

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 14TH DAY OF DECEMBER, 2004, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Bruce C. Goodson, Chairman, Roberts District
Michael J. Brown, Vice Chairman, Powhatan District
John J. McGlennon, Jamestown District
M. Anderson Bradshaw, Stonehouse District
Jay T. Harrison, Sr., Berkeley District

Sanford B. Wanner, Clerk
Leo P. Rogers, County Attorney

B. MOMENT OF SILENCE

Mr. Goodson requested the Board and citizens observe a moment of silence.

C. PLEDGE OF ALLEGIANCE

Sarah Reynolds, a sixth-grade student at James Blair Middle School, led the Board and citizens in the Pledge of Allegiance.

D. HIGHWAY MATTERS

Mr. David Steele, Williamsburg Resident Engineer, stated that the asphalt overlay schedule has been completed; road conditions in Windsor Forest and Treasure Island Road were also addressed during the overlay process.

Mr. Steele stated that the Virginia Department of Transportation (VDOT) recently performed a dry run of snow removal procedures as well as inspections on the equipment and VDOT crews are ready to address winter weather concerns affecting local roads.

Mr. Brown thanked VDOT for addressing overlay needs in the Powhatan District and for attendance at a Scott's Pond Homeowner Association meeting.

Mr. McGlennon thanked Mr. Steele for attending to the overlay of Treasure Island Road and requested drainage ditch maintenance be performed along Hickory Sign Post Road and Lake Powell Road.

Mr. Steele stated that there is erosion along Hickory Sign Post Road, which will be addressed within the next 30 days; stated that along Lake Powell Road there is a pipe separation that needs to be repaired in the next few weeks; and stated the drainage ditches will be added to the drainage schedule to be attended to in the next few months.

Mr. Steele stated that a dead tree was located on Treasure Island Road and removed, and requested the specific location of the dead tree reported on Hickory Sign Post Road.

Mr. McGlennon stated that he would relay the specific location of the tree.

Mr. McGlennon requested an update on the Route 199/Route 31 intersection project.

Mr. Steele stated that the contractor is working on the right-turn lanes off Route 199 and would provide a better update in January.

Mr. McGlennon thanked Mr. Steele for the updates.

Mr. Harrison stated that individuals are using Hickory Sign Post Road as an alternate around the Route 199/Route 31 intersection project and requested the speed limit be reduced along the road to reflect the residential neighborhood and one-way signs be posted at the entrance/exit of Hickory Sign Post Road to discourage cut-throughs.

Mr. Steele stated that he would pass on the request to the engineers.

E. PRESENTATIONS

1. 2004 The Year of the Neighborhoods - Neighborhood of the Quarter - Peleg's Point Owners' Association

Mr. Goodson and Mr. McGlennon presented Dave Volz, President of the Peleg's Point Owners' Association; Nancy Volz, Treasurer; and Sandy Light, Secretary; with a resolution proclaiming Peleg's Point Owners' Association as the connected neighborhood of the quarter for December 2004.

2. 2004 Chairman's Awards

Mr. Goodson presented the 2004 Chairman's Awards to Suzanne R. Mellen, Acting Assistant County Administrator, and the Heritage Human Society for outstanding public service to the County and its citizens.

3. Report of the Water Conservation Committee - Wellington Subdivision

Mr. Richard Costello, Chair of the Water Conservation Committee (Committee), stated that since November 23 when the Board of Supervisors directed the Committee to evaluate concerns about high water bills in Wellington, the Committee has met three times with the residents of the Wellington subdivision, has been informed by the County Attorney's Office that there is no legal authority to adjust individual water bills and any adjustments in the water rate structure have to occur during the next budget cycle, and the Committee evaluated the rate structure, discussed the basis for Increasing Block Rate Systems' implementation, and concurred on recommendations.

Mr. Costello stated that the Committee recommends the retention of the current three-tier rate structure as an effective tool in encouraging water conservation, retention of the current commercial flat rate, consider billing residential customers every two months versus every three months, and improve communications with new customers and the development community about the James City Service Authority Rate System.

Mr. Bradshaw inquired if the Committee considered the gallon benchmarks for the three-tier rate structure.

Mr. Costello stated that the Committee considered the benchmarks as well as other factors such as seasonal usage levels and concurred on the rate structure remaining at the current levels.

F. PUBLIC COMMENT

1. Mr. David Fuss, President of Friends of the Powhatan Creek Watershed, requested the Board continue funding the implementation of the Powhatan Creek Management Plan.

2. Ms. Tina Haywood, 3936 Penzance Place, stated that the three-tier rate structure does not make allowance for watering lawns once a month, stated concern about the accuracy of the figures reported by the Water Conservation Committee, stated that the \$7.60 rate is unreasonable, and stated concern that those making the decisions about the three-tier rate structure have wells for irrigation and therefore the decision makers are unaffected by the rate structure.

3. Mr. Sasha Digges, 3707 Ironbound Road, recommended the Moment of Silence be replaced by the singing of "God Bless America."

4. Mr. Ed Oyer, 139 Indian Circle, commented on the upcoming Budget deliberations and suggested that as Cox raises its rates, the County will get increased franchise fee revenue.

G. CONSENT CALENDAR

Mr. Bradshaw requested Item No. 8, Grant Appropriation – FEMA HMGP Housing Elevation, be pulled.

Mr. Harrison made a motion to adopt the remaining items on the Consent Calendar.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5). NAY: (0).

1. Minutes
 - a. November 23 2004 Work Session
 - b. November 23 2004 Regular Meeting
2. 2004 The Year of the Neighborhoods - Neighborhood of the Quarter - Peleg's Point Owners' Association

RESOLUTION

2004 THE YEAR OF THE NEIGHBORHOODS -

NEIGHBORHOOD OF THE QUARTER - PELEG'S POINT OWNERS' ASSOCIATION

WHEREAS, Peleg's Point Owners Association is a mandatory, self-managed association located in the Jamestown District. Peleg's Point Owners' Association was organized in 1993 and consists of 72 homes with another 36 homes to be built; and

WHEREAS, the Board of Directors of the Peleg's Point Owners' Association is comprised of volunteers dedicated to preserving the integrity and equality of life at Peleg's Point with effective leadership of the association to ensure the covenants made between neighbors are upheld; and

WHEREAS, the key to the success of Peleg's Point Owners' Association lies in its active Board and its communication with residents in promoting interest in and around the neighborhood and County through these efforts:

- A neighborhood "Disaster Preparedness Plan";
- "Yard of the Quarter";
- "Green Thumb Day" **clean-up** day to spruce up the front entrance followed by "Driveway Cookout";
- neighborhood yard sale;
- neighborhood gatherings – pool party at the President of the HOA's house; and
- monthly Board meetings – announced on Channel 48; minutes e-mailed or hard copied to residents including information from Neighborhood Connections monthly mailing.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby proclaim Peleg's Point Owners' Association Neighborhood of the Quarter for December 2004 in connection with the celebration of the 10th Anniversary of Neighborhood Connections.

3. Award of Contract - Mid County Park Trail

RESOLUTION

AWARD OF CONTRACT - MID COUNTY PARK TRAIL

WHEREAS, bids have been received for Mid County Park Trail; and

WHEREAS, staff have reviewed all bids and determined that David A. Nice Builders is the low bidder and qualified to complete the project; and

WHEREAS, the bid is within the capital budget allocated to the Division of Parks and Recreation.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute the necessary contract documents for award of base bid to David A. Nice Builders, the lowest responsive and responsible Bidder, in the amount of \$174,547.

4. Resolutions for Reimbursement

RESOLUTION OF THE BOARD OF SUPERVISORS OF

JAMES CITY COUNTY, VIRGINIA. DECLARING ITS INTENTION TO

REIMBURSE THE COST OF CERTAIN EXPENDITURES - GREENSPACE

WHEREAS, James City County, Virginia (the "County") has made or will make, directly or indirectly, expenditures (the "Expenditures") in connection with the acquisition of land to be held as greenspace or to be developed for the County's public purposes, including the furtherance of economic development in the County (together, the "Project"); and

WHEREAS, such Expenditures may be made directly by the County or indirectly through the Economic Development Authority of James City County, Virginia (the "Authority"); and

WHEREAS, the County or the Authority may determine that the funds advanced and to be advanced to pay Expenditures will be reimbursed to the County or the Authority from the proceeds of one or more tax-exempt obligations to be issued by the County or by the Authority, on behalf of the County (the "Indebtedness").

