

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 9TH DAY OF AUGUST 2005, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

**A. ROLL CALL**

Michael J. Brown, Chairman, Powhatan District  
Jay T. Harrison, Sr., Vice Chairman, Berkeley District  
Bruce C. Goodson, Roberts District  
John J. McGlennon, Jamestown District  
M. Anderson Bradshaw, Stonehouse District

Sanford B. Wanner, County Administrator  
Leo P. Rogers, County Attorney

**B. MOMENT OF SILENCE**

Mr. Brown requested that the Board and citizens observe a moment of silence.

**C. PLEDGE OF ALLEGIANCE**

Holden Lipscomb, who will be a third-grade student at Stonehouse Elementary School this fall, led the Board and citizens in the Pledge of Allegiance.

**D. PUBLIC COMMENT**

1. Mr. Ed Oyer, 139 Indian Circle, stated that on July 29 the eastbound traffic on Route 60 E was backed up; stated concern about the impact of traffic jams on the ability of emergency crews to provide services; commented on possible code violations along Route 60 E such as a vacant mobile home and a red Datsun; and commented on a recent newspaper article regarding energy plants.

**E. PRESENTATIONS**

1. Resolution of Appreciation – John Berkenkamp

Mr. Brown presented John Berkenkamp with a Resolution of Appreciation for his distinguished service and dedication to the County and its citizenry while serving on the Economic Development Authority from September 1997 through June 2005.

Mr. Berkenkamp thanked the Board, Mr. Wanner, and Keith Taylor, Director of Economic Development.

Mr. Bradshaw echoed the sentiments stated in the resolution.

F. HIGHWAY MATTERS

Mr. Jim Brewer, Virginia Department of Transportation (VDOT) Residency, stated that the transition associated with the Interstate maintenance contract is working well and Williamsburg Residency crews are now able to focus on road repair and maintenance work in the County; stated that the bids came in over budget for the turn-lane projects on Route 5, Route 60, and Route 199; stated that the right-of-way agreement has been satisfied and work on Monticello Avenue will proceed; stated that both lanes for eastbound Route 199 and a single lane of westbound Route 199 will be open shortly; and stated that road work on Richmond Road in the City of Williamsburg will begin next month and the project will be completed in December.

Mr. Bradshaw thanked Mr. Brewer for the reports on the results of the Speed Studies and requested that the results be reconsidered.

Mr. Bradshaw inquired about the status of the Barnes Road work.

Mr. Brewer stated that the work was interrupted because the paver machine broke; it is anticipated work will resume in approximately two weeks.

G. CONSENT CALENDAR

Mr. **Goodson** made a motion to adopt the items on the Consent Calendar including the amended minutes.

On a roll call vote, the vote was: AYE: Harrison, **Goodson**, **McGlennon**, Bradshaw, Brown (5). NAY: (0).

1. Minutes
  - a. July 26, 2005, Work Session
  - b. July 26, 2005, Regular Meeting (as amended)
2. Resolution of Appreciation - John Berkenkamp

RESOLUTION

CERTIFICATE OF APPRECIATION -

JOHN BERKENKAMP

WHEREAS, John Berkenkamp served as a member of the Economic Development Authority of James City County since September 1997, and retired from same effective June 2005; and

WHEREAS, John Berkenkamp served as Vice Chairman of the Industrial Development Authority of James City County from July 2000 to December 2001; and

WHEREAS, John Berkenkamp served on the County Comprehensive Plan Committee; and

WHEREAS, John Berkenkamp was instrumental in overseeing the development of the Fiscal Impact Model presently used by the Office of Economic Development and the Manager of Financial and

Management Services to evaluate expanding and prospective James City County business and industry; and

WHEREAS, throughout this period of service John Berkenkamp gave freely of his time, his energy, and his knowledge for the betterment of his County, as an active member; and

WHEREAS, John Berkenkamp consistently demonstrated those essential qualities of leadership, diplomacy, perseverance and dedication while providing exceptional service to the citizens of James City County.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby extends its sincere appreciation to John Berkenkamp and recognizes his distinguished service and dedication to the County and its citizenry.

3. Acceptance of Williamsburg Community Health Foundation Grant Award - \$250,000

**RESOLUTION**

**ACCEPTANCE OF WILLIAMSBURG COMMUNITY HEALTH FOUNDATION**

**GRANT AWARD**

WHEREAS, the Williamsburg Community Health Foundation has awarded a grant to the James City County Fire Department in the amount of **\$250,000** for the purchase of an Advanced Life Support Ambulance and related medical equipment; and

WHEREAS, the grant requires no matching funds; and

WHEREAS, the grant reporting period is July 1, 2005, through June 30, 2006.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the acceptance of the Williamsburg Community Health Foundation Grant Award.

4. Acceptance of a Rescue Squad Assistance Grant Award - \$60,984.50

**RESOLUTION**

**ACCEPTANCE OF A RESCUE SQUAD ASSISTANCE GRANT AWARD**

WHEREAS, the Virginia Department of Health, Office of Emergency Medical **Services (OEMS)**, Rescue Squad Assistance Fund (RSAF) has approved **a grant** to the James City County Fire Department in the amount of **\$60,984.50** for the purchase of an ambulance; and

WHEREAS, the grant requires a cash local match of **\$60,984.50**, which is available in the FY 2006 Capital Improvement Project Fund; and

WHEREAS, the grant will be administered by **OEMS**, with a grant period of July 1,2005, through June 30, 2006.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the acceptance of the RSAF grant.

5. Adoption of the James City County Emergency Operations Plan 2005

**RESOLUTION**

**JAMES CITY COUNTY EMERGENCY OPERATIONS PLAN**

WHEREAS, there exists many threats, including man-made disasters, natural disasters, and hostile actions by an unknown enemy; and

WHEREAS, the safety and protection of the citizens and property is of foremost concern to the Board of Supervisors of the County of James City; and

WHEREAS, the Board of Supervisors desires, and Commonwealth of Virginia statutes require, the adoption of appropriate planned protective measures.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the James City County Emergency Operations Plan dated July 2005.

