

CLR20241373B

Tax Parcel Numbers 3830100002A, 3830100003, and 3830100004

PROFFERS

MONTICELLO AVENUE SHOPS

September 10, 2024

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

RETURN TO:
County Attorney's Office
101 Mounts Bay Rd., Bldg. D
Williamsburg, VA 23185
(757) 253-6612

MONTICELLO AVENUE SHOPS PROFFERS

THESE PROFFERS ("Proffers") are made this 10th day of September, 2024, by and between **VERDAD REAL ESTATE, INC.**, a Texas corporation, **LARRY R. COOKE**, and **CHERYL SUTHERLAND, AS SUCCESSOR TRUSTEE, OF THE HENRY NEAL ERTL FAMILY TRUST DATED JANUARY 1, 2011**, (collectively, "Owner") (to be indexed as grantor), and **THE COUNTY OF JAMES CITY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia ("County") (to be indexed as grantee), provides as follows:

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").

R-2. The Property is now zoned R8 – Rural Residential. The Property is designated Neighborhood Commercial on the County's Comprehensive Plan Future Land Use Map.

R-3. Owner has applied to rezone the Property from R8 – Rural Residential to B1 – General Business, with proffers. The rezoning of the Property to B1, with proffers, is consistent both with the land use designation for the Property in the County's Comprehensive Plan and the statement of intent for the General Business zoning district set forth in Section 24-389 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-4. A community impact study ("Community Impact Study") entitled "Community Impact Statement Rezoning of Monticello Avenue Shops" prepared by AES Consulting Engineers, dated January 2023 and last revised May 2024, has been submitted to the County Planning Director for review by the County in connection with this proposed rezoning. The Community Impact Study is on file in the office of the County Planning Director.

R-5. Developer has submitted to the County a traffic impact study ("Traffic Impact Study") entitled "Traffic Impact Analysis" prepared by Grove Slade, dated September 18, 2023, which has been prepared to address traffic associated with the Property. The Traffic Study is on file in the office of the County Planning Director.

R-6. Developer has submitted to the County a conceptual plan of development ("Master Plan") entitled "Master Plan for Rezoning and Special Use Permit for Monticello Avenue Shops", dated January 27, 2023 and last revised September 10, 2024, prepared by AES Consulting Engineers, for the Property in accordance with the County Zoning Ordinance. The Master Plan is on file in the office of the County Planning Director.

R-7. Developer has submitted to the County design guidelines for the proposed improvements to the Property ("Design Guidelines") entitled "Design Guidelines for Monticello Shops in James City County, Virginia", dated February 26, 2023, prepared by Hopke | Harrison, Inc. The Design Guidelines are on file in the office of the County Planning Director.

R-8. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

R-9. The provisions of the Zoning Ordinance, may be deemed inadequate for protecting and enhancing orderly development of the Property. Accordingly, Owner, in furtherance of the above-described 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 Sections 15.2-2303 and 15.2-2303.4(D)(1) of the Code of Virginia, as amended (the "Virginia Code"), Ordinance N0.31A-346 adopted by the James City County Board of Supervisors on October 8, 2019 and Sec 24-16 of the Zoning Ordinance.

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 Master Plan, and pursuant to Sections 15.2-

2303 and 15.2-2303.4(D)(1) of the Virginia Code, and Section 24-16 of the Zoning Ordinance, it is agreed that all of the following conditions shall be met and satisfied in developing the Property.

PROFFERS:

1. **Design.** The Property shall be developed generally in accordance with the Master Plan and Design Guidelines and with only changes thereto that the County or its duly authorized designee determines do not alter the basic concept or character of the development in accordance with Section 24-23(a)(2)(f) of the Zoning Ordinance in effect on the date hereof; provided, however, 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.

2. **Prohibited Uses.** The following uses shall be prohibited on the Property:

- a. Convenience Store with fuel sales;
- b. Grocery Store;
- c. Fast Food Restaurant with drive-through;
- d. Funeral Home;
- e. Machinery Sales and Service;
- f. New and Rebuilt Automotive Parts Sales;
- g. Vehicle Repair and Service; and
- h. Vehicle and Trailer Sales and Service.

3. **Water Conservation.** Water conservation standards for the Property shall be developed and submitted to and approved by the James City Service Authority ("JCSA") for general consistency with the terms of this Proffer prior to final site plan approval for development of the Property. The standards shall address such customary and reasonable 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.