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia (the "Board"), that:

1. The Board hereby adopts this declaration of official intent under Treasury Regulations Section 1.150-2 and declares that the County intends to reimburse itself or the Authority with the proceeds of Indebtedness for Expenditures made on, after, or within 60 days prior to the date hereof with respect to the Project, except that Expenditures made more than 60 days prior to the date hereof may be reimbursed as to certain de minimis or preliminary expenditures described in Treasury Regulations Section 1.150-2(f) and as to other expenditures permitted under applicable Treasury Regulations.
2. The maximum principal amount of Indebtedness expected to be issued for the Project is \$15,000,000.
3. This Resolution shall take effect immediately upon its adoption

RESOLUTION OF THE BOARD OF SUPERVISORS OF
JAMES CITY COUNTY, VIRGINIA, DECLARING ITS INTENTION TO
REIMBURSE THE COST OF CERTAIN EXPENDITURES - COMMUNITY COLLEGE

WHEREAS, James City County, Virginia (the "County") has made or will make, directly or indirectly, expenditures (the "Expenditures") in connection with the site development and off-site costs for the new campus of Thomas Nelson Community College for the County's public purposes, including the furtherance of economic development in the County; and

WHEREAS, such Expenditures may be made directly by the County or indirectly (together the "Project") through the Economic Development Authority of James City County, Virginia (the "Authority"); and

WHEREAS, the County or the Authority may determine that the funds advanced and to be advanced to pay Expenditures will be reimbursed to the County or the Authority from the proceeds of one or more tax-exempt obligations to be issued by the County or by the Authority, on behalf of the County (the "Indebtedness").

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia (the "Board"), that:

1. The Board hereby adopts this declaration of official intent under Treasury Regulations Section 1.150-2 and declares that the County intends to reimburse itself or the Authority with the proceeds of Indebtedness for Expenditures made on, after, or within 60 days

prior to the date hereof with respect to the Project, except that Expenditures made more than 60 days prior to the date hereof may be reimbursed as to certain de minimis or preliminary expenditures described in Treasury Regulations Section 1.150-2(f) and as to other expenditures permitted under applicable Treasury Regulations.

2. The maximum principal amount of Indebtedness expected to be issued for the Project is \$10,000,000.
3. This Resolution shall take effect immediately upon its adoption.

RESOLUTION OF THE BOARD OF SUPERVISORS OF
JAMES CITY COUNTY, VIRGINIA, DECLARING ITS INTENTION TO
REIMBURSE THE COST OF CERTAIN EXPENDITURES - SPORTS FACILITY

WHEREAS, James City County, Virginia (the "County") has made or will make, directly or indirectly, expenditures (the "Expenditures") in connection with the construction of a community sports facility for the County's public purposes, including the furtherance of economic development in the County (together, the "Project"); and

WHEREAS, such Expenditures may be made directly by the County or indirectly through the Economic Development Authority of James City County, Virginia (the "Authority"); and

WHEREAS, the County or the Authority may determine that the funds advanced and to be advanced to pay Expenditures will be reimbursed to the County or the Authority from the proceeds of one or more tax-exempt obligations to be issued by the County or by the Authority, on behalf of the County (the "Indebtedness").

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia (the "Board"), that:

1. The Board hereby adopts this declaration of official intent under Treasury Regulations Section 1.150-2 and declares that the County intends to reimburse itself or the Authority with the proceeds of Indebtedness for Expenditures made on, after, or within 60 days prior to the date hereof with respect to the Project, except that Expenditures made more than 60 days prior to the date hereof may be reimbursed as to certain de minimis or preliminary expenditures described in Treasury Regulations Section 1.150-2(f) and as to other expenditures permitted under applicable Treasury Regulations.
2. The maximum principal amount of Indebtedness expected to be issued for the Project is \$8,000,000.
3. This Resolution shall take effect immediately upon its adoption.

RESOLUTION OF THE BOARD OF SUPERVISORS OF
JAMES CITY COUNTY, VIRGINIA, DECLARING ITS INTENTION TO
REIMBURSE THE COST OF CERTAIN EXPENDITURES -
PROPERTY DEVELOPMENT RIGHTS

WHEREAS, James City County, Virginia (the "County") has made or will make, directly or indirectly, expenditures (the "Expenditures") in connection with the acquisition of property development rights for the County's public purposes, including the furtherance of economic development in the County (together, the "Project"); and

WHEREAS, such Expenditures may be made directly by the County or indirectly through the Economic Development Authority of James City County, Virginia (the "Authority"); and

WHEREAS, the County or the Authority may determine that the funds advanced and to be advanced to pay Expenditures will be reimbursed to the County or the Authority from the proceeds of one or more tax-exempt obligations to be issued by the County or by the Authority, on behalf of the County (the "Indebtedness").

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia (the "Board"), that:

1. The Board **hereby** adopts this declaration of official intent under Treasury Regulations Section 1.150-2 and declares that the County intends to reimburse itself or the Authority with the proceeds of Indebtedness for Expenditures made on, **after**, or within 60 days prior to the date hereof with respect to the Project, except that Expenditures made more than 60 days prior to the date hereof may be reimbursed as to certain **de minimis** or preliminary expenditures described in Treasury Regulations Section 1.150-2(f) and as to other expenditures permitted under applicable Treasury Regulations.
2. The maximum principal amount of Indebtedness expected to be issued for the Project is \$8,000,000.
3. This Resolution shall take effect immediately upon its adoption.

5. Jamestown-Scotland Ferry

RESOLUTION

JAMESTOWN-SCOTLAND FERRY

WHEREAS, the Jamestown-Scotland **Ferry** is an important and vital part of the transportation network and the economy of both sides of the James River, with the number of vehicles using the **ferry** currently averaging 3,000 per day; and

WHEREAS, there are not sufficient ferries to handle the existing number of vehicles in an efficient manner, resulting in long lines and frustrating delays for persons waiting to ride the **ferry**; and

WHEREAS, the number of vehicles will only increase with the 400th anniversary of Jamestown in 2007 and with the general population growth in the area; and

WHEREAS, a new ferry would help to alleviate the current problem and would also allow visitors to the area for the Jamestown 2007 commemoration to have a quality experience visiting historic areas and sites on both sides of the James River; and

WHEREAS, in order for a new ferry to be built and ready for use in time for the Jamestown 2007 Commemoration, it is necessary that a decision to build a new ferry and fund the cost of construction be made immediately.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that it is of vital importance for the citizens of James City County, the surrounding jurisdictions, and the Commonwealth of Virginia to build and finance a new ferry for the Jamestown-Scotland Ferry and that such ferry be placed into service in time for the Jamestown 2007 Commemoration.

BE IT FURTHER RESOLVED that the County Administrator send copies of this resolution to the Governor of the Commonwealth, the Virginia General Assembly, the Commonwealth Transportation Board, and other appropriate Federal and State officials who may be in a position to make the decision to finance and construct a new ferry to serve the Jamestown-Scotland Ferry route.

6. Dedication of Streets in Stonehouse. Phase 1. Section 6A and Stonehouse. Phase 1. Section 6B

RESOLUTION

DEDICATION OF STREETS IN STONEHOUSE. PHASE 1. SECTION 6A

AND STONEHOUSE. PHASE 1. SECTION 6B

WHEREAS, the streets described on the attached Additions Form **SR-5(A)**, fully incorporated herein by reference, are shown on plats recorded in the Clerk's Office of the Circuit Court of James City County; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation advised the Board that the streets meet **the** requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation; and

WHEREAS, the County and the Virginia Department of Transportation entered into an agreement on July 1, 1994, for comprehensive stormwater detention which applies to this request for addition.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests the Virginia Department of Transportation to add the streets described on the attached Additions Form **SR-5(A)** to the secondary system of State highways, pursuant to § 33.1-229 of the Code of Virginia, and the Department's Subdivision Street Requirements.

BE IT FURTHER RESOLVED, the Board guarantees a clear and unrestricted right-of-way, as described, and any necessary easements for cuts, fills, and drainage.

