

Indenture- Docket 250

THIS AMENDED AND RESTATED INDENTURE, made this ____ day of _____ 202__, by and between the Swan Point Development Company, LLC, a Delaware Limited Liability Company hereinafter referred to as “Petitioner” and the County Commissioners of Charles County, Maryland, a body corporate and politic, hereinafter referred to as the “County”.

WHEREAS, the United States Steel Corporation (“USS Corp.”), on June 5, 2006, was the owner of a 695-acre parcel described more fully herein (the “Original Property”);

WHEREAS, USS Corp., on June 5, 2006, was the owner of a 202-acre parcel described more fully herein (the “Horse Farm Property”);

WHEREAS, USS Corp. filed and the County granted a petition for a Zoning Map Amendment as evidenced by the Order dated November 19, 1986, thereby rezoning the Original Property from Residential (R-15) to Waterfront Planned Community (WPC) and approving a Master Plan for the Original Property, said Order hereinafter referred to as “1986 Docket 250 Order,”

WHEREAS, the conditions of the 1986 Docket 250 Order were enumerated in the Indenture dated November 17, 1986, recorded among the Land Records of Charles County, Maryland, on November 25, 1986, in Liber 1170 at Folio 364 (hereinafter referred to as the “1986 Indenture”);

WHEREAS, the USS Corp. submitted two (2) requests to the County concerning the Original Property and the Horse Farm Property: Master Plan Amendment Request and Docket 250 Amendment Request, (#04-250(01)) and separate request to rezone the Horse Farm Property (#05-23);

WHEREAS, after due consideration, on June 5, 2006, the County granted the Master Plan Amendment Request and Docket 250 Amendment Request (#04-250(01)), with conditions, pursuant to a Decision and Order;

WHEREAS, the Petitioner became the owner-of-record of both the Original Property and the Horse Farm Property by deed dated March 20, 2008, recorded among the Land Records of Charles County, Maryland in Liber 6601 at Folio 579; ~~and~~

WHEREAS, the Decision and Order for the Master Plan Amendment Request and the Docket 250 Amendment Request (#04-250(01)) and the Decision and Order for the Rezoning of the Horse Farm Property (#05-23) required an Indenture incorporating the terms of the two referred Decision and Orders, together with the conditions of approval, to be executed by the property owner and recorded among the Land Records of Charles County, Maryland; ~~and~~

WHEREAS, the Decision and Order for the Master Plan Amendment Request and Docket 250 Amendment Request and the Rezoning of the Horse Farm Property was intended to memorialize the Petitioner’s property rights in the subject properties and to ensure that any future land use restrictions or regulations do not diminish, revoke or further restrict Petitioner’s property rights as set forth herein;

WHEREAS, the 1986 Indenture was amended and restated on April 9, 2010; and

WHEREAS, the Petitioner is seeking to update the current Indenture in order to reflect changes that have occurred since 2010.

NOW THEREFORE, this Indenture WITNESSETH: That for and in consideration of the mutual covenants and promises hereinafter contained, the sum of one dollar (\$1.00), ~~the granting of said rezoning with conditions and of said amendments to the Master Plan and Doeket 250;~~ and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that the ~~1986~~2010 Indenture be amended and restated, with the new Indenture terms included to state as follows:

1. A. The Petitioner agrees to amend and restate the April 9, 2010 Indenture. ~~accepts and agrees to the rezoning from Residential (R-15) to Waterfront Planned Community (WPC), of 695± acres of land, of premises situated, lying in the Fifth (5th) Election District of Charles County, Maryland, and more particularly described as follows and hereinafter referred to as the "Original Property:"~~

~~All that land described in a deed from Bennett Crain, et al., to U.S. Steel Corporation recorded among the Land Records of Charles County, Maryland in Liber 213 at folio 76, et seq., saving and excepting therefrom all of that land described and set forth on plats of Phase I, Section 1 of Swan Point Subdivision, and Phase 2, Section 2A and 2B of Swan Point Subdivision recorded among the Plat Records of Charles County, Maryland, in Liber 19 at folio 13-17 and in Liber 33 at Folios 204-209.~~

~~Further saving and excepting therefrom all of that land described in a deed to the County Commissioners of Charles County, Maryland in Liber 1017 at Folio 156.~~

