

050019046

NEW TOWN -  
PORTION OF SECTION 9-  
PROFFERS

Parcel ID #3840100055

THESE PROFFERS are made as of this 9<sup>th</sup> day of August 2005, by PHILIP RICHARDSON COMPANY, INC., a Virginia corporation (together with its successors and assigns, the "Owner").

RECITALS

R-1. Owner is the owner of certain real property (the "Property") located in James City County, Virginia (the "County") more particularly described on Exhibit A attached hereto and made a part hereof.

R-2. Owner has contracted to sell the Property to Langley Federal Credit Union who intends to construct an office building on the Property.

R-3. In connection with said sale to Langley Federal Credit Union, Owner has applied for a rezoning of the Property from M1 to MU, Mixed Use (the "Rezoning"). The Rezoning of the Property to MU, with proffers, is in fact consistent both with the land use designation for the Property on the County's Comprehensive Plan and the statement of intent for the MU Zoning District set forth in Section 24-514 of the County's Zoning Ordinance in effect on the date hereof (the "Zoning Ordinance").

R-4. The Property is located within the vicinity of a development commonly known as "New Town." The New Town development is subject to and governed by (i) certain proffers entitled the "New Town Proffers" dated December 9, 1997 of record in the Clerk's Office of the Circuit Court for the City of **Williamsburg** and County of James City, Virginia (the "Clerk's Office") as Instrument No. 980001284, (ii) a conceptual master land use plan entitled "New Town Plan" prepared by Cooper, Robertson & Partners and AES Consulting Engineers, dated July 23, 1997 and revised December 8, 1997 (the "New Town Master Plan"), (iii) design guidelines entitled "NEW TOWN DESIGN GUIDELINES, JAMES CITY COUNTY, VIRGINIA," prepared by Cooper, Robertson & Partners dated September 3, 1997 and (iii) the New Town Sections 2 and 4, Proffers dated November 1, 2001 of record in the Clerk's Office as Instrument No. 010023715 (the "New Town Design Guidelines"), (iv) New Town Sections 3 and 6, Proffers dated October 25, 2005, Instrument No. 040027471, (v) Supplemental Proffers New Town Sections 2 and 4, October 3, 2003, Instrument No. 030032005, and (vi) New Town Section Proffers, April 23, 2004, Instrument No. 040020235.

R-5. In connection with the rezoning of the Property, Owner intends to subject the Property to these Proffers which are consistent with the New Town Proffers, the New Town Master Plan and the New Town Design Guidelines.

R-6. Owner has **submitted** to the County a master plan for the Property entitled "Master Plan for **Rezoning** and Special Use Permit" prepared by AES Consulting Engineers dated February 22, 2005 and revised June 23, 2005 (the "Property Master Plan").

R-7. Owner in conjunction with Langley Federal Credit Union has previously submitted to the DRB, and the DRB has previously approved in writing, as consistent with both the New Town Master Plan and the New Town Design Guidelines, a master plan entitled "Master Plan For Rezoning and Special Use Permit" dated February 22, 2005, and revised May 17, 2005 for the Property, copies of which are on file with the County's Director of Planning.

R-8. In accordance with the requirements of the New Town Proffers, Owner has submitted to the County an updated **traffic** study (the "Traffic Study"), which is on file with the County's Director of Planning.

NOW, THEREFORE, for and in consideration of the approval by the Board of Supervisors of the County of the Property Master Plan and related documents, submitted herewith, and the rezoning set forth above, and pursuant to Section 15.2-2296 et seq. of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. In the event the requested rezoning is not granted by the County, these Proffers shall thereupon be null and void.

#### PROFFERS

1. Development Process and Land Use.

(a) Development. All the Property and the entrance road into the property shall be developed, in one phase, in accordance with the Property Master Plan. The improvements shall be developed and constructed prior to the issuance of a final Certificate of occupancy.

(b) New Town Owner's Association. A supplemental declaration (the "Supplemental Declaration") shall be executed and recorded in the Clerk's Office to submit all or a portion of the Property to the New Town Master Association, a Virginia non-stock corporation (the "Commercial Association"), and to the Master Declaration of Covenants, Easements and Restrictions for New Town, dated June 22, 1998, recorded in the Clerk's Office as documents no. 980013868, the articles of incorporation and the bylaws governing the Association, as any of the foregoing have been or may be hereafter supplemented, amended or modified pursuant to the terms thereof (collectively the "Governing Documents"), if any, shall be submitted to and reviewed by the County Attorney for general consistency with this proffer prior to final site plan approval.