RE IT FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

7. Installation of "Watch for Children" Sign -Church Lane in Toano

RESOLUTION

INSTALLATION OF "WATCH FOR CHILDREN" SIGN - CHURCH LANE IN TOANO

WHEREAS, Section 33.1-210.2 of the Code of Virginia provides for the installation and maintenance of signs by the Virginia Department of Transportation, alerting motorists that children may be at play nearby, upon request by a local governing body; and

WHEREAS, Section 33.1-210.2 further requires that the funding for such signs be from the secondary road system maintenance allocation for the County; and

WHEREAS, residents of Church Lane in Toano have requested that a "Watch for Children" sign be installed on Church Lane.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby request that the Virginia Department of Transportation install and maintain one "Watch for Children" sign as requested with funds from the County's secondary road system maintenance allocation.

8. Grant Appropriation - EMA HMGP Housing Elevation

Tal Luton, Deputy Fire Chief, stated that the Federal Emergency Management Agency has awarded the James City County Fire Department a grant to elevate three flood-vulnerable homes in Chickahominy Haven, and requested the Board approve the resolution authorizing a budget appropriation of the grant funds.

Mr. Bradshaw stated that one of the homeowners whose home will be elevated has expressed appreciation for this opportunity.

Mr. Bradshaw made a motion to adopt the resolution

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5).
NAY: (0).

RESOLUTION

GRANT APPROPRIATION - FEMA HMGP HOUSING ELEVATION

WHEREAS, the Federal Emergency Management Agency has awarded the James City County Fire Department a housing elevation grant of \$152,998; and

WHEREAS, there is no local match required.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation amendment to the Special **Projects/Grants** Fund:

Revenue:

FEMA HMGP Elevation Grant - State	\$ 32,210
FEMA HMGP Elevation Grant - Federal	<u>120,788</u>
	<u>\$152,998</u>

Expenditure:

FEMA HMGP Elevation Grant	<u>\$152,998</u>
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H. PUBLIC HEARINGS

1. **Conveyance of Easement to Newport News Waterworks - Fire Station No. 2**

Mr. Bernard M. Farmer, Jr., Capital Projects Administrator, presented a resolution authorizing the County Administrator to execute an easement for the extension of **Newport News** waterlines sewing the replacement Fire Station No. 2 building.

Mr. **Goodson** opened the Public Hearing.

As no one wished to speak to this matter, Mr. **Goodson** closed the Public Hearing.

Mr. **McGlennon** made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, **McGlennon**, **Goodson** (5). NAY: (0).

RESOLUTION

CONVEYANCE OF EASEMENT TO NEWPORT NEWS WATERWORKS -

FIRE STATION NO. 2

WHEREAS, James City County owns a parcel located at 8421 Pocahontas Trail designated as Tax Parcel No. 5230100001; and

WHEREAS, **James City County** Fire Station No. 2 is located on the Parcel; and

WHEREAS, James City County desires to convey to the City of **Newport** News an easement for the purpose of constructing waterlines and appurtenances in accordance with that certain plat made by Mitchell-Wilson Associates, P.C. dated October 27, 2004.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes and directs the County Administrator to execute a deed of easement and any other documents required to convey an easement to the City of **Newport** News for the purpose of constructing waterlines and appurtenances.

2. Case No. SUP-26-04. Gross Family Subdivision

Mr. Matthew D. Arcieri, Planner, stated that Michael and Melina Gross have applied for a Special Use Permit (SUP) for a family subdivision of 2.740 acres from the existing 5.01 acres located at 9040 Barnes Road, zoned A-1, General Agricultural, and further identified as Parcel No. (2-1) on James City County Real Estate Tax Map No. (10-2).

Staff found the proposal to be consistent with the surrounding zoning and development and Section 19-17 of the James City County Subdivision Ordinance.

Staff recommended approval of the application with conditions.

Mr. Goodson opened the Public Hearing

As no one wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. Bradshaw made a motion to approve the resolution.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5).
NAY: (0).

RESOLUTION

CASE NO. SUP-26-04. GROSS FAMILY SUBDIVISION

WHEREAS, the Board of Supervisors of James City County has adopted **by** ordinance, specific land uses that shall be subjected to a special use permit process; and

WHEREAS, the applicant has requested a Special Use Permit (SUP) to allow for a family subdivision in an A-1, General Agricultural District, located at 9040 Barnes Road, further identified as Parcel No. (2-1) on James City County Real Estate Tax Map No. (10-2).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP No. 26-04 as described herein with the following conditions:

1. This SUP is valid for a family subdivision for the creation of one new lot of 2.740 acres with one parent lot of 2.269 acres remaining generally as shown on the subdivision plat submitted with this application.
2. Only one entrance serving both lots shall be allowed onto Barnes Road.
3. Final subdivision approval must be received from **the County** within twelve months from the issuance of this SUP or the permit shall become void.

4. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

3. Case No. SUP-28-04. Leon Avery Family Subdivision

Mr. Trey Davis, Planner, stated that **Sonya Miles** applied for an SUP for a family subdivision of 1.00 acre from the existing 3.23 acres located at 3918 Rochambeau Drive, zoned A-1, General Residential, and further identified as Parcel No. (1-14) on James City County Real Estate Tax Map No. (31-1).

Staff found the proposal to be consistent with the surrounding zoning and development and Section 19-17 of the James City County Subdivision Ordinance.

Staff recommended approval of the application with conditions.

Mr. Goodson opened the Public Hearing.

As no one wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. Bradshaw made a motion to approve the resolution.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5).
NAY: (0).

RESOLUTION

CASE NO. SUP-28-04. LEON AVERY FAMILY SUBDIVISION

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance, specific land uses that shall be subjected to a Special Use Permit (SUP) process; and

WHEREAS, the applicant has requested an SUP to allow for a family subdivision in an A-1, General Agricultural District, located at 3918 Rochambeau Drive, further identified as Parcel No. (1-14) on James City County Real Estate Tax Map No. (13-1).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby **approve the** issuance of SUP No. 28-04 as described herein with the following conditions:

1. This SUP is valid for a family subdivision for the creation of one new lot of 1.00 acre with one parent lot of 2.23 acres remaining generally as shown on the subdivision plat submitted with this application.
2. Only one entrance sewing both lots shall be allowed onto Rochambeau Drive.
3. Final subdivision approval must be received from the County within twelve months from the issuance of this SUP or the permit shall become void.
4. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

4. Case No. SUP-25-04. Bay Lands Federal Credit Union at Norge

Ms. Karen Drake, Senior Planner, stated that Tom Derrickson, AES Consulting Engineers, applied on behalf of Bay Lands Federal Credit Union for an SUP to construct a 3,500-square-foot credit union and a future second-phase 15,000-square-foot credit union operations center, on approximately 3.4 acres located at 7031 Richmond Road in Norge, zoned B-1, General Business, and further identified as Parcel No. (1-13) on James City County Real Estate Tax Map No. (24-1).

Staff found the proposed use consistent with surrounding zoning and development patterns on Richmond Road but inconsistent with the Low-Density Residential Comprehensive Plan land use designation. Staff believes that with the proposed SUP conditions, the impact of the credit union and operations center will be adequately mitigated through the conditions regarding traffic, landscaping, and architecture.

At its meeting on November 1, 2004, the Planning Commission voted 5-0 to recommend approval of this application.

Staff recommended approval of the application with conditions.

Mr. Goodson opened the Public Hearing.

1. Mr. Richard Costello, AES Consulting Engineers, was available to answer questions from the Board and stated that the proposed changes to the conditions recommended by the Planning Commission are acceptable to the applicant.

As no one else wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. Bradshaw made a motion to approve the resolution,

Mr. Bradshaw made a motion adopt the revised resolution

Mr. Bradshaw requested the applicant and staff continue to work together to have the credit union's appearance reflect the architectural details of the Norge community, the possible beginnings of a regional stormwater basin. and wished the business success.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5). NAY: (0).