6. Appropriation of Funds – Department of Motor Vehicles – Grant Award • \$1,500

**RESOLUTION**

**APPROPRIATION OF FUNDS - DEPARTMENT OF MOTOR VEHICLES -**

**GRANT AWARD - \$1,500**

WHEREAS, the Virginia Department of Motor Vehicles (DMV) has approved a grant for the Police Department in the amount of \$1,500; and

WHEREAS, the grant requires no matching funds; and

WHEREAS, the grant will be administered by DMV, with a grant period of July 20, 2005, through September 30,2005.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation:

Revenue:

DMV – Checkpoint Strikeforce

\$1,500

Expenditure:

DMV – Checkpoint **Strikeforce** \$1,500

7. Allocation of Funds – Department of Social Services Allocation for Child Welfare Services - \$23,724

**RESOLUTION**

**ALLOCATION OF FUNDS • DEPARTMENT OF SOCIAL SERVICES ALLOCATION FOR  
CHILD WELFARE SERVICES - \$23,724**

WHEREAS, the Virginia **Department** of Social Services (VDSS) has allocated \$23,724 to the James City County Division of Social Services for the delivery of Child Welfare Services; and

WHEREAS, the caseloads of Social Workers in the Child Protective Services Unit far exceed accepted standards; and

WHEREAS, the local match and additional Federal **funding** are already available in the approved Division of Social Services budget.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the Division of Social Services budget:

Revenue:

VDSS-Child Protective Services Social Worker I \$23,724

Expenditure:

VDSS-Child Protective Services Social Worker I \$23,724

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County does hereby create a full-time permanent Social Worker I position.

8. Budget Appropriation – Stonehouse Development **Company**, LLC and **Centex** Homes Funds - \$15,000

**RESOLUTION**

**BUDGET APPROPRIATION - STONEHOUSE DEVELOPMENT COMPANY, LLC**

**AND CENTEX HOMES FUNDS - \$15,000**

WHEREAS, the Board of Supervisors of James City County has been requested to approve the appropriation of funds **from** Stonehouse Development Company and **Centex** Homes to **the Non-Departmental** Water Quality Account.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the Non-Departmental Water Quality:

Revenue:

Miscellaneous Revenue \$15,000

Expenditure:

Non-Departmental Water Quality \$15,000

Mr. Wanner announced that Tal Luton has **been** named as the Fire Department's new Chief

Mr. Wanner also stated that Luton is the first chief to rise **from** the ranks of firefighter to the top position in the history of the department and that Luton is a proven leader who has strong commitment to the County and he is confident that Luton will continue to build on the Fire Department's strengths as well as effectively provide leadership for new directions.

**H. PUBLIC HEARINGS**

1. Case Nos. Z-9-05/MP-6-05. Governor's Grove at Five Forks

Mr. Matthew D. Arcieri, Planner, stated that Eric Nielsen, National Housing Corporation, submitted an application to rezone 23.26 acres located at 4310 and 4360 John Tyler Highway and 3181 and 3191 Ironbound Road from R-8, Rural Residential, and **B-1**, General Business, to MU, Mixed Use, with proffers; the property can be further identified as Parcel Nos. (1-14) and (1-37) on James City County Real Estate ~~Tax~~ Map No. (46-2) and as Parcel Nos. (1-35) and (1-36) on James City County Real Estate Tax Map No. (47-1).

Staff found the proposal, with submitted proffers, will not negatively impact surrounding property and also found the proposal to be generally consistent with surrounding land uses, the Comprehensive Plan, and the Primary Principles for Five Forks Area,

At its meeting on July 11, 2005, the Planning Commission recommended approval of the proposal by a vote of 5-0.

Staff recommended approval of the rezoning and master plan applications and acceptance of the voluntary proffers.

Mr. Brown opened the Public Hearing.

1. Mr. Vernon M. Geddy, **III**, representing the applicant, gave a brief introduction of the applicant and the developer; provided an overview **of the** application including anticipated environmental and fiscal benefits to the community; and requested that the Board approve the application.

The Board and applicant discussed the estimated cost to clean up the site for development and level of cash proffers offered by the applicant.

2. Ms. Sarah Kadec, representing the Historic Route 5 Association, stated that the Association was opposed to the earlier proposal primarily due to the impacts to traffic and the **Powhatan** Creek; stated that although this is a different proposal, the impacts to traffic and the **Powhatan** Creek are still a concern; stated that the preservation and maintenance of the Community Character Corridor of Route 5 is important to the community; and requested that the Board deny the application.

3. Mr. **Sasha** Digges, 3612 Ironbound Road, stated concern about the displacement of citizens from the site and requested that the County and community lend assistance to the individuals being displaced.

4. Ms. Kay Thorington, 3195 Ironbound Road, stated concern about the treatment of individuals at the site and the eviction notices, and requested that the application be denied unless assistance is provided to the individuals who will be displaced.

5. Mr. Gary Bohlken, 119 **Rothbury** Drive, stated that he spoke in December against a development in this area and is **speaking** against this proposed development citing concerns about the adequacy of public services for the new growth, increased **traffic** concerns, and stated that the development should be considered for approval only if there is lower density.

6. Ms. Mary Catherine **Digges**, 3612 Ironbound Road, stated that as a member of the Five Forks Study team she feels that the proposed development is not consistent with the findings of the study; stated concerns about the recent increased **traffic** on Ironbound Road and impacts of this proposed development on those traffic levels; stated concern about the displacement of residents from the site; and requested that the proposal be deferred until assistance is provided to the citizens who will be displaced.

7. Ms. Judy Fuss, 3509 Hunters Ridge, representing the **Powhatan** Crossing Homeowners Association, stated that the proposed development does not address concerns about increased negative impacts to the **traffic** flow on Ironbound Road; the design capacity at schools are not adequate to handle the increased potential student population created by the development; the height of the proposed development is a concern as it is not in keeping with the surrounding Community Character Corridor; and stated that the Association is opposed to the development of this project.

8. Mr. David Fuss, 3008 Chelsford Way, representing the Friends of the **Powhatan** Creek Watershed, requested that the Board deny the application and rezoning request; stated concern about the associated negative impacts to the **Powhatan** Creek Watershed if the development were to be approved; recommended that the development of the site be in keeping with by-right development; and made a brief comment on the positive aspects of the proposal.

9. Ms. Melissa Gagne, 4716 Bristol Circle, stated that the proposed development is not in keeping with the Community Character Corridor; commented on the scale of the development infrastructures not being in scale with surrounding developments; requested a better proposal for use of the site, and stated concern that there is no affordable housing component with the proposal.

10. Mr. Ed Oyer, 139 Indian Circle, stated concern that the applicant indicated that the Board had met with him and inquired if there is a conflict of interest.

As no one else wished to speak to this matter, Mr. Brown closed the Public Hearing.

The Board and staff discussed the current traffic conditions on Ironbound Road and when the **last** traffic study was conducted along that corridor, conservation easements and open space, and environmental impact reviews by the Environmental Division prior to approval of the Site Plan for the development.

The Board and staff discussed services and assistance available to residents that are being evicted by the landowner.

Mr. Harrison made a motion to adopt the resolution.

The Board and staff discussed the impacts to the community on services and infrastructure and the proffers offered by the applicant to help mitigate the impacts.

