

Z-03-02/Z-04-02. Colonial Heritage at Williamsburg Amended Proffers

**AMENDED AND RESTATED
PROFFERS
COLONIAL HERITAGE AT WILLIAMSBURG**

December, 2004

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THESE AMENDED AND RESTATED PROFFERS are made this 2nd day of December, 2004, by and among:

COLONIAL HERITAGE LLC, a Virginia limited liability company ("Colonial Heritage") (to be indexed as grantor) and

THE COUNTY OF JAMES CITY, VIRGINIA ("County") (to be indexed as grantee), provides as follows:

RECITALS:

R-1. Colonial Heritage is a wholly-owned subsidiary of and is managed by U.S. Home Corporation, a Delaware corporation ("U.S. Home").

R-2. Colonial Heritage is the owner of certain real property located in the County of James City, Virginia, more particularly, described on **Exhibit A** attached hereto and made a part hereof. The property described on Exhibit A is referred to herein as the "Colonial Heritage Property."

R-3 Colonial Heritage is likewise the owner of certain real property located in the County of James City, Virginia containing 740.2 ± acres, formerly owned by the Colonial

Prepared by: Kaufman & Canoles,
P.C. P.O. Box 6000
Williamsburg, VA 23188

Virginia Council of Boy Scouts of America, Inc., more particularly described on **Exhibit B**, attached hereto and made a part hereof (the "Boy Scout Property").

R-4. Colonial Heritage is the developer of an age-restricted active adult community known as Colonial Heritage, located on the Colonial Heritage Property, pursuant to certain Proffers dated November 7, 2001 which are recorded in the Office of the Clerk of the Circuit Court for the City of Williamsburg and County of James City as Instrument No. 010022082 (the "Proffers"), and a master plan of development which is incorporated by reference and made a part of the Proffers.

R-5. A portion of the Boy Scout Property described on **Exhibit C** is located outside the Primary Service Area defined on the James City County Comprehensive Plan and Zoning Map as in effect on the date hereof ("PSA") (the "Non-PSA Boy Scout Property").

R-6. All real property which is described on Exhibits A and B inclusive and which is located inside the PSA shall be referred to collectively herein as the "Property".

R-7. Colonial Heritage, its successors and assigns who own record title to the Property and subsequent purchasers of Residential Units (as hereinafter defined) and non-residential areas are referred to collectively herein as the "Owners". The term "Residential Unit(s)" as used herein shall be defined as any residential dwelling, house, condominium or other unit.

R-8. The Owners and/or their predecessors in title have filed applications under County file numbers Z-3-02/Z-4-02/MP-1-02 (the "Applications for Amendment") to (i) rezone the Boy Scout Property, and (ii) to amend the previously approved master plan and the

Proffers in connection with incorporating portions of the Boy Scout Property into Colonial Heritage but without any increase whatsoever in the number of permitted Residential Units, and (iii) to rezone the Non-PSA Boy Scout Property from A-1 to A-1 with a special use permit (referenced in R-10 below) allowing a residential cluster development.

R-9. Colonial Heritage has filed an application for a special use permit ("SUP") under County file number SUP-21-04 to establish not more than fifty (50) residential lots on the Non-PSA Boy Scout Property, which application and SUP will impose certain conditions upon the Non-PSA Boy Scout Property.

R-10. The provisions of the Zoning Ordinance, Section 24-1, *et seq.* possibly may be deemed inadequate for protecting and enhancing orderly development of the Property in accordance with the County Comprehensive Plan. The Owners, in furtherance of the Application, desire to proffer certain conditions which, among other things, provide for some of the types of benefits specified in the low density residential provisions of the comprehensive plan and in the Cluster Development Standards and density bonus provisions of the Zoning Ordinance applicable to R-1, R-2 and R-5 districts that should be provided for densities greater than one dwelling unit per acre. These conditions are specifically 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-11. The County constitutes a high-growth locality as defined by Section 15.2-2298

of the Virginia Code.

R-12. Phase I, II and III Archaeological Studies have been performed on the Colonial Heritage Property as described in that document entitled: An Archeological Assessment of the Massie and Ware Tracts, James City County, Virginia dated October, 2000 prepared by Cultural Resources, Inc. The referenced studies with treatment plans required pursuant to paragraph 2 below have been approved by the County Director of Planning.

R-13. Copies of each of the studies referenced in Recital paragraph R-13 and paragraph 2 below are on file in the office of the County Director of Planning.

R-14. A Community Impact Statement made by AES Consulting Engineers, with update dated June 24, 2002 has been submitted to the County Director of Planning for review and approval by the County in connection with both the Application and the Applications for Amendment, and those statements are on file in the office of the County Director of Planning.

NOW, THEREFORE, for and in consideration of the approval by the County of the rezoning of the Property, and pursuant to Section 15.2-2296 of the Virginia Code and Section 24-16 of the Zoning Ordinance, Colonial Heritage agrees that the Owners shall meet and comply with the following conditions and proffers as indicated in developing the Property.

PROFFERS:

SECTION I. Proffers Applicable to All Property.

1. Binding Master Plan. The Property shall be developed generally in accordance with an Amended Master Plan of Development pursuant to Section 24-515(b) of the Zoning

Ordinance entitled "Amended Master Development Plan of Colonial Heritage at Williamsburg" made by AES Consulting Engineers and Land Design, Inc. and Williamsburg Environmental Group, Inc., dated June 21, 2002, and revised July 2, 2004, which is incorporated by reference (the "Master Plan"). The Master Plan provides only for the general location of proposed streets, the general location of proposed areas of open space, buffer areas, recreation facilities, densities, and types of land use, and the general location of proposed areas for golf fairways, greens, drainage facilities, pedestrian connectivity, greenways and other amenities. Development plans may deviate from the Master Plan if the Planning Commission concludes after reviewing written comments from the Planning Director that the plan does not significantly alter the character of land uses or other features or conflict with any conditions placed on the approval of the rezoning. The County hereby acknowledges that the Master Plan described above has been submitted to and is on file in the office of the County Director of Planning. Prior to or concurrent with submission of development plans for each land bay shown on the Master Plan within the Property ("Land Bays"), the Owners shall receive approval from the County's Director of Planning of more detailed master plan(s) for each Land Bay which more detailed master plans shall describe the dwelling unit and commercial land use types and layout for each Land Bay.

2. Archaeological Study. If not previously submitted and approved, a Phase I Archaeological Study for each Land Bay shall be submitted to the Director of Planning for his review and approval prior to issuance of a land disturbing permit for any soil disturbing activity in such Land Bay. A treatment plan shall be submitted to, 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 being 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 II 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 area. 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 Standard 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 each Land Bay and shall be adhered to during the clearing, grading and construction activities thereon.

3. Traffic.

A. U.S. Home has submitted to the Office of the County Director of Planning and the Virginia Department of Transportation ("VDOT") a traffic analysis dated October 23, 2000 entitled: "Traffic Analysis for U.S. Homes Site on Richmond Road" prepared by DRW Consultants, Inc. as updated by supplements dated June 18, 2002 and July 28, 2004 (the "Traffic Study"). The Traffic Study is on file with the County Department of Planning.

B. The following entrance and road improvements ("West Crossover Improvements") shall be installed to VDOT standards and specifications:

(6) Modifications to crossover pavement to accommodate

(1) A traffic signal at the west crossover as shown and defined in the Traffic Study (hereinafter "West Crossover").

