

040027471

NEW TOWN - SECTIONS 3 and 6 - PROFFERS

THESE PROFFERS are made as of this 25th day of October, 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**, a political subdivision of the Commonwealth of Virginia (the "County") (index as the "grantee").

RECITALS

R-1. Owner is the owner of certain real property located in James City County, Virginia, being more particularly described on EXHIBIT A attached hereto and made a part hereof (the "Property"). Owner is also the owner of certain real property, including the Property, located in James City County, Virginia, being more particularly described on EXHIBIT B attached hereto and made a part hereof (the "New Town 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 Instrument Number 980001284.

R-3. The New Town Proffers provide for development of the Property in accordance with (i) a conceptual plan of development (the "New Town Master Plan") entitled, "NEW TOWN PLAN", dated July 23, 1997, revised December 8, 1997, prepared by Cooper, Robertson & Partners and AES Consulting Engineers, and (ii) design guidelines (the "New Town Design Guidelines") entitled "NEW TOWN DESIGN GUIDELINES, JAMES CITY COUNTY,

Prepared by:  
Kaufman & Canoles, P.C.  
4801 Courthouse St., Suite 300  
Williamsburg, VA 23188

VIRGINIA", dated September 3, 1997, prepared by Cooper, Robertson & Partners. A copy of the New Town Master Plan and New Town Design Guidelines are on file with the County Planning Director.

R-4. In furtherance of the vision embodied in the New Town Master Plan and New Town Design Guidelines, Owner has applied for a rezoning of the Property from R-8, Rural Residential with proffers to MU, Mixed-Use with proffers. The rezoning of the Property to MU, with proffers, is consistent both with the land use designation for the Property on the County Comprehensive Plan and the statement of intent for the MU zoning district set forth in Section 24-514 of the County Zoning Ordinance, Section 24-1 *et seq.* of the County Code of Ordinances, in effect on the date hereof (the "Zoning Ordinance").

R-5. Owner has submitted an update to the Community Impact Statement entitled "Community Impact Statement for the Casey Newtown", dated March 21, 1997, previously filed with the County Planning Director 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 original Community Impact Statement, are on file with the County Planning Director.

R-6. In accordance with the requirements of paragraph 4 of the New Town Proffers, Owner has submitted to the County an updated traffic study (the "Traffic Study") entitled "TRAFFIC STUDY FOR SECTIONS 3 & 6 OF NEW TOWN, JAMES CITY COUNTY, VIRGINIA", dated June 2004, prepared by DRW Consultants, Inc., Midlothian, Virginia, which is on file with the County Planning Director.

R-7. Pursuant to subparagraph 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-8. Pursuant to the New Town Proffers, the DRB is charged with the responsibility of rendering a written advisory recommendation to the County Planning Commission and to the County 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 design guidelines in future rezonings of the property subject to the New Town Proffers.

R-9. Owner 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 conceptual plan of development (the "Sections 3 and 6 Master Plan") entitled "NEW TOWN SECTIONS 3 & 6 MASTER PLAN BERKELEY DISTRICT JAMES CITY COUNTY, VIRGINIA", dated June 1, 2004, revised June 21, 2004, prepared by AES Consulting Engineers, and design guidelines (the "Sections 3 and 6 Guidelines") entitled "New Town Discovery Park Sections 3 & 6 Design Guidelines", dated September 2, 2004, prepared by Cooper Robertson & Partners, for the Property, copies of which Sections 3 and 6 Master Plan and Sections 3 and 6 Guidelines are on file with the County Planning Director.

R-10. A Phase I Archaeological Study (the "Casey Study") was conducted on the Property as detailed in that certain report 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, which report has been submitted to, reviewed and approved by the County Planning Director. The Casey Study identified only one (1) area of archaeological significance on the Property, Site

44JC617, and recommended such site for Phase II evaluation. Subsequent to the Casey Study, Owner commissioned a second Phase I Archaeological Study (the "Associates Study") of, *inter alia*, Site 44JC617 as detailed in that certain report entitled "Phase I Archaeological Investigations of Sites 44JC617, 44JC618, 44JC619, and 44JC620 on the New Town Tract James City County, Virginia", dated January, 2004, prepared by Alain C. Outlaw, Principal Investigator, Timothy Morgan, Ph.D., and Mary Clemons, which report has been submitted to, reviewed and approved by the County Planning Director. The Associates Study determined that Site 44JC617 is an isolated finds area and recommended no further treatment of the site.

