

NEW TOWN - SECTIONS 2 and 4 - PROFFERS

THESE PROFFERS are made as of this 1<sup>st</sup> day of November, 2001, by **NEW TOWN ASSOCIATES, LLC**, a Virginia limited liability company (together with its successors and assigns, "Associates") (index as a "grantor"); and the **COUNTY OF JAMES CITY, VIRGINIA** (the "County") (index as the "grantee").

RECITALS

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

R-2. The Property is subject to the New Town Proffers (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 document no. 980001284.

R-3. The New Town Proffers provide for development of the Property in accordance with (i) 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"), and (ii) design guidelines entitled "NEW TOWN DESIGN GUIDELINES, JAMES CITY COUNTY, VIRGINIA" prepared by Cooper, Robertson & Partners dated September 3, 1997 (the "New Town Design Guidelines").

R-4. In furtherance of the vision embodied in the New Town Master Plan and New Town Design Guidelines, Associates, as the owner of the Property, has applied for a rezoning of the Property from MU, Mixed-Use, in part, and R-8, Rural Residential, in part, to MU, Mixed-Use, with proffers. 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-5. Associates has submitted an update to the Community Impact Statement previously filed with the County's Director of Planning which satisfies the requirements of Section 24-515(c) of the Zoning Ordinance and the New Town Proffers, which update to the Community Impact Statement includes, without limitation, an updated Fiscal Impact Study which has been reviewed and accepted by the County in connection with the rezoning request referenced above. The update to the Community Impact Statement, as well as the Community Impact Statement, are on file with the County's Director of Planning.

R-6. Pursuant to subsection 2(b) of the New Town Proffers, there has been established a Design Review Board ("DRB") for development of the property subject to the New Town Proffers.

R-7. Pursuant to the New Town Proffers, the DRB is charged with the responsibility of rendering a written advisory recommendation to the County's Planning Commission and to the County's Board of Supervisors as to the general consistency with the New Town Master Plan and the New Town Design Guidelines of any proposed master plans and guidelines in future rezonings of the property subject to the New Town Proffers.

R-8. Associates 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 "NEW TOWN SECTIONS 2 & 4 MASTER PLAN", dated June, 2001, revised September 14, 2001 (the "Sections 2 and 4 Master Plan") and design guidelines entitled "NEW TOWN SECTIONS 2 & 4 DESIGN GUIDELINES", dated June 21, 2001 (the "Sections 2 and 4 Guidelines") for the Property, copies of which Sections 2 and 4 Master Plan and Sections 2 and 4 Guidelines are on file with the County's Director of Planning.

R-9. The provisions of the Zoning Ordinance, Section 24-1, et seq., may be deemed inadequate for protecting and enhancing orderly development of the Property. Accordingly, Associates, in furtherance of its application for rezoning, desires to proffer certain conditions which are specifically limited solely to those set forth herein in addition to the regulations provided for by the Zoning Ordinance for the protection and enhancement of the development of the Property, in accordance with the provisions of Section 15.2-2296 et seq. of the Code of Virginia (1950), as amended (the "Virginia Code") and Section 24-16 of the Zoning Ordinance.

R-10. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

NOW, THEREFORE, for and in consideration of the approval by the Board of Supervisors of the County of the rezoning set forth above and the Sections 2 and 4 Master Plan, the Sections 2 and 4 Guidelines and all related documents described herein, and pursuant to Section 15.2-2296, et seq., of the Virginia Code, Section 24-16 of the Zoning Ordinance and the New Town Proffers, Associates agree that all of the following conditions shall be met and satisfied in developing the Property.

PROFFERS:

PROFFERS APPLICABLE TO ALL THE PROPERTY

1. Application of New Town Proffers, Master Plan and Design Guidelines. Unless otherwise specifically noted herein, these Proffers shall supercede and amend and restate in their entirety the New Town Proffers, the New Town Master Plan and the New Town Design Guidelines, but only as to the Property.