(2) Modification on and/or improvement of the single left turn lane on westbound Richmond Road at the West Crossover, if, as and when required by VDOT.

(3) Construction of a right-turn lane on eastbound Richmond Road at the West Crossover.

(4) Construction of two (2) exit lanes and two (2) entrance lanes at the site entrance at the West Crossover.

(5) Construction of a left-turn lane on eastbound Richmond Road at the West Crossover as necessary to accommodate the traffic signal described above.

(6) Modifications to crossover pavement to accommodate improvements listed herein.

C. In addition, the following entrance and road improvements ("East Crossover Improvements") shall be installed to VDOT standards and specifications:

(1) A traffic signal at the east crossover as shown on the Traffic Study (hereinafter "East Crossover").

(2) Construction of double left turn lanes on westbound Richmond Road at the East Crossover.

(3) Construction of a right turn lane on eastbound Richmond Road at

the East Crossover.

(4) Construction of three (3) exit lanes and two (2) entrance lanes at the site entrance at the East Crossover.

(5) Construction of an eastbound left turn lane at the East Crossover as necessary to accommodate a traffic signal.

(6) Construction of East Crossover pavement to accommodate improvements listed herein.

(7) If commercial component or Nonresidential Use (as defined below) development precedes residential development and commercial component or Nonresidential access to the West Crossover is requested, then the West Crossover improvements cited above shall be required as a condition of the Nonresidential development approval upon determination of necessity by the County Director of Planning and approval by VDOT.

D. (1) The East Crossover and West Crossover Improvements cited above may be phased in accordance with a commercial phasing plan. Any phasing of East Crossover and West Crossover Improvements must be approved by VDOT and the County Director of Planning as a condition of the site plan approval for the commercial phase.

(2) After approval of the first phase of road improvements identified above and within 30 days of a request from VDOT, the Owners shall pay to VDOT a pro rata share (pro rata share based on the number of signals provided by the Owner divided by the total number of signals included) of any VDOT U.S. Route 60 (Richmond Road)

signal coordination project that includes either or both of the East and West Crossovers committed for construction by the earlier of December 31, 2020 or the date of completion of development of the Property (defined below).

(3) For purposes of this paragraph, the date of completion of development of the Property shall be defined as the later of such date on which preliminary site plan or preliminary subdivision plan approval has been granted by the County for all portions of the Property devoted to both residential and commercial use.

(4) The cost for a signal coordination project may include traffic signal equipment at intersections on Richmond Road and may include any necessary utility relocation within available right of way and easements to accommodate traffic signal equipment, but will not include any right of way acquisition expense(s) or road construction changes.

E. For any right turn in/right turn out driveway on eastbound Richmond Road to provide access to the Nonresidential areas of the Property, a right turn lane on eastbound Richmond Road shall be installed to VDOT standards and specifications prior to the issuance of any temporary or permanent Certificate of Occupancy for buildings shown on the associated site plan.

F. In addition, the following entrance and road improvements shall be installed to VDOT standards and specifications:

(1) Construction of a left turn lane on northbound Centerville Road at the point of access.

(2) Construction of a right turn lane on southbound Centerville Road at the point of access.

(3) Construction of two (2) exit lanes and one (1) entrance lane at the point of access.

(4) A traffic signal shall be installed on Centerville Road at the point of access.

G. Plantings approved in advance by the County Director of Planning and VDOT, if necessary, shall be placed in the median of Richmond Road along those portions of Richmond Road which abut the Property.

H. Except as otherwise provided herein, the entrance and road improvements described in subparagraphs B and C above shall be completed prior to approval of any final subdivision plat or final site plan for any lot, section or phase housing a Residential Unit within the Property. Construction of the clubhouse, golf course or other neighborhood recreation facilities, roads and amenities within Colonial Heritage may begin and may be completed prior to completion of such road improvements.

I. The road improvements to Centerville Road described in subparagraph F above shall be completed or bonded prior to approval of any subdivision plat or final site plan for any lot, section or phase containing Residential Units within Land Bay V, VII or VIII as shown on the Master Plan. The entrance and road improvements for Centerville Road described in subparagraph F above and the connection of the main road shown on the Master Plan connecting State Route 614 (Centerville Road) to U.S. Route 60 (Richmond Road) shall be completed or bonded prior to approval of any final subdivision plat or site plan for any lot, section or phase creating a cumulative total of 1,200 Residential Units within the Property. No Residential Units beyond 1200 shall be approved by the County until said improvements and connection have been completed or bonded. If said improvements and connection to Centerville Road have

not then been completed, then the Owner shall provide an additional traffic impact analysis (reviewed and approved by the County Director of Planning and VDOT) to include:

(1) A count of actual traffic using the U.S. Route 60 (Richmond Road) access during the AM and PM peak hours.

(2) A determination of the actual trip generation rates of the existing Residential Units during the AM and PM peak hours.

(3) A forecast for the then remaining Residential Units on the Property to be built to determine if the sum of the traffic from said remaining Residential Units at actual trip generation rates without the State Route 614 (Centerville Road) connection added to the actual trips exiting and entering the Property at U.S. Route 60 (Richmond Road) is less than or greater than the Residential Unit traffic assigned to U.S. Route 60 (Richmond Road) in the Traffic Study.

(4) If it is determined that the sum of said remaining Residential Unit traffic at actual trip generation rates without the State Route 614 (Centerville Road) connection added to the actual trips exiting and entering the Property at U.S. Route 60 (Richmond Road) is greater than the Residential Unit traffic assigned to U.S. Route 60 (Richmond Road) in the Traffic Study, then the additional traffic impact analysis will determine either:

(a.) That the traffic from said remaining Residential Units based on actual trip generation rates will not change the levels of service (letter grade) presented in the Traffic Study in which event subdivision and/or final site plan approval may proceed beyond the 1,200 units described above, or

(b.) Additional road improvements identified by the Traffic Study and needed on U.S. Route 60 (Richmond Road) to provide the levels of service (letter grade) presented in the Traffic Study for the remaining Residential Units at actual trip generation rates will be provided by the Owner.

(5) The improvements identified in 3(I)(4)(b) above, if any, shall be installed or bonded as described below prior to final site plan or subdivision approval for any Residential Units beyond 1200. Except as provided to the contrary above, the Owner may obtain final plat or site plan approval by bonding the completion of the required improvements.

J. Furthermore, the following additional measures shall be undertaken:

(1) Prior to issuance of a building permit for the 600th Residential Unit on the Property, a trip generation study of the residential development of the Property shall be conducted and submitted to the County Director of Planning and VDOT for review and approval. The trip generation study shall conduct counts (7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.) and document actual two-way A.M. and P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued by the County as of the date of the study, but such counts shall be limited to entering and exiting counts at all residential points of access to the Property.

(a.) In the event that such actual two-way A.M. and/or P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued is greater than the residential trip generation rates projected in the Traffic Study, additional steps shall be taken as described in subparagraph 4 below to mitigate traffic impacts

upon Richmond Road and/or Centerville Road.

(b.) In the event that actual trip generation rates are equal to or less than those projected in the Traffic Study, development of Residential Units may proceed pending additional traffic studies as described below.

(c.) The trip generation study shall also include an assessment of the need for the second left turn lane westbound on Route 60 at the west crossover and the second left turn lane northbound on Centerville Road, Route 614 at the west crossover for construction of 600 to 1200 residential units. If needed, either or both turn lanes shall be constructed or bonded prior to approval of the number of units determined in the study to require either or both turn lanes.

