

ORDINANCE NO. 6643-09

AN ORDINANCE TO AMEND AND REORDAIN ORDINANCE NO. 5028-97 BY AMENDING THAT CERTAIN MAP ENTITLED, "ZONING DISTRICT MAP" (CONSISTING OF REAL ESTATE TAX ASSESSMENT MAPS 001 THROUGH 322 AND KEPT ON FILE IN THE OFFICES OF THE DEPARTMENTS OF CODES COMPLIANCE AND PLANNING) DATED THE 10TH DAY OF JUNE, 1997, WHICH SAID MAP IS MADE A PART OF THE SAID ORDINANCE NO. 5028-97.

WHEREAS, conditional zoning application CZ-09-281 has been made by **CORRECTIONAL SERVICES CORPORATION** for the rezoning of the hereinafter described property from the present O2 Office Park District to R5 Low Density Multiple-Family Dwelling District, conditioned by written and voluntary proffers; and

WHEREAS, the application has been considered by the Planning Commission for the City of Newport News for recommendation and has been duly advertised as required by law and the said Planning Commission has made its recommendation.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News, Virginia:

Section 1. That Ordinance No. 5028-97 is hereby amended and reordained by amending that certain map entitled, "Zoning District Map" (Consisting of Real Estate Tax Assessment Maps 001 through 322 and kept on file in the offices of the Departments of Codes Compliance and Planning) dated the 10th day of June, 1997, which said Map is made a part of Ordinance No. 5028-97 by changing the following described property from the present O2 Office Park District to R5 Low Density Multiple-Family Dwelling District, conditioned by written and voluntary proffers:

Legal Description:

PARCEL A

All that certain piece or parcel of land situate, lying and being in the City of Newport News, Virginia, and being a parcel containing 19.32 acres, and shown as Lot Numbered THREE (3), on a certain plat entitled, "PLAT OF SURVEY, FHA PROJECT NO. 051-13003-NP-EC, PLAT OF THE PROPERTY OF WHITTAKER MEMORIAL HOSPITAL ASSOCIATION, INCORPORATED, LOCATED ON MARSHALL AVENUE, BEING PARCEL 3 &

PART OF PARCEL 4, AS SHOWN ON PLAT OF THE PROPERTY OF BEN COHEN, CITY OF NEWPORT NEWS, VA.," which said plat is dated August 18, 1983, and made by Donald W. Davis, Registered Land Surveyor, and attached to and made a part of the deed of trust recorded in the Clerk's Office, Circuit Court, City of Newport News, Virginia, in Deed Book 1068, page 1876, and being more particularly described as follows:

Commencing at a point on the Easterly side of Marshall Avenue, which said point is N 26 degrees 23' W a distance of 696.99 feet from a point which marks the Northerly terminus of the arc created by the intersection of the Northeasterly corner of the intersection formed by 48th Street and Marshall Avenue, and from the point of beginning, continuing thence along the arc of a curve to the right having a linear distance of 23.56 feet, an angle of 90 degrees, and a radius of 15 feet to a point; running thence N 63 degrees 37' E a distance of 681.09 feet along a 50 foot strip of land providing access to the property herein described to point; continuing thence S 26 degrees 23' E a distance of 227.42 feet to a point; running thence N 63 degrees 37' E a distance of 1036.66 feet to a pipe; running thence N 26 degrees 23' W a distance of 804.02 feet to a pipe; running thence S 63 degrees 37' W a distance of 892.75 feet to a pipe; running thence S 26 degrees 23' E a distance of 304.02 feet to a pipe; running thence S 63 degrees 37' W a distance of 220 feet to a point; running thence S 26 degrees 23' E a distance of 222.58 feet to a point; running thence S 63 degrees 37' W along the aforementioned 50 foot right-of-way a distance of 605 feet to a point; running thence along the arc of a curve to the right having a linear distance of 23.56 feet, and angle of 90 degrees and a radius of 15 feet to a point located on the Easterly side of Marshall Avenue; running thence S 26 degrees 23' E along the Easterly side of Marshall Avenue a distance of 80 feet to the point or place of beginning.