RESOLUTION

CASE NO. SUP-25-04. BAY LANDS FEDERAL CREDIT UNION

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a Special Use Permit (SUP) process; and

WHEREAS, Mr. Tom Derrickson of AES Consulting Engineers has applied on behalf of property owner, Bay Lands Federal Credit Union, for an SUP to allow a bank at 7031 Richmond Road; and

WHEREAS, the property is located on land zoned B-1, General Business, and can be further identified as Parcel No. (1-13) on James City County Real Estate Tax Map No. (24-1); and

WHEREAS, the Planning Commission, following its Public Hearing on November 1, 2004, voted 5-0 to recommend approval of this application.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP No. 25-04 as described herein with the following conditions:

1. If construction has not commenced on Phase I of this project (credit union building, associated parking, entrance, and stormwater management facility) within twenty-four months from the issuance of an SUP, the SUP shall become void. Construction shall be defined as obtaining permits for building construction and installation of footings **and/or** foundation.
2. As determined by the Planning Commission, the plan of development shall be in accordance with the SUP Plan prepared by AES Consulting Engineers and dated October 18, 2004.
3. Prior to the final site plan approval and as determined by the Planning Director, the building architecture for both buildings shall be compatible and consistent with each other and the architectural building treatment shall be consistent, compatible and reflective of significant architectural elements found in other buildings located in the Norge Community Character Area such as but not limited to the following: C&O Depot, Norge Community Hall, **McKown** House, Old Store in the Village and the Wicker Store.
4. All exterior lighting on the property shall be recessed fixtures with no bulb, lens, or globe extending below the casing. The casing shall be opaque and shall completely surround the entire light fixture and light source in such a manner that all light will be directed downward and the light source is not visible from the side. Modifications to this requirement may be approved by the Planning Director if it is determined that the modifications do not have any negative impact on the property or surrounding properties.
5. A landscaping plan shall be approved by the Planning Director prior to final site plan approval for this project. The landscaping plan shall include enhanced landscaping within the fifty-foot Community Character Corridor buffer along Richmond Road (Route 60 West) and in the rear landscaping buffer adjacent to Colonial Heritage. Enhanced landscaping shall be defined so that the required number of plants and trees equals, at a minimum, 125 percent of the requirements of the James City County Landscape Ordinance. A minimum of fifty percent of the trees within the landscape buffers shall be evergreen.
6. Access to the site is proposed via a direct driveway from Richmond Road to the property as shown on the SUP Plan and all warranted traffic improvements shall be approved by the Planning Director and Virginia Department of Transportation (VDOT) prior to site plan approval. If access to the site is gained from the adjacent property to the north and the existing Econo Lodge entrance as shown on the SUP Plan, the direct driveway entrance from Richmond Road to **the** property shall be closed and remained closed with enhanced landscaping in accordance with Condition No. 5 of this special use permit replacing the driveway. The alternate entrance and any associated traffic improvements shall be reviewed and approved by the Planning Director and VDOT.
7. The applicant shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority prior to final site plan approval. The standards may include, but shall not be limited to, such water conservation measures as limitations on the installation and use of irrigation

systems, the use of approved landscaping materials including the use of drought-tolerant plants where appropriate, and the use of water-conserving fixtures to promote water conservation and minimize the use of public water resources.

8. Free standing **signage** shall be limited to one monument style sign. For purposes of this condition, a "monument" style sign shall be defined as a free standing sign with a **completely** enclosed base not to exceed thirty-two square feet in size and not to exceed eight feet in height from grade.
9. This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

5. Case Nos. 2-7-03 & MP-8-03. Governor's Grove at Five Forks

Mr. Matthew Arcieri, Planner, stated that Eric Nielsen, National Housing Corporation, has applied to rezone 23.26 acres located on John Tyler Highway from R-8, Rural Residential, and B-1, General Business, to MU, Mixed Use, with proffers to construct a new multi family housing complex, office commercial space, and open space.

Staff found the proposal, with submitted proffers, would not negatively impact surrounding property, found the proposal generally consistent with surrounding land uses, the Land Use policies of the Comprehensive Land, the Comprehensive Plan Land Use Map designation, and the Primary Principles for the Five Forks Area of James City County.

Staff also found the added benefit of affordable housing will meet an important need in the County and the proposed open space will provide significant protection to the John Tyler Highway community character corridor.

At its meeting on November 1, 2004, the Planning Commission recommended approval of the case by a vote of 3-2.

Staff recommended approval of the rezoning and master plan applications and acceptance of the voluntary proffers.

The Board discussed protection and enforcement of the proffered open space, and the \$22,000 per acre value of the property as open space.

Mr. Goodson opened the Public Hearing.

1. Mr. Vernon Geddy of Geddy, Harris Franck & Hickman, representing the applicant, provided an overview of the proposal and introduction to the developer, highlighted some of the benefits of the proposal, and requested approval of the application.

2. Mr. Eric Nielsen, National Housing Corporation, provided additional information on the proposal and its benefits to the County and the Five Forks community, and assured the Board and citizens that he would be a good custodian of the development.

The Board, Mr. Geddy, and applicant discussed stormwater management measures to be approved by the County before final approval of the development, and concerns about the affordability of the units in the development and amount of non-affordable units.

3. Mr. **Sasha Digges, 3707 Ironbound Road**, commented on the desire of the **Five Fork** residents to avoid high-density development in that area, and stated that this proposal does not meet the criteria of affordable housing because residents want ownership and responsibility of their dwelling.

4. Ms. **Fran Turner, 205 St. Georges Boulevard**, stated that she disagrees with the applicant's proposed number of school children enrollments associated with the development and stated that she expects it will be a higher number.

5. Ms. **Susan Baudier, 207 Robertson Street**, stated opposition to the proposal due to the lack of adequate infrastructure for medical care for the **current** population in the County.

6. Mr. **Bob Tyndall, 3313 New Castle Drive**, President of the **Westray Downs Community Association Board of Directors**, stated that the Community Association opposes the proposal citing concerns regarding traffic concerns, adequate water, and school enrollment concerns; commented on the National Housing Corporation's association with other developments that faced suits due to faulty construction; requested the Board of Supervisors deny the application; stated concern about the rudeness of two Board members to citizens making inquiries about the proposal; and stated that regardless of the Board's decision on the application, the **Westray Downs Community Association** will be referring the National Housing Corporation to appropriate Federal agencies to conduct a proper inquiry.

7. Mr. **Arthur Dorsey, 4909 Whithorn Circle**, requested the Board deny the application and stated concern about the increasing traffic flow on John Tyler Highway.

8. Ms. **Kathleen Thoringion, 3195 Ironbound Road, Lot 2**, requested denial of the application and cited concerns about the impacts of the proposal on the number of children enrolled in the overcrowded schools, increasing traffic on John Tyler Highway, and concern for safety of pedestrians from the proposed development; and inquired where the current residents on the land are to go.

9. Ms. **Judy Fuss, 3509 Hunters Ridge**, President of the **Powhatan Homeowners Association**, requested denial of the application, stated concerns about traffic, additional school enrollment impacts, and inadequacy of proffers to cover increased demands for public **service** resulting from the proposal.

10. Mr. **Maxwell Burry, 3408 Avery Circle**, stated that he had reviewed the Planning Commission files on the proposal and concluded the project would be a distinct improvement to the area; however, it would also further stress the infrastructures that support the Five Forks area, he requested the Board preserve the community character corridor of Five Forks, and requested denial of the application.

11. Ms. **Melissa Gagn, 4716 Bristol Circle**, stated opposition to the proposal, commented on the aesthetics of the building and existing zoning of the land, requested the Board preserve the community character of the Five Forks corridor, stated concern about the impacts on school resources, increased traffic along John Tyler Highway, and concurred that affordable housing is needed in the County; however; it should be in the form of **home** ownership, not rental units.

12. Mr. **Gary Bohlken, 119 Rothbury Drive**, stated concern about the negative impacts of the proposed development on school resources, traffic on John Tyler Highway, water supply, the community character of the Five Forks area; and stated that the historical significance of Mainland Farm is being lost due to the development in the County.

13. Mr. **Walt Silva, 3347 New Castle Drive**, stated **concern** that the proposed development is not in harmony with the surrounding community, stated that the negative impacts of the proposal outweigh the possible benefits of the proposal, and requested the Board deny the application.

14. Mr. **Brent Fung, 3309 New Castle Drive**, stated concern that the proposal is outside the box in regard to the Comprehensive Plan's designation for the area; stated concern that the developer has not

given adequate specifics for the development plans; stated concern about enrollment impacts of the proposal, impacts to emergency services, the additional traffic impacts, the possible increase in crime to the Five Forks area as a result of the proposal; and requested denial of project.

