

160012690

NEW TOWN – PROFFER AMENDMENT
SECTIONS 2 AND 4

THIS PROFFER AMENDMENT is made as of this 23rd day of June, 2016, by NEW TOWN ASSOCIATES, LLC, a Virginia limited liability company (together with its successors and assigns, “Associates”) (to be indexed as Grantor) and the COUNTY OF JAMES CITY, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the “County”) (to be indexed as Grantee.)

RECITALS

R-1. Associates is the developer of New Town, a mixed use development, located in James City County, Virginia, occupying in part certain real property more particularly described on **Exhibit A** attached hereto and made a part hereof (the “Property”).

R-2. The Property was originally subject to the New Town Proffers dated December 9, 1997, of record in the Office of the Clerk of the Circuit Court for the City of Williamsburg and County of James City, Virginia (“Clerk’s Office”) as document number 980001284. Upon previous rezonings, Sections 2 and 4 of New Town became subject to (i) proffers (the “New Town-Sections 2 and 4 Proffers”) dated November 1, 2001 of record in the Clerk’s Office as document number 010023715, and (ii) Supplemental Proffers, dated October 3, 2003 of record in the Clerk’s Office as document number 030032005. The foregoing proffers are referred to below collectively as the “Existing Proffers.”

R-3. The Existing Proffers provide for development of the Property in conformity with a master plan (the “New Town Master Plan”) and certain design guidelines (the “New Town Design Guidelines”). A design review board (the “DRB”) has been established by the Existing

Proffers to administer the New Town Design Guidelines and oversee development of the Property.

R-4. The New Town Master Plan is supplemented by a master plan specific to Sections 2 and 4 of New Town, likewise described in the Existing Proffers (the “Sections 2 and 4 Master Plan”).)

R-5. The development of the Property is nearing completion. As development has progressed, topography, environmental considerations, amenities usage by residents of New Town and evolving policies and laws affecting real estate development have led Associates to seek amendments to the Existing Proffers and the Sections 2 and 4 Master Plan, which said proffer amendments are described below.

NOW, THEREFORE, for and in consideration of the approval by the County Board of Supervisors of certain amendments to the Sections 2 and 4 Master Plan and the proffer amendments described below, and pursuant to Sections 15.2-2302 and 2303 of the Code of Virginia, Section 24-16 of the James City County Code, and the Existing Proffers, Associates hereby amends the Existing Proffers as applicable to the Property as follows:

PROFFER AMENDMENTS

1. **Development of Conformity with Master Plan.** The Property shall be developed generally in accordance with (i) the Existing Proffers as amended hereby and (ii) the Sections 2 and 4 Master Plan as amended pursuant to approval of James City County case no. MP-0001-2016.

2. **Playgrounds.** The requirements for installation and placement of playgrounds, playground equipment or acceptable alternative equipment, neighborhood recreation or urban park area(s) contained within paragraph 11 of the Existing Proffers shall be modified as follows:

Associates has constructed one playground that meets the design requirements set forth in the Existing Proffers (the "Existing Playground") and is required to construct, in addition to the Existing Playground, one playground or alternative neighborhood recreation or urban park area with playground or acceptable alternate equipment (the "Additional Playground"). Upon joint approval of the DRB and the Residential Advisory Board of the New Town Residential Association, Inc., construction of the Additional Playground may be modified or omitted. Associates shall submit written evidence of the joint approval of both the DRB and the Residential Advisory Board to the Director of Planning. Upon receipt and verification of such joint approval, the Director of Planning shall consider the requirements of this amendment and paragraph 11 of the Existing Proffers satisfied, and acknowledge such in writing. The playground, neighborhood recreation, and/or urban park requirements of this amendment shall be completed on or before the date of transition of the New Town Residential Association, Inc. from developer control to property owner control ("Transition Date"). The Transition Date shall be defined as the date on which the Class B membership is terminated in accordance with Article III of the Amended and Restated Master Declaration of Protective Covenants and Restrictions, New Town Residential, which is of record in the Clerk's Office as document number 050014430. Associates shall notify the County Director of Planning upon occurrence of the Transition Date.

3. **Bus/Transit Facilities.** This section amends, supersedes, and replaces paragraph 10 of the New Town Sections 2 and 4 Proffers.

A. One (1) bus stop total shall be constructed within Sections 2 and 4 of New Town. Such facility has been completed, located at Legacy Hall, and includes a pull-off and signage.