(2) Prior to issuance of a building permit for the 1,200th Residential Unit on the Property, a trip generation study of the residential development of the Property shall be conducted and submitted to the County Director of Planning and VDOT for review and approval. The trip generation study shall conduct counts (7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.) and document actual two-way A.M. and P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued by the County as of the date of the study, but such counts shall be limited to entering and exiting counts at all residential points of access to the Property.

(a.) In the event that the actual two-way A.M. and/or P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued is greater than the residential trip generation rates projected in the Traffic Study, additional steps shall be taken as described in subparagraph 4 below to mitigate traffic impacts upon Richmond

Road and/or Centerville Road.

(b.) In the event that actual trip generation rates are equal to or less than those projected in the Traffic Study, development of Residential Units may proceed pending additional traffic studies as described below.

(c.) The trip generation study shall also include an assessment of the need for the second left turn lane westbound on Route 60 at the west crossover and the second left turn lane northbound on Centerville Road, Route 614 at the west crossover for construction of 1200 to 1600 residential units. If needed, either or both turn lanes shall be constructed or bonded prior to approval of the number of units determined in the study to require either or both turn lanes.

(3) Prior to issuance of a building permit for the 1,600th Residential Unit on the Property, a trip generation study of the residential development of the Property shall be conducted and submitted to the County Director of Planning and VDOT for review and approval. The trip generation study shall conduct counts (7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.) and document actual two-way A.M. and P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued by the County as of the date of the study, but such counts shall be limited to entering and exiting counts at all residential points of access to the Property.

(a.) In the event that the actual two-way A.M. and/or P.M. peak hour trip generation for Residential Units for which a certificate of occupancy has been issued is greater than the residential trip generation rates projected in the Traffic Study, additional steps shall be taken as described in subparagraph 4 below to mitigate traffic impacts

upon Richmond Road and/or Centerville Road.

(b.) In the event that actual trip generation rates are equal to or less than those projected in the Traffic Study, development of Residential Units may proceed.

(c.) The trip generation study shall also include an assessment of the need for the second left turn lane westbound on Route 60 at the west crossover and the second left turn lane northbound on Centerville Road, Route 614 at the west crossover for construction of 1600 to 2000 residential units. If needed, either or both turn lanes shall be constructed or bonded prior to approval of the number of units determined in the study to require either or both turn lanes.

(4) In the event that such actual trip generation rates as determined above produced by Residential Units on the Property exceed those projected by the Traffic Study, additional roadway improvements shall be made after each trip generation study or, at the option of the County, cash payment(s) may be made to the County after each trip generation study in order to fund road improvements, additional signal coordination, capacity improvements on Richmond Road or Centerville Road, or other capacity needs generated by development of the Property as may be determined appropriate and approved in advance by the County Director of Planning; provided, however, that the aggregate cost of improvements and/or cash payment(s) described herein during the entire development of the Property shall not exceed a total of Five Hundred Thousand and No/100 Dollars (\$500,000.00).

K. The Owners shall make a contribution to the County in the amount of \$40,250.00 for a portion of the costs of intersection improvements at the Centerville/Jolly Pond intersection as described by the Traffic Study. This payment shall be made on or before January 1, 2006.

L. Traffic signals described in and required by this paragraph 3 shall be constructed at such time as warrants, need or traffic thresholds established by VDOT are met (referred to herein as "warranted"). Prior to the issuance of final site plan or subdivision plat approval for the 1500th Residential Unit on the Property, any traffic signal required by this paragraph which has not been warranted shall be guaranteed in accordance with the following procedure:

(1) A cash deposit in the amount of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) per traffic signal shall be made with the County.

(2) The deposit(s) referenced above shall be held for a period of five (5) years (the "Deposit Term") from the date on which said deposits are made.

(a.) Should any traffic signal(s) not be warranted during the Deposit Term, the deposit for each of such lights shall be returned to the depositor or its assigns.

(b.) In the case of traffic signal(s) which are warranted during the Deposit Term, the deposit for such signal(s) shall be retained by the County in full satisfaction of the obligations created by these proffers to provide the subject signal(s).

4. Underground Utilities. All existing and new utilities, including electrical and telephone wires, conduits and all sewer and water pipes within the Property (but outside of the easements currently held by, or area currently dedicated to transmission lines for Dominion Virginia Electric & Power, Dominion Virginia Natural Gas and the City of Newport News) shall be underground, except as approved by the County Director of Planning.

5. Bus/Transit Facilities. A bus pull-off area and bus stop shelter shall be

constructed on both Richmond Road and Centerville Road adjacent to the Property prior to issuance of a Certificate of Occupancy for any permanent building in Land Bay I. Design and location of the pull-off and shelter shall be approved in advance by the County Transit Administrator. The timing of completion of construction of the facilities required by this subparagraph may be deferred by approval of the County Transit Administrator.

6. Natural Resources.

A. The Owners shall commission a natural resource inventory of each of the portions of the Colonial Heritage Property to be disturbed, before each such portion is disturbed, which will map and describe unique and sensitive habitats for known threatened and/or endangered species, as well as rare species of concern ("Natural Heritage Resources") which are now listed by the Virginia Department of Conservation and Recreation's Division of Natural Heritage ("DCR/DNH"). These investigations will be conducted by personnel who are qualified to conduct such studies and be submitted to and approved by the County Director of Planning prior to issuance of a preliminary site plan or subdivision plan approval for any portion of the development of the Property occupied by a Natural Heritage Resource. If the natural resource inventory confirms that a Natural Heritage Resource exists on a particular portion of the Property to be disturbed, a conservation management plan will be prepared, submitted, and approved by the County Director of Planning, as well as other agencies responsible for the protection/conservation of the specific species inventoried, prior to issuance of any land disturbance permit for the affected portion of the Property. All inventories and conservation management plans shall meet or exceed DCR/DNH standards. All approved conservation management plans shall be incorporated into the development plan of the portion of the Property affected and if unavoidable impacts will occur as a result of

clearing, grading or construction, an appropriate mitigation plan will be developed by the Owners and approved by the County Director of Planning and the appropriate regulatory agency prior to issuance of a land disturbance permit for the portion of the development of the Property occupied by any Natural Heritage Resource. Such an inventory shall be completed and the terms above met for any portion of the property which is the subject of a land disturbance permit application before issuance of that permit. The provisions of this paragraph shall be in addition to and not in lieu of any environmental inventory otherwise required by the County Code.

B. The Owners shall commission a natural resource inventory for all of the Boy Scout Property within the PSA prior to County approval of any final site plan or subdivision plat for development on said property. Such inventory will map and describe unique and sensitive habitats for any known threatened and/or endangered species, as well as any rare species of concern ("Natural Heritage Resources") which are listed by the Virginia Department of Conservation and Recreation's Division of Natural Heritage ("DCR/DNH"). These investigations will be conducted by personnel who are qualified to conduct such studies and be submitted to and approved by the County Director of Planning prior to preliminary site plan or subdivision plan approval for any portion of the development of the Property occupied by any Natural Heritage Resource. If the natural resource inventory confirms that a Natural Heritage Resource exists on a particular portion of the Property to be disturbed, a conservation management plan will be prepared, submitted, and approved by the County Director of Planning, as well as any other agency responsible for the protection/conservation of the specific species inventoried, prior to issuance of any land disturbance permit for the affected portion of the Property. All inventories and conservation management plans shall meet or exceed DCR/DNH

standards. All approved conservation management plans shall be incorporated into the development plan of the portion of the Property affected and if unavoidable impacts will occur as a result of clearing, grading or construction, an appropriate mitigation plan will be developed by the Owners and approved by the County Director of Planning and the appropriate regulatory agency prior to issuance of a land disturbance permit for the portion of the development of the Property occupied by any Natural Heritage Resource.