On a roll call vote, the vote was: AYE: Harrison, **Goodson**, Bradshaw, Brown (4). NAY: **McGlennon** (1).

## RESOLUTION

### CASE NO. Z-9-05/MP-6-05. GOVERNOR'S GROVE AT FIVE FORKS

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, and Section 24-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Zoning **Case No. Z-9-05/MP-6-05**, with Master Plan, for rezoning 23.26 acres from R-8, Rural Residential and **B-1**, General Business, to MU, Mixed Use, with proffers; and

WHEREAS, the Planning Commission of James City County, following its Public Hearing on July 11, 2005, recommended approval of Case No. **Z-9-05/MP-6-05**, by a vote of 5 to 0; and

WHEREAS, the properties are located at 4310 and 4360 John Tyler Highway and 3181 and 3191 Ironbound Road and further identified as Parcel Nos. (I-14) and (1-37) on James City County Real Estate Tax Map No. (46-2) and Parcel Nos. (1-35) and (1-36) on James City County Real Estate Tax Map No. (47-1).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. **Z-9-05/MP-6-05** and accepts the voluntary proffers.

### **2. Case Nos. Z-4-05/SUP-7-05. Langley Federal Credit Union at New Town**

Ms. **Tammy** Mayer Rosario, Senior Planner, stated that Tom Homer of Langley Federal Credit Union applied for a setback modification, special use permit (**SUP**), and **rezoning** of approximately two acres from **M-1**, Limited **Business/Industrial**, to MU, Mixed Use, with proffers to construct a **two-story**, 16,000-square-foot bank and **office** building at 5220 Monticello Avenue and further identified as Parcel No. **(1-55)** on James City County Real Estate Tax Map No. (38-4).

Staff found the proposed use, with revised proffers and master plan, to be consistent with the surrounding development, the New Town Design Guidelines, and the Comprehensive Plan.

At its meeting on August 1, 2005, the Planning Commission failed to approve the case by a vote of 3 to 4.

The New Town Design Review Board concurs with the Planning Commission's recommendation of a request for only four drive-through lanes.



Since August 1, the applicant has reduced the number of lanes requested for immediate approval from seven to five, has addressed all proffer issues raised by the Planning Commission, and has stated in writing his willingness to enter into a shared parking arrangement with the adjoining land owners for the joint use of the property's parking area.

Staff recommended that the Board approve the **SUP** and rezoning for the proposed use and accept the voluntary proffers.

The Board and staff discussed the New Town development guidelines, number of **other** drive-through lanes at other **financial** institutions, and size of the site for the proposed development.

Mr. Brown opened the Public Hearing.

1. Mr. Raymond H. Suttle, Jr., attorney for the applicant, thanked staff for assistance in the development of the proffers and the master plan, and was available to answer questions from the Board.

2. Mr. Tom Tingle, representing the applicant, provided an overview of the proposal and design, and requested approval of four drive-through lanes and a drive-up ATM lane for a total of five lanes.

As no one else wished to speak to this matter, Mr. Brown closed the Public Hearing.

The Board and staff discussed the development lot size, the revised proffers, and that the applicant has been compliant to the New Town guidelines.

Mr. **Goodson** made a motion to adopt the resolutions and accept the voluntary proffers.

Mr. Brown stated concern about the manner in which the Planning Commission conducted itself in the review and deliberation of this proposal, and stated that the primary role of the Planning Commission is to determine if a proposal conforms to current policies; ordinances, and the Comprehensive Plan.

Mr. Brown stated that additional input or views are welcome from the Planning Commission and its members in the form of written communication when the input and views are outside the normal scope of the considerations. However, it is a concern when the **Planning** Commission chooses to include those comments and views as part of its scope of consideration **of the** merits of a proposal.

On a roll call vote, the vote was: AYE: Harrison, **Goodson**, Bradshaw, Brown (4). NAY: **McGlennon** (1).

## **RESOLUTION**

### **CASE NO. 2-4-05. LANGLEY FEDERAL CREDIT UNION AT NEW TOWN**

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia, and Section 24-13 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Case No. 2-4-05 for rezoning two acres from M-1, Limited **Business/Industrial**, to MU, Mixed Use, with proffers; and

WHEREAS, at the James City County Planning Commission public hearing on August 1, 2005, the motion to approve Case No. 2-4-05, failed by a vote of 3 to 4; and

WHEREAS, the proposed use is shown on the master plan prepared by AES, dated **February 22, 2005**, with a revision date of July 21, 2005, and entitled "Master Plan for Rezoning & Special Use Permit - Langley Federal Credit Union;" and

WHEREAS, the property is located at 5220 Monticello Avenue and further identified as **Parcel No. (1-55)** on James City County Real Estate Tax Map No. (38-4).

NOW, THEREFORE, BE IT RESOLVED that the Board of **Supervisors** of James City County, Virginia, does hereby approve Case No. 2-4-05 and accept the voluntary proffers.

## RESOLUTION

### CASE NO. SUP-7-05. LANGLEY FEDERAL CREDIT UNION AT NEW TOWN

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a special use permit process; and

WHEREAS, Mr. Tom Homer of **Langley** Federal Credit Union has applied for a special use permit to allow for a 16,000-square-foot bank and office building at 5220 Monticello Avenue, further identified as Parcel No. **(1-55)** on James City County Real Estate Tax Map No. (38-4); and

WHEREAS, the proposed use is shown on the master plan prepared by AES, dated February 22, 2005, with a revision date of July 21, 2005, and entitled "Master Plan for Rezoning & Special Use Permit - Langley Federal **Credit** Union;" and

WHEREAS, at the James City County Planning Commission public hearing on August 1, 2005, the motion to approve Case No. SUP-7-05 failed by a vote of **3** to 4.

NOW, THEREFORE, BE IT RESOLVED ~~that the~~ Board of Supervisors **of James** City County, Virginia, does hereby approve the issuance of Case No. SUP-7-05.

### **3. Case No. ZO-4-05. Wireless Communications Facilities Amendment**

Ms. Ellen Cook, Planner, stated that per an initiating resolution approved by the Planning Commission, staff proposed to add a new ordinance section and amend an existing ordinance section related to Wireless Communications Facilities (WCF).

Staff found that a tower greater than 120 feet in height is something that could potentially be accommodated in the R-4 District and that the amendment is consistent with the County's adopted Performance Standards for Wireless Communications Facilities.

At its meeting on July 11, 2005, the Planning Commission voted 5-0 to recommend approval of the amendment.

Staff requested that the Board approve the ordinance amendment.

Mr. Brown opened the Public Hearing.