B. Associates shall establish bus pull off areas on both sides of Casey Boulevard at or near the Roper archeological site, subject to the approval of design and location by the County, the DRB, VDOT and the Williamsburg Area Transit Authority. In the event that the approvals described in the proceeding sentence have not been received within six (6) months of the submittal to the County of a plan, exhibit, or conceptual plan for approval of a bus pull off area, Associates may satisfy this proffer at any time thereafter by paying to the County the sum of Three Thousand and 00/100 Dollars (\$3,000.00.)

C. In lieu of the bus stop shelters and any other bus facilities originally proffered for New Town Sections 2 and 4, Associates makes the following cash proffer:

i. Associates shall pay to the County in escrow the sum of Thirty-Seven Thousand Two Hundred Fifty and 00/100 Dollars (\$37,250.00) within ninety (90) days of the date of approval of this Proffer Amendment by the County Board of Supervisors.

ii. The escrow funds described above shall be utilized by the County for transportation improvements benefitting the Property, as determined by the Director of Planning. Such transportation improvements may include but shall not be limited to bus stop or bus shelter infrastructure supporting the Williamsburg Area Transit Authority.

iii. In the event that the escrow funds paid to the County pursuant to this Proffer have not been utilized by application as described above within ten (10) years of the date of approval of this Proffer Amendment by the County Board of Supervisors, such sum (without interest) shall be distributed one-half (1/2) to the New Town Commercial Association Inc. and one-half (1/2) to the New Town Residential Association Inc. (the two (2) property owners' associations created pursuant to the terms of the Existing Proffers) or their successors.

4. **Recreation Facilities: Trails.** No additional trails (biking, jogging, walking or otherwise) which are not constructed as of the date hereof shall be required on the Property. This change shall be applicable regardless of the New Town Master Plan, the provisions of the Existing Proffers, and the County Comprehensive Parks and Recreation Plan Proffer guidelines in effect now or at the time of acceptance of the Existing Proffers.

5. **Interpretation.** Except as expressly modified hereby, the terms of the Existing Proffers shall remain unchanged.

6. **Defined Terms.** Terms capitalized in this document shall have the same meaning ascribed to such terms in the Existing Proffers.

7. **Headings.** All section or paragraph headings contained within this document are for convenience only and shall not be deemed a part of the Proffer Amendment.

{Signature & Notary Clause of New Town Proffer Amendment – Section 2 & 4 on the following page}

WITNESS the following signatures and seal:

NEW TOWN ASSOCIATES, LLC

By: _____

Lawrence A. Salzman

Title: President

APPROVED AS TO FORM:

Adrian Kinsman
County Attorney

COMMONWEALTH OF VIRGINIA

AT LARGE, to-wit:

The foregoing instrument was subscribed and sworn before me this 23rd day of June, 2016, by Lawrence A. Salzman, President of New Town Associates, LLC, who is personally known to me or who has produced satisfactory evidence of identity.

My Commission expires: 7-31-2016
Notary Registration no.: 7199694

Corina Cassie Paulsen
Notary Public [Affix Notarial Stamp]

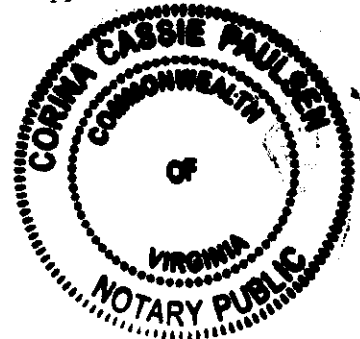


EXHIBIT A-1

DESCRIPTION OF PROPERTY – NEW TOWN SECTIONS 2 & 4

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, and in addition;

Those certain pieces or parcels of land shown and set out as "AREA ADDED TO SECTION 4" on the NEW TOWN Sections 2 and 4 AMENDED MASTER PLAN prepared by Cooper, Robertson & Partners and AES Consulting Engineers, dated June, 2001 and last amended June 23, 2003.

All as more particularly described as the New Town Sections 2 and 4 Amended Master Plan made by AES Consulting Engineers, last revised February 2016, which has been submitted to James City County as part of Case No. MP-0001-2016.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 7-15-2016
at 2:56 ~~PM~~/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: MONA A. FOLEY, CLERK

BY Mona A. Foley Clerk



OFFICIAL RECEIPT
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT
DEED RECEIPT

