

Tax Parcel I.D. Numbers: (38-4)(1-51) and (38-4)(1-56)

PROFFERS

NEW TOWN – SECTION 7 & 8

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NEW TOWN - SECTION 7 and 8 - PROFFERS

THESE PROFFERS are made as of this 1st day of December, 2006, by **NEW TOWN ASSOCIATES, LLC**, a Virginia limited liability company (together with its successors and assigns, "Owner") (index as the 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").

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, 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 SETTLER'S MARKET AT NEW TOWN", dated February 28, 2006, prepared by DRW Consultants, LLC, Midlothian, Virginia, which addresses the proposed development of the Property and 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 "Section 7 and 8 Master Plan") entitled "NEW TOWN SECTION 7 AND 8 MASTER PLAN BERKELEY DISTRICT JAMES CITY COUNTY, VIRGINIA", dated August 25, 2006, revised October 13, 2006, prepared by AES Consulting Engineers and Cooper Robertson & Partners, and design guidelines (the "Section 7 and 8 Guidelines") entitled "NEWTOWN SECTION 7 & 8 DESIGN GUIDELINES – RESIDENTIAL NEW TOWN ASSOCIATES", dated October, 2006, prepared by AES Consulting Engineers and Cooper Robertson & Partners, for the Property, copies of which Section 7 and 8 Master Plan and Section 7 and 8 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 three (3) areas of archaeological significance on the Property, Sites 44JC618, 44JC619, and 44JC620, and recommended such sites for Phase II evaluation.

Subsequent to the Casey Study, Owner commissioned a second Phase I Archaeological Study (the "Associates Study 1") of, *inter alia*, Sites 44JC618, 44JC619, and 44JC620 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 1 recommended avoidance or a Phase II analysis of Sites 44JC618, 44JC619, and 44JC620.

Owner commissioned a Phase II Archaeological Study (the "Associates Study 2") of Site 44JC620 as detailed in that certain report entitled "An Archaeological Evaluation of Site 44JC620, New Town Tract, James City County, Virginia", dated May 4, 2005, prepared by William and Mary Center for Archaeological Research, which report has been submitted to, reviewed and approved by the County Planning Director. The Associates Study 2 determined that Site 44JC620 was not eligible for the National Register of Historic Places and recommended no further treatment of the Site.

Owner commissioned a Phase II Archaeological Study (the "Associates Study 3") of Site 44JC618 as detailed in that certain report entitled "An Archaeological Evaluation of Site 44JC618, James City County, Virginia", dated June 18, 2004, prepared by William and Mary Center for Archaeological Research, which report has been submitted to, reviewed and approved by the County Planning Director. The Associates Study 3 determined that the historic component of Site 44JC618 is eligible for the National Register of Historic Places and that the prehistoric component is not eligible. The Associates Study 3 recommended that Site 44JC618 be avoided or that the archaeological data be recovered.

Owner commissioned a supplemental Phase II Archaeological Study (the “Associates Study 4”) of Site 44JC618 as detailed in that certain report entitled “Supplemental Archaeological Evaluation of Site 44JC618, James City County, Virginia”, dated June 7, 2005, prepared by William and Mary Center for Archaeological Research, which report has been submitted to, reviewed and approved by the County Planning Director. The Associates Study 4 determined that a portion of Site 44JC618 is not eligible for the National Register of Historic Places and redefined the area of Site 44JC618.

Owner is proposing to avoid Sites 44JC618 and 44JC619 in accordance with Proffers 9 and 10 herein.

R-11. A small whorled pogonia survey was conducted on the Property identifying the “Casey Colony” as existing on a portion of Section 8 of the Property. The report generated from that survey is entitled “Detailed Survey for the Small Whorled Pogonia (*Isotria medeoloides*) New Town, James City County, Virginia Latitude: 37°16’50.00”N Longitude: 76°45’00.00”W WEG # 456” (the “WEG Report”), dated July 10, 2006, prepared by Williamsburg Environmental Group, Inc. A copy of the WEG Report is on file with the County Planning Director. Owner is proposing to preserve the “Casey Colony” in accordance with Proffer 10 herein.