4. **Nutrient Management Plan.** The owner of any portion of the Property proposed for development shall be responsible for coordinating with an agent of the Colonial Soil and Water Conservation District ("CSWCD") or, if a CSWCD agent is unavailable, a soil scientist licensed in the Commonwealth of Virginia, or other qualified professional approved by the County's Director of Planning, to conduct soil tests and to develop, based upon the results of the soil tests, customized nutrient management plans (the "Nutrient Plans") for all turf areas within the portions of the Property proposed for development. A Nutrient Plan for each portion of the Property proposed for development shall be submitted to the County Stormwater & Resource Protection Director for review and approval prior to the issuance of a Certificate of Occupancy for each portion of the Property developed. Upon approval, the owner of such portion of the Property shall be responsible for ensuring that any nutrients applied to the turf areas on such portion of the Property be applied in accordance with the applicable Nutrient Plan or any updates or amendments thereto as may be approved by the County Stormwater & Resource Protection Director.

5. **Transportation.**

a. **Traffic Improvements.** Development of the Property shall include the construction of an 100 foot eastbound right-turn taper on Monticello Avenue at the entrance to the Property, which right-turn taper shall be installed (or 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) by Owner when deemed warranted by the County and the Virginia Department of Transportation ("VDOT"), but in no event prior to final site plan approval for the first building to be constructed on the Property in accordance with the Master Plan.

b. Trip Generation. Development of the Property shall not exceed 72 PM peak hour trips as determined by the most recent edition of the Institute of Transportation Engineers Trip Generation Manual (the "ITE Manual") at the time of each site plan approval for the development of the Property. Accordingly, each site plan for the development of the Property shall, when submitted to the County for review, contain an accounting of the PM peak hour trip generation, as determined by the ITE Manual, associated with the development proposed by such site plan, all development shown on previously approved site plans for development of the Property (except to the extent the proposed site plan is in lieu of a previously approved site plan for development of the Property), and all development shown on site plans then under review by the County for development of the Property. No site plan for development of the Property shall be approved by the County which includes an amount of development that, together with all other development shown on previously approved site plans for development of the Property (except to the extent the proposed site plan is in lieu of a previously approved site plan for development of the Property), would generate more than 72 PM peak hour trips as determined by the ITE Manual. In determining and accounting for the foregoing PM peak hour trips: (i) internal and pass-by capture shall be determined in accordance with VDOT standards, and (ii) traffic counts for completed and occupied development on the Property may, with the approval of the County's Director of Planning, be substituted for ITE Manual estimated trips.

6. Headings. All section headings and subheadings of these Proffers are for convenience only and shall not be read as a part of these Proffers or utilized in interpretation thereof.

7. Delegation of Subsequent Approvals. The County Board of Supervisors by accepting these Proffers is exercising its legislative function. While these Proffers provide for subsequent approvals by the County or by its duly authorized designees appointed by the County,

such subsequent approvals by any duly authorized designee of the County shall not include the exercise of any legislative function.

8. **Severability**. In the event that any clause, sentence, paragraph, section or subsection of these Proffers shall be adjudged 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.

9. **Successors and Assigns**. These Proffers shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors and/or assigns; provided, however once a party ceases to own any portion of the Property, such party shall have no continuing liability hereunder.

10. **Void if Rezoning Not Approved**. In the event that any of the proposed rezoning sought by this application is not approved by the County as submitted or is overturned by subsequent judicial determination, these Proffers shall be null and void.

11. **Reasonable Proffers**. The Owner, as evidenced by its signature below, deems these proffers to be reasonable and appropriate.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

[COUNTERPART SIGNATURE PAGE TO PROFFERS]

WITNESS the following signatures, thereunto duly authorized:

VERDAD REAL ESTATE, INC.

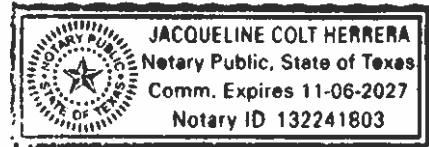
By: Johanna Lawrence
Name: Johanna Lawrence
Title: Chief Operating Officer

STATE OF TEXAS
COUNTY OF TARRANT

The foregoing instrument was acknowledged before me this 16 day of July, 2024, by Johanna Lawrence, COO of Verdad Real Estate, Inc., on its behalf.