DATE: 07/15/16 TIME: 14:56:57 ACCOUNT: 830CLR160012690 RECEIPT: 16000025713
CASHIER: RXC REG: WD02 TYPE: AMEND PAYMENT: FULL PAYMENT
INSTRUMENT : 160012690 BOOK: PAGE: RECORDED: 07/15/16 AT 14:56
GRANTOR: NEW TOWN ASSOCIATES LLC EX: N LOC: CO
GRANTEE: COUNTY OF JAMES CITY VIRGINIA EX: N PCT: 100%
AND ADDRESS : N/A N/A, XX. 00000
RECEIVED OF : COUNTY OF JAMES CITY VIRGINIA DATE OF DEED: 06/23/16
: \$.00
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2: NEW TOWN NAMES: 0
CONSIDERATION: .00 A/VAL: .00 MAP:
PIN:
301 DEEDS .00
TENDERED : .00
AMOUNT PAID: .00
CHANGE AMT : .00

CLERK OF COURT: MONA A. FOLEY

PAYOR'S COPY
RECEIPT COPY 1 OF 2

60012689

NEW TOWN – PROFFER AMENDMENT

SECTIONS 3 AND 6

THIS PROFFER AMENDMENT is made as of this 21st day of April, 2016, by NEW TOWN ASSOCIATES, LLC, a Virginia limited liability company (together with its successors and assigns, “Associates”) (to be indexed as Grantor) and the COUNTY OF JAMES CITY, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the “County”) (to be indexed as Grantee).

RECITALS

R-1. Associates is the developer of New Town, a mixed use development located in James City County, Virginia, occupying in part certain real property more particularly described on **Exhibit A** attached hereto and made a part hereof (the “Property”).

R-2. The Property was originally subject to the New Town Proffers dated December 9, 1997, of record in the Office of the Clerk of the Circuit Court for the City of Williamsburg and County of James City, Virginia (“Clerk’s Office”) as document number 980001284. Upon previous rezonings, Sections 3 and 6 of New Town became subject to (i) proffers (“the New Town Sections 3 and 6 Proffers”) dated October 25, 2004 of record in the Clerk’s Office as document number 040027471, and (ii) Supplemental Proffers dated December 21, 2006 of record in the Clerk’s Office as document number 070005135. The foregoing proffers are referred to below collectively as the “Existing Proffers.”

R-3. The Existing Proffers provide for development of the Property in conformity with a master plan (the “New Town Master Plan”) and certain design guidelines (the “New Town Design Guidelines”). A design review board (the “DRB”) has been established by the Existing

Proffers to administer the New Town Design Guidelines and oversee development of the Property.

R-4. The New Town Master Plan is supplemented by a master plan specific to Sections 3 and 6 of New Town, likewise described in the Existing Proffers (the "Sections 3 and 6 Master Plan".)

R-5. The development of the Property is nearing completion. As development has progressed, topography, environmental considerations, amenities usage by residents of New Town and evolving policies and laws affecting real estate development have led Associates to seek amendments to the Existing Proffers and the Sections 3 and 6 Master Plan, which said proffer amendments are described below.

NOW, THEREFORE, for and in consideration of the approval by the County Board of Supervisors of certain amendments to the Sections 3 and 6 Master Plan and the proffer amendments described below, and pursuant to Sections 15.2-2302 and 2303 of the Code of Virginia, Section 24-16 of the James City County Code, and the Existing Proffers, Associates hereby amends the Existing Proffers as applicable to the Property as follows:

PROFFER AMENDMENTS

1. **Bus/Transit Facilities.**

- A. Two (2) bus stops with shelters shall be provided on the Property.
- B. One (1) of such bus stops with pull off and shelter exists on New Town Avenue, south of the intersection with Watford Lane.
- C. The other bus stop with shelter is proposed for the northeast side of Discovery Park Boulevard between Ironbound Road and New Town Avenue, subject to the approval of the bus stop design and location by the County, the DRB, VDOT, and the

Williamsburg Area Transit Authority. In the event that the approvals described in the proceeding sentence have not been received within six (6) months of the submittal to the County of a plan, exhibit, or conceptual plan for approval of a bus stop and/or bus shelter, Associates may satisfy this proffer at any time thereafter by paying to the County in escrow the sum of Eleven Thousand and 00/100 Dollars (\$11,000.00.)

i. The escrow funds described above shall be utilized by the County for transportation improvements benefitting New Town, as determined by the Director of Planning. Such transportation improvements may include but shall not be limited to bus stop or bus shelter infrastructure supporting the Williamsburg Area Transit Authority.

ii. In the event that the escrow funds paid to James City County pursuant to this Proffer have not been utilized by application as described above within ten (10) years of the date of approval of this Proffer Amendment by the County Board of Supervisors, such sum (without interest) shall be distributed one-half (1/2) to the New Town Commercial Association Inc. and one-half to the New Town Residential Association Inc. (the two (2) property owners' associations created pursuant to the terms of the Existing Proffers) or their successors.