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 Section 7 and 8 Master Plan, the Section 7 and 8 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 Section 7 and 8 Master Plan and the Section 7 and 8 Design Guidelines shall supersede, 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 Residential Association, Inc., a Virginia non-stock corporation (the "Residential Association"), and to the Master Declaration of Protective Covenants and Restrictions for New Town residential property, dated May 19, 2004, recorded in the Clerk's Office as Instrument Number 040013865 (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 Residential Association, Owner shall submit such remaining portion(s) 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). 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 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) establish architectural controls, approved by the DRB with input from the County Planning Director, consistent with the Section 7 and 8 Design Guidelines, and (iv) provide for the implementation and enforcement of the water conservation, water quality monitoring/remediation plan, turf management, and stream channel monitoring/remediation 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 Section 7 and 8 Master Plan and the Section 7 and 8 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, landscape 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 Section 7 and 8 Master Plan and Section 7 and 8 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 Section 7 and 8 Master Plan and/or the Section 7 and 8 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 Section 7 and 8 Guidelines and/or the Section 7 and 8 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 Section 7 and 8 Master Plan and/or the Section 7 and 8 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. Mix of Housing Types. A minimum of twelve (12) “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 Fifty-Four Thousand Dollars (\$154,000), 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 Office of Housing and Community Development. This obligation to construct and offer for sale the “Residential Units” with the above-proffered pricing shall be exclusive of any similar obligations that may have been or will hereafter be transferred from other sections of the New Town development.

5. Community and Open Spaces.

(a) The Section 7 and 8 Master Plan and the Section 7 and 8 Guidelines set forth an archaeological interpretive park, a small whorled pogonia preserve, and other open and/or community spaces (collectively, the “Community Space”).

(b) A site plan or other appropriate plan as may be reasonably requested by the Planning Director for the Community Space located in Section 7 shall be submitted to the County prior to final site plan or subdivision plan approval for greater than forty percent (40%) of the “Residential Units” to be constructed on Section 7 of the Property. Any improvements to be located in the Community Space 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 greater than seventy-five percent (75%) of the “Residential Units” to be constructed on Section 7 of the Property. Any form of a guarantee shall be approved by the County Attorney.

(c) A site plan or other appropriate plan as may be reasonably requested by the Planning Director for the Community Space located in Section 8 shall be submitted to the County prior to final site plan or subdivision plan approval for greater than forty percent (40%) of the “Residential Units” to be constructed on Section 8 of the Property. Any improvements to be located in the Community Space shall be completed or Guaranteed in a manner approved by the County Attorney prior to final site plan or subdivision plan approval for greater than seventy-five percent (75%) of the “Residential Units” to be constructed on Section 8 of the Property.

(d) The configuration, composition, location and design of the Community Space 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.

(e) The Community Space 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.

(f) The Property shall be developed in compliance with currently 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 development 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 Space 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.

6. 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; and (ii) streetscape plans for streets within the subject portion of the Property, all of which pedestrian connections and streetscapes shall be consistent with the Section 7 and 8 Guidelines applicable to the Property. The approved streetscape plans, including, where required by the DRB pursuant to the Section 7 and 8 Design Guidelines, street trees, sidewalks, walking trails, crosswalks, street lighting, and any other miscellaneous improvements that may be required by the Section 7 and 8 Design Guidelines and approved by the DRB, shall be implemented when the adjacent portion of the Property is developed.

7. Bus/Transit Facilities. If requested by the Williamsburg Area Transport Company in writing to Owner prior to March 31, 2007, at least one (1) bus pull-off area with bus stop shelter shall be constructed on the Property at a location along the proposed Casey Boulevard in the vicinity of that portion of the Property shown on the Master Plan as "Archaeological Interpretive Park" or, at the request of Owner, at such reasonable alternative location as is approved by the County Planning Director and the Williamsburg Area Transport Company. Design of any pull-offs and shelters shall be approved in advance by the DRB. The pull-off(s) and shelter(s) shall be shown on development plans for the subject portion(s) of the Property, Guaranteed at the time of final development plan approval, and installed in connection with construction of the adjacent roadway(s).