2. New Town Owner's Association. Either 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, or, in the alternative, for any of the Property not submitted by the Supplemental Declaration, a separate association (the "Residential Association") shall be formed. In addition to the Commercial Association and Residential Association, one or more separate owners or condominium associations may be organized for the Property (each individually a "Separate Association") and supplemental restrictive covenants may be imposed on the Property. The Supplemental Declaration and any articles of incorporation, bylaws and declaration associated with separate owner's associations for the Property (collectively, the "Governing Documents"), if any, shall be submitted to and reviewed by the County Attorney for general consistency with this proffer. The Governing Documents shall (i) require that the applicable association adopt an annual maintenance budget and assess all members for the maintenance of the properties owned or maintained by such association, (ii) grant such association the power to, and require that such association, file liens on member's properties for non-payment of such assessments and for the cost to remedy violations of, or otherwise enforcing, the Governing Documents, and (iii) provide that the DRB is to serve as a design review board for each association formed with respect to the Property.

3. Development Process and Land Use.

(a) Development. All the Property shall be developed, in one or more phases, generally in accordance with the Sections 2 and 4 Master Plan and the Sections 2 and 4 Guidelines; provided, however, there are two categories of certain specifically identified development items

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depicted on or described by the Sections 2 and 4 Master Plan and/or the Sections 2 and 4 Guidelines. These categories and their respective development items are as follows:

“Fixed Development Items”:

- (i) land uses,
- (ii) densities,
- (iii) streets designated on Sections 2 and 4 Master Plan as “REQUIRED” (“Required Streets”)
- (iv) “Civic Green”, “Court Square”, “Pecan Square”, and “Village Community Spaces” (as those terms are defined in Section 6 hereof), and
- (v) buffer areas

“Flexible Development Items”:

- (i) pedestrian connections,
- (ii) streets other than Required Streets,
- (iii) areas of commercial use, office use, residential use, parking placement zones, view triangles, “build-to zones” and frontage zones and all other structures and improvements that are not Fixed Development Items.

The Sections 2 and 4 Master Plan provides for the location of the Fixed Development Items, but only the general location of the Flexible Development Items. Flexible Development Items are shown on the Sections 2 and 4 Master Plan for illustrative purposes only, and may be altered, moved or eliminated subject to DRB review and approval pursuant to subsection 3(b) below. Notwithstanding the aforesaid, all of such development shall be expressly subject to such changes in configuration, composition, and location as required by all other governmental authorities having jurisdiction over such development and provided such changes are in compliance with the Zoning Ordinance, are reviewed by the County Planning Director pursuant to subsection 3(c) below and receive DRB review and approval.

(b) 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

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“NEW TOWN DESIGN PROCEDURES JAMES CITY COUNTY”, 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 Sections 2 and 4 Master Plan and Sections 2 and 4 Guidelines. 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 Sections 2 and 4 Master Plan and/or the Sections 2 and 4 Guidelines. 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 Sections 2 and 4 Guidelines and/or the Sections 2 and 4 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 Sections 2 and 4 Master Plan and/or the Sections 2 and 4 Guidelines, 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, improved, identified for preservation, left undisturbed or modified, as applicable, substantially in accordance with the plans and specifications as finally approved by the DRB.

(c) Procedures for Changes to Sections 2 and 4 Master Plan and Sections 2 and 4 Guidelines. Applications to change the Sections 2 and 4 Master Plan and/or the Sections 2 and 4 Guidelines are to be made to the Planning Commission or the Board of Supervisors, as appropriate, as hereinafter provided and in accordance with the Zoning Ordinance.

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In accordance with Section 24-518 of the Zoning Ordinance, all of such amendments shall be subject to the approval of the County Planning Commission if, after reviewing written confirmation from the County's Director of Planning, the Planning Commission concludes that the changes do not significantly alter the character of the land uses or other features or conflict with any conditions placed on the approval of the rezoning.

No amendment of the Sections 2 and 4 Master Plan and/or Sections 2 and 4 Guidelines which significantly alters the character of land uses or other material features or conflicts with any conditions placed on approval of the rezoning as determined by the County's Director of Planning, and, if applicable under Section 24-518 of the Zoning Ordinance, the Planning Commission, shall be effective unless approved by the County Board of Supervisors.

Any change or amendment shall apply after its effective date but shall not require modification or removal of any previously approved construction.

(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 or modifications, nor for ensuring compliance with building codes or other governmental requirements, or ordinances or regulations. Neither the Associates, 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.