B. The Petitioner ~~accepts and agrees to the rezoning from agricultural conservation (AC) to Waterfront Plan Community (WPC) of 202± acres of land, said premises situated and lying in the Fifth (5th) Election district of Charles County, Maryland, and more particularly described as follows in hereinafter referred to as "Horse Farm Property"~~

~~All that land described in a deed from Cantor Wood investments, Inc. to USX Corporation (formally and presently known as United States Steel Corporation) recorded among the land records of Charles County, Maryland in Liber 1421 at Folio 554.~~

2. That the Amended and Restated Indenture shall be subject to Zoning Map Amendments referenced hereinafter granted upon the following conditions listed in items 3 through 31, below.
3. Definitions. The following definitions shall apply whenever used in this document:

- A. Single-Family Detached (S. F. D.) - A building designed for not more than one family for living purposes with cooking and sanitary facilities and entirely separated from any other building or structure by land on all sides.

- B. Single Family Cluster (S.F.C).-A residential unit which may fall under the category of single-family detached, single-family twin zero lot-line home, patio home, semi- attached units or other special concept single-family structure. Such buildings shall contain no more than four dwelling units per structure.
- C. Multi- Family- A structure containing four or more dwelling units sharing common walls or a roof. This category may include a variety of unit types including town houses, multiplexes, apartments, and stack flats, either for sale or for rent.
- D. Time-Share Property -Any building, whereby a purchaser, through any arrangement, plan, scheme or similar device, in exchange for advanced consideration, receives a right to use or occupy a timeshare unit as regulated by the Maryland Real Estate Time-Sharing Act.
- E. Fractional Ownership-The ownership and use of a dwelling unit by twelve (12) or fewer unrelated persons whereby each owner maintains a minimum annual use of thirty (30) days.

€.

4. Buffer. A natural buffer of 100 feet shall be maintained along all wetlands and shorelines of the Subject Property as required by the Charles County Critical Area Ordinance (the “100-foot Critical Area Buffer”). The natural buffer shall be established in the form of conservation easements with restrictive covenants, as depicted on the General Development Plan (GDP) and incorporated by reference in the 2006 Docket 250 Order. These easements and dedicated open space buffers consist of approximately 2,000 linear feet of area maintained 100 feet inland from the mean high water line of the Potomac River and Cuckold Creek, and 6,700 linear feet of area maintained 100 feet inland from the mean high water line of Weir Creek, Matthews Cove, and Cuckold Creek wetlands as defined by the Maryland Department of Natural Resources. The 2,500 linear feet of the Buffer Exempt Area/Buffer Modification Area and existing Phase 1 golf course are not included in this buffer. The limits of the 100-foot Critical Area Buffer are shown on the GDP.

- A. The 100-foot Critical Area Buffer shall be managed and maintained in a natural state as much as possible, with the exception of the golf course/ open space proposed adjacent to the Matthews Cove wetland, which will be designed and constructed with the following environmental controls:
 - i. A twenty-five (25) foot managed buffer zone along the northern half of this wetland.
 - ii. A vertical timber wall shall be constructed with sediment control cloth along the eastern half of this wetland.
 - iii. The grading and construction of the golf course will conform to the best management practices as prepared for the Chesapeake Bay Critical Criteria. All surface drainage shall be directed to retention/ detention areas and away from all wetlands.

- B. The 100-foot Critical Area Buffer shall be managed as a natural buffer, insofar as possible. In order to preserve the filter strip and wildlife habitat functions of the buffers, the following conditions shall be established by restrictive covenants to apply to these buffer areas:
- i. Grading of earth and clear cutting of trees is not permitted, except as permitted under Charles County Critical Area laws.
 - ii. Dead and decaying vegetation may be cut, trimmed, or otherwise removed to preserve the buffer from pests, disease, insect ~~infestation~~infiltration, or threat of fire.
 - iii. No privately- owned piers may be constructed. A limited number of community fishing/ observation piers may be constructed, after General Development Plan approval, and approved by the appropriate State bodies.
 - iv. No clearing of undergrowth, other than the removal of dead and decaying vegetation, shall be allowed except selected tree limb trimming and limited understory clearing of view corridors, subject to site plan approval. Indigenous ground cover is to be preserved and enhanced in all areas except for the provision of a limited number of community pedestrian trails constructed on crushed stone, oyster shell, or other similar pervious surfaces.