R-11. A small whorled pogonia survey was conducted on the Property revealing that no small whorled pogonia plants exist on the Property. The report generated from that survey is 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"), prepared by Dr. Donna M. E. Ware of the College of William & Mary for Williamsburg Environmental Group, Inc. The results of the 1996 Report are illustrated on sheet 6, entitled "Master Stormwater Plan", of the New Town Master Plan. A copy of the 1996 Report is on file with the County Planning Director.

R-12. 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 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-13. 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 3 and 6 Master Plan, the Sections 3 and 6 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, Owner agrees that all of the following conditions shall be met and satisfied in developing the Property.

PROFFERS:

1. Application of New Town Proffers, Master Plan and Design Guidelines. These Proffers, the Sections 3 and 6 Master Plan and the Sections 3 and 6 Design Guidelines shall supercede, 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. Accordingly, this document contains the only proffers hereinafter applicable to the Property.

2. New Town Owner's Association.

(a) A supplemental declaration ("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 Instrument Number 980013868 (including 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).

(b) For any of the Property not submitted by Supplemental Declaration to the Commercial Association, a separate association (the "Residential Association") shall be formed. In addition to the Commercial Association and the Residential Association, one or more separate owners or condominium associations may be organized for portions of the Property (each individually a "Separate Association") as subordinate associations of the Commercial Association and/or Residential Association and supplemental restrictive covenants may be imposed on the corresponding portions of the Property.

(c) The Residential Association and the Commercial Association shall develop shared facilities agreements ("Shared Facilities Agreements") between the associations as necessary to fairly and reasonably apportion fiscal responsibility for the operation and maintenance of common elements, recreation facilities, stormwater management facilities, roadways, or other facilities benefiting or serving the members of both associations. The apportionment of such fiscal responsibility shall be based upon such factors as impervious surface area, building square footage, numbers of "Residential Units" (hereinafter defined) within a particular association, number of members, land area of the membership, intensity of use of such shared facilities by the membership of each association and/or such other factors agreed to between the associations.

(d) Any Supplemental Declaration and any articles of incorporation, bylaws and declaration associated with the Residential Association or a Separate Association for the Property (collectively, the "Governing Documents") and the Shared Facilities Agreements, 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 of its 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 its member's properties for non-payment of such assessments and for the cost to remedy violations of, or otherwise enforce, the Governing Documents, (iii) provide that the DRB shall serve as a design review board for each association formed with respect to the Property, and (iv) provide for the implementation and enforcement of the water conservation standards proffered herein.

3. Development Process and Land Use.

(a) Development. The Property shall be developed in one or more phases generally in accordance with the Sections 3 and 6 Master Plan and the Sections 3 and 6 Design Guidelines, including, but not limited to, the land uses, densities and design set forth therein. 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.

(b) DRB Authority, Duties and Powers. All site plans, exterior architectural plans, building materials, building elevation plans 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" as the same may be amended by the DRB from time to time, a copy of which is on file with the County Planning Director, and such other rules as may be adopted by the DRB from time to time, for general consistency with the Sections 3 and 6 Master Plan and Sections 3 and 6 Guidelines. Evidence of DRB approval of plans required to be submitted to the County for approval shall be provided

with any submission of such plans to the County Department of Development Management. The County shall not be required to review any 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 3 and 6 Master Plan and/or the Sections 3 and 6 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 3 and 6 Guidelines and/or the Sections 3 and 6 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 3 and 6 Master Plan and/or the Sections 3 and 6 Guidelines, if circumstances, including, but not limited to, topography, natural obstructions, design/development hardship, economic conditions or aesthetic or environmental considerations, warrant approval. All structures, improvements, 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) 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, ordinances or regulations. Neither 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.



4. Transportation Improvements. Owner shall construct/install the following entrance and road improvements (“Transportation Improvements”) to Virginia Department of Transportation (“VDOT”) standards and specifications for the Watford Lane (as designated in the Traffic Study) intersection with Ironbound Road:

- (a) A northbound left turn lane on Ironbound Road at Watford Lane;
- (b) A southbound right turn lane on Ironbound Road at Watford Lane;
- (c) A minimum of two lanes approaching Ironbound Road and two lanes departing Ironbound Road on Watford Lane in New Town Section 3; and
- (d) A traffic signal which shall include: i) signal coordination equipment at the request of VDOT, and ii) traffic signal preemption equipment acceptable to the County Fire Chief.