As no one wished to speak to this matter, Mr. Brown closed the Public Hearing.

Mr. Bradshaw made a motion to adopt the ordinance.

Mr. Harrison requested a deferral to discuss broader approaches for wireless towers in the County.

The Board briefly discussed the deferral request.

Mr. Harrison withdrew his request for deferral.

On a roll call vote, the vote was: AYE: Harrison, **Goodson, McGlennon**, Bradshaw, Brown (5). NAY: (0).

## **I. BOARD CONSIDERATION**

### **1. 2004 PDR Program – Offer to Sell a Conservation Easement: 4904 and 4920 Fenton Mill Road**

Mr. Bradshaw stated that he has previously represented the property owners; however, he feels that he can impartially consider the item before the Board and does not see a conflict of interest in voting on the item.

Mr. Edward T. **Overton**, Purchase of Development **Rights** Program Administrator, stated that Williams and Mary Apperson agreed to **terms** of a conservation easement on their property located at 4904 and 4920 **Fenton** Mill Road at a negotiated price of \$400,000. The property can be further identified as **Parcel Nos.** (I-15) and (1-18) on James City County Real Estate Tax Map Nos. (14-4) and (24-2).

Staff recommended approval **of the** resolution accepting the offer to sell a conservation easement and authorizing the County Administrator to execute all documents necessary for completing the acquisition.

Mr. Bradshaw made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Harrison, **Goodson, McGlennon**, Bradshaw, **Brown (5)**. NAY: (0).

## **RESOLUTION**

### **2004 PDR PROGRAM • OFFER TO SELL A CONSERVATION EASEMENT:**

#### **4904 AND 4920 FENTON MILL ROAD**

WHEREAS, the County has received an offer to sell a conservation easement under the Purchase of Development Rights (PDR) Program **from** the owners of the property known as 4904 and 4920 **Fenton** Mill Road, Tax Parcel Nos. 1440100015 and 2420100018; and

WHEREAS, the owners offered to sell a conservation easement on the property for a purchase price of Four Hundred Thousand and ~~00/100~~ Dollars (**\$400,000**), subject to the conditions set forth in the proposed deed of easement enclosed with the County's invitation of offer.

NOW, THEREFORE, BE IT RESOLVED that the Board of **Supervisors** of James City County, Virginia, hereby accepts the offer to sell a conservation easement described above, or as modified by the County Attorney, and authorizes the County Administrator to execute all documents necessary for completing the acquisition.

BE IT FURTHERRESOLVED that the Board of Supervisors hereby directs the PDR Administrator to send a copy of this resolution to the owner of the property identified herein.

**J. PUBLIC COMMENT**

1. Mr. Richard Costello, 10020 Sycamore Landing Road, commented on the school cash proffer policy proposal; that low-impact developments are sensitive to filtration and are usually approved after soil borings are completed; and stated that he will provide Mr. Oyer with fertilizer loading information for turf management.

**K. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Wanner recommended that the Board approve the expansion of the **Thomas Nelson** Community College Local College Board membership to a total of 14 members.

Mr. Harrison made a motion to approve the expansion to 14 members.

On a roll call vote, the vote was: AYE: Harrison, **Goodson, McGlennon**, Bradshaw, Brown (5). NAY: (0).

Mr. Wanner recommended that at the conclusion of the Board meeting, the Board **adjourn until** 7 p.m. on September 13, 2005.

**L. BOARD REQUESTS AND DIRECTIVES**

Mr. **McGlennon** made a motion to appoint L. Bruce Abbott to the Agricultural and Forestal District (AFD) Advisory Committee.

On a roll call vote, the vote was: AYE: Harrison, **Goodson, McGlennon**, Bradshaw, **Brown** (5). NAY: (0).

Mr. **McGlennon** thanked Mr. **Costello** for his comments.

Mr. Bradshaw reminded citizens that the County Fair is August 12 and 13 and parking will be off-site.

Mr. Bradshaw stated that he was pleased that York County was able to assist James City County **by** providing dispatch backup after the County's Emergency Communications Center was struck by lightning.

Mr. Wanner thanked Mr. **Goodson** for his regional foresight in moving forward an agreement with York County for the partnership.

Mr. Harrison responded to Mr. **Oyer's** stated concern about Board members meeting with applicants and stated that it is his responsibility to meet with citizens, constituents, businesses, and applicants in matters that impact the good of the community and ensure that no problems arise in the allocation of County time, funds, and resources.

**M. ADJOURNMENT**

Mr. Goodson made a motion to adjourn.

On a roll call vote, the vote was: **AYE**: Harrison, Goodson, McGlennon, Bradshaw, Brown (5). **NAY**:  
(0).

At 9:40 p.m., Mr. Goodson adjourned the Board until 7 p.m. on September 13, 2005,



Sanford B. Wanner  
Clerk to the Board

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PROFFERS

THESE PROFFERS are made this 16th day of May, 2005 by FIVE FORKS, VIRGINIA, INC., a Virginia corporation, and KATHRYN S. DALY, Successor Trustee to E. H. Saunders under the E. H. Saunders Revocable Trust dated July 29, 1997 (together with their successors and assigns, the "Owner") and NATIONAL HOUSING, LLC, a Virginia limited liability company ("Buyer").

RECITALS

A. Owner is the owner of four contiguous tracts or parcels of land located in James City County, Virginia, one with an address of 4360 John Tyler Highway, Williamsburg, Virginia and being Tax Parcel 4620100014, the second with an address of 4310 John Tyler Highway, Williamsburg, Virginia and being Tax Parcel 4620100037, the third with an address of 3191 Ironbound Road, Williamsburg, Virginia and being Tax Parcel 4710100035, and the fourth with an address of 3181 Ironbound Road, Williamsburg, Virginia and being Tax Parcel 4710100036, being more particularly described on Exhibit A attached hereto (together, the "Property"). A portion of the Property is now zoned B-1 and a portion is now zoned R-8. The Property is designated Moderate Density Residential and Low Density Residential on the County's Comprehensive Plan Land Use Map.

B. Buyer has contracted to purchase the Property conditioned upon the rezoning of the Property.

C. Owner and Buyer have applied to rezone the Property from B-1 and R-8 to MU, Mixed Use District, with proffers.

D. Buyer has submitted to the County a master plan entitled "Master Plan for Rezoning of Governor's Grove for National Housing Corporation" prepared by AES Consulting Engineers dated March 21, 2005 and revised May 23, 2005 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

E. Owner has submitted to the County a traffic impact analysis entitled "Traffic Analysis for Governor's Grove" prepared by DRW Consultants, Inc. dated March 18, 2005 (the "Traffic Study") for the Property.