7. Sidewalks. Sidewalks shall be constructed on one side of the road along those portions of Richmond Road and Centerville Road which abut the Property. These sidewalks shall be constructed prior to issuance of a building permit by the County for the 250th Residential Unit within the Property. Should VDOT or other permitting issues delay completion of the sidewalks described in this paragraph, the Owners may be issued building permits beyond 250 Residential Units after bonding compliance with this paragraph.

8. Cash Proffer in Lieu of Public Use Site.

A. In order to mitigate impacts upon the County of development of the Property and its use as described herein, a contribution shall be made to the County in the amount of ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000.00). The County may make these monies available for any project in the County's capital improvement plan, the need for which is generated by the physical development and/or physical operation of the Property.

B. The cash contribution described in this paragraph shall be paid to the County on or before such date as is sixty (60) days after the date of final approval of both the Applications for Amendment and the SUP described above. For purposes of these proffers, final approval shall be defined as such date which is sixty (60) days after action of the Board of

Supervisors approving the Applications for Amendment, no appeal or challenge to such action having been noted or filed by any person or party, or, in the event of such appeal or challenge, the date on which a final non-appealable order has been entered resolving any such appeal or challenge.

C. The cash proffer described in this paragraph shall be in lieu of and shall supersede any obligation described in the Proffers to convey or dedicate land for a public use site, including without limitation, Public Use Site A or Public Use Site B as described in the Proffers.

SECTION II. Proffers Applicable to Residential Property

1. Age Restriction. Occupancy of Residential Units developed upon the Property shall be age restricted to persons fifty-five (55) years of age or older in accordance with the following parameters:

A. It is the intent of the parties that Residential Units shall be occupied by persons fifty-five (55) years of age or older and that no Residential Unit shall be occupied by a person under the age of eighteen (18). In some instances, persons under the age of fifty-five (55) but over the age of eighteen (18) shall be entitled to occupy Residential Units, subject, at all times, to the laws and regulations governing age fifty-five (55) and over restricted housing as more particularly set forth and described in subparagraph B below.

B. Each Residential Unit within the Property shall have a master bedroom and bath on the main floor of such unit and shall be developed and operated in compliance with applicable federal and state laws and regulations regarding housing intended for occupancy by persons fifty five (55) years of age or older, including but not limited to: the Fair Housing Act, 42 U.S.C. §3601 *et seq.* and the exemption therefrom provided by 42 U.S.C.

§3607(b)(2)(C) regarding discrimination based on familial status; the Housing for Older Persons Act of 1995, 46 U.S.C. §3601 *et seq.*; the Virginia Fair Housing Law Va. Code §36-96.1 *et seq.*; any regulations adopted pursuant to the foregoing; any judicial decisions arising thereunder; any exemptions and/or qualifications thereunder; and any amendments to the foregoing as now or may hereafter exist. Specific provisions of the age restriction described above and provisions for enforcement of same shall be set forth in a declaration of restrictive covenants and property owners' association documents described in Section II, paragraph 8 below.

2. Density.

A. No more than two thousand (2,000) Residential Units shall be developed upon the Property. Any Residential Units developed on the Non-PSA Boy Scout Property shall be subject to this limitation on total Residential Units.

B. The maximum number of Residential Units for which building permits may be issued both on the Property and the Non-PSA Boy Scout Property shall not exceed a total of two thousand (2,000). Any development of Residential Units on the Non-PSA Boy Scout Property shall otherwise comply with all applicable provisions of the Zoning Ordinance in effect from time to time.

3. Water Source: Cash Contribution. A contribution shall be made to the County in the amount of Seven Hundred Fifty and No/100 Dollars (\$750.00) for each Residential Unit developed on the Property (the "Per Unit Contribution"). The County shall make these monies available for development of water supply alternatives. Such contributions shall be payable for each of the Residential Units developed within the Property upon the earlier of the time of final subdivision plat or final site plan approval by the County for the particular Residential Unit or

grouping, phase or section of Residential Units.

4. Neighborhood Recreation Facilities. The following recreation facilities shall be provided, open to all residents of the Property, maintained and regulated by the Association (defined below):

A. Park land which meets or exceeds the Guidelines (defined below) shall be established by Colonial Heritage. Included shall be an eighteen (18) hole golf course, an approximately 10 acre clubhouse site with a clubhouse facility of at least 15,000 square feet and related amenities. Clubhouse amenities shall include a room for library use which shall accommodate a cooperative program between the Williamsburg Regional Library (or successor public library) and the Association (defined in Section II, paragraph 8 below). Clubhouse amenities shall also include an aerobic exercise room and locker rooms.

B. Tennis courts numbering not fewer than three (3).

C. An indoor and an outdoor swimming pool with an aggregate area of all pools (whether one or more, indoor, outdoor or both) not less than twenty-five (25) meters by twenty-five (25) meters.

D. The clubhouse, swimming pool(s) and tennis courts shall be completed before issuance of the Certificate of Occupancy for the 450th Residential Unit within the Property.

E. (1) The Owners shall construct and convey to the County public greenways generally as shown on the Master Plan. Such greenways shall be in the location(s) as generally shown on the Master Plan and shall not exceed 30 feet in width.

(2) The greenways described herein shall be (a) conveyed subject to restrictive covenants prohibiting all motorized vehicles from operating thereon, and further

prohibiting all buildings or structures thereon, (b) constructed with soft, pervious surfaces in accordance with the County Greenway Master Plan approved June 25, 2002, and (c) constructed not less than eight (8) feet in width unless a lesser width is approved by the County Director of Planning.

(3) The general location of greenways within the Property shall be described in advertising, promotional and disclosure materials published by the Owners.

(4) Greenways located inside the PSA shall be constructed and conveyed in segments, with each section or segment constructed and conveyed prior to issuance by the County of a building permit for any structure in any section or tract adjacent to a particular segment of greenway.

(5) Greenways located outside the PSA shall be dedicated as shown on the Master Plan prior to final approval of any subdivision plat establishing lots on the Boy Scout Property outside the PSA. The Owners shall not be required to clear or construct those greenways which are located outside the PSA.

5. Transitional Screening.

A. A landscape area shall be established between all commercial and residential use areas within the Property. Such landscape area shall be thirty-five (35) feet in width, and shall contain plantings which meet or exceed the landscape area standards of Section 24-94 of the Zoning Ordinance. This landscape area may be located on areas within the Property which are designated for commercial or residential uses, or partly on both, but no portion of said landscape area shall be part of any individual lot designated for a Residential Unit. Landscape areas compliant with this subparagraph shall be established and planted

adjacent to areas of Nonresidential Use (defined below) prior to issuance of a Certificate of Occupancy by the County for such Nonresidential Use.

B. A buffer of one hundred fifty (150) feet shall be maintained between any lot and the Centerville Road right-of-way as it exists on the date hereof. In areas of this buffer which are not presently wooded, a minimum of three (3) trees per four hundred (400) square feet of buffer area shall be planted; not less than fifty percent (50%) of such trees shall be evergreen species.

(1) The buffer described in this subparagraph may, with the approval of the Planning Director, include entrance/exit roads, directional signage, underground utilities, underground and above ground drainage facilities, bus stops, curbs, gutters, sidewalks, fences and signs.