15. Mr. Gerald Johnson, 4513 Wimbelton Way, President of the Historic Route Five Association, recommended denial of proposed project, requested the community character be preserved, and stated concerns about the negative impact of the proposal on traffic and pedestrian safety, educational resources, water resources, and environmental impacts.

16. Ms. Sarah Kadec, 3504 Hunters Ridge, commented on the historic nature of the two-lane highway through the Five Forks area, stated concern about the pace in which the Five Forks Area Study was conducted, requested the Board preserve the community character of the corridor, and stated concern about low-cost housing being placed where access to services requires crossing a busy highway.

17. Ms. Joan Milkavich, 4707 Wood Violet Lane, stated concern about the school redistricting effects of the proposal, traffic and pedestrian safety issues; and inquired where 35 percent of the development residents would be heading that will travel west on John Tyler Highway.

18. Mr. Donald Milkavich, 4707 Wood Violet Lane, stated that he reviewed the application and stated concern about the cost to public services the proposed project would cost, stated concern about the impacts of reassessments in the Five Forks area as a result of the proposal, encouraged the Board to be proactive in affordable housing by getting citizen input on the issue, and requested denial of the application.

19. Mr. Jim Bellaire, 4781 Bristol Circle, stated that active duty troops like ownership not rentals, stated that he purchased a home in the Five Forks area because of the community character of area, stated that though schools are overcrowded, children get a good education; stated that the proposed number of school enrollment students is low; and stated concern that the existing emergency services for high-density dwellings in this area inadequate for this proposal.

20. Mr. Richard Bowers, 3317 Isle Wright Court, stated concern that the members of the Board may not vote against the proposal, and requested the Board deny the application.

21. Mr. Cliff Henderson, 3328 Running Cedar Way, stated that he is representing other members of his community as well in stating concerns about the proposal including quality of construction, a rental housing community rather than a home ownership community; stated concerns about the negative impacts of the proposal on the community character, school resources, and traffic; and requested denial of the application.

22. Mr. John Dunaway, 3500 Hollingsworth Drive, stated concern about the traffic study numbers reported with the proposal, stated that the existing infrastructure will not handle the increased traffic impacts associated with the proposal, and stated concern about the concept of the proposal and the possible increased crime.

23. Mr. Peter Zilko, 3423 Darden Place, stated concern about the open-ended project and requested the Board members vote against it.

24. Mr. Glen Williams, 133 Wellington Circle, stated that the applicant has made a good case for the proposal and the citizens of the community have spoken well against the proposal, and requested the Board consider a reasonable persons vote on the proposal.

25. Mr. David Fuss, 3008 Chelsford Way, President of the Friends of the Powhatan Creek Watershed, stated that the Friends of the Powhatan Creek Watershed spent time with the developer and found it unfortunate that suggestions made to the developer have not been incorporated into the proposed Master

Plan, stated concern that the proposal will create environmental problems, commented that the Five Forks community has given much input into the type of development they see for the area and has gathered here to speak against this proposal in this community, and requested the Board deny the application.

26. Mr. Ed Oyer, 139 Indian Circle, recommended the Board deny the rezoning request, encouraged developers to build by-right; and stated concern about the Board's view of the voices of Roberts District citizens that a similar project in the Roberts District with citizen opposition was approved despite ongoing existing traffic concerns.

27. Ms. Marian Riley, 3412 Darden Place, stated that she has worked with affordable housing projects for 30 years and in historic districts reviewing many proposals, stated that this proposal is the worst affordable housing proposal she has heard, and requested the Board deny the proposal.

Mr. Goodson closed the Public Hearing.

Mr. Goodson inquired if the application deadline for tax credit for this project is March.

Mr. Nielsen stated that the application deadline is in March; however, a notice of intent must be given in January of intent to go forward with the tax credit application.

Mr. McGlennon inquired if adequate time for providing notice in January would have also been met if the Board had considered this case at one of the two January Board meetings.

Mr. Nielsen stated that would not have provided enough time because notice is due in January.

The Board and applicant discussed the impression made by the applicant that a decision had to be made by the Planning Commission in November and by the Board in December to meet the application deadline of March.

The Board and staff discuss the height waiver policy in the County and the by-right height limitations of this parcel of land for the proposed development.

Mr. Geddy stated that the proposed apartments will be approximately 35 to 38 feet in height.

The Board, staff, and applicant discussed the theory that the residents for the proposed project would be County residents currently living elsewhere in the County, the uncertainty that County renters would move from existing apartments to this proposed apartment complex, desire of the Board and citizens to see affordable housing through home ownership rather than rental units, and the potential for Section 8 voucher residents in this proposed development.

Mr. Harrison made a motion to deny the application.

The Board discussed the proposal and its benefits and potential impacts to public services/infrastructures.

On a roll call vote, the vote was: AYE: Harrison, Brown, McGlennon, Goodson (4). NAY: Bradshaw (1).

At 10:09 p.m., Mr. Goodson recessed the Board for a brief break,

At 10:17 p.m., Mr. Goodson reconvened the Board,

6. & 7. Case Nos. Z-3-02, Z-4-02, MP-1-02, and SUP-21-04. U. S. Home - Colonial Heritage Proffer and Master Plan Amendments. Boy Scout Property Rezoning. and Rural Cluster Special Use Permit

Mr. Christopher Johnson, Senior Planner, stated that Alvin Anderson and Gregory **Davis of Kaufman & Canoles** applied in 2002 to rezone the Boy Scout property of approximately **732** acres to incorporate that property into the existing Colonial Heritage at Williamsburg development. That application was indefinitely deferred at the request of the applicant and recently brought back with an amended rezoning application along with an SUP application for a 50-lot rural cluster development on a portion of the Boy Scout property located outside the Primary Service Area (PSA).

Staff **found** the proposed Colonial Heritage proffer and master plan amendments and Boy Scout property rezoning to be consistent with surrounding zoning and development, and consistent with the Comprehensive Plan.

At its meeting on November 1, 2004, the Planning Commission voted 4 to 1 to approve the applications.

Mr. McGlennon inquired what water conservation standards the Colonial Heritage at Williamsburg is responsible for.

Mr. Johnson stated that Condition No. 6 of the resolution highlights the responsibility of the applicant for the water conservation standards.

Mr. McGlennon inquired if there are irrigation restrictions for the yards.

Mr. Johnson stated that there is a restriction; however, he is unsure of the specifics of the restriction.

Mr. Brown inquired if the restriction on wells and watering applies to the common areas and not to individual parcel owners.

Mr. Johnson stated that is correct.

Mr. McGlennon requested clarification from Mr. Foster on the general nature of the water conservation standards for Colonial Heritage at Williamsburg and enforcement.

Mr. Larry Foster, General Manager of the James City Service Authority, stated that irrigation systems are permitted on 30 percent of the lots and no individual irrigation wells are permitted; **drought-tolerant** plants are encouraged and mulch use is encouraged; and enforcement is by covenants through the Homeowners Association.

Mr. **Goodson** opened the Public Hearing.

1. Mr. Greg Davis, applicant, provided an overview **of the** proposal, the benefits **of the** proposal versus by-right development of the land, and requested approval of the applications.

2. Mr. Ed **Oyer**, 139 Indian Circle, stated concern **about** rezonings and inquired if the easements are on unusable land.

As no one else wished to speak to this matter, Mr. **Goodson** closed the Public Hearing

The Board held a brief discussion on the merits **of the** applications and possible alternative uses for the property.

Mr. Brown made a motion to adopt the Master Plan amendments and Boy Scout property rezoning.