5. Habitat Corridor. A habitat corridor/buffer, originally required to be maintained along the southern water boundary of the Potomac River, shall instead be shifted to encompass the restored beach area proposed between Weir Creek and the east property line. Once the restoration is designed, bonded, and permitted, protective easements and covenants, approved by the Charles County Planning Commission or the Charles County Planning Director, shall be recorded.

- A. Best management practices for erosion and stormwater sediment shall be used (in this area) for the specific purpose of protecting plant and wildlife habitat, while accommodating recreational beach usage, ~~within a segment near Swan Village~~.
- B. The Petitioner shall develop this area according to a plant and wildlife protection program, which shall be developed by the Petitioner. The program shall be subject to review and approval by the Charles County Planning Commission at the time of site plan submission for development within that habitat corridor/buffer.

6. Easements. All buffer areas and habitat corridors shall be shown and recorded as restrictive covenants/ environmental easements on all preliminary and final record plats. A copy of the proposed restrictive covenants shall be submitted to the Charles County Planning Commission or the Charles County Planning Director for approval. The covenants, other than those regarding the Habitat Corridor in paragraph number 5 above, shall be recorded among the Land Records of Charles County, Maryland at the time a final plat is recorded. The final plat shall make specific reference to the recorded covenants. The Petitioner shall provide for a procedure whereby prospective lot owners are notified of the covenant restrictions. The notification procedure shall be submitted to the Charles County Planning Commission for approval.

If any portion of the buffer is transferred to Charles County, these restrictive covenants would not bind the Subject Property and neither the Swan Property Owner's Association nor other owner's associations would be responsible.

The buffer areas shall be monitored, maintained, and financially supported by a Homeowner's Association which shall be established by restrictive covenants.

7. Mitigation Techniques. The Petitioner shall limit clearing so as to mitigate impacts to the environment due to construction and development. Improvement plans shall show pre- and post- development lines of natural vegetation and reflect implementation of the following measures:

- A. Snow fence protection around vegetation to be preserved.
- B. Staging of development to avoid long periods of construction activity.
- C. Minimal grading.
- D. Controlled storage of materials away from preservation areas.
- E. Construction of units on pilings to minimize grading in the floodplain.
- F. Required planting being limited to indigenous-type plant materials or other plant materials **approved by the County**. Plant materials shall be compatible with existing oak/pine/holly association.
- G. Restoration of natural ground covers immediately after construction.

8. Shoreline Erosion. ~~Any shoreline stabilization along the Potomac River on the western and southern property edges shall conform to all applicable County, State and Federal regulations. All eroding shorelines shall be stabilized, preferably by vegetative means. However, where such measures are deemed to be impractical, shoreline areas shall be stabilized by structural means such as gabions, riprap, and/or other techniques as outlined by the Maryland Department of Natural Resources.~~

9. Marina. The marina area shall be developed in accordance with all applicable laws and regulations.

10. Lot Coverage~~Impervious Surface~~. The development of the entire site shall be limited to 15% of lot coverage in the Limited Development Zone (LDZ)~~impervious surface area~~. All preliminary plats shall indicate the area of lot coverage~~impervious surface~~ proposed for the area shown on the plat.

11. Stormwater Management Plan. Conceptual ~~Complete~~ stormwater management plans shall be prepared and submitted to the County at the time of preliminary plan submission.

12. Evaluation of Environmental Impacts. Not less than sixty (60) days prior to submission of the first preliminary plan or site plan for Swan Point, the Petitioner shall, at its own expense, prepare, and submit to the County for approval, an independent study to analyze the potential pre- and post- construction impacts of the build-out of Swan Point (as approved in the revised Master Plan and General Development Plan) on the Potomac River and Cuckold Creek. This study shall identify, analyze, and quantify (based on accepted

methodologies and practices) the potential water quality impacts of all construction-related activities and approved land uses on stormwater discharges to the Potomac River and Cuckhold Creek. The study shall identify and locate all pre-construction and post-construction best management practices and improvements needed to ensure that the proposed development will not adversely affect the water quality in the Potomac River or Cuckhold Creek. Under the terms of this condition, the term “adversely affect” shall mean any stormwater discharges from lands within the intense development zone of the critical area that fails to improve water quality in the receiving waters by ten (10) percent or more and stormwater discharges from all other lands that would reduce water quality in the receiving waters by more than the current state at the time of approval of this condition.