(2) The buffer described in this subparagraph shall be planted, or the planting of such buffer shall be bonded, prior to final approval of any subdivision plat for any Residential Unit(s) in the Land Bay(s) adjacent to said buffer.

C. A buffer of one hundred fifty (150) feet shall be maintained between any residential lot (exclusive of any well lot) and the Jolly Pond Road right-of-way as it exists on the date hereof. In the event that clearing is undertaken to provide sight lines for any entrance or driveway providing access to Jolly Pond Road, the buffer described here shall be maintained from the limits of such clearing to any adjacent lot. The buffer described in this subparagraph may, with the approval of the Planning Director, include entrance/exit roads, directional signage, underground utilities, underground and above ground drainage facilities, bus stops, curbs, gutters, sidewalks, fences and signs.

6. Golf Course Water Usage. Unless otherwise specifically approved by the Board of Directors of the James City Service Authority, no groundwater or water supplied by a public water system as defined in the Zoning Ordinance shall be used for irrigation purposes upon the golf course developed upon the Property. The term "groundwater" as used in this paragraph shall not include surface water, surface water runoff, stormwater, water from stormwater management facilities (including those facilities commonly known as or defined by the County Code, Virginia Code or applicable regulations, best management practices or BMPs), water from ponds, lakes or other impoundments not supplied by wells. Water from Deer Lake and other lakes, ponds or impoundments on the Property or the Non-PSA Boy Scout Property shall constitute surface water, and irrigation with such water shall not be prohibited by this proffer. Design features, including the use of drought tolerant grasses and plantings, a water conservation plan, and drought management plan shall be implemented to reduce the total irrigated area of the golf course in order to accomplish the limitation on use of public water and groundwater contained within this paragraph.

7. Additional Water Conservation.

A. The Owners and the Association shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority. The Association shall be responsible for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems, 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. The standards shall be approved by the James City Service Authority prior to the first subdivision plat approval for a Residential Unit within the Property.

B. No irrigation well(s) shall be established or utilized for any Residential Unit within the Property.

C. Existing wells located on the Property shall be capped/abandoned in accordance with applicable Commonwealth of Virginia and/or County regulations and ordinances, if, as and when the Owners determine in their discretion that such wells are not necessary or to be utilized in the future.

8. Property Owners Association. A residential property owners' association ("Association") shall be established in accordance with the Virginia Property Owners' Association Act, §55-508 *et seq.* of the Virginia Code, in which all owners of Residential Units within the portions of the Property currently lying inside the PSA shall be members by virtue of their property ownership. The articles of incorporation or organization and bylaws of the Association and declaration of restrictive covenants enforceable by the Association shall be submitted to and reviewed by the County Attorney for consistency with this proffer. Such governing documents shall require or provide for, *inter alia* the following:

A. The Association shall adopt an annual maintenance budget and assess all members for the maintenance of all properties owned and/or maintained by the Association, including private roads.

B. The Association shall be granted the right to adopt and enforce rules and regulations with respect to the use of common areas and with respect to other areas of responsibility of the Association.

C. The Association shall have the power to assess its members in order to provide for the budget described above, and shall further have the power to levy special assessments, and to have a lien upon property owned by its members for collection and'

enforcement of such assessments, and for the cost of remedying violations of the rules and regulations established by the Association. Separate owners' associations may be established for individual sections within the Property, and impose supplemental restrictive covenants on individual sections or areas of the Property.

D. The Association shall have the power and shall enforce the age restrictions described above, including without limitation the application of such restrictions upon sale and/or resale of any Residential Unit.

E. The Association shall administer the Automatic External Defibrillator program described in Section II, paragraph 14 below.

F. The Association shall be charged with the obligation to provide for not less than one (1) uniformed security guard to be continuously stationed at the main entrance to the Property from Richmond Road. Such security guard need not be, but may be at the discretion of the Association (subject to appointment procedures established by law), (i) a special police officer(s) and/or conservator(s) of the peace, and/or (ii) armed.

G. The Association shall conduct or facilitate a golf instructional program for children of low income families residing in the County, so as to expose children to the game of golf. Such instructional program shall be conducted no less frequently than two (2) times per calendar year.

H. The Association shall enforce the water conservation standards described in paragraph 7 above.

I. The Association shall enforce restrictions designed to preserve natural open space adjacent to Residential Units or residential lots subdivided within those portion of the Property currently within the PSA.

J. The Association shall maintain the median plantings described in Section I paragraph 3(G) above, by replacing dead or diseased plantings.

9. Private Streets. All streets (as defined by the County Code) within the residential portions of the Property shall be private and shall conform to VDOT construction standards. All private streets shall be certified to the satisfaction of the County engineer as required by Section 19-49 of the County Code. Curb and gutter shall be constructed on any streets on which a Residential Unit fronts.

10. Deed Provisions. Every deed by which any lot or parcel created for a Residential Unit is first conveyed to any owner by the Owners shall contain reference to the age restriction provisions of Section II, paragraph 1 above.

11. Streetscapes. Any and all residential development within the Property shall be in conformity with the County Streetscape Guidelines Policy as in effect on the date hereof. No Residential Unit(s) shall front on any portion of Colonial Heritage Boulevard shown on the Master Plan running from U.S. Route 60 (Richmond Road) to State Route 614 (Centerville Road).

12. Sidewalks/Pedestrian and Bicycle Trails.

A. (1) Sidewalks shall be constructed on at least one (1) side of every internal street or road constructed within the Property, and sidewalk construction shall be completed or bonded not later than the date on which construction of the adjacent road is completed (including final asphalt topcoating).

(2) Sidewalks (or a combination of sidewalks and the pedestrian trails described in subparagraph B below) shall be constructed on both sides of any internal street on which multiple family or two-family (as defined in the County Code) Residential

Units front. Such sidewalks and/or trails shall be completed or bonded not later than the date on which construction of the adjacent road is completed (including final asphalt topcoating).

(3) At any point where sidewalks or pedestrian trails described herein cross and connect to another sidewalk or trail across the main arterial street shown on the Master Plan connecting U.S. Route 60 (Richmond Road) with State Route 614 (Centerville Road), striping, signage, and pavement texturing shall be designed and implemented to assure the visibility of such crossing. All such measures shall be subject to the approval of the County Director of Planning.

B. A system of pedestrian and bicycle trails shall be constructed or bonded in connection with and simultaneously with development of each phase, section or Land Bay shown on the Master Plan (which trail system shall include the sidewalks described above) conforming to the following design guidelines:

(1) All pedestrian trails shall be not less than four (4) feet in width and all bicycle trails shall be not less than eight (8) feet in width.

(2) Access to abutting Land Bays shown on the Master Plan and connection of cul-de-sacs shall be established where practical as determined by Colonial Heritage and approved by the County Planning Director.

(3) Interconnectivity for pedestrian traffic between the commercial or Non-Residential Use (defined below) areas of the Property shall be established as a part of pedestrian trail and/or sidewalk systems created pursuant to this paragraph.

(4) Trails shall avoid lands with greater than twenty-five percent

(25%) slopes, environmentally sensitive areas and areas designated as resource protection areas where practical as determined by the County Chesapeake Bay Administrator.

(5) Paved surfaces shall be provided, except as limited by environmentally sensitive areas, wherein pervious, soft surfaces underlaid with filter cloth shall be employed, as determined by the County Director of Planning.