PARCEL B

Parcel One:

All that certain piece or parcel of land situate, lying and being in the City of Newport News, Virginia, and being a parcel containing 3.1669 acres, and shown as Lot Numbered ONE (1), on a certain plat entitled, "PLAT OF SURVEY, FHA PROJECT NO. 051-13003-MP-EC, PLAT OF THE PROPERTY OF WHITTAKER

MEMORIAL HOSPITAL ASSOCIATION, INCORPORATED, LOCATED ON MARSHALL AVENUE, BEING PARCEL 3 & PART OF PARCEL 4, AS SHOWN ON PLAT OF THE PROPERTY OF BEN COHEN, CITY OF NEWPORT NEWS, VA.," which said plat is dated August 18, 1983, and made by Donald W. Davis, Registered Land Surveyor, and attached to and made a part of the deed of trust recorded in the Clerk's Office, Circuit Court, City of Newport News, Virginia, in Deed Book 1068, page 1876, and being more particularly described as follows:

Commencing at a point on the Easterly side of Marshall Avenue, which said point is N 26 degrees 23' W a distance of 776.99 feet from a point which marks the northerly terminus of the arc created by the intersection of the northeasterly corner of the intersection formed by 48th Street and Marshall Avenue, and from the point of beginning thus established running thence N 26 degrees 23' W a distance of 207.58 feet to a pipe; thence running N 63 degrees 37' E a distance of 620.00 feet to a point; running thence S 26 degrees 23' E a distance of 222.58 feet to a point running thence S 63 degrees 37' W a distance of 605 feet to a point; running thence along the arc of a curve to the right having a linear distance of 23.56 feet, and angle of 90 degrees, and a radius of 15 feet to a point located on the Easterly side of Marshall Avenue, the point or place of beginning.

Parcel Two:

All that certain piece or parcel of land situate, lying and being in the City of Newport News, Virginia, and being a parcel containing 3.6331 acres, and shown as Lot Numbered TWO (2), on a certain plat entitled, "PLAT OF SURVEY, FHA PROJECT NO. 051-13003-MP-EC, PLAT OF THE PROPERTY OF WHITTAKER MEMORIAL HOSPITAL ASSOCIATION, INCORPORATED, LOCATED ON MARSHALL AVENUE, BEING PARCEL 3 & PART OF PARCEL 4, AS SHOWN ON PLAT OF THE PROPERTY OF BEN COHEN, CITY OF NEWPORT NEWS, VA.," which said plat is dated August 18, 1983, and made by Donald W. Davis, Registered Land Surveyor, and attached to and made a part of the deed of trust recorded in the Clerk's Office, Circuit Court, City of Newport News, Virginia, in Deed Book 1068, page 1876, and being more particularly described as follows:

Commencing at a point on the Easterly side of Marshall Avenue, which said point is N 26 degrees 23' W a distance 484.57 feet from

a point which marks the northerly terminus of the arc created by the intersection of the northeasterly corner of the intersection formed by 48th Street and Marshall Avenue, and from the point of beginning thus established running thence N 26 degrees 23' W a distance of 212.42 feet to a point continuing thence along the arc of a curve to the right having a linear distance of 23.56 feet, an angle of 90 degrees, and a radius of 15 feet to a point; running thence N 63 degrees 37' E a distance of 681.09 feet to a point; continuing thence S 26 degrees 23' E a distance of 227.42 to a point; running thence S 63 degrees 37' W a distance of 696.09 feet to the point or place of beginning.

LESS AND EXCEPT from Parcel A and Parcel B described above all that certain parcel of land conveyed to the City of Newport News by deed from Whittaker Memorial Hospital Association, Inc. dated December 2, 1988, recorded July 19, 1989 in the Clerk's Office, Circuit Court, City of Newport News, Virginia in Deed Book 1203, page 2340.

(The property has a common street address of 5100 Marshall Avenue and is assigned Real Estate Assessor's Tax ID #288.00-04-04.)

