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NEW TOWN – SECTION 5 PROFFERS

THESE PROFFERS are made as of this 23rd day of April, 2004, by **NEW TOWN ASSOCIATES, LLC**, a Virginia limited liability company (together with its successors and assigns, "Owner") (index as a "grantor"); and the **COUNTY OF JAMES CITY, VIRGINIA** (the "County") (index as the "grantee").

RECITALS

R-1. Owner 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 currently 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 as part of the New Town project, 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 Plan of Development"), and (ii) design guidelines entitled "NEW TOWN DESIGN GUIDELINES, JAMES CITY COUNTY,

Prepared by:
Kaufman & Canoles, P.C.
P.O. Box 6000
Williamsburg, VA 23188

VIRGINIA" prepared by Cooper, Robertson & Partners dated September 3, 1997 (the "New Town Design Guidelines").

R-4. Owner has applied for a rezoning of the Property from R-8, Rural Residential with proffers, in part, and M-1, Limited Business/Industrial with proffers, in part, to M-1, Limited Business/Industrial, with proffers. The rezoning of the Property to M-1, Limited Business/Industrial, 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 M-1, Limited Business/Industrial zoning district set forth in Section 24-410 of the County's Zoning Ordinance, ("Zoning Ordinance"), Section 24-1 *et seq.* of the James City County Code ("County Code"), in effect on the date hereof.

R-5. Owner has submitted an update to the New Town Community Impact Statement previously filed with the County's Director of Planning which satisfies the New Town Proffers and the requirements of Section 24-23(a)(2) and Section 24-515(c) of the Zoning Ordinance, which update to the Community Impact Statement includes, without limitation, a Fiscal Impact Statement which has been accepted by the County as satisfying all requirements for submission of such Fiscal Impact Study 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 the New Town Proffers, a Phase I Archaeological Study recommending no further treatment or further 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 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.

R-7. Owner's predecessor in title has caused a small whorled pogonia survey to be conducted on the Property in 1996 and 2001 revealing that no small whorled pogonia plants or small whorled pogonia habitat exist on the Property. The reports generated from these surveys are entitled "SEARCHES FOR THE SMALL WHORLED POGONIA, ISOTRIA MEDEOLOIDES, ON THE CASEY TRACT, CHISEL RUN WATERSHED, WILLIAMSBURG/JAMES CITY COUNTY, VIRGINIA SPRING/SUMMER 1996" (the "1996 Report") and "SEARCHES FOR THE SMALL WHORLED POGONIA, ISOTRIA MEDEOLOIDES, ON THE WINDSORMEADE PROPERTY JAMES CITY COUNTY, VIRGINIA JULY 2001" (the "2001 Report"). The 1996 Report and the 2001 report were prepared by Dr. Donna M. E. Ware of the College of William & Mary for Williamsburg Environmental Group, Inc. A copy of the 1996 Report and 2001 Report are on file with the County's Director of Planning.

R-8. In accordance with the requirements of Section 4 of the New Town Proffers, Owner has submitted to the County an updated traffic study entitled "TRAFFIC STUDY FOR 8.865 ACRES OF NEW TOWN LAND IN SECTION 5 OF NEW TOWN, JAMES CITY COUNTY, VIRGINIA", dated January 19, 2004, prepared by DRW Consultants, Inc., Midlothian, Virginia (the "Traffic Study"), which is on file with the County's Director of Planning. The Traffic Study recommended no traffic improvements in connection with this rezoning request.

R-9. Pursuant to subsection 2(b) of the New Town Proffers, there has been established a Design Review Board ("DRB") to oversee development of the Property in accordance with the New Town Proffers.

R-10. The provisions of the Zoning Ordinance, may be deemed inadequate for protecting and enhancing orderly development of the Property. Accordingly, Owner, 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-11. 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 Section 5 Plan of Development (defined below) 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, Owner agrees that all of the following conditions shall be met and satisfied in developing the Property.

PROFFERS:

1. Application of New Town Proffers, Plan of Development and Design Guidelines.

Except as otherwise specifically noted in paragraph 2 herein, these Proffers shall supersede, amend and restate in their entirety the New Town Proffers, the New Town Plan of

Development and the New Town Design Guidelines, but only as applicable to the Property. Except as set forth in paragraph 2 of these Proffers, no portion of the New Town Proffers, the New Town Plan of Development or the New Town Design Guidelines shall apply to or control use or development of the Property. Accordingly, this document contains the only proffers hereinafter applicable to the Property. Owner shall not be required to submit to the DRB nor shall the DRB have any review authority over any subdivision plats, site plans, landscaping plans, architectural plans and elevations, or other development plans for the Property.