8. Recreation Facilities. The Property is being developed in furtherance of a comprehensive town plan that is subject to the Section 7 and 8 Guidelines and the Section 7 and 8 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 accordance with 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 issuance of buildings permits for units exceeding seventy-five (75%) of the "Residential Units" to be constructed on the Property, Owner shall complete the installation of: (i) one (1) playground; (ii) one (1) pool; (iii) one (1)

urban park area associated with the pool; (iv) one (1) archaeological interpretive park; (v) one (1) urban park area in Section 8; and (vi) a system of pedestrian/jogging paths as shown on the Section 7 and 8 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 approval by the County Planning Director, Owner may utilize the Community Space to meet the aforementioned requirements.

9. Archaeology. Prior to any final site plan or subdivision plan approval for development on the Property, Owner shall submit to the County Planning Director for review and approval a treatment plan for that portion of the Property shown as “Archaeological Interpretive Park” on the Section 7 & 8 Master Plan to include but not be limited to (i) substantial preservation of the site in place, (ii) the placement of benches, landscaping and educational signs in the park area, and (iii) nomination of the site to the National Register of Historic Places; provided, however, that such treatment plan shall not conflict with any requirements of or restrictions imposed by any other governmental authority with jurisdiction.

10. Small Whorled Pogonia. Prior to any final site plan or subdivision plan approval for development on Section 8 of the Property, Owner shall (i) preserve as natural open space the area including and surrounding the small whorled pogonia colony (the “Casey Colony”) located on the Property (the “SWP Buffer”) shown as “Casey SWP Colony”, “Archaeological Preserve”, and “Casey SWP Colony Preserve” on the Section 7 and 8 Master Plan (ii) and submit to the County Planning Director for review and approval a preservation plan for the SWP Buffer addressing the maintenance and protection of the SWP Buffer; provided, however, that such preservation plan shall not conflict with any requirements of or restrictions imposed by the United States Army Corps of Engineers or other governmental authority with jurisdiction.

11. 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.

12. Nutrient Management. The Residential Association, the Commercial Association and/or Separate Association(s) shall be responsible for contacting an agent of the Virginia Cooperative Extension Office (“VCEO”) or, if a VCEO agent is unavailable, a soil scientist licensed in the Commonwealth of Virginia or other qualified professional to conduct soil tests and to develop, based upon the results of the soil tests, customized nutrient management plans (“Nutrient Management Plans”) for all common areas of such Association(s) within the Property. The Nutrient Management Plans for individual common areas shall be submitted to the County Environmental Director for his review and approval prior to the issuance of building permits for the “Residential Units” adjacent to such common area(s). Upon approval, such Association shall be responsible for ensuring that any nutrients applied to the common areas which are controlled by such Association be applied in accordance with the applicable Nutrient

Management Plan or any updates or amendments thereto as may be approved by the County Environmental Director. Within twelve (12) months after issuance of the Certificate of Occupancy for the final “Residential Unit” on the Property and every three (3) years thereafter, a nutrient management information seminar shall be conducted regarding the Property. Such seminars shall be designed to acquaint residents with the tools, methods, and procedures necessary to maintain healthy lawns and landscaping.

13. Stormwater Management.

(a) A site plan for the that certain stormwater management facility shown as “BMP PARCEL # 1” on that certain plat entitled “PLAT OF SUBDIVISION SHOWING CENTER STREET, NEW TOWN AVENUE, BLOCK 5, AND COMMON AREA, (BMP PARCEL#1) PREPARED FOR NEW TOWN ASSOCIATES, LLC”, dated December 11, 2003, prepared by AES Consulting Engineers, and recorded in the Clerk’s Office of the Circuit Court of the City of Williamsburg and the County of James City, Virginia as Instrument Number 040009441, as the same may be amended from time to time, shall be submitted to the County prior to issuance of a land disturbance permit for development of the Property. Owner shall complete and have in service BMP Parcel # 1 in accordance with such site plan prior to issuance of any land disturbance permit for development on Section 8 of the Property.