The study shall analyze the water quality impacts of all construction activities associated with or necessary to achieve build-out of the project and the water quality impacts of our proposed land use activities and long-term maintenance activities for the proposed land uses in the areas to be developed. The study shall map the discharge points along the Potomac River and Cuckold Creek for all stormwater drainage improvements to be constructed in the development and the watersheds (or drainage basins) that drain to each discharge point. The study shall further identify areas within the Potomac River and Cuckold Creek around each discharge point where periodic, long-term water quality monitoring should be performed to determine the water quality impacts from stormwater discharges into the receiving waters. The study will recommend a frequency and level of testing that should be performed to assess the water quality impacts that could reasonably be expected to occur, based on the nature of the disturbance activities in land uses in the development. The study shall also quantify, based on accepted practices and methodologies, the water quality impacts from the development site under the development conditions that existed on the date of the approval of the Master Plan amendment and General Development Plan. Finally, the study shall recommend, design, and locate best management practices that will prevent future water quality degradation of the Potomac River and Cuckold Creek as specified in this condition.

The bylaws for each new property owner’s association in Swan Point shall contain specific provisions for adequate funding of periodic, long-term water quality monitoring at each stormwater discharge point as recommended by the approved independent water quality study. Such long-term monitoring shall not exceed three (3) years after the date of the last Use and Occupancy permit in the affected drainage subwatershed.

13. General Development Plan. The revised Master Plan and General Development Plan (GDP) have been approved to replace the 1986 Master Plan and paragraph 2.K. of the 1986 Indenture. The approved density ranges are reflected on the approved GDP. The Petitioner has incorporated the adjacent 202 acre Horse Farm property without increasing the amount of dwelling units from what was approved in 1986. There is a reduction to the number of units from 1,517 plus and development allowed on the Weir Creek peninsula to 1,500 units overall.

14. Construction in Conformity with the General Development Plan. The Petitioner shall construct the project in substantial conformity with the amended Master Plan and General Development Plan.

15. Sidewalks. The Petitioner shall provide a Pedestrian Circulation Master Plan to the Charles County Planning Commission at the time of filing of the first preliminary plat. The Petitioner shall construct all ways as shown on the approved Pedestrian Circulation Master Plan. The locations of the walkways and the circulation network shall be shown on all improvement plans.

16. Water and Sewer.

- A. The Petitioner, at its cost, shall make any and all modifications to the existing water and sewage facilities necessary to serve this project as required by the Charles County Department of Public Works and the Maryland State Department of Health and Mental Hygiene. Prior to the approval of any preliminary plat in the WPC zone, the Petitioner shall submit to the Charles County Planning Commission a timetable for making the required improvements to the water and sewage facilities.
- B. A Water/Sewer Category Amendment for the “Horse Farm Property” must be approved prior to any approval of a preliminary plan that encompasses the “Horse Farm Property”.

17. Traffic Impact Analysis. The Petitioner will submit a traffic study for Maryland Route 257 from its intersection with Swan Point Road to its intersection with U.S. Route 301, at the time of Preliminary Plan submittal.

18. Public Access to the Waterfront. The Petitioner shall make provisions for public access to the Potomac River from the site in a manner acceptable to the Charles County Planning Commission and to the Petitioner.

19. Priority Funding Area - Prior to the approval of any preliminary plan that encompasses the “Horse Farm Property”, a Priority Funding Area Amendment must be approved by the County.

20. General Conditions of the 2006 Docket 250 Order.

- A. The final phasing plan for the Master Plan amendment and the General Development Plan shall be based on the provisions of the following Charles County ordinances: Adequate Public Facilities (APF) Ordinance, the Critical Area Law, the Forest Conservation Ordinance, the Water and Sewer Ordinance, the Zoning Ordinance, and the Subdivision Regulations.
- B. The Petitioner must obtain applicable Federal, State, and County permits or waivers for the development of the Villages at Swan Point, prior to the commencement of the related construction.