Section 2. That the rezoning approved hereby is conditioned by written and voluntary proffers contained in the application and binding the development of the property as set forth in the exhibit, consisting of four pages and labeled "A-6," attached hereto and made a part hereof. These conditions shall continue in effect until a subsequent amendment to the zoning of the property described in Section 1 hereof is adopted; provided, however, that the conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

Section 3. The applicant, as well as successors, assigns and agents, if any, shall comply with all of the conditions stated herein, as well as all codes, ordinances and regulations of federal, state and local governments.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON NOVEMBER 24, 2009

Mabel Washington Jenkins, CMC
City Clerk

Joe S. Frank
Mayor

A true copy, teste:

City Clerk

Conditioned
Proffer Statement for Change of Zoning

TO: The Honorable Newport News City Council

DATE: 10-28-09

APPLICATION NUMBER: CZ-09-281

In reference to the above request for a change of zoning:

Conditioned- **"SLN 5100, L.P.**, a Virginia limited partnership (the contract purchaser); and **Correctional Services Corporation**, a Delaware corporation (the current owner) (together the "Grantors") hereby proffer that the development of 5100 Marshall Avenue (the "Property") shall be in accordance with the conditions set forth in this submission."

1. The Property, when developed, shall be developed in substantial conformity with the conceptual site plan prepared by Cox, Kliewer & Company, P.C., entitled "SLN 5100 APARTMENTS, S.L. Nusbaum Realty Co., Marshall Avenue, Newport News, Virginia" dated October 20, 2009 (the "Concept Plan"), a copy of which is on file with the Department of Planning and has been exhibited to the Newport News City Council. Any significant changes in the Concept Plan may be made to accommodate environmental, engineering, architectural, topographic or other development conditions subject to the approval of the Director of Planning

2. Prior to issuance of a certificate of use and permanent occupancy for any residential unit or building on the Property, the Grantors shall construct a twenty foot (20) wide paved access road (the "Secondary Access Road") designed to sufficient standards to accommodate emergency fire equipment from Marshall Avenue across portions of two parcels owned by the City of Newport News, Virginia (the "City"), successors and/or assigns, to the secondary fire access drive leading from the proposed multi-family site substantially as shown on the Concept Plan, or along an alternate second access way acceptable to Grantor, the City, the Newport News Redevelopment and Housing Authority ("NNRHA") and the Fire Department. Should the City or any successor in title fail to grant and convey the necessary fee interests, easements, consents and approvals for construction of the Secondary Access Road across the two (2) parcels currently owned by the City for construction of the Secondary Access Road, the Grantors shall not be prohibited from receiving a certificate of use and occupancy for failure to comply with this condition. In addition to the foregoing, the Grantors shall dedicate a 50' wide public right-of-way from Marshall Avenue through the property at 5100 Marshall Avenue up to the gated entrance to the multi-family development on the property substantially as shown on the

Concept Plan. Within the 50' dedicated right-of-way, Grantor shall install a sidewalk on the west side of the road substantially as shown on the Concept Plan and improve the existing drive aisle by adding curb and gutter and widening the paved section to no more than 32' from curb to curb. Said improvements shall be dedicated to the City. All other road improvements and utilities on the Property known as 5600 Marshall Avenue and of any public roads constructed for the single-family homes on the Property shall be the responsibility of the City or its successors or assigns.

3. The Grantors shall provide \$10,000 to Hampton Roads Transit (HRT) for a bus shelter at the main entrance at 5100 Marshall Avenue in accordance with the Newport News Citywide Bus Shelter Plan. Grantor's payment shall be made prior to the issuance of a temporary Certificate of Occupancy ("CO").

4. The Grantors shall operate and provide on-site management of the multi-family development and provide evidence of such to the Department of Codes Compliance.

5. The multi-family residential buildings and clubhouse on the Property shall be constructed in substantial conformity with the conceptual building elevations prepared by Cox, Kliewer & Company, P.C., entitled "SLN 5100 APARTMENTS, Newport News, Virginia", dated October 7, 2009, consisting of three (3) sheets, a copy of which is on file with the Department of Planning and has been exhibited to the City Council. Building elevations, exterior materials and color selections have been submitted to the Director of the Department of Planning and shall apply to this development.

