

060 01'7869

PROFFERS

THESE PROFFERS are made this 28th day of April, 2006 by **TOANO BUSINESS CENTER, LLC**, a Virginia limited liability company (together with its successors in title and assigns, the "Owner").

RECITALS

A. Owner is the owner of those certain parcels or pieces of land located in James City County, Virginia, with addresses of 9686 and 9690 Old Stage Road and being Tax Parcels 0440100034 and 040100004 and being more particularly described on Exhibit A hereto (the "Property").

B. The Property is now zoned A-1. The Owner has applied to rezone the Property from A-1 to MU, with proffers.

C. Owner has submitted to the County a master plan entitled "Proposed Master Plan, Moss Creek Commerce Centre" prepared by LandMark Design Group and dated September 22, 2004 and revised December 28, 2005 (the "Master Plan").

D. Owner desires to offer to the County certain conditions on the development of the Property not generally applicable to land zoned MU.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2298 of the

Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owners agree that they shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

CONDITIONS

1. **Water Conservation.** The Owner shall be responsible for developing water conservation standards to **be** submitted to and approved by the James City Service Authority and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. Irrigation wells shall only draw water from the Upper Potomac or Aquia Aquifers. The standards shall be approved by the James City Service Authority prior to final site plan approval.

2. **Design Guidelines and Review.** (a) Owner shall prepare and submit design review guidelines (the "Guidelines") to the County for the approval of the Development Review Committee prior to the County being obligated to grant final approval to

any development plans for the Property setting forth design and architectural standards for the Property incorporating but not limiting the following as guidelines:

(i) The buildings on the Property shall be harmonious and of uniform architectural design (as noted in (v) below) and color scheme (e.g., muted earth tones);

(ii) The design of the buildings on the Property shall have varied roof lines, wall articulations, window placements and other features to reduce the mass and unbroken building lines that may occur in certain standard commercial designs;

(iii) All buildings immediately adjacent to Fieldstone Parkway or Old Stage Road shall present a front façade to the road;

(iv) No building on the property shall exceed thirty-five (35) in height;

(v) The buildings shall be consistent with the architectural styles embodied in elevations made by James Pociluyko, AIA, dated February 9, 2006 submitted to the County herewith.

Once approved, the Guidelines may not be amended without the approval of the Development Review Committee.

(b) Owner shall establish in the Governing Documents a Design Review Board to (i) adopt more specific procedures for the design review process, (ii) review all building plans, building elevations and landscape plans for conformity with the Guidelines and (iii) approve or deny such plans. The Design Review Board shall establish an Advisory Committee consisting of three property owners in the Mill Pond at Stonehouse development elected by the property owners. The Advisory Committee shall review all plan submissions and render an advisory opinion to the Design Review Board. The Governing Documents shall set forth more specific procedures for the design review process. All building plans, building elevations and landscape plans shall receive the approval of the Design Review Board prior to the Director of Planning being required to grant approval of the plans.

(c) Owner shall submit to the Director of Planning with each site plan for development within the Property conceptual architectural plans, including architectural elevations, for the buildings and associated structures shown on the site plan for the Director of Planning to review and approve for consistency with the Guidelines. Decisions of the Director of Planning may be appealed to the Development Review Committee, whose decision

shall be final. Final architectural plans shall be consistent with the approved conceptual plans. Completed buildings shall be consistent with the approved plans. No building on the Property shall exceed thirty-five (35) feet in height.

3. **Owners Association.** There shall be organized an owner's association or associations (the "Association") in accordance with Virginia law in which all property owners in the development, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing each Association shall be submitted to and reviewed by the County Attorney for consistency with this Proffer. The Governing Documents shall require that each Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs, open space areas, private streets, sidewalks, and all other common areas under the jurisdiction of each Association, and shall require that the Association (i) assess all members for the maintenance of all properties owned or maintained by the Association and (ii) file liens on members' properties for non-payment of such assessments. The Governing Documents shall grant each Association the power to file liens on members' properties for

the cost of remedying violations of, or otherwise enforcing, the Governing Documents. The Governing Documents shall also provide for a Design Review Board with the power to adopt more specific procedures for the design review process; review all building plans, building elevations and landscape plans for conformity with the Guidelines and the Governing Documents and approve or deny such plans.