F. On September 28, 2004, the Board of Supervisors of James City County adopted Primary Principles for the Five Forks Area of James City County (the "Primary Principles")

G. Owner and Buyer desire to offer to the County certain conditions on the development of the Property not generally applicable to land zoned MU.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2298 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. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

CONDITION

1. **Master Plan.** The Property shall be developed generally as shown on the Master Plan, with only minor changes thereto that the Development Review Committee determines do not change the basic concept or character of the development. There shall be no more than 132 residential dwelling units on the Property. All residential dwelling units on the Property shall be offered for sale by the developer thereof.

2. **Owners Association.** There shall be organized an owner's association or associations (the "Association") in accordance with Virginia law in which all unit owners in the Property, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing the Association shall be submitted to and reviewed by the County Attorney for consistency with this Proffer. The Governing Documents shall require that the Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs, recreation areas,



private roads and parking areas, shall require each initial purchaser of a unit to make a capital contribution to the Association for reserves in an amount equal to one-sixth of the annual general assessment applicable to the unit (but no less than \$100.00) and shall require that the association (i) assess all members for the maintenance of all properties owned or maintained by the association and (ii) file liens on members' properties for non-payment of such assessments. Upon the request of the Director of Planning the Association shall provide evidence of such initial capital contributions. The Governing Documents shall grant the Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing Documents.

3. **Water Conservation.** (a) Water conservation standards shall be submitted to the James City Service Authority for its review and approval as a part of the site plan or subdivision submittal for development on the Property and Owner and/or the Association shall be responsible for enforcing these standards. The standards shall address such water conservation measures as limitations on the 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.

(b) If the Owner desires to have outdoor watering it shall provide water for irrigation utilizing surface water collection from the surface water pond that is shown on the Master Plan and shall not use James City Service Authority ("JCSA") water for irrigation purposes.

**4. Cash Contributions for Community Impacts.** For each dwelling unit on the Property the one time cash contributions set forth in this Section 4 shall be made.

(a) A contribution of \$796.00 for each dwelling unit on the Property shall be made to the James City Service Authority ("JCSA") in order to mitigate impacts on the County from the physical development and operation of the Property. The JCSA may use these funds for development of alternative water sources or any project related to improvements to the JCSA water system, the need for which is generated by the physical development and operation of the Property.

(b) A contribution of \$1,000.00 for each dwelling unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need

for which is generated by the physical development and operation of the Property, including, without limitation, for emergency services equipment replacement and supply, school uses, off-site road improvements, library uses, and public use sites.

(c) A contribution of \$500.00 for each dwelling unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated by the physical development and operation of the Property, including, without limitation, off-site stream stabilization or other stormwater management projects in the Powhatan Creek watershed.

(d) The contributions described above, unless otherwise specified, shall be payable for each dwelling unit on the Property at or prior to the final approval of the site plan or subdivision plat for such unit.

(e) The per unit contribution(s) pursuant to this Section shall be adjusted annually beginning January 1, 2006 to reflect any increase or decrease for the preceding year in the Consumer Price Index, U.S. City Average, All Urban Consumers (CPI-U) All Items (1982-84 = 100) (the "CPI") prepared and reported monthly by the U.S. Bureau of Labor Statistics of the United States

Department of Labor. In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in paragraphs (a) and (b) of this Section. The adjustment shall be made by multiplying the per unit contribution for the preceding year by a fraction, the numerator of which shall be the CPI as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the CPI as of December 1 in the preceding year, In the event a substantial change is made in the method of establishing the CPI, then the per unit contribution shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing CPI. In the event that the CPI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the CPI (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the per unit contribution to approximate the rate of annual inflation in the County.

(f) A single lump sum contribution of \$24,162.00 shall be made to the County prior to the County being obligated to grant final development plan approval for any development on the Property in order to mitigate impacts on the County from the

physical development and operation of the Property. The County may use these funds for intersection improvements at the Route 5/Ironbound Road intersection or, if the County determines not to construct such improvements, for any project in the County's capital improvement plan, the need for which is generated by the physical development and operation of the Property.

**5. Route 5 Buffer.** There shall be a 150 foot buffer along the Route 5 frontage of the Property north of Route 5 generally as shown on the Master Plan. The buffer shall be exclusive of any lots or units and shall be undisturbed, except for the entrance, right turn taper and stormwater management facilities as shown generally on the Master Plan, the trails, sidewalks and bike lanes as shown generally on the Master Plan, and with the approval of the Development Review Committee, for utilities, lighting, entrance features and signs. Dead, diseased and dying trees or shrubbery, invasive or poisonous plants may be removed from the buffer area with the approval of the County Engineer. A buffer plan showing the location of the stormwater management facility, trails, picnic facilities and providing for supplemental landscaping in the buffer area adjacent to the stormwater management BMP pond shown on the Master Plan and in the southeast corner of the buffer generally as shown on the Master Plan shall be submitted as a part of the development plan

for Section 1 of the Property for review and approval by the Director of Planning. The supplemental landscaping shown on the approved plan shall be installed or its installation bonded prior to the issuance of any certificates of occupancy for dwelling units in Section 1.

**6. Entrances/Turn Lanes.** (a) There shall be one entrance into Section 1 of the Property to and from Route 5 and one entrance into Section 3 of the Property to and from Ironbound Road, all as generally shown on the Master Plan, except as specifically permitted by paragraph (b) of this Proffer 6. An eastbound left turn lane and a westbound right turn taper on Route 5 shall be constructed at the entrance to the Property from Route 5. The turn lanes proffered hereby shall be constructed in accordance with Virginia Department of Transportation ("VDOT") standards and shall be completed prior to the issuance of the first certificate of occupancy. At the time of construction of the turn lanes proffered above, Owner shall install, to the extent not already existing, a three foot paved shoulder on the north side of Route 5. Owner shall reserve sufficient area for a future vehicular connection from Section 3 of the Property to the adjacent property to the north (Tax Parcel 4710100024). The entrance into Section 3 of the

Property shall be designed and constructed to accommodate a shoulder bike lane along Ironbound Road.

(b) The area in Section 1 shown on the Master Plan as "Emergency Access Only" shall be used only for emergency vehicle and pedestrian access to and from the Property and Ingram Road unless the Board of Supervisors of the County, with the approval of VDOT, prior to preliminary site plan approval requests that the emergency vehicle access be opened to normal vehicular traffic, either as an exit only from the Property or a full entrance/exit. Any such entrance shall be constructed in accordance with VDOT standards and the design thereof shall be approved by the Director of Planning.