(b) Commencing at the date of issuance of the first land disturbing permit for any area within the Property build out and continuing for a period of five (5) years after complete build-out of Sections 2, 4, 7, 8, and 9 of New Town, Owner or the Residential Association shall monitor that portion of that certain stream located on the Property starting at the outfall of that certain BMP # 1, shown on the Section 7 & 8 Master Plan separating Section 7 from Section 8, by annual inspections to be conducted by a third-party environmental monitoring service for the

purpose of evaluating channel stability. A copy of the report generated from each such annual inspection shall be provided to the County Environmental Director.

(c) Commencing at the date of issuance of the first land disturbing permit for any area within the Property and continuing for a period of five (5) years after complete build out of Sections 2, 4, 7, 8 and 9 of New Town, Owner or the Residential Association shall monitor water resources on the Property bi-annually for the purpose of conducting water quality sampling and testing for Total Suspended Solids (“TSS”), Total Phosphorus, Dissolved Oxygen, Temperature, Nitrate, Nitrite, pH and Biological/Benthic. Owner shall establish not more than five (5) monitoring stations within the Property and/or New Town in locations approved by the Environmental Director and provide reports based on data collected all pursuant to a water quality monitoring plan designed by Owner and subject to the approval of the James City County Environmental Director. Such water quality monitoring plan shall be submitted to the Environmental Director for review prior to final approval of the first site plan or subdivision plan for any development within the Property.

(d) If the water quality monitoring plan or stream channel stability monitoring described above reveal the need for remediation as determined by the Environmental Director, such remediation shall be the obligation of the Residential Association as referenced in paragraph 2 above. The remediation shall be described in a plan approved by the Environmental Director when warranted by findings of the aforesaid programs. Owner shall provide the funds described in paragraph 15(i) below to capitalize or partially capitalize such remediation plans as may be approved by the County Environmental Director, but shall have no further or other obligation to undertake or fund remediation proffered herein.

14. Community Character Corridor Buffer. Owner shall maintain a variable width undisturbed (except for supplemental plantings as provided herein) buffer (the “Community Character Corridor Buffer”) with an average depth of one hundred ten (110) feet but not less than one hundred (100) feet from the existing public right of way for Virginia Route 199 along the western boundary line of the Property. Prior to final site plan or subdivision plan approval for development in Section 8 of the Property, Owner shall supplement the Community Character Corridor Buffer with native, evergreen trees and shrubs to be planted in the Community Character Corridor Buffer and/or the adjacent public right of way (as may be approved by the Virginia Department of Transportation) in accordance with a landscape plan (the “Landscape Plan”) designed to enhance the visual buffer from vehicles traveling on Virginia Route 199 and development on Section 8 of the Property. The Landscape Plan shall be prepared by a landscape architect licensed in the Commonwealth of Virginia and submitted to the County Planning Director for review and approval.

15. Contribution for Public Facilities/Impacts.

(a) Recreation Facilities. A recreation facilities contribution shall be made to the County in the amount of One Hundred Nine Dollars (\$109), for each individual residential dwelling unit (individually, a “Residential Unit”, and collectively, the "Residential Units") constructed on the Property (the “Per Unit Recreation 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 in whole or in part by the development of the Property.

(b) Water Facilities. A water facilities contribution shall be made to the County in the amount of Eight Hundred Twenty Dollars (\$820), for each single-family attached and multi-family Residential Unit constructed on the Property and in the amount of One

Thousand Ninety-Three Dollars (\$1,093), for each single-family detached Residential Unit constructed on the Property (collectively, 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 in whole or in part by the development of the Property.

(c) School Facilities. A school facilities contribution shall be made to the County in the amount of Four Thousand Eleven Dollars (\$4,011) per single-family detached Residential Unit constructed on the Property (the “Per Unit School Contribution”). The Per Unit School Contribution shall not apply to any single-family attached, multi-family, or any other type of Residential Units constructed on the Property. 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 in whole or in part by the development of the Property.