4. Entrances/Turn Lanes. (a) The main entrance to the Property shall be from Old Stage Road in the approximate location shown on the Master Plan. A right turn lane with 150 feet of storage and a 150 foot taper and a left turn lane with 200 feet of storage and a 200 foot taper shall be constructed at the main entrance.

(b) Owner may install a second entrance to the Property from Fieldstone Parkway in the approximate location shown on the Master Plan. If and when this second entrance is installed, a left turn lane from Fieldstone Parkway into the second entrance shall be constructed.

(c) Owner shall install a traffic signal at the main entrance when and if Virginia Department of Transportation ("VDOT") traffic signal warrants are met. Owner shall conduct a traffic signal warrant study within six months of the issuance

of certificates of occupancy for the bank and convenience store shown on the Master Plan and submit the study to the Director of Planning and VDOT for review and approval. Owner shall perform a second traffic signal warrant study at such time as certificates of occupancy have been issued for 80% of the development permitted under the Master Plan if the traffic signal has not previously been installed and submit the study to the County and VDOT for their review and approval. If either approved study determines such a signal is warranted, the County shall not be obligated to issue any further building permits for further development on the Property until such traffic signal at the main entrance has been installed or its installation commenced and surety for its completion in form acceptable to the County Attorney has been posted with the County.

(d) The turn lanes at the main entrance into the Property proffered hereby and the bike lanes along Route 30 shown on the Master Plan shall be constructed in accordance with VDOT standards and shall be completed or their completion bonded in form satisfactory to the County Attorney prior to the issuance of any building permit for buildings on the Property. The left turn lane from Fieldstone Parkway into the second entrance into the Property proffered hereby shall be constructed in accordance

with VDOT standards and shall be completed or its completion bonded in form satisfactory to the County Attorney at the time of construction of the second entrance.

5. Lighting. All street light poles on the Property shall not exceed 20 feet in height. All building or canopy mounted external lights on the Property shall be recessed fixtures with no globe, bulb or lens extending below the casing or otherwise unshielded by the case so that the light source is visible from the side of the fixture. No glare defined as 0.1 footcandle or higher shall extend outside the property lines of the Property unless otherwise approved by the Director of Planning. Owner shall submit a lighting plan to the Director of Planning for review and approval for consistency'with this Proffer prior to final site plan approval.

6. Archaeology. A Phase I Archaeological Study for the entire Property and any portion of the adjacent VDOT right of way to be disturbed for the entrance into the Property shall be submitted to the Director of Planning for review and approval prior to land disturbance. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National

Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase III study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study areas. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the

Property and the clearing, grading or construction activities thereon.

7. **Perimeter Buffer**. A combination of preservation of existing trees, enhanced landscaping (defined as 125% of ordinance requirements as to quantity, with at least 50% of the trees and shrubs being evergreen, including Leyland cypress, pine and ligustrum, with the plants being of a size at planting that exceeds ordinance requirements, for example, black pine with a diameter of at least four inches, Leyland cypress with a height of at least eight feet and ligustrum with a height of at least two feet) and low berms shall be provided in the perimeter buffer between the Property and Fieldstone Parkway, Tax Parcel 0440100001 and Tax Parcel 0440100028 to create an effective buffer between the properties in accordance with a landscaping plan approved by the Director of Planning. The balance of the perimeter buffers shall contain enhanced landscaping in accordance with a landscaping plan approved by the Director of Planning. A landscape plan for the entire perimeter buffer shall be submitted to the Director of Planning with the initial site plan for development on the Property for his review and approval for consistency with this proffer. The buffers shall be planted or the planting bonded prior to the County being

obligated to issue certificates of occupancy for buildings located on the Property.

8. Environmental Protections. Owner shall submit to the County a master stormwater management plan as a part of the site plan submittal for the Property, including the stormwater management facility generally as shown on the Master Plan and low impact design measures where feasible and appropriate, for review and approval by the Environmental Division. A minimum of 25% of the site shall be captured and treated by Low Impact Design (LID) measures. LID measures shall not be used to comply with the County's 10-point BMP system for water quality. The master stormwater management plan may be revised and/or updated during the development of the Property with the prior approval of the Environmental Division. The County shall not be obligated to approve any final development plans for development on the Property until the master stormwater management plan has been approved. The approved master stormwater management plan, as revised and/or updated, shall be implemented in all development plans for the Property.