The Transportation Improvements shall be completed or guaranteed (“Guaranteed”) in accordance with Section 15.2-2299 of the Virginia Code (or such successor provision) and the applicable provisions of the County Code of Ordinances (such performance assurances to be hereinafter referred to as a “Guarantee” or “Guarantees”) prior to final site plan or subdivision plan approval for residential and/or non-residential construction on the Property exceeding 400,000 square feet unless earlier warranted and/or deemed needed by VDOT. The deadline established by the preceding sentence may be extended by the County Planning Director based upon such objective criteria as, *inter alia*, the rate of residential development of the New Town Property and/or traffic generated by development of the New Town Property and surrounding properties.

5. Mix of Housing Types. A minimum of six (6) “Residential Units” constructed on the Property 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 “Residential Units” at a price at or below One Hundred Nine Thousand Thirty-Four Dollars (\$109,034), subject to adjustment as set forth herein, and a minimum of ten (10) “Residential Units” constructed on the Property shall be initially offered for sale for a period of nine (9) continuous months after the issuance of a building permit for such “Residential Units” at prices between One Hundred Nine Thousand Thirty-Four Dollars (\$109,034) and One Hundred Forty-Five Thousand Eight Hundred Ninety-Eight Dollars (\$145,898), subject to adjustment as set forth herein. The County Planning Director shall be provided with a copy of the listing agreement and sales literature for each “Residential Unit” offered for sale at a price at or below the adjusted price set forth above, and with respect to the sale of such “Residential Units”, consultation shall be made with, and referrals of qualified buyers shall be accepted from, the County Department of Housing and Community Development. With the approval of the County Planning Director, Owner may satisfy the requirements of this proffer by encumbering, in a manner satisfactory to the County Attorney, other property within the New Town Property with the obligation to construct and offer for sale the “Residential Units” with the above-proffered pricing upon the same terms and conditions. Such encumbrance on other New Town Property may be changed with the prior written approval of the County Planning Director.

6. Community Spaces. The Sections 3 and 6 Master Plan and the Sections 3 and 6 Guidelines set forth a “Northern Focal Open Space” (“Northern Community Space”). The site plan for the Northern Community Space shall be submitted to the County prior to final approval of the site plan for that portion of New Town Avenue located on Sections 3 and 6. The Northern Community Space shall be completed or Guaranteed on or before the earlier of: i) such date as the road way striping for that portion of New Town Avenue located on Sections 3 and 6 is

completed, and ii) such date that any widening of the portion of Ironbound Road adjacent to the Property has been completed. Other open space areas (“Neighborhood Community Spaces”) shall be constructed on the Property as generally depicted on the Sections 3 and 6 Master Plan. Each Neighborhood Community Space shall be completed or Guaranteed prior to the issuance of certificates of occupancy for the first building(s) adjacent to such Neighborhood Community Space. The configuration, composition, location and design of the Northern Community Space and the Neighborhood Community Spaces (collectively, the “Community Spaces”) is subject to the provisions of paragraph 3(b) 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. 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 the Community Spaces and the 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, *inter alia*, the subtenants, licensees, concessionaires, business invitees, employees and customers of all such persons.

7. Open Spaces. The Property shall be developed in compliance with applicable County open space requirements, including Section 24-524 of the Zoning Ordinance. With the approval of the County Planning Director, the applicable open space requirements in developing the Property may be met by specifically designating open space on other property within the New Town Property as and when the Property is developed if 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 New Town Property may be changed with the prior written approval of the County Planning Director. Owner may utilize the Community Spaces or portions thereof to meet the open space requirements for the Property, provided such space meets the applicable definition of open space contained in the Zoning Ordinance.

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 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 3 and 6 Guidelines, which area conveyed shall be limited to, but not necessarily include all of, that portion of the Property along the easterly property line of Section 3 of the Property adjacent to Ironbound Road thereby providing additional right-of-way for Ironbound Road of a variable width up to a maximum additional area conveyed of 72 feet in width which additional width is measured from the existing western right-of-way line of Ironbound Road as shown on the applicable VDOT roadway plans on the date of conveyance.

9. Streetscapes. All site plans 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 streets within the subject portion of the Property; and (iii) streetscape plans for those portions of the Property adjacent to Ironbound Road, all of which pedestrian connections and streetscapes shall be consistent with the Sections 3 and 6 Guidelines applicable to the Property. The approved streetscape plans, including, where required by the DRB pursuant to the Sections 3 and 6 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 3 and 6 Design Guidelines and approved by the DRB, shall be implemented incrementally when development on adjoining portions of the Property is completed.