(c) With the prior approval of VDOT and the Board of Supervisors of the County, Owner may install a right in/right out only access from the Property to Route 5 in Section 3 in the location as generally shown on the Master Plan. Such entrance shall only be approved upon a demonstration by the applicant that 1) the entrance will alleviate an offsite congestion, delay, or safety problem at the proposed Ironbound Road entrance and 2) the entrance will not increase congestion or delay on Route 5. Any such entrance shall be constructed in accordance with VDOT standards and the design thereof shall be approved by the Director of Planning.

7. **Sidewalk Connections.** There shall be a pedestrian walkway connection from the internal pedestrian walkway in Section 1 to the multi-use path adjacent to Route 5 generally as shown on the Master Plan. There shall be internal pedestrian walkways installed generally in the locations shown on the Master Plan, which may be installed in phases as residential units are constructed. Pedestrian walkways shall be installed concurrently with the construction of adjoining units.

8. **Recreation.** Owner shall provide the recreational facilities shown on the Master Plan before the County is obligated to grant certificates of occupancy for more than 30 dwelling units on the Property. The recreational facilities on the Property shall meet the standards set forth in the County's Recreation Master Plan as determined by the Director of Planning.

9. **Multi-Use Path/Easement.** (a) There shall be a paved multi-use path at least five feet in width installed on Section 1 of the Property generally as shown on the Master Plan. The path shall be located to avoid mature or specimen trees where reasonably feasible and the exact location of the trail shall be approved by the Director of Planning. The path shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney prior to the issuance of any certificates of occupancy.



(b) At or prior to the County being obligated to issue any building permits for residential dwelling units on the Property, Owner shall grant to the County free of charge an easement 35 feet in width over the area of Section 2 of the Property immediately adjacent to Route 5 permitting the County to construct and maintain a path in the easement area.

(c) At or prior to the County being obligated to issue any building permits for residential units on the Property, Owner shall grant to the County, free of charge, an easement 35 feet in width through the open space of Section 1 of the Property generally in the location shown on the Master Plan permitting the County to construct and maintain a trail in the easement area.

**10. Private Drives.** All entrance roads, interior roads, driveways, lanes or drive aisles connecting the parking areas on the Property to Route 5 or Ironbound Road shall be private.

**11. Environmental Protections.** (a) The Owner shall maintain and preserve as open space with terms consistent with these Proffers the area designated on the Master Plan as Open Space generally in the locations shown on the Master Plan. The exact boundaries of the Open Space shall be shown on subdivision plats and/or site plans of the Property. The Open Space shall remain undisturbed by Owner and in its natural state, except as

set forth below. Dead, diseased and dying trees or shrubbery and invasive or poisonous plants may be removed from the Open Space with the approval of the County Engineer. With the prior approval of the Environmental Division utilities may intrude into or cross the Open Space and clearing and construction activities necessary therefor may take place in the Open Space. Pedestrian paths, trails and bridges generally as shown on the Master Plan may intrude into or cross the Open Space and clearing and construction activities necessary therefor may take place in the Open Space. Stormwater BMPs may be located in the Open Space but shall not be located in nor impact the channel flow of perennial streams unless specifically approved by the Environmental Division and any stormwater BMP in Section 2 shall be located only in areas already cleared as of the date hereof. To the extent reasonably feasible, utility crossings shall be generally perpendicular through the Open Space and Owner shall endeavor to design utility systems that do not intrude into the Open Space. The Open Space shall be exclusive of lots or dwelling units.

(b) Owner shall submit to the County a master stormwater management plan as a part of the site plan submittal for the Property, including the stormwater management pond generally as shown on the Master Plan, dry swales and/or other low impact

design measures, methods and measures to reduce fecal bacteria, such as aeration and maintenance of appropriate water levels in the stormwater management pond and generally attempting where feasible and practical to maximize the amount of drainage from impervious surfaces draining to pervious surfaces prior to draining into the BMP pond, for review and approval by the Environmental Division. The master stormwater management plan may be revised and/or updated during the development of the Property with the prior approval of the Environmental Division. The County shall not be obligated to approve any final development plans for development on the Property until the master stormwater management plan has been approved. The approved master stormwater management plan, as revised and/or updated, shall be implemented in all development plans for the Property.

(c) There shall be a 10 foot construction setback adjacent to the Open Space on the Property. No building shall be permitted in this setback area. This setback shall be shown on all development plans for those areas of the Property.

(d) The Association shall be responsible for developing and implementing a turf management plan ("Turf Management Plan") for the maintenance of lawns and landscaping on the Property in an effort to limit nutrient runoff into Powhatan Creek and its

tributaries. The Turf Management Plan shall include measures necessary to manage yearly nutrient application rates to turf such that the application of total nitrogen does not exceed 75 pounds per year per acre. The Turf Management Plan shall be prepared by a landscape architect licensed to practice in Virginia and submitted for review to the County Environmental Division for conformity with this proffer. The Turf Management Plan shall include terms permitting enforcement by either the Owners Association or the County. The Turf Management Plan shall be approved by the Environmental Division prior to final subdivision or site plan approval.

(e) Owner shall explore the potential of shared stormwater management with the owner of the adjoining parcels, County Parcel No.'s 4620100015 and 4620100011.

**12. Archaeology.** A Phase I Archaeological Study for the Property 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 a 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 shall be adhered to during the clearing, grading and construction activities thereon.

13. **Architectural Review.** Prior to the County being obligated to grant final development plan approval for any of

the buildings shown on any development plan for any portion of the Property, there shall be prepared and submitted to the Director of Planning for approval architectural and landscaping plans, including architectural elevations, for the Director of Planning to review and approve for general consistency with the guidelines from Article III, Section 5 of the Primary Principles and the architectural elevations submitted herewith entitled "Governor's Grove at Five Forks, Conceptual Elevations". The Director of Planning shall review and either approve or provide written comments setting forth changes necessary to obtain approval within 30 days of the date of submission of the plans in question. Decisions of the Director of Planning may be appealed to the Development Review Committee, whose decision shall be final. Final plans and completed buildings shall be consistent with the approved conceptual plans.

**14. Updated Traffic Study.** If any use is proposed on Section 3 of the Property with a materiality, as determined by the Director of Planning, higher trip generation based on ITE trip generation figures than the use used in the Traffic Study which results in an overall materiality, as determined by the Director of Planning, higher trip generation from Section 3 of the Property, then Owner shall submit with the proposed site plan for the new use an updated traffic impact study to the

Director of Planning and VDOT based on the new proposed use for their review and approval to confirm that the new A.M. and P.M. peak hour new trips from the different use fall within the trip generation thresholds set forth in Article I, Section 5 of the Primary Principles. If the County does approve development plans for such a use, at the time of final plan approval Owner shall make an additional one time cash contribution to the County calculated pursuant to the formula set forth on Exhibit B attached hereto for the incremental trip generation from the new use over and above the trip generation from Section 3 assumed in the Traffic Study in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated by the physical development and operation of the Property, including, without limitation, intersection improvements at the Route 5/Ironbound Road intersection. If the update to the Traffic Study indicates trip generation from Section 3 exceeds the trip generation thresholds set forth in Article I, Section 5 of the Primary Principles, the County shall not be obligated to approve development plans for such use.

