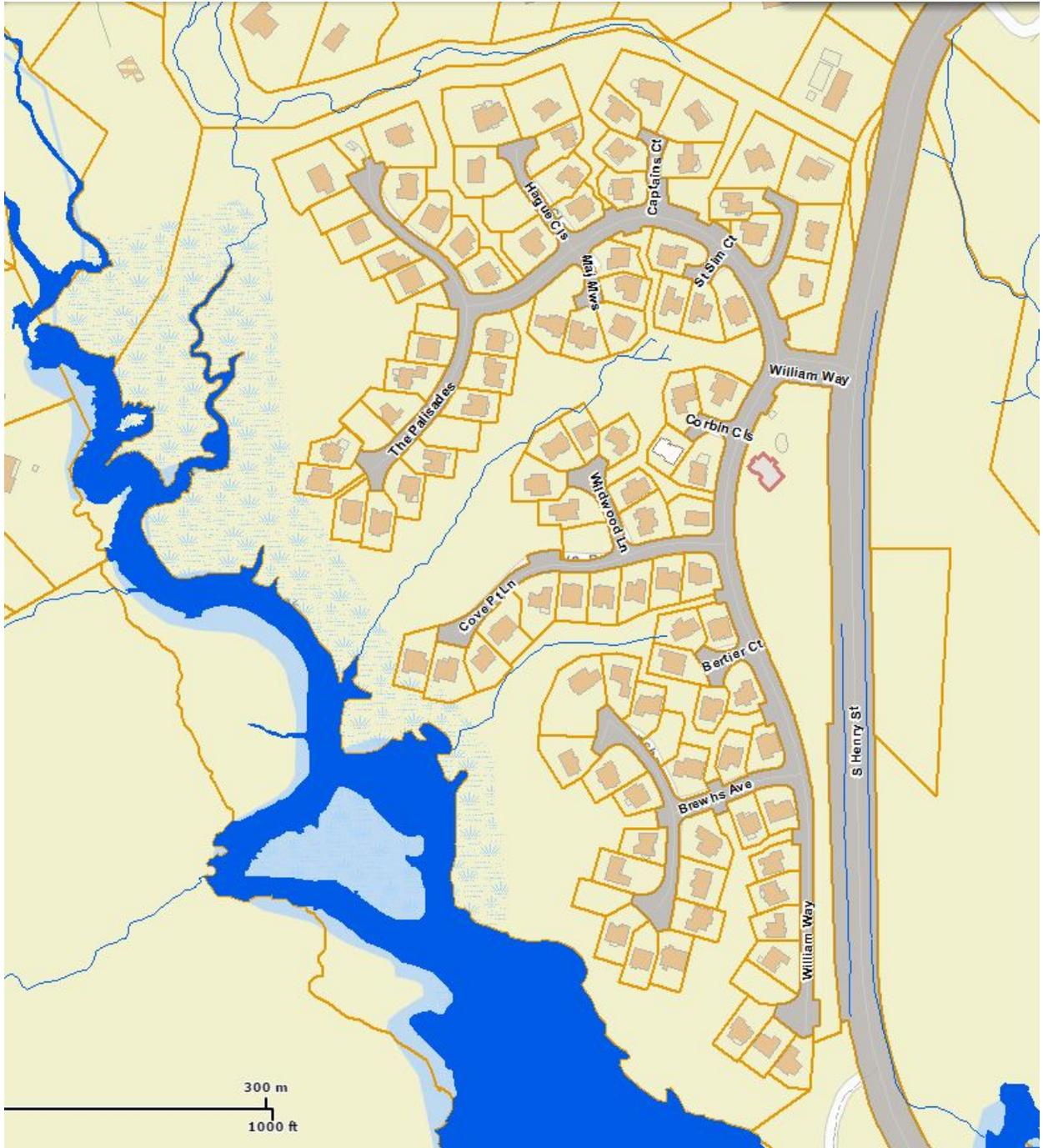
**Open deck:** A deck with no roof and no side enclosure other than railings.

**Unenclosed porch:** A porch with no side enclosure, other than railings or screens, that is more than eighteen (18) inches high. An unenclosed porch shall not be enclosed unless sufficient unutilized footprint area exists to allow the enclosure.

**This ordinance shall be in effect from the time and date of passage.**

**Above adopted and signed into passage August 10, 1989 by Lois Bodie, clerk of council and John Hodges, mayor.**

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Port Anne Subdivision