6. At the time of the development, the Grantors shall accept rental vouchers under Section 8 of the U.S. Housing Act of 1937 (the "Rental Vouchers") from qualified applicants, for a target of approximately forty (40) housing units. The Rental Voucher tenants will be disbursed throughout the multi-family residential development on the Property.

7. The number of multi-family residential units developed on the Property shall be limited to a maximum of two-hundred sixty-four (264) units and the number of single-family detached residential homes shall be limited to eight (8) units.

8. The clubhouse and swimming pool shall be constructed prior to the issuance of a CO for any residential unit.

9. With the exception of access ways to adjacent parcels, the Property shall be fully enclosed by fencing. The fencing shall be a six foot (6') tall, black, vinyl coated, chain-link fence with a black vinyl bar on top. Except for the fencing along Marshall Avenue, all preexisting fencing along the eastern property line shall have an opaque black corner attached. The fencing along Marshall Avenue shall be a decorative maintenance-free fence substantially as depicted on the Concept Plan.

10. The Property shall be limited to one monument style sign no more than eight feet (8') in height located at the Property's main entrance along Marshall Avenue. The design of the

monument sign shall compliment the design of the multi-family units on the Property and shall be submitted and approved by the Director of Planning.

11. Prior to the commencement of any construction on the Property, Grantors shall walk the areas of the Property where development is proposed with representatives of the Planning Department to identify and preserve the areas where tree preservation coincides with the proposed development plan.

12. The heavily wooded area located to the south of the main entrance road and the portion of the heavily wooded area north of the main entrance road between Marshall Avenue and the "Dedication Area" shall be preserved in a natural state. Grantors shall walk these portions of the Property with representatives of the Planning Department to determine the extent of underbrush clearing proposed for these areas.

13. A landscaping plan in conformance with the requirements of the Site Regulations shall be submitted to and approved by the Director of Planning. Landscaping shall be maintained in a healthy condition during the life of the multi-family residential development. A final CO shall not be issued until the landscaping has been installed or bonded.

14. No structure shall be located within sixty-two feet (62') of the eastern most property line, abutting the existing single-family residential area. Additional preservation efforts shall be taken to preserve as many large trees as possible within the area shown on the Concept Plan along the eastern property line. Within this preservation area, Grantors shall install under story, evergreen plantings.

15. A photometric lighting plan to include height of poles and lighting fixtures shall be submitted to and approved by the Director of Planning.

16. Video surveillance equipment with recording devices shall be installed at locations within the Property. Recordings shall be maintained for a period of thirty (30) days and made available for viewing by the Police Department.

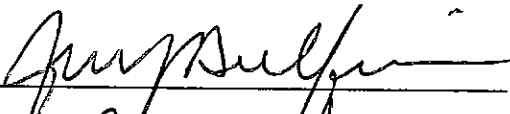
17. Grantors shall dedicate approximately 1.04 acres to the City of Newport News and/or the NNRHA for the purpose of constructing up to 8 single family detached homes thereon. The homes shall be substantially similar to the design and quality of the homes to be built by NNRHA on the adjacent City property. The area to be dedicated is depicted on the Concept Plan and labeled as "TO BE DEDICATED TO THE CITY". Grantors agree to subdivide and dedicate this portion of the Property following sixty (60) days' written notice from the City Manager that the City and/or NNRHA is ready to proceed with the development of the single family homes on this portion of the Property.

18. Grantors shall install sprinklers within all multi-family residential structures and the clubhouse in accordance with Fire Code 13R.

Upon acquisition of the Property by SLN 5100, L.P., SLN 5100, L.P. shall succeed to all rights and obligations of the "Grantors" under this agreement, and Correctional Services Corporation shall have no further rights or obligations of a "Grantor" under this agreement.

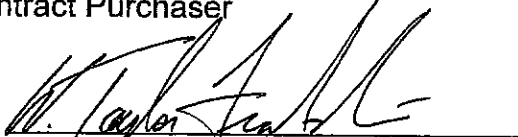
CORRECTIONAL SERVICES CORPORATION,
a Delaware corporation,

Owner or bona fide representative

By: 
Its: V.P., Secretary

SLN 5100, L.P.,
a Virginia limited partnership,

Contract Purchaser

By: 
Its: Managing Partner