(d) Library Facilities. A library facilities contribution shall be made to the County in the amount of Sixty-One Dollars (\$61) for each Residential Unit constructed 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 in whole or in part by the development of the Property.

(e) Fire/EMS Facilities. A fire/EMS facilities contribution shall be made to the County in the amount of Seventy-One Dollars (\$71) for each Residential Unit constructed on the Property (the “Per Unit Fire/EMS Contribution”). 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 in whole or in part by the development of the Property.

(f) Timing. The Per Unit Recreation Contribution, Per Unit Water 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) Per Unit Contributions Inapplicable to Certain Residential Units. Notwithstanding any other provision of these Proffers, none of the Per Unit Contributions shall be assessed for any Residential Unit with original proffered pricing at or below One Hundred Fifty-Four Thousand Dollars (\$154,000) or as such amount may be adjusted in accordance with paragraph 18 of these Proffers.

(h) Transportation Improvements. Prior to final site plan or subdivision plan approval for development of the Property or portion thereof, a transportation improvement contribution shall be made to the County in the amount of Twelve Thousand Seven Hundred Twenty-Eight and 00/100 Dollars (\$12,728). The County shall make these monies available for off-site road improvements in the Monticello Avenue corridor, the need for which is deemed by the County to be generated in whole or in part by the development of the Property.

(i) Remediation Funding. Prior to final site plan or subdivision plan approval for development within the Property, Owner shall establish an interest bearing capital reserve account in the amount of Sixty Thousand and 00/100 Dollars (\$60,000) in the name of the Residential Association for the purpose of funding water quality or stream channel remediation efforts on the Property. If the capital reserve funds have not been utilized by the New Town

Residential Home Owners Association within the monitoring period proffered in paragraphs 13(c) and (d) above, any remaining funds shall revert to the Owner or its assignee.

16. Private Streets. Any and all streets within Section 7 and 8 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 plan approval by the County for the particular phase or section which includes the street to be designated as private.

17. Building Setback from Wetland and Other Areas. The Section 7 and 8 Master Plan identifies a “RPA Buffer” and a “Voluntary Wetland Buffer” (collectively, the “Buffer”) on the Property. Except in the area shown on the Section 7 & 8 Master Plan as “COMM”, no building or impervious cover shall be constructed or installed on the Property within fifteen (15) feet of the Buffer.

18. Marshall & Swift 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, 2007 to reflect any increase or decrease for the preceding year in the Marshall and Swift Building Cost Index (the “MSI”). 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 MSI as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the MSI as of December 1 in the preceding year. In the event a substantial change is made in the method of establishing the MSI, 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 MSI. In the event that the MSI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the MSI (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.

19. 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 in whole or in part by the development of the Property.

20. 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.

21. 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.

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

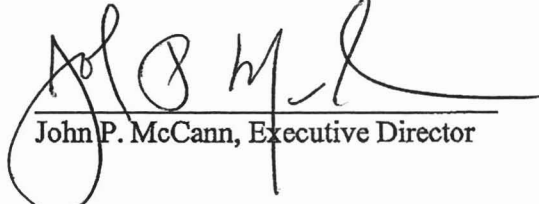
WITNESS the following signature, thereunto duly authorized:

[SIGNATURE LOCATED ON SUCCEEDING PAGE]

[SIGNATURE PAGE TO NEW TOWN SECTION 7 & 8 PROFFERS]

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 29TH day of NOV., 2006 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: 08/31/08

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EXHIBIT A

All those certain pieces, parcels, or tracts of land shown as “Section 7” and “Section 8” on that certain plan entitled “NEW TOWN SECTION 7 AND 8 MASTER PLAN BERKELEY DISTRICT JAMES CITY COUNTY, VIRGINIA”, dated August 25, 2006, revised October 13, 2006, prepared by AES Consulting Engineers, a copy of which is on file with the County Planning Director.