9. Reserved Right of Way. Owner shall reserve the areas shown on the Master Plan as "Reserved Right of Way" for a possible future road connections to the adjacent parcel shown on

the Master Plan as Stonehouse at Williamsburg, LLC, Stonehouse Land Bay 1. If the owner of the adjacent parcel and Owner reach an agreement permitting Owner access from the Property to a road on the adjacent property and ultimately to Fieldstone Parkway, Owner shall install road connections in the "Reserved Right of Way".

10. Paths. If approved by the Development Review Committee as an alternative to construction of sidewalks in accordance with Section 24 - 35(c) of the Zoning Ordinance, Owner shall install a hard surface path along the Fieldstone Parkway frontage of the Property generally in the location shown on the Master Plan and along the Route 30 frontage of the Property in the location of the Stage Road Trace shown on the Master Plan. The path shall be shown on the landscape plan for the perimeter buffer described in Proffer 7. The path shall be installed or its installation bonded prior to the County being obligated to issue certificates of occupancy for buildings located on the Property.

11. Entrance Feature. Any entrance feature and/or signage at the entrance(s) into the Property shall be of similar design and materials as the entrance into the Stonehouse development at Fieldstone Parkway and Route 30.

12. **Convenience Store with Fueling.** (a) No more than two signs shall be allowed on the canopy over the gasoline pumps except as provided herein. Gas pricing signs shall be allowed on a monument type sign in the parking area or on the columns of the canopy.

(b) No outside display, sale or storage of merchandise other than ice machines shall be permitted at the convenience store. No outside vending machines shall be permitted.

WITNESS the following signature.

TOANO BUSINESS CENTER, LLC

By: Vernon M. Geddy, III
Title: Authorized Representative

STATE OF VIRGINIA

CITY/COUNTY OF Williamsburg

28th The foregoing instrument was acknowledged before me this day of April, 2006, by Vernon M. Geddy III as Authorized Representative of Toano Business Center, LLC on behalf of the company.

Jani M. Shapiro
Notary Public

My commission expires: 2-28-07

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

EXHIBIT A

Parcel One

ALL that certain tract or parcel of land, situate in Stonehouse District, James City County, Virginia, containing by survey **23.77** acres, and contained within the following bounds, commencing at a point in the center of the main stage road leading from **Toano** to Richmond opposite a ditch bank separating this land from Joe Johnson's tract, thence down the said ditch bank to a stob near a white oak tree N. **64 E. 2.47** chains, thence down the said ditch bank N. **65 E. 3.25** chains to a stob on the said bank, thence down said ditch bank N. **67 E 4.85** chains to a stob on said bank, thence S. **20 1/4 E. 25.85** chains to a cedar stob, edge of woods, thence S. **67 3/4 W.9.68** chains to a point in the center of said Main Stage Road opposite a marked white oak tree; thence up the center of the said main road N. **14 1/4 W. 11.19** chains to a point in the center of the said road, thence up the said road N. **25 1/4 W. 3.32** chains to a stob in the center of the said main road; thence up the said road N. **29.14E. 10.91** chains to the point of beginning. For a further and better description reference is made to deed dated October **13,1913**, from C.C. Branch and wife to J.E. Williams, as record in the Clerk's Office of the City of Williamsburg and County of James City, in Deed Book **14**, pages **287-288**.

TOGETHER WITH the right-of-way retained for the **23.77** acre parcel described in Deed Book **23**, page **369** and in Deed Book **77**, page **277**, recorded in the Clerks' Office, Circuit Court, City of Williamsburg and County of James City, Virginia.

LESS AND EXCEPT the **3 3/5** acre parcel described in Deed Book **23**, at page **369**.

Parcel Two

All that certain parcel of land in the Stonehouse District of James City County, Virginia, being part of the tract of land known as "Parkers", lying on the northwest side of State Highway Rt. **168**, as shown and designated as **1.156 ACRES** on a plat of survey of "PARKERS", made by Reynolds & Miller, C.L.S., dated December **23,1970**, a copy of which is recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City in Plat Book **29**, at page **42**.

Being part of the property conveyed unto Hazelwood Farms, L.L.C., by deed dated December **7, 1998**, from R.M. Hazelwood, Jr., recorded as James City County Instrument No. **980023833**.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 25 July 06
at 9:08 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