21. Conditions of the 2006 Docket 250 Order - Water and Sewer.

- A. The Petitioner shall be required to notify all existing lot owners in Swan Point of the available sewer treatment capacity, once the sewage treatment plant (Phase I) has been constructed and has passed a substantial -completion inspection from the County.
- B. The new sewage treatment plant (Phase I) must be constructed and have passed a substantial completion inspection from the County before and new connections can be allowed.
- C. The Petitioner will be required to obtain Water and Sewer allocations for all proposed connections, residential and commercial, approved under the General Development Plan for the Villages at Swan Point. Issuance of allocations shall be based solely on the availability of plant capacity to serve the

proposed uses consistent with the February 21, 2005 agreement between the Charles County Commissioners and United States Steel Corporation.

- D. The Groundwater Application Permit (GAP) for the Villages at Swan Point shall be approved prior to approval of the first preliminary plan of subdivision or site plan for the Villages at Swan Point.

22. Conditions of the 2006 Docket 250 Order- Schools.

- A. The Master Plan Amendment and the General Development Plan shall be subject to the provisions of the Adequate Public Facilities (APF) Ordinance.
- B. The covenants and deed restrictions for the active adult community must be approved by the Charles County Attorney's Office before and lots impacted by the active adult community can be recorded.

23. Conditions of the 2006 Docket 250 Order- Site Design and Architectural Review.

- A. The Petitioner received the preliminary approval of the Design Code for the Villages at Swan Point on December 15, 2005. Any subsequent development must be reviewed by the Charles County Planning Division for compliance with the Design Code and County standards.
- B. The Design Code, under commercial guidelines, shall specify the retail and commercial uses that would be allowed.

24. Conditions of the 2006 Docket 250 Order- Historical Preservation.

- A. The recommendations of the "Visual Impact Assessment- Brookfield Homes/Swan Point, Charles County, Maryland", conducted by Christopher Goodwin & Associates, Inc., including the height and bufferyard requirements, shall be followed for all development in the vicinity of the Cuckold Creek.
- B. The Petitioner shall provide the Charles County Planning Division staff with all copies of correspondence and reporting with the Maryland Historical Trust per the requirements of Section 106. The petitioner shall designate the Charles County Planning Division as an "Interested Party" in the Section 106 review process and should work closely with the County in mitigating any impact known to archaeological resources determined or assumed by staff to be eligible for the National Register of Historic Places, including the archaeological house site known as Wollaston Manor.

25. Conditions of the 2006 Docket 250 Order- Transportation.

- A. Final determinations of all road classifications will be made at time of preliminary subdivision and/or site plan application(s) for development of this project, when the traffic impact analysis, complying with the Adequate Public Facilities (APF) criteria, and Section 257 of the Charles County Zoning Ordinance is complete.

B. The Petitioner and the Planning Division staff met and the ultimate design of Swan Point Road from Riverside Drive to Maryland Route 257 will be two (2) paved twelve (12) foot wide travel lanes, two (2) paved ten (10) foot wide shoulders, and side ditches, all to occur within the existing County right-of-way. The Petitioners are to provide a typical cross-section of the road which will be approved by the Charles County Director of Planning & Growth Management or his designee. The Petitioners will provide twelve (12) foot wide paved bypass lanes at Woodland Point Road. The Petitioners will upgrade the intersection of Swan Point Road and Maryland Route 257 to provide a dedicated north- and dedicated south-bound turning lane from Swan Point Road to Maryland 257. In order to promote safer travel during storm events, the road improvements of Swan Point Road in the low lying sections near Shaw's Branch and the Holy Ghost Cemetery and that run from approximately two hundred thirty-nine (239) feet west of the centerline of Riverside Drive to approximately thirty-nine (39) feet east of the centerline of Riverside Drive; and from approximately one-hundred eight (108) feet west of the centerline of Woodland Point Road to approximately 135 feet east of the centerline of Woodland Point Road; will be improved by raising the centerline road elevation to an elevation of six and one-half (6 1/2) feet. The existing road paving width will be raised and the shoulders on each side of the roadway will be two (2) feet in order that the grades are able to tie back to the edge of the existing shoulders. This work will be done within the width of the existing paving and shoulders and within the existing County right-of-way. The Petitioner is to provide a typical cross section of the road which will be approved by the Charles County Director of Planning and Growth Management or designee. The improvements to raise the roadway shall be completed prior to the beginning of the 11th phase of the Villages at Swan Point and performed concurrently with improvements required to be made by the Petitioner at the intersection of Swan Point Road and MD Route 257.