(c) DRB Authority, Duties and Powers. All subdivision plats, site plans, landscaping plans, architectural plans and elevations and other development plans for the Property shall be submitted to the DRB for review and approval in accordance with the manual entitled "NEW TOWN DESIGN PROCEDURES JAMES CITY COUNTY", dated June 15, 2000, as the same may be amended by the DRB from time to time, and such other rules as may be adopted by the DRB from time to time, for general consistency with the Property Master Plan and architectural plans. Evidence of DRB approval of plans required to be submitted to the

County for approval shall be provided with any submission to the County Department of Development Management of such plans. The County shall not be required to review any subsequent development plans not receiving the prior approval of the **DRB**. In reviewing applications, development plans and specifications, the DRB shall consider the factors set forth in the Property Master Plan and architectural plans. The DRB shall advise of either (i) the **DRB's** recommendation of approval of the submission, or (ii) the areas or features of the submission which are deemed by the DRB to be materially inconsistent with the applicable Property Master Plan and the reasons for such finding and suggestions for curing the inconsistencies. The **DRB** may approve development plans that do not strictly comply with the Property Master Plan and architectural plans, if circumstances, including, but not limited to, topography, natural obstructions, hardship, economic conditions or aesthetic or environmental considerations, warrant approval. All structures and improvements and open space, wetlands and other natural features on the Property shall be constructed, unproved, identified for preservation, left undisturbed or modified, as applicable, substantially in accordance with the plans and specifications as finally approved by the **DRB**.

(d) Limitation of Liability. Review of and recommendations with respect to any application and plans by the **DRB** is made on the basis of aesthetic and design considerations only and the **DRB** shall not have any responsibility for ensuring the structural integrity or soundness of approved construction of modifications, nor for ensuring compliance with building codes or other governmental requirements, or ordinances or regulations. Neither the Owner, the County, the **DRB** nor any member of the **DRB** shall be liable for any injury, damages or losses arising out of the manner or quality of any construction on the Property.

### 3. Traffic Study and Road and Signal Improvements/Traffic Signal Preemption Equipment.

(a) Prior to final site plan approval, Owner shall make a contribution of \$25,000 towards pedestrian improvements required at the Monticello Avenue **corridor** which shall include the following: (i) demolishing existing handicap ramps and construction and installation of new ramps which meet current design standards; (ii) installation and construction of curbs and gutters which meet current design standards; (iii) installation and construction of pedestrian signal and stripping of crosswalks all to current design standards; and (iv) other improvements, the need for which is generated in whole or in part by the development.

(b) The Property may be **served** by no more than one (1) right-out only exit providing direct access from the Property to Monticello Avenue, as shown on the Property Master Plan. The exit shall be governed by **signage** and design criteria approved by VDOT and the County's Director of Planning, which shall provide for right turn only use of such exit to Monticello Avenue. No entrance from Monticello Avenue shall be permitted via the exit described herein.

(c) The side street leading from New Town Avenue to the Property has the potential to be private; however, the street shall be designed, constructed and maintained in conformance with VDOT and New Town Design Guideline Standards.

(d) The use shall have no more than five drive-through lanes (including both teller and ATM lanes) as shown on the Property Master Plan, except that upon application by the credit union and review by the Planning Director and the Planning Commission, the Board of Supervisors may allow up to two additional drive-through lanes for a total of seven drive-through lanes (including both teller and ATM lanes). The additional lanes are to be located in what is labeled as the "proposed landscape island" on the Property Master Plan. In making application, the credit union shall justify that the additional lanes are needed to address off-site congestion **and/or on-** or off-site safety issues. In making a recommendation, the Planning Commission and the Board of Supervisors shall consider the following criteria: peak and non-peak drive-through lane volumes, **on-** and off-site queuing, on-site circulation, traffic accident data, the pedestrian circulation on-site and around the site, including the impact of additional lanes on the goal of encouraging pedestrian use throughout New Town and other traffic study information as needed.

4. Streetscapes. All site development and subdivision plans for development of the Property shall include streetscape plans for adjacent streets to the Property consistent with the New Town Design Guidelines applicable to that property. The approved streetscape plan shall be implemented when the Property is developed.

5. Water Conservation. The **owner(s)** of the Property shall be responsible for developing and enforcing, as to the Property, water conservation standards to be submitted to and approved by James City Service Authority (the "JCSA"). The standards shall address such water conservation measures as limitations on installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. Design features, including the use of drought tolerant grasses and plantings, a water conservation plan, and drought management plan shall be implemented to reduce the total irrigated area of the Property in order to accomplish the limitation on use of public water and groundwater. The standards shall be approved by the JCSA prior to approval of the first site plan for development of the Property or any portion thereof.

6. Archaeological Study. If deemed necessary by the County and pursuant to the County's Archaeological Policy adopted September 22, 1998, a Phase I Archaeological Study for the entire site shall be submitted to the Director of Planning for his review and approval prior to land disturbance. A treatment plan shall be submitted to, and approved by, the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation, **and/or** identified as being eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places **and/or** those sites that require a Phase III study. If in the Phase II study, a site is determined eligible for nomination to the National register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study area. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standard and

Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the site, and the clearing, grading or construction activities thereon.