10. Bus/Transit Facilities. At least two (2) bus pull-off areas with bus stop shelters shall be constructed on the Property at locations along the proposed Discovery Boulevard and/or New Town Avenue within Sections 3 and 6 of the Property or, at the request of Owner, at such reasonable alternative locations as are approved by the County Planning Director. Design of any pull-offs and shelters shall be approved in advance by the DRB. The pull-offs and shelters shall be installed at the direction of the Planning Director, but in no event before 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 Sections 3 and 6 Guidelines and the Sections 3 and 6 Master Plan which provide for a more urban approach to the design of buildings and public spaces in order to avoid conventional suburban patterns and promote an environment conducive to walking. 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 on 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 final site plan or subdivision plan approval for more than one hundred (100) "Residential Units" on the Property, Owner shall install or Guarantee: (i) one (1) playground; (ii) one (1) urban park area; and (iii) a system of

pedestrian/jogging paths as shown on the Sections 3 and 6 Master Plan, all in accordance with the currently adopted version of the County Parks and Recreation Master Plan and as approved by the DRB and County Planning Director. Subject to review by the County Planning Director, Owner may utilize the Community Spaces to meet the aforementioned requirement to construct an urban park area.

12. Water Conservation. The owner(s) of the Property, the Residential Association, the Commercial Association and/or Separate Association(s) 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 ("JCSA"). The standards shall address such water conservation measures as limitations on 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 accomplish the limitation on use of public water and groundwater. The standards shall be submitted to and reviewed by the County Attorney for general consistency with this proffer and shall be approved by JCSA prior to final approval of the first site plan or subdivision plan for development of the Property or any portion thereof.

13. Contribution for Public Facilities.

(a) Water. A contribution shall be made to the County in the amount of Seven Hundred Eighty Dollars (\$780), for each individual residential dwelling unit (individually, a "Residential Unit", and collectively, the "Residential Units") developed on the Property (the "Per Unit Water Contribution"). The County shall make these monies available for development

of water supply alternatives, the need for which is deemed by the County to be generated by the development of the Property.

(b) Recreation. A playground contribution shall be made to the County in the amount of Sixty-Seven Dollars (\$67), for each Residential Unit developed on the Property in excess of two hundred ninety-four (294) Residential Units (the "Per Unit Playground Contribution"). A courts/softball field contribution shall be made to the County in the amount of Seventy-Four Dollars (\$74), for each Residential Unit developed on the Property (the "Per Unit Courts/Softball Field Contribution"). The County shall make these monies available for development of recreational facilities, the need for which is deemed by the County to be generated by the development of the Property.

(c) School Facilities. A contribution shall be made to the County in the amount of Five Hundred Eighteen Dollars (\$518) per Residential Unit for the initial one hundred fifty-five (155) Residential Units developed on the Property (the "Per Unit School Contribution"). 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.

(d) Library Facilities. A contribution shall be made to the County in the amount of Sixty Dollars (\$60.00) for each Residential Unit developed on the Property (the "Per Unit Library Contribution"). The County shall make these monies available for the development of library space, the need for which is deemed by the County to be generated by the development of New Town.

(e) Fire/EMS Facilities. A contribution shall be made to the County in the amount of Seventy Dollars (\$70.00) for each Residential Unit developed on the Property (the

“Per Unit Fire/EMS Contribution”). The calculation of such contributions is premised upon a need for a total financial contribution for the entire New Town development of Seventy Thousand Dollars (\$70,000.00) (in 2004 dollars), said need being deemed by the County to be generated by the anticipated development of New Town. Such contribution is deemed by the County to satisfy the entire need for fire and rescue equipment and facilities generated by New Town. The County shall make these monies available for the acquisition of fire and rescue facilities and equipment, the need for which is deemed by the County to be generated by the development of New Town.

(f) The Per Unit Water Contribution, Per Unit Playground Contribution, Per Unit Courts/Softball Field Contribution, Per Unit School Contribution, Per Unit Library Contribution, and Per Unit Fire/EMS Contribution (collectively, the “Per Unit Contributions”) shall be payable for each of the Residential Units to be developed within the Property at the time of final site plan or subdivision plan approval for the particular Residential Unit or grouping of Residential Units or at such other time as may be approved by the County Planning Director.

(g) Notwithstanding any other provision of these Proffers, none of the Per Unit Contributions shall be assessed for any Residential Unit with proffered pricing at or below One Hundred Nine Thousand Thirty-Four Dollars (\$109,034) as such amount may be adjusted in accordance with paragraph 17 of these Proffers.