Jacqueline Colt Herrera
Notary Public

My commission expires: 11-06-2027
My registration number is: 132241803



[COUNTERPART SIGNATURE PAGE TO PROFFERS]



Larry R. Cooke

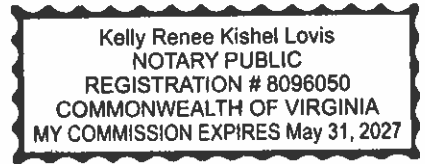
COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me this 16 day of July, 2024, by
Larry R. Cooke.



Notary Public

My commission expires: May 31, 2027
My registration number is: 8096050



[COUNTERPART SIGNATURE PAGE TO PROFFERS]

Cheryl Sutherland, Trustee
Cheryl Sutherland, as Successor Trustee of the
Henry Neal Ertl Family Trust Dated January 1,
2011

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me this 16 day of July, 2024, by Cheryl Sutherland, as Successor Trustee of the Henry Neal Ertl Family Trust Dated January 1, 2011.

Nettie M. Burrell-Warner
Notary Public

My commission expires: July 31, 2026
My registration number is: 7604557

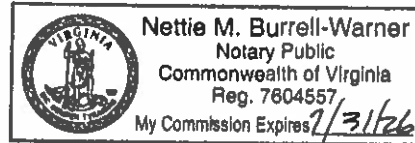


EXHIBIT A

Parcel ID: 3830100002A

ALL THAT certain piece or parcel of land, together with all improvements thereon and appurtenances thereunto, containing 2.0 acres, more or less, situated in James City County, Virginia, shown and designated as Section No. 1 on a plat entitled, "Plat Showing Two Parcels of Land Surveyed for Carlton C. Casey", made by V.D. McManus October 23, 1950, said plat being duly of record in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City in Plat Book 12 at page 20.

LESS AND EXCEPT that portion of the property conveyed to the Commonwealth of Virginia by deed dated April 15, 1966 and recorded in the Clerk's Office of the Circuit Court of James City County, Virginia in Deed Book 108 at page 564.

FURTHER LESS AND EXCEPT that portion of the property conveyed to the Commonwealth of Virginia by Certificate of Take recorded in the Clerk's Office of the Circuit Court of James City County, Virginia in Deed Book 792 at page 276, confirmed by Order recorded as Instrument Number 000003039, and further confirmed by Order recorded as Instrument Number 020006408.

Parcel ID: 3830100004

All that certain piece or parcel of land, situate in Jamestown District, James City County, Virginia, bounded and described as follows: at an iron stake on the westerly side of Iron Bound Road on the dividing line between the land hereby conveyed and that of Drummond E. New; thence in a southwesterly direction along the said Road the distance of 105 feet to a point; the said parcel of land then extends back between parallel lines N 54 degrees 30' W the distance of 438.91' on its northeasterly side and the distance of 439 feet, more or less, on its southwesterly side, all four corners being marked by iron stakes.

LESS AND EXCEPT that portion of the property conveyed to the Commonwealth of Virginia by deed dated April 15, 1966 and recorded in the Clerk's Office of the Circuit Court of James City County, Virginia in Deed Book 109 at page 386.

FURTHER LESS AND EXCEPT that portion of the property conveyed to the Commonwealth of Virginia by deed dated May 3, 1996 and recorded in the Clerk's Office of the Circuit Court of James City County, Virginia in Deed Book 787 at page 487.

Parcel ID: 3830100003

All that tract, piece or parcel of land situate in James City County, Virginia and containing 1.83 acres, more or less, as shown on that certain plat of survey entitled "Survey of a parcel of land for conveyance from the Drummond E. New estate to Henry F. Ertl and Edith D. Ertl", dated September 22, 1977, made by Douglas E. White, C.L.S., a copy of which plat is recorded in the Office of the Clerk of the Circuit Court of James City County, Virginia, in Deed Book 180 at page 243.

INSTRUMENT 202413738
RECORDED IN THE CLERK'S OFFICE OF
WMSBG/JAMES CITY CIRCUIT ON
OCTOBER 18, 2024 AT 09:17 AM
ELIZABETH E. O'CONNOR, CLERK
RECORDED BY: SPA