4. Traffic Study and Road and Signal Improvements/Traffic Signal Preemption Equipment.

(a) In accordance with the requirements of Section 4 of the New Town Proffers, Associates has submitted to the County an updated traffic study entitled "TRAFFIC STUDY FOR SECTIONS 2 & 4 OF NEW TOWN (CASEY PROPERTY), JAMES CITY COUNTY,

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VIRGINIA”, dated June 2001, prepared by DRW Consultants, Inc., Midlothian, Virginia (the "Traffic Study"), which is on file with the County’s Director of Planning.

(b) The following entrance and road improvements shall be completed (or bonded pursuant to the County Code) for the “North Boulevard” (as designated in the Traffic Study) connection to Ironbound Road when warranted by VDOT:

- (i) A northbound left turn lane on Ironbound Road
- (ii) A southbound right turn lane on Ironbound Road
- (iii) On North Boulevard, a minimum of two lanes approaching Ironbound Road and two lanes departing Ironbound Road.

A traffic signal shall be designed and installed (or bonded pursuant to the County Code) as required by the Virginia Department of Transportation (“VDOT”) when warranted at the intersection, which traffic signal shall include, subject to VDOT approval, traffic signal preemption equipment meeting VDOT design standards and acceptable to the James City County Fire Department.

(c) There shall be completed (bonded pursuant to the County Code) on “Court Street” (as designated in the Traffic Study) two lanes approaching Monticello Avenue and two lanes departing Monticello Avenue, when warranted by VDOT. A traffic signal shall be designed and installed as required by VDOT when warranted at the intersection, which traffic signal shall include, subject to VDOT approval, traffic signal preemption equipment meeting VDOT design standards and acceptable to the County Fire Department.

(d) For the “Center Street” (as designated in the Traffic Study) connection to Monticello Avenue, the following entrance and road improvements shall be completed (or bonded) when warranted by VDOT:

- (i) On “Center Street” (as designated in the Traffic Study), two lanes approaching and two lanes departing Monticello Avenue.
- (ii) A westbound right turn lane on Monticello Avenue at Center Street.

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After opening of the Center Street connection to Monticello Avenue, a traffic signal shall be designed and installed (or bonded) as required by VDOT when warranted at the intersection, which traffic signal shall include, subject to VDOT approval, traffic signal preemption equipment meeting VDOT design standards and acceptable to the County Fire Department.

(e) Prior to occupancy of greater than 175,000 square feet of office space or, if sooner, equivalent p.m. peak hour trip generation from the Property, the following road improvements shall, subject to section 23-4.01 of the Virginia Code, as applicable, be completed (or bonded pursuant to the County Code) at the intersection of Monticello Avenue with Ironbound Road:

- (i) A second through lane on eastbound Monticello Avenue and on westbound Monticello Avenue.
- (ii) Right turn lanes on eastbound and westbound Monticello Avenue.

(f) The road improvements identified in items (b), (c), (d) and (e) above shall be installed to VDOT standards and specifications.

5. Mix of Housing Types. A minimum of fifteen (15) residential dwelling units constructed in Sections 2 and 4 of the Property combined shall be initially offered for sale for a period of nine (9) continuous months (if not earlier sold pursuant to such offer) after the issuance of a building permit for such units at a price at or below \$105,000, subject to adjustment as set forth herein, and a minimum of twenty-five (25) residential dwelling units constructed in Sections 2 and 4 of the Property combined shall be initially offered for sale for a period of six (6) continuous months after the issuance of a building permit for such units at prices between \$105,000 and \$140,500, subject to adjustment as set forth herein. The \$105,000 and \$140,500 prices set forth herein shall be increased by adjusting such price by the cumulative rate of inflation as measured by the Consumer Price Index – Urban, U.S. City Average for the period from January 2003 until the date of the settlement for the dwelling unit in question. The Director of Planning shall be provided

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with a copy of the listing agreement and sales literature for each residential dwelling unit offered for sale at a price at or below the adjusted price set forth above, and with respect to the sale of such units, consultation shall be made with, and referrals of qualified buyers shall be accepted from, the County Department of Housing and Community Development.