(1). On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, Goodson (4). NAY: McGlennon

RESOLUTION

CASE NOS. Z-3-02, Z-4-02, and MP-1-02. U.S. HOME - COLONIAL HERITAGE PROFFER AND MASTER PLAN AMENDMENTS AND BOY SCOUT PROPERTY REZONING

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia and Section 24-15 of the James City County Zoning Ordinance, a Public Hearing was advertised, adjoining property owners were notified, and a hearing was scheduled on Zoning and Master Plan Case Nos. 2-3-02 and MP-1-02 for rezoning approximately 722 acres from MU, Mixed Use, with proffers, to MU, Mixed Use, with amended and restated proffers; and

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia and Section 24-15 of the James City County Zoning Ordinance, a Public Hearing was advertised, adjoining property owners were notified, and a hearing was scheduled on Zoning Case No. 2-4-02 for rezoning approximately 229 acres from A-I, General Agricultural, to MU, Mixed Use, with proffers; and rezoning approximately 503 acres from A-1, General Agricultural, to A-1, General Agricultural, with proffers; and

WHEREAS, the Planning Commission of James City County, following its Public Hearing on November 1, 2004, recommended approval of Case Nos. Z-3-02, Z-4-02, and MP-1-02, by a vote of 4 to 1; and

WHEREAS, the properties are identified as Parcel No. (1-21) on James City County Real Estate Tax Map No. (23-4); Parcel No. (1-32) on Tax Map No. (24-3); Parcel No. (1-11) on Tax Map No. (31-1); and Parcel No. (1-7) on Tax Map No. (22-4).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case Nos. 2-3-02, 2-4-02, and MP-1-02 and accepts the voluntary amended and restated proffers.

Mr. Bradshaw made a motion to adopt the SUP for Rural Cluster.

(1). On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, Goodson (4). NAY: McGlennon

RESOLUTION

CASE NO. SUP-21-04. U.S. HOME - COLONIAL HERITAGE, BOY SCOUT PROPERTY RURAL CLUSTER

WHEREAS, the Board of Supervisors of James City County has adopted, by Ordinance, specific land uses that shall be subjected to a special use permit process; and

WHEREAS, Mr. Alvin Anderson and Mr. Gregory Davis of Kaufman & Canoles have applied on behalf of Colonial Heritage, LLC, for a special use permit to allow a 50-lot rural cluster development in accordance with the provisions of Section 24-214(c) of the Zoning Ordinance on the portion of the Boy Scout Property located outside the Primary Service Area (PSA); and

WHEREAS, the properties are located at 6175 Richmond Road, zoned MU, Mixed-Use, with proffers, and further identified as Parcel No. (1-21) on James City County Real Estate Tax Map No. (23-4); 6799 Richmond Road, zoned MU, Mixed-Use, with proffers, and further identified as Parcel No. (1-32) on James City County Real Estate Tax Map No. (24-3); 6993 Richmond Road, zoned MU, Mixed- Use, with proffers, and further identified as Parcel No. (1-11) on James City County Real Estate Tax Map No. (31-1); and 499 Jolly Pond Road, zoned A-I, General Agricultural, and further identified as Parcel No. (1-7) on James City County Real Estate Tax Map No. (22-4); and

WHEREAS, the Planning Commission of James City County, following its Public Hearing on November 1, 2004, recommended approval of this application by a vote of 4 to 1.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-21-04 as described herein with the following conditions:

1. Development Limitation. No more than fifty residential lots shall be platted on the portion of the Boy Scout of America (BSA) property located outside the PSA. Any residential lots developed on the BSA property located outside the PSA shall be subject to the 2,000-residential-unit density cap.
2. Conservation Easement. A conservation easement shall be submitted for review and approved by the County Engineer prior to issuance of a land-disturbing permit for any related plan of development of the portion of the BSA property located outside the PSA. The conservation easement shall be dedicated to James City County or an agency acceptable to the County prior to final site plan or subdivision approval for any plan of development or subdivision of lots for the ±282 acres shown on the plan "Special Use Permit Plan on a Portion of Colonial Virginia Council, Boy Scouts of America, a Virginia Corporation" prepared by AES Consulting Engineers, September 24, 2004. The area within the conservation easement 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 calculations, and watershed protection measures for the Colonial Heritage development and the 50-lot rural cluster. The conservation easement shall clearly state that no clearing, land disturbing, or development shall occur on the ±282 acres unless otherwise approved by the Planning Director.
3. Buffers. A minimum 150-foot buffer shall be maintained along Jolly Pond Road and Cranston's Mill Pond Road. That buffer shall remain undisturbed with the exception of breaks for any entrance road, pedestrian connections, utilities, walking, hiking, and biking trails, any required clearing necessary to create adequate sight distance, and other uses specifically approved by the Planning Director. The Planning Director shall approve the design of such features located within the required buffer.
4. Vehicular Access. Access to the 50-lot cluster development shall be from a single entrance road onto Jolly Pond Road unless a second entrance road is approved by the Planning Commission following the review of the Development Review Committee.

5. Central Well. An independent central well shall be required for the proposed cluster development. Connection into existing JCSA facilities shall not be permitted from outside the PSA. The independent well shall be designed to provide the necessary fire flow, peak water demands, and irrigation requirements for the development. A hydraulic analysis shall be submitted in accordance with JCSA standards for review and approval prior to final approval being granted for any plan of development or subdivision of lots of the property located outside the PSA.
6. Water Conservation. The applicant shall be responsible for developing water conservation standards to be submitted to and approved by the JCSA. The applicant shall be responsible for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of approved landscaping design and materials to promote water conservation and minimize the use of water resources. The JCSA shall approve the standards prior to final approval for any plan of development on the portion of the BSA property located outside the PSA.
7. Archaeology. Prior to issuance of a land-disturbing permit for any portion of the BSA property located outside the PSA, the applicant shall provide written evidence to the Planning Director which demonstrates that the recommendations of a professional archaeologist **have been** implemented in a manner consistent with the preservation objectives of the Board of Supervisors Archaeological Policy, as **determined** by the Planning Director or his designee.
8. Master Stormwater Plan. A Master Stormwater Plan shall be submitted with the development plan for the alternative which is submitted for review and approval by the Environmental Director. The Master Stormwater Plan should specifically address how Deer Lake will be utilized **as a primary Best Management Practices (BMP) (by use of drawings/narratives)**, whether additional **onsite** structural or non-structural practices are necessary and whether there is a better site design/low-impact development component proposed for stormwater compliance.
9. Steep Slopes. Any plan of development for the portion of the BSA property located outside the PSA shall maintain a separation of at least 35 feet between the top of 25 percent and steeper slopes and any **structure** and a 20-foot separation from the limit of grading to the top of 25 percent and steeper slopes. This is intended to apply to the larger, contiguous areas of steep slopes, not isolated areas, as determined by the Environmental Director. The Environmental Director shall have the ability to grant variances from this criteria to provide flexibility in application of this condition.
10. RPA/Perennial Stream. The applicant shall conduct a perennial stream evaluation which shall receive approval from the Environmental Director prior to preliminary approval being granted for any plan of development of the portion of the BSA property located outside the PSA. If perennial streams are present on the site, a 100-foot buffer shall be required around them and any wetlands contiguous to and connected by surface flow to the stream. Any plan of development for the portion of the BSA property located outside the PSA shall also maintain a structural separation of 35 feet from any Resource Protection Area (RPA) on the property.
11. Severability. This special use permit is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

8. Stormwater Task Group Special Stormwater Criteria and Offsite Open Space Program

Mr. Scott J. Thomas, Senior Engineer, presented the revised Special Stormwater and Offsite Open Space Programs as directed by the Board of Supervisors at its Work Session on November 23, 2004, to include clarification of application of the Special Stormwater Criteria (SSC) to single-family lots, and if the SCC procedure should be based on site, project, or disturbed area.

Staff recommended adoption of the resolution adopting the Special Stormwater Criteria, the Offsite Open Space Program, and associated revisions to the County BMP Manual.

The Board and staff discussed the Offsite Open Space Program and ability of small sites to meet the requirements.

Mr. Goodson opened the Public Hearing.

1. Mr. John Schmerfeld, 128 Jordans Journey, commented that he was a member of the Stormwater Task Group (STG); complimented the Board on its forward thinking, addressing a quality of life issues in the County; and stated that the STG concurred with the SSC, which gives the developers and contractors flexibility in meeting the criteria while keeping costs down.

2. Mr. Robert Duckett, Director of Public Affairs of the Peninsula Home Builders Association, stated the development communities concerns still exist, requested further statistical analysis of the proposals, stated concern about the lack of credit given for meeting criteria, requested the Board appoint an appeal board with broad-based members, and requested the Board adopt the SSC and Offsite Open Space Program for one year and reevaluate the proposal at that time.