2. Development. The Property shall be developed in one or more phases but subject to the buffers, development restrictions and density limitations shown on that certain master plan of development entitled: "NEW TOWN SECTION 5 MASTER PLAN, BERKELEY DISTRICT, JAMES CITY COUNTY, VIRGINIA" dated January 21, 2004, revised April 23, 2004, made by AES Consulting Engineers (the "Section 5 Plan of Development") which is incorporated herein by reference. All of such development shall be expressly subject to such changes in configuration, composition and location as may be required by other governmental authorities (if any) having jurisdiction over such development.

3. Visual Screening Buffer. In order (i) to ensure development which minimizes the environmental and land use impacts associated with noise, glare, and dust, (ii) to reduce the visual impact of development of the Property, and (iii) to preserve the character of adjacent sections of New Town, Owner shall provide a natural and/or planted buffer along the southern and western boundary lines of the Property adjacent to Sections 3 and 6 of New Town (the "Visual Buffer") compliant with the following:

(a) A landscaping plan for the portion of the Visual Buffer located on area(s) of the Property then proposed for development shall be submitted to the County Director of Planning for review and approval before or as a part of site plan approval for development on any portion(s) of the Property adjoining the southern or western boundary line(s) of the Property. Plantings within the Visual Buffer shall be native species only, and subject to approval by the County Environmental Director so as to assure minimization of adverse impacts on wetland(s) buffering caused by such plantings.

(b) The Visual Buffer shall occupy the area of the Variable Width Wetlands Buffer created for environmental protection and shown on the Section 5 Plan of Development, located on the southern and western boundary lines of the Property.

(c) The Visual Buffer shall be left in its undisturbed natural state and supplemented only as necessary in order to create an effective visual screen which complies with the transitional screening requirements of Section 24-98 or successor provision of the Zoning Ordinance.

(d) In the event that trees and/or vegetation within the above-referenced Variable Width Buffer are disturbed due to establishment of stormwater management facilities, best management practices, placement of utilities or activities otherwise permitted by the County Code, the Visual Buffer may be required by the County Planning Director to be supplemented so as to effectively protect adjacent users in New Town from visual impacts of development of the Property. The intent of this proffer and buffering undertaken pursuant to its terms is to preserve the visual enjoyment of the appearance, architectural and design standards governing the

remainder of New Town, given the industrial use to be made of the Property. Supplementation of the Visual Buffer may include the following:

- i) specification of building colors within the Property;
- ii) screening fences;
- iii) plantings or landscaping adjacent to building faces; visible from other sections of New Town; and/or
- iv) supplemental plantings of native species within the Buffer.

(e) Disputes as to the requirements of this proffer imposed by the County Planning Director or Environmental Director and/or variances from the requirements of this paragraph shall be resolved or granted by the Development Review Committee of the County's Planning Commission.

4. Water Conservation. Owner shall be responsible for developing water conservation standards, as to the Property or any portion thereof proposed for development. 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 in accordance with the Water Conservation Guidelines published by the County and the James City Service Authority ("JCSA"). The standards for each site or portion of the Property to be developed shall be approved by the JCSA prior to final approval of the site plan for development of the subject portion of the Property.

5. Height Limitation. No structure shall be erected on the Property which exceeds three (3) stories or forty-five (45) feet in height as defined by the Zoning Ordinance, whichever is less.

6. Certain Uses Prohibited. The following uses of land or buildings shall be prohibited on the Property:

- (a) adult day care centers
- (b) automobile service stations
- (c) banks and other similar financial institutions
- (d) barber and/or beauty shops
- (e) child day care centers
- (f) drug stores
- (g) dry cleaning or laundry retail shop offering customer pick up and delivery
- (h) farmers market
- (i) hotel, motel, or convention center
- (j) house(s) of worship
- (k) kennels
- (l) restaurants and taverns
- (m) retail food stores, bakeries, fish markets
- (n) retail stores, but this prohibition shall not apply to retail uses which are

secondary to a use primarily directed to manufacturing, distribution and/or warehousing.

Terms utilized in this paragraph shall be defined as in the Zoning Ordinance.

7. Design Elements. In order to ensure that the pattern of development of the Property is efficient, unobtrusive, and does not unduly impact other sections of New Town, all plans for development of the Property shall be subject to review and approval by the County's Director of Planning relative to the following elements of site usage:

(a) *Lighting*: Any new exterior site lighting shall be limited to fixtures which are mounted (i) on light poles not to exceed 30 feet in height and/or (ii) on other structures, and shall be recessed fixtures with no bulb, lens or globe extending below the casing. The casing shall be opaque and shall completely surround the entire light fixture and light source in such a manner that all light will be directed downward and the light source is not visible from the side. No glare, defined as 0.1 footcandle or higher, shall extend outside the property lines.