6. Community Spaces. The Sections 2 and 4 Master Plan and the Sections 2 and 4 Guidelines set forth (i) a “Village Green” and a “Village Square” or such alternative centrally located village community space as the DRB may approve as consistent with the Sections 2 and 4 Guidelines (collectively, the “Village Community Spaces”), (ii) a “Civic Green” (“Civic Green”), (iii) a “Court Square” (“Court Square”), and (iv) “Pecan Square” (“Pecan Square”). The construction of the Civic Green and Court Square shall be completed within ninety (90) days of the date building permits have been issued for the construction of building improvements comprising twenty-five percent (25%) of the allowable non-residential density of Section 2. The construction of the Village Community Spaces shall be completed within ninety (90) days of the date building permits have been issued for the construction of building improvements comprising sixty percent (60%) of the allowable non-residential density of Section 2. The construction of Pecan Square shall be completed within ninety (90) days of the date building permits have been issued for the construction of building improvements comprising fifty percent (50%) of the allowable residential or non-residential density of that portion of Section 2 identified on the Sections 2 and 4 Master Plan as fronting Ironbound Road, lying between Pecan Square and the Civic Green, and bounded on two sides by Required Streets. In lieu of such completion, but in order to provide completion assurances, an agreement may be made with the County and the County may be furnished with a certified check, bond with surety or letter of credit in an amount equal to one hundred fifty percent (150%) of the estimated cost to complete the respective improvements based upon preliminary site development plans approved by the DRB, in form satisfactory to the County, along with such other

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agreements which are satisfactory to and approved by the County Attorney, all as more particularly set forth in the County Code. Notwithstanding the aforesaid, the configuration, composition and location of the design of the Civic Green, the Court Square, the Pecan Square, the "Neighborhood Green" (as designated on the Sections 2 and 4 Master Plan), and the Village Community Spaces (collectively, the "Community Spaces") are subject to the provisions of paragraph 3(c) hereof, and shall be further expressly subject to such changes in configuration, composition and location as required by governmental authorities, other than the County, having jurisdiction over said areas, provided such changes are in compliance with the Zoning Ordinance, are reviewed by the County Planning Director and receive DRB review and approval. The Community Spaces shall be maintained by the Commercial Association, the Residential Association and/or a Separate Association, and shall be subject to rules and regulations as may be promulgated, from time to time, by the responsible association; provided, however, no permanent barriers shall be erected or maintained to prohibit pedestrian access to such Community Spaces and such Community Spaces shall be open to the owners of the Property, their respective mortgagees, and tenants and occupants of buildings constructed on the Property and the respective subtenants, licensees, concessionaires, business invitees, employees and customers of all such persons.

7. Open Spaces. The Property shall comply with applicable County open space requirements, including Section 24-524 of the Zoning Ordinance. The applicable open space requirements in developing the Property may be met by specifically designating open space on the remainder of the "R-8 Property" (as defined in the New Town Proffers) as and when the Property is developed and such open space requirements applicable to the Property cannot reasonably be met by identifying open space located on the Property. Such designation of open space on the remaining R-8 Property may be subject to change with the prior written approval of the County's Department of Development Management. At the request of the County, Owner shall subject that

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portion of the Property designated on the Sections 2 and 4 Master Plan as the “Woodland Preserve” to an open space (for Section 24-524 compliance) or a natural open space easement, as appropriate, to ensure compliance with open space requirements with respect to such area. Further, Associates may utilize Community Spaces, in part, to meet the open space requirements for the Property.

8. Ironbound Road Right-of Way. At such time as VDOT is prepared to improve Ironbound Road, there shall be conveyed, free of charge to the County or VDOT, in a single conveyance, an additional variable width portion of the Property and of the R-8 Property lying adjacent to, and along, Ironbound Road as is necessary for the upgrade of Ironbound Road to a variable width four lane road with medians and bikeways generally as described in the Sections 2 and 4 Guidelines, which area conveyed shall be limited to, but not necessarily include all of, that portion of the Property and the R-8 Property, as shown on Figure 8 in the Sections 2 and 4 Guidelines, “Ironbound Comprehensive Plan and Section”, as follows: (1) along the easterly property line of Section 2 of the Property adjacent to Ironbound Road thereby providing a right of way for Ironbound Road up to a maximum width of 126 feet (when combined with existing right of way) which total width is measured from the existing eastern right of way line of Ironbound Road, and (2) along the easterly property line of Section 3 of the R-8 Property adjacent to Ironbound Road thereby providing additional right of way for Ironbound Road up to a maximum additional area conveyed of 76 feet in width which additional width is measured from the existing western right-of-way line of Ironbound Road.