Mr. Brown inquired if Mr. Duckett could provide specific changes to the criteria for the Board to consider before taking action on the proposal this evening.

Mr. Duckett stated that he would be able to get specific changes to the Board within the next few business days.

Mr. Brown stated that he would not be comfortable holding up action on the proposal at this late date and invited citizens and interested groups to submit suggestions for amendments to the Board for ongoing reviews of the proposal.

3. Mr. Richard Costello, AES Consulting Engineers, recommended the Board have citizens, groups, and developers meet with the Board to review the documents for feedback on the applications, use, and interpretations of the proposal and supported the recommendation for an appeal board.

4. Mr. David Fuss, 3008 Chelsford Way, stated that the resolution's language indicates this proposal is a "living" document and will be subject to reviews and revisions as appropriate.

As no one else wished to speak to this matter, Mr. Goodson closed the Public Hearing.

Mr. McGlennon made a motion to adopt the resolution.

The Board held a discussion on the SSC and expectations for reviews and input on the application and use of the programs.

Mr. Brown requested an amendment to the resolution to include the words "other users and" in the fifth bullet of the resolution.

The Board briefly discussed the amendment.

Mr. **McGlennon** accepted the amendment to his motion.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, **McGlennon**, Goodson (5).
NAY: (0).

RESOLUTION

STORMWATER TASK GROUP -

SPECIAL STORMWATER CRITERIA AND OFFSITE OPEN SPACE PROGRAM

WHEREAS, the Board of Supervisors, on February 26, 2002, adopted eight goals and 21 of 24 priorities associated with the **Powhatan** Creek Watershed Management Plan (Priority Nos. 3, 4, and 11 were not adopted); and

WHEREAS, the Board of Supervisors, on October 14, 2003, adopted the **Yarmouth** Creek Watershed Management Plan dated July 14, 2003, with the exception of Priority No. 3, Special Stormwater Criteria; and

WHEREAS, Priority No. 7 of the **Powhatan** Creek Watershed Management Plan refers to "Special Stormwater Criteria in sensitive stream areas and conservation areas"; and Priority No. 3 of the **Yarmouth** Creek Watershed Management Plan refers to "adopt Special Stormwater Criteria (SSC) in the watershed to increase groundwater recharge in the development process"; and

WHEREAS, the Board of Supervisors authorized the formulation of a Stormwater Task Group (STG) to develop *Special Stormwater Criteria (SSC)*, an *Offsite Open Space Program* and perform general revisions to the County Best Management Practice (BMP) Manual; and

WHEREAS, the 2003-2004 STG conducted a series of fourteen monthly meetings between June 20, 2003, and October 15, 2004, to accomplish their objectives; and

WHEREAS, the STG presented recommendations to the Board of Supervisors at a Work Session on November 23, 2004.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the *Special Stormwater Criteria (SSC)*, the *Offsite Open Space Program*, and associated revisions to the County BMP Manual as developed by the 2003-2004 STG and authorizes proceeding with its implementation recommendations as follows:

1. Incorporate *Special Stormwater Criteria (SSC)* and the *Offsite Open Space Program* into the revised County BMP Manual.
2. Submit the revised County BMP Manual to appropriate State regulatory agencies for review and comment.
3. Use the revised County BMP Manual effective January 1, 2005, or later pending review by appropriate State agencies and following appropriate notification to all known manual users.

4. Incorporate language for use of *Special Stormwater Criteria (SSC)* into an appropriate section of the County's Chesapeake Bay Preservation Ordinance at an appropriate future time.
5. Conduct follow-up implementation meetings with the STG and other users and report to the Board as necessary or as directed.

The Board concurred and directed staff to bring the Special Stormwater Criteria and Offsite Open Space Program before the Board for review before the end of 2005.

I. PUBLIC COMMENT -None

J. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. Wanner recommended the Board recess briefly for the James City Service Authority Board of Directors meeting, then reconvene to go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of appointments of individuals to County Boards **and/or** Commissions, and Section 2.2-3711(A)(3) of the Code of Virginia to consider the acquisition of real property for public use.

Mr. Wanner recommended at the conclusion of the Board's agenda, the Board recess to 4 p.m. on January 3, 2005, for the Board's Organizational Meeting.

Mr. Wanner reminded citizens that the County Government offices will be closed December 23 and 24 in observance of the holidays.

Mr. Wanner stated that the County will be issuing, under the Board adopted procedures **of the** Private Partnership Education Act, a Request for Proposal to do the necessary infrastructure improvements at the Warhill site.

K. BOARD REQUESTS AND DIRECTIVES

Mr. Harrison requested staff bring before the Board **a draft** cash proffer policy as it applies to schools during a Work Session, then consideration of a Board vote on adoption.

The Board discussed the request, scope of the request, and concurred on request

Mr. **McGlennon** requested staff bring **forward** a recommendation on the prohibition on open burning of vegetation cleared for development.

Mr. **Goodson** congratulated Oliver Tabb as the new President of the NAACP.

Mr. **Goodson** thanked the members **of the** Board for support during his **term as** Chairman, highlighted the accomplishments of the Board during 2004, and congratulated Frank Morton on his retirement after 31 years of service to the County.

Mr. Bradshaw thanked Mr. **Goodson** for his leadership during the year.

Mr. Goodson recessed the Board for a James City Service Authority Board of Directors meeting at 11:34 p.m.

At 11:36 p.m. Mr. Goodson reconvened the Board.

L. CLOSED SESSION

Mr. Harrison made a motion to go into Closed Session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia for the consideration of appointments of individuals to County Boards and/or Commissions, and Section 2.2-3711(A)(3) of the Code of Virginia to consider the acquisition of real property for public use.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5).
NAY: (0).

Mr. Goodson adjourned the Board into Closed Session at 11:49 p.m.

Mr. Goodson reconvened the Board into Open Session at 12:30 a.m.

Mr. McGlennon made a motion to adopt the Closed Session resolution.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5)
NAY: (0).

RESOLUTION

CERTIFICATION OF CLOSED MEETING

WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies and ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(3) to consider the acquisition of parcels of property; and Section 2.2-3711(A)(1) to consider personnel matters, the appointment of individuals to County boards and/or commissions.

Mr. McGlennon made a motion to reappoint Timothy Mills to a five-year term on the Board of Building Adjustments and Appeals, term to expire December 31, 2009; to appoint Ingrid Blanton an unexpired term on the Planning Commission, term to expire on January 31, 2008; to appoint Martin Mathes to an unexpired term on the Purchase of Development Rights (PDR) Committee, term to expire on February 12, 2008; and to appoint Joseph McCleary, Lafayette Jones, Janis MacQueston, Mike Maddocks, Jim Tucker, Bruce Goodson, John Home, Jody Puckett, Sue Mellen, the County Administrator, a Williamsburg/James City County School representative, and a Williamsburg Convention/Visitors Bureau representative to the Virginia 2007 Community Committee.

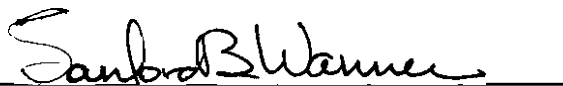
On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5).
NAY: (0).