C. All Zoning Ordinance requirements pertaining to the Adequacy of Public Facilities shall be fully addressed at time of preliminary subdivision and/or site plan application(s) for development of this project.

D. The Petitioner must complete and submit to the County, the traffic analysis of Maryland Route 257 (Rock Point Road) from the intersection with Swan Point Road to the intersection of U.S. Route 301, at the time of subdivision submittal. Any improvement to Maryland 257 (Rock Point Road) shall be addressed as part of the subsequent Preliminary Plan and/or Site Plan approval process.

E. The Petitioner shall comply with all applicable Road Ordinance regulations for all proposed roads, within the Villages at Swan Point, at the time of the preliminary plan.

26. Conditions of the 2006 Docket 250 Order- Emergency Services.

A. Prior to the approval of the first preliminary plan for the Villages at Swan Point, the Petitioner shall meet with the Department of Emergency Services and the local volunteer fire departments to devise a plan for improving response times and filling the equipment and water supply needs of the local volunteer fire departments and to determine whether a site for County Fire and Rescue station is needed.

B. The Petitioner shall provide a study of the water system and fire flows prior to any approval of preliminary plans or site development plans in the Villages of Swan Point.

- C. The developer/builder will be required to install sprinkler systems in any multi-story, multi-family residential or commercial building, as well as any new commercial building constructed within the Villages at Swan Point, as required by the State Fire Code Regulations.

27. Conditions of the 2006 Docket 250 Order- Environmental Conditions.

- A. Critical Area Buffer, Buffer Exemption/ Buffer Modification Areas, and 100-foot Habitat Corridor Buffer:
 - i. The Critical Area Buffer shall be delineated according to the Charles County Zoning Ordinance, extending 100 feet landward of tidal waters, tributary streams, and tidal wetlands, and expanded accordingly to include soils with hydric properties, highly erodible soils, steep slopes, and non-tidal wetlands. The issue of whether the presence of hydric soils warrant expansion of the Buffer beyond what is shown on the General Development Plan shall be resolved by the Petitioner, County staff, and Critical Area Commission staff prior to the request for Growth Allocation approval being presented to the Critical Area Commission for approval.
 - ii. The Buffer shall be fully established in vegetated cover where existing vegetated cover does not currently exist. Prior to this request being presented to the Critical Area Commission for review, the Petitioner shall provide Planning Division staff with a typical section landscape plan for establishing the Buffer in the required areas. Prior to approval of a Development Services Permit or final plat, the petitioner shall provide to the Charles County Planning Division for review and approval, a more detailed plan to establish the Buffer and a bond sufficient to secure such plantings. **Additionally, trees proposed by removal under the Buffer Management Plan shall be replanted with native species of comparable canopy coverage.**
 - iii. Uses within the Buffer shall comply with Charles County Zoning Ordinance. For uses not permitted by right, the Petitioners will be required to obtain a variance from the Board of Appeals or amend the General Development Plan. Prior to consideration of the Growth Allocation request by the Critical Area Commission, the Petitioner will be required to obtain a variance for the Buffer disturbance associated with the proposed road crossing, which provides access to Weir Creek peninsula. Approval of the Growth Allocation request does not guarantee approval of any variance requests.
 - iv. The existing 100-foot Habitat Corridor Buffer defined by Docket 250, which requires environmentally sensitive development and is located between Weir Creek and the east property line shall remain, but may be shifted to encompass the restored beach area once the restoration is designed, bonded, and permitted. Protective easements and covenants, approved by the Charles County Planning Commission or the Charles County Planning Director, shall be recorded to protect the 100-foot Habitat Corridor Buffer once the restoration is designed and approved.
 - v. Shoreline stabilization along the Potomac River on the western and southern property edges shall conform to all applicable Federal, State, and County regulations.