9. Streetscapes. All site development and subdivision plans for development within the Property shall include (i) pedestrian connections on the Property, or the portion thereof so developed, along main roads adjoining the Property, (ii) streetscape plans for adjacent streets within the Property, and (iii) streetscape plans for those portions of the Property adjacent to Ironbound Road and Monticello Avenue, all of which pedestrian connections and streetscapes shall be

consistent with the Sections 2 and 4 Guidelines applicable to the Property. The approved streetscape plans, including, where required by the DRB pursuant to the Sections 2 and 4 Design Guidelines, street trees, the town wall or fence, sidewalks, walking trails, crosswalks, street lighting, street furniture, and bike lanes, and any other miscellaneous improvements required by the Sections 2 and 4 Design Guidelines and approved by the DRB, shall be implemented when the adjacent portion of the Property is developed.

10. Bus/Transit Facilities. At least three (3) bus pull-off areas and bus stop shelters shall be constructed on the Property, one each on the proposed Court Street and North Boulevard within Sections 2 and 4, respectively, of the Property and the third elsewhere on the Property, or at such reasonable alternative locations as approved by the County Transit Administrator. Design of the pull-offs and shelters shall be approved in advance by the DRB. The pull-offs and shelters shall be installed when the adjacent roadways are constructed.

11. Recreation Facilities. The Property is being developed in furtherance of a comprehensive town plan that is subject to the Section 2 and 4 Guidelines and the Section 2 and 4 Master Plan which provide for a more urban approach to the design of buildings and public spaces to avoid conventional suburban patterns and promote a walking environment, and implementation of such development design will provide for a network of sidewalks, alleyways and community areas. Specifically, in furtherance of the County Comprehensive Parks and Recreation Plan proffer guidelines (the “County Recreation Guidelines”), as in effect on the date hereof, recreation facilities in the form of the Community Spaces to be established at the Property shall be provided, open to all residents of the development, and maintained and regulated by the Commercial Association, the Residential Association and/or a Separate Association. Further, prior to issuance of certificates of occupancy for more than one hundred (100) residential dwelling units in Section 4 of the Property, there shall be installed in Section 4 at least two (2) urban scale playgrounds or such alternative

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neighborhood recreation or urban park area(s) as approved by the DRB and the County's Director of Planning. At least two (2) such playground, recreation or park areas shall have installed thereon either playground equipment consistent with County Recreation Guidelines or such acceptable alternative equipment as approved by the Planning Commission's Development Review Committee.

12. Water Conservation. The owner(s) of the Property, the Residential Association and/or the Commercial Association 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.

13. Contribution for Public Facilities.

(a) Water; Recreation. A contribution shall be made to the County in the amount of Seven Hundred Dollars (\$700), for each individual residential dwelling, house, condominium or other residential unit (individually, a "Residential Unit", and collectively, the "Residential Units") developed on the Property (the "Per Unit Facilities Contribution"). The County shall make these monies available for development of water supply alternatives and recreational facilities, the need for which is deemed by the County to be generated by the development of the Property. The Per Unit Facilities Contribution shall be payable for each of the Residential Units developed within the

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Property at the time of issuance of a building permit by the County for the particular Residential Unit or grouping, phase or section of Residential Units.

(b) School Facilities. A contribution shall be made to the County in the amount of Two Hundred Ninety-five Dollars (\$295), for the initial 370 Residential Units developed on the Property (the "Per Unit School Contribution"). The calculation of such contributions is premised upon a need for a total financial contribution for the entire New Town of \$240,000, said need being deemed by the County to be generated by the anticipated development of the residential components of New Town. The County shall make these monies available for acquisition of school sites and/or construction of school facilities, the need for which is deemed by the County to be generated by the development of the Property. Such contributions shall be payable for each of the initial 370 Residential Units developed within the Property at the time of issuance of a building permit by the County for the particular Residential Unit or grouping, phase or section of Residential Units.

(c) The Per Unit Facilities Contribution and Per Unit School Contribution (collectively, the "Per Unit Contributions") paid in each year shall be adjusted annually beginning January 1, 2003 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 respective Per Unit Contributions be adjusted to a sum less than the amount initially established by this Proffer Agreement. The adjustment shall be made by multiplying each of the Per Unit Contributions 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

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Unit Contributions 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 Contributions to approximate the rate of annual inflation in the County.