**15. Height Limitation.** No building in Section 1 or Section 3 of the Property shall exceed 45 feet in height.

16. **Commercial Use Restrictions.** The following uses shall not be permitted in Section 3 of the Property:

Convenience store  
Automobile service station  
Fast food restaurant

17. **Buffer/Open Space Landscaping.** Any areas of buffer or open space proffered hereby that are disturbed by adjacent construction activity on the Property shall be landscaped in accordance with the County's landscape ordinance requirements, subject to any restrictions in applicable easements.



WITNESS the following signatures.

Five Forks, Virginia, Inc.

By: Kathryn Daly  
Title:

Kathryn Daly  
Kathryn S. Daly, Successor  
Trustee

National Housing LLC

By: [Signature]  
Title: VP

STATE OF VIRGINIA AT LARGE  
~~CITY/COUNTY OF~~ JAMES CITY, to-wit:

The foregoing instrument was acknowledged this 16th  
day of May, 2005, by Kathryn Daly, as  
of Five Forks, Virginia, Inc. on behalf of the corporation.

[Signature]  
NOTARY PUBLIC

My commission expires: 12/31/08.

STATE OF VIRGINIA AT LARGE  
~~CITY/COUNTY OF~~ JAMES CITY, to-wit:

The foregoing instrument was acknowledged this 16th  
day of May, 2005, by Kathryn S. Daly, Successor  
Trustee to E. H. Saunders under the E. H. Saunders Revocable  
Trust dated July 29, 1997.

Vernon M. Geddy III  
NOTARY PUBLIC

My commission expires: 12/31/08 .

STATE OF VIRGINIA AT LARGE  
CITY/COUNTY OF JAMES CITY , to-wit:

The foregoing instrument was acknowledged this 16th  
day of May , 2005, by Eric A , as Vice President  
of National Housing, LLC on behalf of the company.

Vernon M. Geddy III  
NOTARY PUBLIC

My commission expires: 12/31/09 .

Prepared by:  
Vernon M. Geddy, III, Esquire  
Geddy, Harris, Franck & Hickman, LLP  
1177 Jamestown Road  
Williamsburg, VA 23185  
(757) 220-6500

**Exhibit A**  
**Property Description**

Parcel I

All that certain tract, **piece** or parcel of land, with any and all the buildings **and improvements** thereon, situate, lying **and being in** Berkeley District, James City County, Virginia, formerly situated in **Jamestown** District, James City county, Virginia, lying just west of the **"Five Forks" intersection** on both sides of State Route **5**, said **parcel** of land containing **37.38 acres**, more or **less**, but hereby **conveyed** in gross and not by the acre, said property **known as "Goat Hill"**, and being shown upon that certain blue **print plat** thereof entitled, **"COMPILED PLAT SHOWING THE EMILY M. HALL PROPERTY, SITUATED IN JAMESTOWN DISTRICT, JAMES CITY COUNTY, VIRGINIA,"** made by **Vincent D. McManus, C. L.**, S., and dated **November, 1945**, a blue print **copy** of which plat is recorded in the Clerk's Office of the Circuit Court of the **City** of Williamsburg and James City County in Plat Book 23, **page 4**, to which said plat reference **is hereby** made for a more particular **description** of the property conveyed herein.

LESS AND EXCEPT that certain lot, of land, containing 1.70 aares, more or less, **conveyed** by Emily M. Hall, **unmarried**, to **Albert M. Baker and Frances M. Baker**, husband and wife, by deed dated December 18, 1951, and **recorded December 19, 1951** in James City County **Deed Book No. 46, page 210**, said **conveyance is** more fully shown and described on that certain plat entitled, **"Plat Showing Lot Surveyed For Emily M. Hall, Located Near Five Forks, James City County, Virginia"**, surveyed December, 1951, and made by **W. D. Thomas, Surveyer**, and **duly recorded in James City County Plat Book No. 13, page 1**, to which **said plat** reference **is hereby** made for a more particular description of the **property** excepted from the hereinabove **referred to** plat recorded in the aforesaid **Clerk's Office in Plat Book 23, page 4**.

AND FURTHER LESS AND EXCEPT all that certain piece or parcel of land, lying, **situate** and being in Berkeley **District, James City County, Virginia**, containing 0.485 **acres**, more or less, and **shown and designated as PARCEL "A"**, on that certain blueprint plat entitled, **"PLAT OF PART OF GOAT HILL, PROPERTY OF EDMUND H. SAUNDERS"**, dated **February, 1968**, and made by **Stephen Stephens, C. L. S.**, a **copy** of which said blueprint plat is attached to a deed from the **party** of the **first part** to **Heffner Oils, Incorporated, a Virginia corporation**, dated April 30, 1868, and **recorded in the aforesaid Clerk's Office on May 17, 1968 in Deed Book 116, page 390 and incorporated therein by reference, to which deed and plat reference is made for a more particular description of the property therein conveyed.**

**Parcel I** being a **portion** of the property conveyed to the party of the **first part** by Deed dated **September 30, 1965**, from **Emily M. Hall, unmarried**, and recorded in the aforesaid **Clerk's Office in Deed Book 103, page 52**.

Parcel II

All that certain **piece**, parcel or lot of land, together with any improvements, thereon, **lying and being in Jamestown Magisterial District, James City County, Virginia**, as shown and designated on a certain

blueprint plat entitled, "Plat Showing Portion of Land Belonging to A. M. Baker, Located Near Five Forks, James City County, Virginia", made by W. D. Thomas, C.S., November, 1952, a copy of which plat is duly of record at Plat Book 13, page 26, in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, Williamsburg, Virginia. Said property is Younded and described as follows on said plat: Commencing at a point in the center of the road leads from Powell's Pond to Five Forks; thence, S 76 20' W a distance of 212.3 feet along the line of

the property thereby conveyed and the land formerly belonging to A. M. Baker; thence, N 30 00' W a distance of 100 feet along the line of the property thereby conveyed and the land formerly of Emily Hall? thence, N 76 02' E a distance of 263.4 feet along the line of the property thereby conveyed and the land formerly of A. M. Baker to a point in the center of the aforesaid road; thence up said road S 0 23' E a distance of 100 feet to the point of departure in the center of said road.