- vi. Any proposed future disturbance of the Critical Area Buffer shall require submission of a Buffer Management Plan, to be approved by the Charles County Planning Division. A preliminary mitigation plan for Buffer disturbances permitted under the approved Buffer Management Plan shall be provided to the Charles County Planning Division for review prior to the consideration of the Growth Allocation request by the Critical Area Commission. The final mitigation plan shall be reviewed and approved with the Final Habitat Protection Plan, prior to approval of the first preliminary plan.
- vii. Grading proposed with the preliminary Buffer Management Plan is directly related to shore erosion control device and road construction. At the time of engineering/permits, any grading of the Buffer determined to be a new development activity will be prohibited without approval of a variance per Chapter 297, Article 9 of the Charles County Zoning Ordinance.
- viii. Development in the Buffer Exemption/ Buffer Modification Areas must be designed in accordance with Chapter 297, Article 9 of the Charles County Zoning Ordinance.
- ix. To minimize excessive disturbance to the Buffer and to provide adequate public access to the water, there shall be a maximum of three community piers in the Cuckhold Creek Village and two existing community piers in Weir Creek Village. There shall be one community pier in Swan Village and one community pier in Riverside Village, subject to concurrence by the Maryland Department of Natural Resources and the U.S. Army Corps of Engineers. Community Piers shall be a maximum width of fifteen (15) feet, twenty (20) feet for the pier at Swan Village and shall conform to all State regulations.
- x. All proposed shoreline boardwalks proposed within the Swan Point Buffer Exemption/Buffer Modifications Area shall be of wood or alternative pervious/semipervious construction and shall not be wider than ten (10) feet at any point along the shoreline. Any trail improvements within the Buffer that are not within a Buffer Exemption/Buffer Modification Area shall be of a pervious material as required by Chapter 297, Article 9 of the Charles County Zoning Ordinance. Additionally, the Petitioner shall provide for review by the Charles County Department of Planning and Growth Management a more detailed plan for the construction/creation of the trail currently proposed within the Buffer along Riverside Drive. This plan shall minimize disturbance to the Buffer and will become part of the approved preliminary Buffer Management Plan. This plan is required prior to the Critical Area Commission's consideration of the Growth Allocation.

B. Habitat Protection Areas:

- i. All Habitat Protection Areas shall be protected according to the Charles County Chesapeake Bay Critical Area Program and best management practices

recommended by the Maryland Department of Natural Resources and the Critical Area Commission staff.

- ii. The preliminary Habitat Protection Plan was approved by the Planning Division on May 24, 2006, with the following conditions, which are incorporated herein:
 - a. The Petitioner shall work with the Charles County Planning Division to incorporate the approved preliminary Habitat Protection Plan into subsequent approval requests for this development. A final Habitat Protection Plan will be required to be approved prior to approval of the first preliminary plan associated with this project. Review of the final Habitat Protection Plan(s) will include coordination with the Critical Area Commission staff and the Maryland Department of Natural Resources.
 - b. Each preliminary plan will be reviewed to determine if any additional habitat protection requirements shall apply based upon species migration or new information identified since the time of preliminary Habitat Protection Plan approval. The Petitioner will be required to address new habitat concerns in coordination with the staff of the Charles County Planning Division, Critical Area Commission staff and Maryland Department of Natural Resources.
 - c. Any conditions included in the preliminary Habitat Protection Plan approval must be addressed prior to final approval of the Critical Area Growth Allocation request.
 - d. Cutting or clearing of forest in the Critical Area shall be subject to limits and replacement conditions stated in the Charles County Zoning Ordinance. Cutting or clearing of forest outside of the Critical Area shall be subject to the Charles County Forest Conservation Ordinance.
 - e. Disturbance in the Buffer Exemption/Buffer Modification Area shall be offset according to the Charles County Critical Area Ordinance.
 - f. A revised Forest Interior Dwelling Bird Management Plan, which addresses how the Petitioner will fulfill the mitigation requirements of 404 acres shall be reviewed and approved by the Charles County Planning Division, in coordination with the Critical Area Commission staff, the Maryland Department of Natural Resources, and the U.S. Fish and Wildlife Service prior to the final approval of the Growth Allocation.
 - g. If the proposed mitigation plan utilizes property owned by Charles County, authorization will be required from the Charles County

Commissioners prior to presentation of the Growth Allocation to the Critical Area Commission.