14. Private Streets. Any and all streets within Sections 3 and 6 of the Property may be private. Pursuant to Section 24-528 of the Zoning Ordinance, private streets within the Property shall be maintained by the Residential Association, Commercial Association and/or a Separate Association, as applicable. The party responsible for construction of a private street shall deposit into a maintenance fund to be managed by the applicable Commercial Association,



Residential Association, or Separate 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. Prohibition of Restrictions on Vehicular Access. Notwithstanding anything in the Sections 3 and 6 Master Plan, the Sections 3 and 6 Guidelines and/or these Proffers to the contrary, no private streets installed pursuant to the provisions of paragraph 14 above for the purpose of providing access from Ironbound Road to the Property or adjacent properties now owned by Owner shall have erected thereon at 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 Ironbound Road to the Property and/or adjacent properties now owned by Owner.

16. Building Setback from Wetland and Other Areas. The Sections 3 and 6 Master Plan identifies a “Var. Width RPA Buffer” and a “Variable Width Non-RPA Buffer” (collectively, the “Buffer”) on the Property. No building shall be constructed on the Property within fifteen (15) feet of the Buffer.

#### MISCELLANEOUS PROVISIONS

17. Consumer Price Index Adjustment. All cash contributions and pricing contained in these Proffers (collectively, the “Proffered Amounts”), to include but not be limited to housing

sales prices and Per Unit Contributions, shall be adjusted annually beginning January 1, 2005 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 Proffered Amounts be adjusted to a sum less than the amount initially established by these Proffers. The adjustment shall be made by multiplying the Proffered Amounts 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 Proffered Amounts shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing the 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 Proffered Amounts to approximate the rate of annual inflation in the County.

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

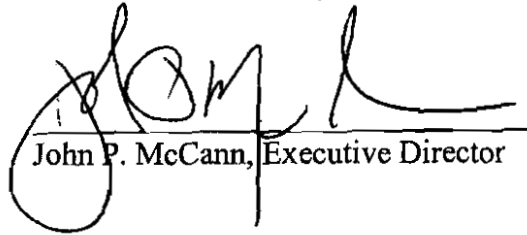
20. Severability. In the event that any clause, sentence, paragraph, subparagraph, section or subsection of these Proffers shall be judged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth 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, subparagraph, 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, subparagraph, section or provision hereof.

21. Headings. All paragraph and subparagraph headings of the Proffers herein are for convenience only and are not a part of these Proffers.

WITNESS the following signature, thereunto duly authorized:

NEW TOWN ASSOCIATES, LLC

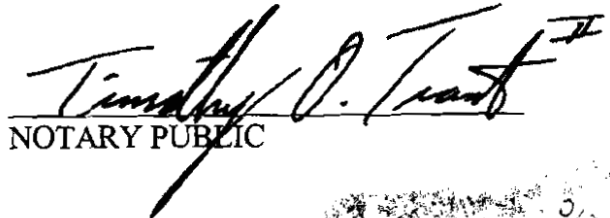
By:

  
John P. McCann, Executive Director

COMMONWEALTH OF VIRGINIA

~~CITY~~/COUNTY OF James City, to wit:

The foregoing instrument was acknowledged before me this 25th day of October, 2004 by John P. McCann as Executive Director of New Town Associates, LLC, a Virginia limited liability company, on its behalf.

  
NOTARY PUBLIC

My commission expires: 2/28/2005



#6056453 v9

**EXHIBIT A**

All those certain pieces, parcels, or tracts of land shown as "Section 3" and "Section 6" on that certain plan entitled "NEW TOWN SECTIONS 3 & 6 MASTER PLAN BERKELEY DISTRICT JAMES CITY COUNTY, VIRGINIA", dated April 26, 2004, prepared by AES Consulting Engineers, a copy of which is on file with the County Planning Director.

**EXHIBIT B**

All those certain lots, pieces or parcels of land owned by New Town Associates, LLC as of the date of execution of these Proffers lying and situate in Sections 2, 3, 4, 6, 7, 8, and 9 of the "New Town" development area in the Berkeley District, James City County, Virginia, as the same are shown on that certain plat entitled "Master Plan" dated July 23, 1997, revised December 2, 1997, prepared by AES Consulting Engineers and Cooper, Robertson & Partners, a copy of which is on file with the James City County Planning Director as a part of case number Z-04-97.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 28 Oct. 04  
at 3:25 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