D. This provisions superseded Paragraph 10 of the New town Sections 3 and 6 Proffers.

2. **Mix of Housing Types.** Paragraph Number 5 of the New Town Sections 3 and 6 Proffers is deemed satisfied based upon transfer of the obligation to provide housing as described in such paragraph to the New Town residential areas known as New Town Sections 7 and 8.

3. **Recreation Facilities: Trails.**

A. A trail shall be constructed connecting Discovery Park Boulevard in Section 6 of New Town to the existing trail in Section 7 of New Town near Rollison Drive, as shown on the Master Plan as amended pursuant to approval of James City County case no. MP-0001-2016. This section of trail connecting Sections 6 and 7 shall be subject to regulation and/or closure by the New Town Residential Association or its delegee the New Town Amenities Management Committee in order to address, inter alia, safety issues, special events, seasonal or weather considerations, or negative impacts associated with the trail section.

B. No additional trails (biking, jogging, walking or otherwise) which are not either described above or constructed as of the date hereof shall be required on the Property. This change shall be applicable regardless of the New Town Master Plan, the provisions of the Existing Proffers, and the County Comprehensive Parks and Recreation Plan Proffer guidelines in effect now or at the time of acceptance of the Existing Proffers.

4. **Development of Conformity with Master Plan.** The Property shall be developed generally in accordance with (i) the Existing Proffers as amended hereby and (ii) the Sections 3 and 6 Master Plan as amended pursuant to approval of James City County case no. MP-0001-2016.

5. **Interpretation.** Except as expressly modified hereby, the terms of the Existing Proffers shall remain unchanged.

6. **Defined Terms.** Terms capitalized in this document shall have the same meaning ascribed to such terms in the Existing Proffers.

7. **Headings.** All section or paragraph headings contained within this document are for convenience only and shall not be deemed a part of the Proffer Amendment.

WITNESS the following signatures and seals:

NEW TOWN ASSOCIATES, LLC

By: _____

Lawrence Salzman

Title: President

APPROVED AS TO FORM:

Adrian Kinsman
County Attorney

COMMONWEALTH OF VIRGINIA

AT LARGE, to-wit:

The foregoing instrument was subscribed and sworn before me this 21st day of April, 2016, by Lawrence Salzman, President of New town Associates, LLC, who is personally known to me or who has produced satisfactory evidence of identity.

My Commission expires: 7-31-2016
Notary Registration no.: 7199694

Corina Cassie Paulsen
Notary Public [Affix Notarial Stamp]

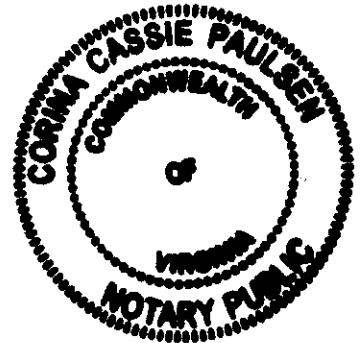


EXHIBIT A

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, last revised February 2016, which has been submitted to James City County as part of Case No. MP-0001-2016.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY

This document was admitted to record on 7-15-2016
at 2:53 ~~PM~~ 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: MONA A. FOLEY, CLERK

BY Mona A. Foley Clerk



OFFICIAL RECEIPT
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT
DEED RECEIPT

DATE: 07/15/16 TIME: 14:53:42 ACCOUNT: 830CLR160012689 RECEIPT: 16000025712
CASHIER: RXC REG: WD02 TYPE: AMEND PAYMENT: FULL PAYMENT
INSTRUMENT : 160012689 BOOK: PAGE: RECORDED: 07/15/16 AT 14:53
GRANTOR: NEW TOWN ASSOCIATES LLC EX: N LOC: CO
GRANTEE: COUNTY OF JAMES CITY VIRGINIA EX: N PCT: 100%
AND ADDRESS : N/A N/A, XX. 00000
RECEIVED OF : COUNTY OF JAMES CITY VIRGINIA DATE OF DEED: 04/21/16
: \$.00
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2: NEW TOWN NAMES: 0
CONSIDERATION: .00 A/VAL: .00 MAP:
PIN:
301 DEEDS .00
TENDERED : .00
AMOUNT PAID: .00
CHANGE AMT : .00

CLERK OF COURT: MONA A. FOLEY

PAYOR'S COPY
RECEIPT COPY 1 OF 2