14. Private Streets. As stated on the Sections 2 and 4 Master Plan, all streets within Sections 2 and 4 of the Property have the potential to be private; however, the intention is that all streets within the Property be public and constructed in conformance with VDOT construction standards unless VDOT will not approve any streets as substantially described in the Sections 2 and 4 Guidelines, in which event such streets not approved as public shall be private. Pursuant to Section 24-528 of the County Code, private streets within the Property shall be maintained by the Residential Association, Commercial Association and/or a sub-association, as applicable. The party responsible for construction of a private street shall deposit into a maintenance fund to be managed by the applicable Residential Association, Community Association, or sub-association responsible for maintenance of such private street an amount equal to one hundred fifty percent (150%) of the amount of the maintenance fee that would be required for a similar public street as established by VDOT – Subdivision Street Requirements. The County shall be provided evidence of the deposit of such maintenance fee amount at the time of final site plan or subdivision plat approval by the County for the particular phase or section which includes the street to be designated as private.

15. Archaeological Study. Pursuant to the New Town Proffers, a Phase I Archaeological Study for the Property, entitled "A Phase I Archaeological Survey of the Casey Property, James City County, Virginia", dated July 30, 1990, prepared for the Casey Family c/o

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Virginia Landmark Corporation by the William and Mary Archaeological Project Center, has been submitted to, and reviewed and approved by, the County Director of Planning. A further Phase II study was conducted for all sites at the Property that were recommended in the Phase I study referenced above for a Phase II evaluation, and/or identified as being eligible for inclusion on the National Register of Historic Places, the results of which Phase II study shall be submitted to, and approved by, the Director of Planning. Based upon the Phase I and Phase II studies, a Phase III Treatment Plan has been prepared and submitted to, and shall be subject to the approval of, the Director of Planning. All Phase I, Phase II and Phase III studies referenced in these Proffers 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 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.

16. Small Whorled Pogonia. The owner of the Property shall cause a survey to be conducted of the Property for small whorled pogonias. The location of any small whorled pogonias located on the Property shall be shown on all subdivision or other development plans of the Property. Before any land disturbing activity is allowed in the vicinity of the small whorled pogonias identified, if any, on the Property, a conservation plan shall be prepared by the owner of the Property in accordance with state and federal laws applicable to the Property at the time of development of the conservation plan and said conservation plan shall be submitted for information purposes to the Director of Planning.

17. Prohibition of Restrictions on Vehicular Access. Notwithstanding anything in the New Town Master Plan, the New Town Design Guidelines, the New Town Proffers, the Sections 2 and 4 Master Plan, the Sections 2 and 4 Guidelines and/or these Proffers to the contrary, no private

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streets installed pursuant to the provisions of Section 14 above for the purpose of providing access from Ironbound Road or Monticello Avenue to the Property or the R-8 Property now owned by Associates shall have erected thereon at Monticello Avenue or Ironbound Road any permanent fence, gate or other structure to prohibit or restrict (except for curbs, landscaping features and other forms of traffic control measures, including, without limitation, one way streets, truck traffic limitations and traffic signals) public vehicular access from Monticello Avenue and/or Ironbound Road to the Property and/or the R-8 Property now owned by Associates.

#### MISCELLANEOUS PROVISIONS

18. 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 deemed by the County to be generated by the development of the Property.

19. 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 obligation(s) of Associates hereunder shall be binding upon and enforceable against any subsequent owner or owners of the Property or any portion thereof.

20. 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

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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.

21. Conflicts. In the event there is a conflict between: (1) these Proffers, the Sections 2 and 4 Guidelines, and/or the Sections 2 and 4 Master Plan; and (2) the New Town Proffers, the New Town Master Plan and/or the New Town Guidelines, then these Proffers, the Sections 2 and 4 Guidelines and the Sections 2 and 4 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.

22. 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 December 11, 2001.


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

24. 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 herein in developing the Property shall not affect the rights of Associates and its successors in interest to develop its other property in accordance with the other applicable provisions of the County Zoning Ordinances.