- h. Prior to approval of the first Preliminary Plan, the Petitioner will submit for review and recordation, a permanent Conservation Easement (documents and exhibits) for the protection of the Great Blue Heron Habitat, as shown on the approved Habitat Protection Plan, and any easements required to accomplish the FIDS mitigation associated with this project. Additionally, a planting plan for the creation of any new FIDS habitat will need to be reviewed by the Charles County Planning Division staff and bonded for.
- iii. At the time of first preliminary plan approval, an updated schedule and phasing plan shall be provided for review. This shall include approximate dates for the beginning and completion of each phase of construction and projected market absorptions. The Charles County Planning Commission may review the project on a regular basis to determine whether or not the project is meeting milestones and if the Growth Allocation should be continued or withdrawn.
- iv. Stormwater from the bridge crossing Weir Creek shall be prevented from directly entering tidal wetlands and directed to a stormwater management treatment facility.
- v. Low Impact Development techniques such as rain gardens, Bay Scaping, pervious paving, green roofs, green buildings, increased tree canopy cover on developed parcels, and bioretention shall be incorporated into the stormwater management plans and general site design to the greatest extent possible.
- vi. In addition to the items provided above, prior to the Growth Allocation request being presented to the Critical Area Commission for approval, the Petitioner shall:
 - a. Provide an amended “The Property” map which accurately reflects the legal descriptions of the Subject Property.
 - b. Provide a copy of the “Pedestrian Circulation Plan” for the Growth Allocation File, as the trails located on the Weir Creek peninsula are within a growth allocation envelope. This plan shall be amended to minimize disturbance to the Buffer per condition 27.A(x)above.
 - c. Provide a soils overlay map for the entire property, utilizing the current approved soils map for Charles County.
- vii. In accordance with Chapter 297, Article 9 of the Charles County Code, approval of the Growth Allocation request is subject to the approval of the Chesapeake Bay Critical Area Commission.
- viii. The project will be required to conform to all applicable Charles County Ordinances and regulations.

28. Conditions of the 2006 Docket 250 Order- Recreational Amenities Conditions.

- A. The Petitioner shall meet or exceed the recreational amenities required to be provided in the Charles County Zoning Ordinance for cluster developments on public Water and Sewer Service at the time of preliminary plan approval.
- B. It is recognized that the General Development Plan provides incidental public access to the water through the design of a commercial yacht club and marina with boardwalk.
- C. ~~Prior to the issuance of the 200th building permit, the Petitioner shall construct a new pool and bath house. The existing pool and bathhouse shall remain open and in full operation, until the new pool and bathhouse are functional.~~
- D. The Petitioner shall construct amenities as required in accordance with the phasing of construction, designate a range of units for phasing of the large scale amenities, i.e. the pool and bathhouse, the equestrian center, if provided, the yacht club, the marina, etc.
- E. The Petitioner shall establish the HOA documents to reserve adequate funds to ensure the proper operation and maintenance of the amenities, the Critical Area Buffer, the Shoreline Habitat Area, the park area, and other community open spaces.
- ~~E.F.~~ The Petitioner shall construct and install a ten (10) foot wide hard surface trail within the existing County Right of Way along Swan Point Road from MD Route 257 to Riverside Drive that will connect to the internal trail network of the Villages at Swan Point. "Hard surface trail" shall mean a hard surface as defined by the Rails-to-Trails Conservancy. The improvements to construct and install the trail shall be completed prior to the beginning of the 11th phase of the Villages at Swan Point and performed concurrently with improvements required to be made by the Petitioner at the intersection of Swan Point Road and MD Route 257.

29. The County Commissioners of Charles County, Maryland, reserve the right to impose additional terms, restrictions, limitations, and conditions at any time in order to assure that the requirements and intentions of the Waterfront Planned Community District shall be complied with.

30. If any clause, sentence, paragraph, section, part or parts of the 2006 Docket 250 Order or this Indenture shall be held unconstitutional or invalid for any reason whatsoever, such unconstitutionality or invalidity shall not affect the validity of the remaining parts of the 2006 Docket 250 Order or this Indenture, or any section thereof.

31. Failure of the Petitioner, its heirs, successors, and assigns to comply with any one of the foregoing conditions, ~~may~~ will cause the zoning of the Subject Property to revert to the Agricultural Conservation (AC) zone, after a hearing before the ~~without the necessity of any further action by the~~ Charles County Commissioners ~~or the Charles County Planning Commission~~ after delivery to Petitioner of written notice and provision of reasonable opportunity to cure.