(b) *Building orientation*: Buildings and pedestrian entrances to buildings shall be, to the greatest extent practicable, oriented toward Tewing Road or its cul-de-sac.

(c) *Connectivity*: Pedestrian and/or vehicular connectivity and access from the Property to Sections 3 and/or 6 of New Town shall be permitted (but not required) based upon road, sidewalk or other pedestrian walkways, the design and location of which shall be approved by the Director of Planning to minimize to the greatest extent possible, the visual, traffic and safety impacts upon adjoining sections of New Town generated by such connectivity pursuant to this paragraph.

8. Recitals. The Recitals set forth above are incorporated by reference.

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

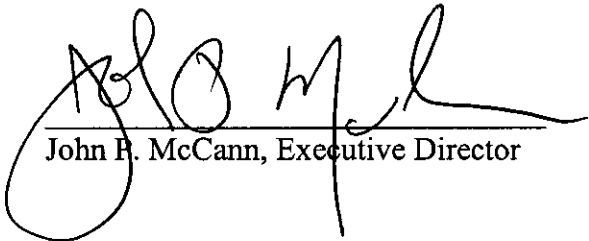
10. Severability. In the event that any clause, sentence, paragraph, section or subsection of these Proffers shall be judged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia 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. Headings. All section and subsection headings of Conditions herein are for convenience only and are not a part of these Proffers.

12. 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 Owner and its successors in interest to develop its other property in accordance with the other applicable provisions of the Zoning Ordinance.

WITNESS the following signatures, thereunto duly authorized:

NEW TOWN ASSOCIATES, LLC

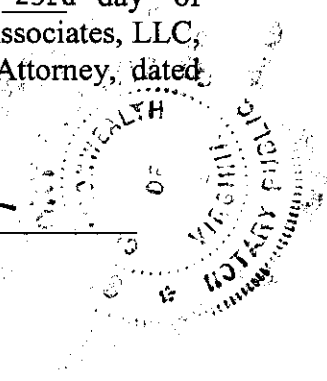
By: 
John P. McCann, Executive Director

STATE OF VIRGINIA

~~CITY~~/COUNTY OF JAMES CITY, to wit:

The foregoing instrument was acknowledged before me this 23rd day of April, 2004 by John P. McCann, Executive Director of New Town Associates, LLC, a Virginia limited liability company, on its behalf, under Limited Power of Attorney, dated October 19, 2001.


NOTARY PUBLIC



My commission expires: August 31, 2006

EXHIBIT A

All those certain pieces or parcels of land located in James City County, Virginia, shown and set out as "Section 5" and "Lot 13" on that certain plat entitled "PLAT OF SUBDIVISION SHOWING SECTION 3, SECTION 5, SECTION 6 AND LOT 13 OWNED BY NEW TOWN ASSOCIATES, LLC", prepared by AES Consulting Engineers, dated May 7, 2003, revised July 28, 2003, recorded in the Circuit Court Clerk's Office for the City of Williamsburg and the County of James City, Virginia as Instrument Number 030027269.

#6051558 v6

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 5 Aug-04
at 2:32 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

COMMONWEALTH OF VIRGINIA



OFFICIAL RECEIPT
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT
DEED RECEIPT

DATE: 08/05/04 TIME: 14:32:43 ACCOUNT: 830CLR040020235 RECEIPT: 04000029620
CASHIER: CHB REG: WD45 TYPE: OTHER PAYMENT: FULL PAYMENT
INSTRUMENT : 040020235 BOOK: PAGE: RECORDED: 08/05/04 AT 14:32
GRANTOR: NEW TOWN ASSOCIATES LLC EX: N LDC: CO
GRANTEE: COUNTY OF JAMES CITY EX: N PCT: 100X

AND ADDRESS :
RECEIVED OF : JCCO DATE OF DEED: 04/23/04

CHECK : \$30.00
DESCRIPTION 1: SEC 5 LOT 13 NEW TOWN ASSOCIATES PROFFERS PAGES: 12
2: NAMES: 0

CONSIDERATION: .00 ASSUME/VAL: .00 MAP: PAID
CODE DESCRIPTION PAID CODE DESCRIPTION PAID
301 BEEDS 28.50 145 VSLF 1.50

TENDERED : 30.00
AMOUNT PAID: 30.00
CHANGE AMT : .00

CLERK OF COURT: BETSY B. WOOLRIDGE

RECORDED
INDEXED
2004 AUG 10 11 52 AM
JAMES CITY COUNTY