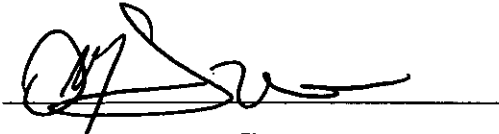
DEC 19 5 01 12

WITNESS the following signatures, thereunto duly authorized:

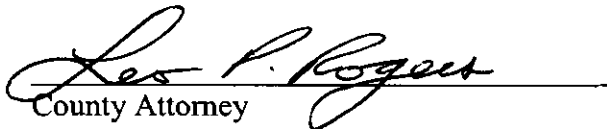
NEW TOWN ASSOCIATES, LLC

By:   
James D. Franklin  
Its: Authorized Representative

THE COUNTY OF JAMES CITY, VIRGINIA

By:   
Its: DIRECTOR OF PLANNING

APPROVED AS TO FORM:

  
County Attorney

DEC 19 2013

STATE OF VIRGINIA  
CITY/COUNTY OF James City, to wit:

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of December, 2001 by James D. Franklin as Authorized Representative of New Town Associates, LLC, a Virginia limited liability company, on its behalf, under Limited Power of Attorney, dated October 19, 2001.

Sara Rosuberg  
NOTARY PUBLIC

My commission expires: 3-31-2004



STATE OF VIRGINIA  
CITY/COUNTY OF JAMES CITY, to wit:

The foregoing instrument was acknowledged before me this 13 day of December, 2001 by O. MARVIN SOWERS as DIRECTOR OF PLANNING for the County of James City, Virginia.

Carole C. Giuliano  
NOTARY PUBLIC

My commission expires: may 31, 2002

DEC 19 2001 14

**EXHIBIT A**

I

That portion of that certain piece or parcel of land located in James City County, Virginia, shown and set out as "Southern Civic District Section 1" on the Master Land Use Plan entitled "NEW TOWN PLAN", prepared by Cooper, Robertson & Partners and AES Consulting Engineers, dated July 23, 1997, last revised December 8, 1997, lying north of Monticello Avenue.

II

Those certain pieces or parcels of land shown and set out as Sections 2 and 4 on the Master Land Use Plan entitled "NEW TOWN PLAN", prepared by Cooper, Robertson & Partners and AES Consulting Engineers, dated July 23, 1997, last revised December 8, 1997.

Parcels I and II above comprise approximately 82.8 acres.

VIRGINIA: City of Williamsburg and County of James City, to Wit:  
In the Clerk's Office at the Circuit Court for the City of  
Williamsburg and County of James City the 19  
day of Dec, 2001 this Proffer  
was presented with the certificate annexed and admitted  
to record at 9:26 AM o'clock.  
Teste:  
By: [Signature]  
Deputy Clerk

DEC 19 2001 15

**EXHIBIT A**

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VIRGINIA: City of Williamsburg and County of James City, to Wit:  
In the Clerk's Office at the Circuit Court for the City of  
Williamsburg and County of James City the 19  
day of Dec. 2001 this Proffer  
was presented with the certificate annexed and admitted  
to record at 9:26 AM o'clock.  
Teste:  
By: Beth A. Workidge  
Deputy Clerk

DEC 19 2001 11 15

COMMONWEALTH OF VIRGINIA



OFFICIAL RECEIPT  
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT  
DEED RECEIPT

DATE: 12/19/01 TIME: 09:30:49 ACCOUNT: 830CLR010023715 RECEIPT: 01000027969  
CASHIER: CHB REG: W104 TYPE: OTHER PAYMENT: FULL PAYMENT  
INSTRUMENT : 010023715 BOOK: PAGE: RECORDED: 12/19/01 AT 09:26  
GRANTOR: NEW TOWN ASSOCIATES LLC EX: N LDC: CO  
GRANTEE: COUNTY OF JAMES CITY EX: N PCT: 100%  
AND ADDRESS :

RECEIVED OF : JCCD CHECK : \$31.00 DATE OF DEED: 11/01/01

DESCRIPTION 1: NEW TOWN SEC 2 & 4 PROFFERS PAGES: 22

CONSIDERATION: .00 ASSUME/VAL: .00 NAMES: 0

CODE DESCRIPTION PAID CODE DESCRIPTION MAP:

301 DEEDS 29.50 145 VSLF 31.00 PAID 1.50

TENDERED : 31.00  
AMOUNT PAID: 31.00  
CHANGE AMT : .00

CLERK OF COURT: BETSY WOOLRIDGE

*Leo Rodgers*  
PLEASE RETURN TO:  
COUNTY ATTORNEY  
JCC - BLDG. C