Being the same property as that conveyed to the party of the first part herein by deed dated June 7, 1968, from Lois S. Nixon and Lawrence N. Nixon, her husband, and Mary C. Taylor and Donald R. Taylor, her husband, which said deed is duly of record in the aforesaid Clark's Office in Deed Book 117 at page 60

### Parcel III

All that certain lot, piece or parcel of land together with the buildings and improvements thereon and Me appurtenances thereunto belonging or in anywise appertaining, Lying, Being and situate in Berkeley District, James City County, Virginia,, being described as follows: commencing at a point in the center of the county road leading from Five Forks to Virginia State Route #615, said point being 276.13 feet southwest of the concrete marker set by the Highway Department to designate the southwest limit of the right of way for Virginia State Highway Route #5, at the intersection between the said Route #5 and the road leading from Five Forks to Route #615; thence, South 62 15' West a distance of 15 feet to an iron pipe, said iron pipe being the point where the said road and the property therein conveyed converge; thence continuing South 62. 1 5 W a distance of 199.19 feet, more or less, to an iron pipe, said pipe being the southwest boundary of the property thereby conveyed; thence North 30 00' West a distance of 105 feet, more or less, to a point, said point being the northwest corner of the property thereby conveyed; thence North 76 20' East a distance of 227.3 feet, more or less, to a point, said point being in the center of the road, leading from Five Fork. to Virginia State Route #615 and being the Northeast corner of the property thereby conveyed; thence South 0 23' East a distance of 65 feet, more or less, to the point of beginning.

Being the same property as that conveyed to the party of the first part from Walter H. Boswell and Louise C.

**Boswell, husband and wife, by deed dated September 28, 1970 and recorded in the aforesaid Clerk's Office at Deed Book 128, page 268.**

**Parcel IV**

All that certain lot, piece or parcel of land, containing a total of 2.77 acres+/- lying, being situate in Berkeley Magisterial District, James City County, Virginia, as shown, set forth and designated as 2.00 AC. and 0.77 AC. on that certain plat entitled, "PLAT SHOWING BOUNDARY LINE ADJUSTMENT AND PROPERTY LINE EXTINGUISHMENT BETWEEN THE PROPERTIES OWNED BY : THE PATRICK COMPANIES, INC. AND FIVE FORKS, VIRGINIA, INCORPORATED"), DATED April 21, 1998 and prepared by AES, Consulting Engineers, which plat is recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, in Plat Book 69, at page 56

**TOGETHER with all singular the rights, privileges, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining**

**The foregoing conveyance is made subject to all easements, conditions or restrictions of record or apparent on the ground insofar as they may lawfully affect the property conveyed hereby.**

**ALL LESS AND EXCEPT that certain portion of the property containing 1.6 acres, more or less, shown and set out on the Master Plan as "Existing B-1 To Remain".**

Exhibit B  
Formula for Contributions to Intersection Improvements

Any increase in trip generation will increase the contribution according to the following formula:

1.  $[(AM * X) + (PM * Y)] / (AM + PM) = \text{Weighted Percent of New Trips}$
2.  $\text{Weighted Percent of New Trips} * \$123.850 = \text{Cash Contribution}$

Where AM=additional AM peak trips, PM=additional PM peak trips.  $X=AM/500$ , and  $Y=PM/650$ .

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 17 Aug. 05  
at 3:57 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

050019046

NEW TOWN -  
PORTION OF SECTION 9-  
PROFFERS

Parcel ID 13840100055

THESE PROFFERS are made as of this ~~9th~~ 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 Anorney 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: 

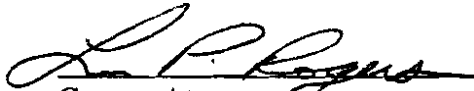
Title: Pres

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.

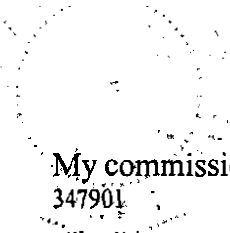
Chun M. Seddy III  
Notary Public

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 A. Marvin Sowers as Planning Director for the County of James City, Virginia

Mary Frances Reeger  
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 4:50 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

AUG 9 2005

ORDINANCE NO. 31A-219

BOARD OF SUPERVISORS  
JAMES CITY COUNTY  
VIRGINIA

AN ORDINANCE TO AMEND **AND REORDAIN** CHAPTER **24**, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE II, SPECIAL REGULATIONS, DIVISION 6, WIRELESS COMMUNICATIONS FACILITIES, SECTION **24-122**, WHERE PERMITTED, TYPES; ARTICLE V, DISTRICTS, DIVISION 5, RESIDENTIAL PLANNED COMMUNITY DISTRICT, **R-4**, BY ADDING NEW SECTION **24-294**, USES PERMITTED BY SPECIAL USE PERMIT ONLY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter **24**, Zoning, is hereby amended and reordained by amending Section **24-122**, Where permitted, types; and by adding new Section **24-294**, Uses permitted by special use **permit** only.

Chapter **24**. Zoning

Article II. Special Regulations

Division 6. Wireless Communications Facilities

**Section 24-122. Where permitted, types.**

(a) *Tower-mounted wireless communications facilities.* Tower mounted **WCFs** shall be allowed as shown on Table 1.



Table 1: Tower Mounted Wireless Communications facilities:

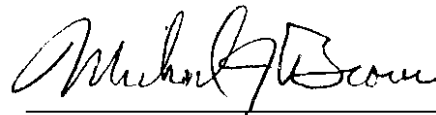
General Agricultural, A-1	≤ 35'	> 35 feet
Rural Residential, R-8	≤ 35'	> 35 feet
R-1, R-2, <del>R-4</del> , R-5, K-6	Not Permitted	Not Permitted
Limited Business, LB	Not Permitted	Not Permitted
General Business, B-1	≤ 60'	> 60 feet
Industrial (M-1, M-2, M-3)	≤ 60'	> 60 feet
Planned Unit Development, PUD	Not Permitted	All Towers
Mixed Use	Not Permitted	All Towers
<del>R-4</del>	<del>Not Permitted</del>	<del>All Towers</del>

Article V. Districts

Division 5. Residential Planned Community Distinct. R-4


**Section 24-294. Uses permitted by special use permit only.**

*Tower mounted wireless communication facilities in accordance with Division 6, Wireless Communications Facilities.*



Michael J. Brown, Chairman  
 Board of Supervisors

ATTEST:



Sanford B. Warner  
 Clerk to the Board

SUPERVISOR	VOTE
HARRISON	AYE
GOODSON	AYE
MCGLENNON	AYE
BRADSHAW	AYE
BROWN	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of August, 2005.