(6) One and one-half (1.5) miles of trail shall be provided for each 590 Residential Units constructed within the Property and all construction of such trails shall be assured by agreement with the County and by furnishing to the County a certified check, bond with surety or letter of credit satisfactory to the County as set forth in Section 19-72 of the County Code.

(7) Except as provided or contradicted above, the trails shall be designed to meet or exceed the standards of the County Comprehensive Parks and Recreation Plan proffer guidelines, as in effect on the date hereof ("Guidelines").

(8) Pedestrian and bicycle trails may, but shall not be required to be located within the buffers established pursuant to Section II, paragraphs 5(A), (B) and (C).

C. All sidewalks constructed within the Property shall meet or exceed the standards of Section 24-35 of the County Code.

13. EMS Equipment/Signalization: Cash Contribution.

A. A contribution shall be made to the County in the amount of Seventy Thousand and No/100 Dollars (\$70,000.00) for fire and rescue equipment replacement and supply and traffic signal preemption equipment. This payment shall be made at the rate of Seventy and No/100 Dollars (\$70.00) per Residential Unit (the "Per Unit Contribution") for the first one thousand (1,000) Residential Units within the Property, and shall be payable upon the

earlier of the time of final subdivision plat or final site plan approval by the County of each said Residential Unit or grouping, phase or section of Residential Units or, in the case of signal preemption equipment, when said equipment is installed.

B. A contribution shall be made to the County in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) for application to the purchase of a new paramedic/first aid vehicle or unit. These funds may be, at the discretion of the Board of Supervisors of the County, applied to other capital needs of the County Emergency Medical Services deemed by the County to be generated by development of the Property. This payment shall be made prior to final site plan or subdivision plat approval for any Residential Units beyond 400 within the Property.

14. Automatic External Defibrillator ("AED") Program. An AED program shall be established for administration by the Association within the Property which shall comply with Section 32.1-111.14:1 *et seq.* of the Code of Virginia, as written on the date hereof, and Virginia State Board of Health regulations promulgated pursuant thereto. Not less than one defibrillator per building to be used as a part of the AED program shall be supplied by the Owner for use in this AED program for every building constructed for public occupancy on the Property of the Association (exclusive of golf course maintenance buildings, equipment sheds, pump houses, storage buildings, Residential Units and other outbuildings of less than 2,000 square feet. The existence of such AED program and an implementation schedule shall be confirmed by the County Fire Chief prior to any final site plan or subdivision plat approval.

15. INTENTIONALLY OMITTED.

16. Cash Contributions For Additional Community Impacts.

A. An additional contribution shall be made to the County in the amount of

Four Hundred Thirty-Eight and No/100 Dollars (\$438.00) for each of the first one thousand (1,000) Residential Units developed on the Property (the "Per Unit Contribution"), in order to mitigate additional impacts on the County arising from the physical development and/or physical operation of the Property. The County may make these monies available for any project in the County's capital improvement plan, the need for which is generated by the physical development and/or physical operation of the Property.

B. The contributions described above, unless otherwise specified, shall be payable for each of the Residential Units developed within the Property at the time of final subdivision plat or final site plan approval by the County for the particular Residential Unit or grouping, phase or section of Residential Units.

17. Slope Protection. For lots subdivided or developed on large, contiguous areas of steep slopes (steep being defined as slopes of twenty-five percent (25%) or greater grade) ("Steep Slope(s)") the following separation or setbacks shall be maintained:

A. Fifteen (15) feet between the top of any Steep Slope and any structure

B. Ten (10) feet between the top of any Steep Slope and the limits of lot or other clearing. The separation or setback described in this paragraph may be reduced upon approval of the County Environmental Director in order to provide flexibility in the application of this provision, and so as to assure that this provision does not unreasonably restrict the developable acreage within the Property.

18. Open Space/Conservation Area. An open space and conservation area consisting of not less than 282± acres shall be established by easement conveyed to the County encumbering land shown on the Master Plan as "Area Not Subject of Master Plan" and more particularly described on that plan entitled "SPECIAL USE PERMIT PLAN — ALTERNATE 1,

COLONIAL HERITAGE BSA PROPERTY" dated 7/9/04, revised 7/29/04, made by AES, Consulting Engineers, submitted with the SUP application SUP-21-04 referenced above, which plan is incorporated by reference. The open space and conservation area easement shall prohibit construction of any Residential Unit or other building, provide for protection of open space, wetlands, trees and tree canopy. The open space and conservation area shall be available, and the Owners shall retain the right to utilize the open space and conservation area for stormwater management structures and facilities, required open space, required impervious/pervious cover percentages, watershed protection measures and other uses benefiting or facilitating development of the Property and/or the Non-PSA Boy Scout Property.

SECTION III. Proffers Applicable to Commercial Property

1. Area of Nonresidential Uses. A portion of the Property as shown on the Master Plan shall be developed for Nonresidential Uses defined in Section 24-521 and/or Section 24-522 of the Zoning Ordinance as written on the date hereof ("Nonresidential Use").

2. Development Plans. Design review standards for Nonresidential Use development shall be established by Colonial Heritage or successor owner(s) of Nonresidential Use areas of the Property, and provided to the County Director of Planning for approval. Thereafter, conceptual plans and conceptual elevations for development shall be approved prior to site plan approval for any Nonresidential building by the County Development Review Committee of the Planning Commission with a procedure generally as provided by Section 24-142 *et seq.* of the Zoning Ordinance so as to assure conformity with such design review standards, including but not limited to the following:

- (a) location and uses of buildings,

- (b) building orientation,
- (c) landscaping, open space and buffers,
- (d) location and number of entrances,
- (e) pedestrian and vehicular connections,
- (f) building height, and size of any single building
- (g) architectural design,
- (h) setbacks from adjacent properties or roadways,
- (i) signs.

Such approval shall be designed to address the uniformity, appearance and quality of Nonresidential Use of the Property, and shall not be unreasonably withheld.

3. Homeowners' Association Not to Control Commercial Property. The Association shall not control any of the Property developed for Nonresidential Uses. This provision shall not be read to preclude establishment of a separate association created in connection with development of areas of Nonresidential Use within the Property.

4. Strip Shopping Center(s) Prohibited. No retail construction/development or nonresidential use shall be undertaken in Land Bay VI that consists of a row or line of building fronts or separately occupied businesses which are one (1) unit deep, parallel or principally oriented to Richmond Road. A majority of the parking spaces provided shall not be located between the buildings and Richmond Road but shall instead be located beside and/or behind the buildings. Street frontage along Richmond Road shall primarily consist of buildings and open space. At least two pedestrian connections shall be provided from U.S. Route 60 (Richmond Road), one shall be provided from the main spine road, and one from Land Bay I. All pedestrian connections shall be paved and be at least four feet wide. All commercial uses

within Land Bay VI shall be interconnected for both pedestrian and motor vehicular access. It is the intent of this proffer to prohibit development commonly known as "strip commercial development." Development plans for Land Bay VI shall be approved by the Planning Director as to their compliance with these proffers.

5. Richmond Road Buffer. A buffer of fifty (50) feet shall be maintained between any parcel, lot or property line within the Property and the Richmond Road right-of-way as it exists on the date hereof. The buffer proffered in this Section f , paragraph 5 may, with the approval of the Planning Director, include entrance/exit roads, directional signage, underground utilities, underground and above ground drainage facilities, bus stops, curbs, gutters, sidewalks, fences and signs.