M. ADJOURNMENT

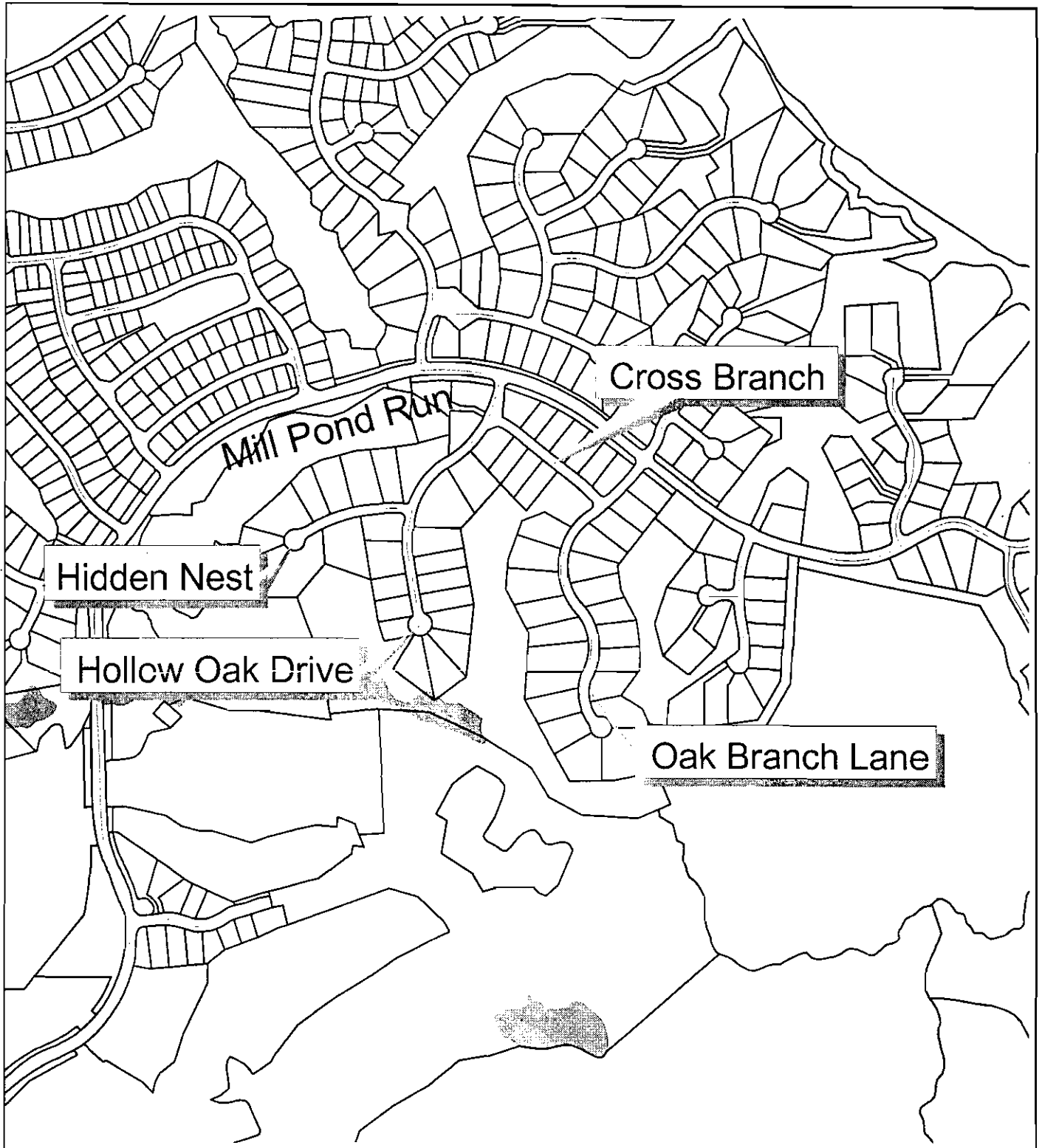
Mr. Harrison made a made a motion to adjourn until 4 p.m. on January 3, 2005, for the Organizational Meeting.

On a roll call vote, the vote was: AYE: Bradshaw, Harrison, Brown, McGlennon, Goodson (5).
NAY: (0).

At 12:31 a.m., Mr. Goodson adjourned the Board until 4 p.m. on January 3, 2005, for the Organizational Meeting.



Sanford B. Wanner
Clerk to the Board



DEDICATION OF STREETS IN STONEHOUSE - SECTIONS 6A & 6B

Street Being
Dedicated

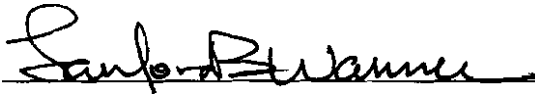


In the County of James City

By resolution Of the governing body adopted December 14,2004

The following Form SR-5A is hereby attached and incorporated as part of the governing body's resolution for changes in the secondary system of state highways.

A Copy Testee Signed (County Official):



Report of Changes in the Secondary System of State Highways

Form SR-5A
Secondary Roads Division 511199

Project/Subdivision

Stonehouse, Phase 1, Sections 6A and 6B, Hollow Oak

Type of Change: **Addition**

The following additions to the Secondary System of State Highways, pursuant to the statutory provision or provisions cited, are hereby requested, the right of way for which, including additional easements for drainage as required, is guaranteed:

Reason for Change: Addition. New subdivision street

Pursuant to Code of Virginia Statute: **§33.1-229**

Route Number and/or Street Name

Cross Branch, State Route Number **1234**

Description: **From:** Rt 1228 (Hollow Oak Drive)

To: Rt 1235 (Oak Branch Lane)

A distance of: 0.13 miles.

Right of Way Record. Filed with the Land Records Office on 6/18/1998, Document # 980011356, with a width of 50'

Hidden Nest, State Route Number **1229**

Description: **From:** Rt 1228 (Hollow Oak Drive)

To: End of cul-de-sac

A distance of: 0.12 miles.

Right of Way Record Filed with the Land Records Office on 1/22/1999, Document #990001458, with a width of 50'

Hollow Oak Drive, State Route Number **1228**

Description: **From:** Rt 1221 (Mill Pond Run)

To: Rt 1234 (Cross Branch Lane)

A distance of: 0.05 miles.

Right of Way Record: Filed with the Land Records Office on 6/18/1998, Document #980011356, with a width of 50'

Description: **From:** Rt 1234 (Cross Branch Lane)

To: Rt 1229 (Hidden Nest)

A distance of: 0.12 miles.

Right of Way Record. Filed with the Land Records Office on 6/18/1998. Document #980011356, with a width of 50'

Description: **From:** Rt 1229 (Hidden Nest)

To: End of cul-de-sac

A distance of: 0.09 miles.

Right of Way Record: Filed with the Land Records Office on 6/18/1998, Document #980011356, with a width of 50'

Report of Changes in the Secondary System of State Highways

Form SR-5A
Secondary Roads Division 5/1/99

Oak Branch Lane, State Route Number 1235

Description: **From:** Rt 1221 (Mill Pond Run)

To: Rt 1234 (Cross Branch)

A distance of: 0.06 miles.

Right of Way **Record:** Filed with the Land Records Office on 3/31/1999, Document #990006891, with a width of 50'

Description: **From:** Rt 1234 (Cross Branch)

To: End of cul-de-sac

A distance of: 0.24 miles.

Right of Way **Record:** Filed with the Land Records Office on 3/31/1999. Document #990006891, with a width of 50'

050000448

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

December, 2004

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

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EXHIBIT A
EXHIBIT B
EXHIBIT C

AMENDED AND RESTATED
PROFFERS
COLONIAL HERITAGE AT WILLIAMSBURG

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:

(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 ("DCRIDNH). 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,

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 III, 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-4-00NP-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).

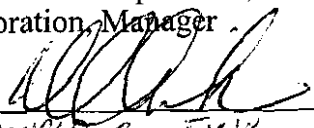
B. In no event shall the unadjusted proffered cash payment(s) or Per Unit Contribution(s) be adjusted to a sum less than the amount specified in the particular paragraphs described herein.

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.

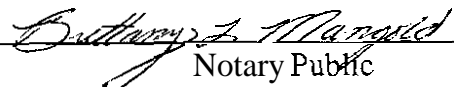
COLONIAL HERITAGE LLC, a Virginia
limited liability company

By: U.S. Home Corporation, a Delaware
corporation, Manager

By: 
Name: DONALD C. FINK
Title: EXECUTIVE VP

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

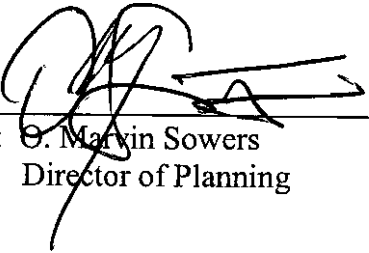
The foregoing instrument was acknowledged before me this 2 day of December,
2004, by Donald C. Fink, Executive VP, of U.S. Home Corporation, Manager
of COLONIAL HERITAGE LLC, a Virginia limited liability company, on its behalf.


Notary Public

My commission expires: June 30 2007



THE COUNTY OF JAMES CITY.
VIRGINIA

By:  _____
Name: O. Marvin Sowers
Title: Director of Planning

APPROVED AS TO FORM:


County Attorney

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 ± (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 comer of Piggott's Estate and the Southwest comer 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 32 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 ±, 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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