7. Natural Resource. If deemed necessary by the County and pursuant to the County's Natural Resource Policy adopted on July 27, 1999, the owner shall submit a natural resource inventory of suitable habitats for S1, S2, S3, G1, G2, or G3 resources in the project area to the Director of Planning for his/her review and approval prior to land disturbance. If the inventory confirms that a natural heritage resource either exists or could be supported by a portion of the site, a conservation management plan shall be submitted to and approved by the Director of Planning for the affected area. All inventories and conservation management plans shall meet the DCR/DNH's standards for preparing such plans, and shall be conducted under the supervision of a qualified biologist as determined by the DCR/DNH or the United States Fish and Wildlife Service. All approved conservation management plans shall be incorporated into the plan of development for the site, and the clearing, grading or construction activities thereon, to the maximum extent possible. Upon approval by the Director of Planning, a mitigation plan may substitute for the incorporation of the conservation management plan into the plan of development for the site.

#### MISCELLANEOUS PROVISIONS

8. Disposition of Proffered Property and Payments. In the event payment of cash and dedication of real property are proffered pursuant to these Proffers and any of such property and cash payments are not used by the County or, with respect to real property, the Commonwealth of Virginia, for the purposes designated within twenty (20) years from the date of receipt by the County, the amounts and property not used shall be used at the discretion of the Board of Supervisors of the County for any other project in the County's capital improvement plan, the need for which is generated in whole or in part by development of the Property.

9. Successors and Assigns. This Proffer Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors and/or assigns. Any obligations of owner hereunder shall be binding upon and enforceable against any subsequent owner or owners of the Property or any portion thereof.

10. Severability. In the event that any clause, sentence, paragraph, section or subsection of these Proffers shall be judged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States, or if the application thereof to any owner of any portion of the Property or to any government agency is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof, or the specific application thereof directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or provision hereof.

11. Conflicts. In the event there is a conflict between: (1) these Proffers, (2) the Property Master Plan, (3) the New Town Proffers, (4) the New Town Master Plan **and/or** (5) the New Town Guidelines, then these Proffers, and the Property Master Plan shall govern. In the event that there is any conflict between these Proffers and the Zoning Ordinance, the conflict shall be resolved by the County's Zoning Administrator subject to the appeal process to the Board of Supervisors and the Courts or as otherwise provided by law.

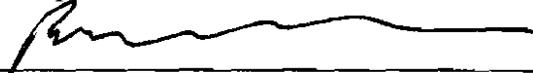
12. Signature By The County. The County's Director of Planning has executed these Proffers solely for purpose of confirming the filings and submissions described herein and **confirming** approval by the Board of Supervisors of the rezoning of the Property with these Proffers by resolution dated August 9, 2005.

13. Headings. All section and subsection headings of Conditions herein are for convenience only and are not a part of these Proffers.

14. Conditions Applicable Only To The Property. Notwithstanding anything in these Proffers to the contrary, the failure to comply with one or more of the conditions here in developing the Property shall not affect the rights of owner and its successors in interest to develop its other property in accordance with the other applicable provisions of the County Zoning Ordinances.

WITNESS the following signatures, thereunto duly authorized:

PHILIP RICHARDSON COMPANY, INC.,  
a Virginia corporation

By: 

Title: Pres

THE COUNTY OF JAMES CITY, VIRGINIA

By: 

Title: Planning Director

APPROVED AS TO FORM:

  
County Attorney

COMMONWEALTH OF VIRGINIA  
COUNTY OF JAMES CITY, to-wit:

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of August, 2005, by Philip O. Richardson, as President, on behalf of PHILIP RICHARDSON COMPANY, INC., a Virginia corporation.

Umm in Sedgely IV  
Notary Public

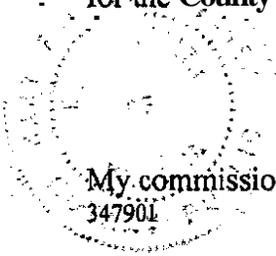
My commission expires: 12/31/09

COMMONWEALTH OF VIRGINIA  
COUNTY OF JAMES CITY, to-wit:

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of August, 2005, by O. Marvin Sowers for the County of James City, Virginia.

May Frances Reeser  
Notary Public

My commission expires: October 31, 2005



Prepared by:  
Raymond H. Suttle, Jr., Esquire  
Jones, Blechman, Woltz & Kelly, P.C.  
701 Town Center Drive, Suite 800  
Newport News, VA 23612-2888  
(757) 873-8006

EXHIBIT A

All that certain lot or parcel of land containing 2.00 Acres  $\pm$  located in James City County, Virginia shown and set out as "New Parcel, Area = 2.00 Acres  $\pm$ " as shown on the plat entitled "Plat of Subdivision Being a Portion of the Property Owned by **WHS** Land Holdings, LLC For Conveyance to Philip **O.** Richardson" made by AES Consulting Engineers dated 1/8/02 and recorded herewith in the Clerk's Office for the Circuit Court for the City of **Williamsburg** and County of James City in James City Plat Book 85 at page 16 (the "Plat").

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 17 Aug. 05  
at 4:00 AM/PM. The taxes imposed by Virginia Code  
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

STATE TAX LOCAL TAX ADDITIONAL TAX

\$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B. Woolridge Clerk