6. Preservation of Magnolia Trees. The trees comprising a double row of mature Magnolia trees existing within Land Bay VI as of the date hereof shall not be completely destroyed to create a building site, parking area or other improvements. Destruction or elimination of some trees shall be permitted to allow for streets, roads and vehicular or pedestrian connections perpendicular to such rows of Magnolia trees, the placement of utilities, or other purposes approved by the County Planning Director. This proffer is not to be read to require reimbursement of existing trees which are destroyed by natural causes.

IV. Miscellaneous Provisions

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

2. 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.

3. Conflicts. In the event that there is any conflict between these Amended and Restated Proffers and the Zoning Ordinance, the conflict shall be resolved by the County's Zoning Administrator subject to the appeal process to the Board of Supervisors and the Courts as otherwise provided by law.

4. Successors and Assigns. This Amended and Restated Proffer Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors and/or assigns.

5. Amended and Restated Proffers Void if Rezoning not Approved. In the event that the requested rezoning of the Boy Scout Property and the Proffer amendments and Master Plan amendments sought by the Applications for Amendment are not approved by the County, these Amended and Restated Proffers shall be null and void, but the Proffers, the master plan and the rezoning approval by the County in Case No. Z-4-00/MP-01-01 shall remain in full force and effect, unaffected hereby.

6. Effect of Accepted Amended and Restated Proffers. If these Amended and Restated Proffers are accepted by the County and the Applications for Amendment are simultaneously approved by the County, upon the expiration of thirty (30) days from said

acceptance and approval with no appeal being duly noted, these Amended and Restated Proffers, and the Master Plan and associated documents filed with the Applications for Amendment shall amend, supersede and restate in their entirety the Proffers and all the associated documents, effective upon the date of such acceptance and approval.

7. INTENTIONALLY OMITTED.

8. Cash Proffer Disposition. In the event that any cash payment(s) or real property conveyed as required under the terms of these Amended and Restated Proffers are not used by the County for the purpose(s) designated within twenty (20) years from the date of receipt by the County, the amounts or Property not used shall be used at the discretion of the Board of Supervisors of the County for any other project in the County's capital improvement plan, the need for which is generated by the development of the Property.

9. Inflation Adjustment of Cash Proffered. Beginning as of January 1, 2003, the payments and/or Per Unit Contribution described in Section I paragraphs 3(J)(4), 3(K) and 3(L), and Section II, paragraph 3, paragraphs 13(A) and (B) and paragraph 16 above shall be inflation adjusted to reflect changes in the Consumer Price Index, U.S. City Average, All Urban Consumers (CPI-U) All Items (1982-84=100) (the "CPI") prepared and reported by the U.S. Bureau of Labor Statistics of the United States Department of Labor.

A. The adjustment shall be made by increasing or decreasing the payment (or any portion thereof) due by the percentage change in CPI from (i.) January 1, 2003 through (ii) the last day of the month most recently preceding the date on which the cash payment is due, payable or paid (or the most recent date on which CPI is available).

B. In no event shall the unadjusted proffered cash payment(s) or Per Unit Contribution(s) be adjusted to a sum less than the amount specified in the particular paragraphs

described herein.

C. In the event that the CPI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the CPI (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of adjusting proffered cash payments to approximate the rate of inflation in the County after January 1, 2003. In the event that substantial change is made in the method of establishing the CPI, then the adjustment(s) described in this paragraph shall be based upon the figure that would have resulted had no change occurred in the manner of computing CPI.

10. Signature by County. The County's Director of Planning has executed these Amended and Restated Proffers solely for purposes of confirming the filings and submissions described in the Recitals section above, and confirming approval by the County Board of Supervisors of the rezoning of the Property with these Amended and Restated Proffers and the Applications for Amendment by a resolution dated December 14, 2004.

#6010116v39

EXHIBIT A

(Colonial Heritage Property)

All those certain lots, pieces or parcels of land, together with buildings and improvements thereon, and appurtenances thereunto belonging, located in James City County, Virginia, being known and designated as "PARCEL `A' (INCLUDES CEMETERY PARCEL)", "PARCEL `B' and "PARCEL `C' as shown on that subdivision plat entitled "PLAT OF SUBDIVISION AND BOUNDARY LINE ADJUSTMENT BETWEEN THE PROPERTIES OWNED BY THE MASSIE CORPORATION, VAJACK, L.L.C., AND DAVID W. WARE MARITAL TRUST STONEHOUSE DISTRICT JAMES CITY COUNTY VIRGINIA," dated 10/24/02, and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia in Plat Book 89, at pages 10-12; together with all rights whatsoever, including riparian, oil, gas and mineral rights, privileges, easements, interests and appurtenances, thereto or thereto belonging.

All that certain lot, piece or parcel of land situate in Powhatan District, James City County, Virginia containing 181.547 acres \pm (but sold in gross and not by the acre) shown and designated as "PARCEL E" on Sheets 2 and 3 of a plat (the `Plat") entitled "PLAT OF SUBDIVISION AND BOUNDARY LIEN ADJUSTMENT BETWEEN THE PROPERTIES OWNED BY THE MASSIE CORPORATION, VAJACK, L.L.C., AND DAVID W. WARE MARITAL TRUST, STONEHOUSE DISTRICT, JAMES CITY COUNTY, VIRGINIA," dated 10/24/02, revised 12/12/02 and made by AES Consulting Engineers, a copy of which is recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia in Plat Book 89, pages 10-12 to which Plat reference is hereby made; together with all rights whatsoever, including riparian, oil, gas and mineral right, privileges, easements, interests and appurtenances thereto.

EXHIBIT B

(Boy Scout Property)

Parcel I

All of that certain tract of land in James City County, State of Virginia, formerly located in Jamestown Magisterial District, containing 617.2 acres, more or less, as shown by Plat of Survey dated May 10, 1938, made by G. L. Evans, Certified Surveyor, and of record in the Clerk's Office of the Circuit Court of James City County, Virginia, in Plat Book 7, Page 43, together with all improvements thereon, rights, privileges and appurtenances thereunto belonging, described as follows, to-wit:

Beginning at a Cedar Stob being the intersection of the Southeast corner of Piggott's Estate and the Southwest corner of R. L. Henley's Estate, thence North 80 degrees 10' W. 200 feet to a point in the center line of the county road; thence with the center line of said road North 61 . degrees 10' W. 534 feet; thence North 75 degrees 00' W. 800 feet; thence North 71 degrees 00' W. 922 feet to a point; thence leaving said road South 67 degrees 20' W. 500 feet to a point; thence North 66 degrees 30' W. 130 feet to a point in the center of said county road; thence continuing with the center line of said road North 46 degrees 00' W. 1100 feet; thence North 33 degrees 20' W. 700 feet; thence North 59 degrees 30' W. 551 feet; thence North 77 degrees 00' W. 600 feet; thence South 75 degrees 20' W. 533 feet; thence North 58 degrees 40' W. 200 feet; thence North 16 degrees 30' W. 410 feet; thence North 35 degrees 30' W. 282 feet to a point; thence leaving said county road; thence North 86 degrees 00' E. 562 feet to an iron axle; thence North 4 degrees 10' E. 100 feet; thence North 0' 30' W. 140 feet; thence North 36 degrees 50' E. 100 feet; thence North 13 degrees 30' E. 100 feet; thence North 0 degrees 30' E. 184 feet; thence North 30 degrees 00' E. 100 feet; thence North 22 degrees 20' E. 123 feet; thence North 4 degrees 50' E. 255 feet; thence North 69 degrees 10' W. 100 feet; thence North 22 degrees 45' W. 300 feet; thence North 43 degrees 15' W. 100 feet; thence North 27 degrees 45' W. 300 feet; thence North 74 degrees 30' W. 100 feet; thence North 49 degrees 00' W. 158 feet; thence North 43 degrees 30' W. 400 feet; thence North 9 degrees 00' W. 254 feet; thence North 37 degrees 45' W. 200 feet; thence North 19 degrees 10' E. 300 feet; thence North 21 degrees 30' W. 359 feet to the South shore of Cranston's Mill Pond; thence continuing across said pond; North 33 degrees 00' E. 530 feet to the North shore of said mill pond; thence re-crossing said mill pond South 57 degrees 45' E. 666 feet; thence South 41 degrees 20' E. 85 feet; thence South 67 degrees 45' E. 200 feet; thence South 83 degrees 30' E. 400 feet; thence South 81 degrees 30' E. 100 feet; thence South 43 degrees 30' E. 200 feet; thence South 54 degrees 45' E. 200 feet; thence North 62 degrees 10' E. 131 feet; thence South 82 degrees 30' E. 100 feet; thence South 56 degrees 15' E. 200 feet; thence South 66 degrees 10' E. 94 feet; thence South 76 degrees 15' E. 600 feet; thence North 62 degrees 40' E. 555 feet; thence South 50 degrees 10' E. 200 feet; thence South 48 degrees 10' E. 500 feet; thence South 55 degrees 00' E. 409 feet; thence South 78 degrees 15' E. 400 feet; thence South 24 degrees 40' E. 300 feet; thence South 39 degrees 00' E. 200 feet; thence South 79 degrees 40' E. 300 feet; thence South 81 degrees 15' E. 393 feet; thence South 29 degrees 50' E. 200 feet; thence South 18 degrees 45' E. 139 feet; thence South 27 degrees 30' E. 400 feet; thence South 47 degrees 20' E. 300 feet; thence South 84 degrees 45'

E. 400 feet; thence South 39 degrees 00' E. 200 feet; thence South 81 degrees 00' E. 107 feet; thence South 18 degrees 30' E. 300 feet; thence South 16 degrees 40' E. 400 feet; thence South 49 degrees 30' E. 500 feet; thence South 24 degrees 10' W. 275 feet; thence South 68 degrees 45' W. 200 feet thence South 29 degrees 20' W. 505 feet; thence South 22 degrees 30' W. 500 feet; thence South 12 degrees 30' E. 200 feet to Cedar Stob; thence South 37 degrees 50' W. 584 feet to a White Oak Stump; thence South 33 degrees 20' W. 260 feet to a White Oak Stump; thence South 12 degrees 00' W. 347 to the point of beginning.

Parcel II

All of that certain tract of land in James City County, State of Virginia, formerly in Jamestown Magisterial District, containing 117.8 acres, more or less, as shown by Plat of Survey dated May 10, 1938, made by G. L. Evans, Certified Surveyor, and of record in the Clerk's Office of the Circuit Court of James City County, Virginia, in Plat Book 7, Page 43, together with all improvements thereon, rights, privileges and appurtenances thereunto belonging, described as follows: to-wit:

Beginning at an iron pipe in a Pine stump located at the intersection of County Roads Nos. 626 and 603; thence North 8 degrees 20' E. 49 feet; thence North 7 degrees 40' W. 323 feet; thence North 21 degrees 40' W. 100 feet; thence North 53 degrees 00' W. 393 feet; thence North 47 degrees 30' W. 765 feet; thence North 77 degrees 10' W. 400 feet; thence North 64 degrees 00' W. 275 feet; thence North 48 degrees 10' W. 235 feet; thence North 26 degrees 40' W. 312 feet; thence North 30 degrees 45' W. 141 feet; thence North 50 degrees 10' W. 245 feet; thence up the center line of an old road North 41 degrees 50' W. 132 feet; thence North 20 degrees 10' W. 100 feet; thence North 4 degrees 50' W. 200 feet; thence North 13 degrees 00' W. 180 feet; thence North 3.2 degrees 50' E. 104 feet; thence leaving old road South 17 degrees 15' E. 158 feet; thence South 62 degrees 20' E. 104 feet to a Beech; thence North 10 degrees 45' E. 253 feet to a Cedar; thence North 36 degrees 00' E. 75 feet to a Beech; thence South 55 degrees 10' E. 76 feet to a point on the Southwest shore of Cranston's Mill Pond; thence North 71 degrees 50' E. 714 feet; thence North 71 degrees 30' E. 238 feet to a point on the Southern shore of said mill pond; thence crossing said mill pond North 26 degrees 45' E. 640 feet to a point on the northern shore of said mill pond; thence re-crossing said mill pond South 58 degrees 45' E. 870 feet to a point on the Southern shore of said mill pond; thence South 21 degrees 30' E. 359 feet; thence South 19 degrees 10' W. 300 feet; thence South 37 degrees 45' E. 200 feet; thence South 9 degrees 00' E. 254 feet; thence South 43 degrees 30' E. 400 feet; thence South 49 degrees 00' E. 158 feet; thence South 74 degrees 30' E. 100 feet; thence South 27 degrees 45' W. 300 feet (shown on Plat as South 27 degrees 45' E.); thence South 43 degrees 15' E. 100 feet; thence South 22 degrees 45' E. 300 feet; hence South 69 degrees 10' E. 100 feet; thence South 4 degrees 50' W. 255 feet; thence South 22 degrees 20' W. 123 feet; thence South 30 degrees 00' W. 100 feet; thence South 0 degrees 30' W. 184 feet; thence South 13 degrees 30' W. 100 feet; thence South 36 degrees 50' W. 100 feet; thence South 0 degrees 30' E. 140 feet; thence South 4 degrees 10' W. 100 feet to an iron axle, thence South 86 degrees 00' W. 562 feet to the point of beginning.

LESS AND EXCEPT all that certain portion of property lying north of the water's edge on the southern side of Bush's Mill or Cranston's Mill Pond as conveyed by Peninsula Council, Boy Scouts of America, a Virginia corporation, by Quitclaim Deed to Toano Fishing and Hunting Club, Incorporated, dated September 10, 1969, recorded September 25, 1969 in the aforesaid Clerk's Office in Deed Book 123, Page 392.

LESS AND EXCEPT all that certain tract, piece or parcel of land as granted to the Commonwealth Transportation Commissioner of Virginia, by Certificate of Take dated January 29, 1990, recorded in the aforesaid Clerk's Office in Deed Book 465, Page 109.

BEING the same property conveyed to Colonial Heritage LLC, A Virginia corporation, by Deed from Colonial Virginia Council of Boy Scouts of America, Inc., a Virginia corporation, dated September 29, 2004, recorded September 30, 2004, in the Clerk's Office of the Circuit Court, James City County, Virginia, as Instrument No. 040024552.

EXHIBIT C

(Non-PSA Boy Scout Property)

All that certain piece or parcel of land situated in James City County, Virginia, containing 506 acres \pm , shown and described as "AREA NOT SUBJECT OF MASTER PLAN SEE ACCOMPANYING SUP APPLICATION" on that certain Master Plan entitled: "COLONIAL HERITAGE, WILLIAMSBURG, VIRGINIA, AMENDED MASTER DEVELOPMENT PLAN" dated July 1, 2004, made by Land Design, and by AES Consulting Engineers, which said plat is incorporated herein by reference for a more particular description of the subject property.

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