

PROFFERS

THESE PROFFERS are made this ~~30th~~ day of April, 2005 by ARMIN U. ALI and AMINA ADOSSA-ALI (together "Ali") and POWHATAN-OLDE TOWNE SQUARE, LLC, a limited liability company ("Powhatan") (Ali and Powhatan, together with their respective successors in title and assigns, are hereinafter sometimes referred to as the "Owner").

RECITALS

A. Ali is the owner of a tract or parcel of land located in James City County, Virginia, with an address of 6001 Centerville Road, Williamsburg, Virginia and being Tax Parcel 3110100036 containing approximately 31.8, being more particularly described on Schedule A hereto (the "Ali Property").

B. Powhatan is the owner of a tract or parcel of land located in James City County, Virginia, with an address of 6061 Centerville Road, Williamsburg, Virginia and being Tax Parcel 3110100033 containing approximately 7.7 acres, being more particularly described on Schedule A hereto (the "Powhatan Property"). The Ali Property and the Powhatan Property are hereinafter sometimes referred to as the "Property."

C. The Property is designated Low Density Residential on the County's Comprehensive Plan Land Use Map and is now zoned A-1. Owners have applied to rezone the Property from A-1 to R-2, General Residential District, with proffers.

C. Owners have submitted to the County a master plan entitled "Preliminary Master Plan, Centerville Road Subdivision" prepared by Vanasse Hangen Brustlin, Inc. dated February 21, 2005 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

D. Owners desire to offer to the County certain conditions on the development of the Property not generally applicable to land zoned R-2.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2298 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owners agree that they shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

CONDITIONS

1. **Master Plan.** The Property shall be developed generally in accordance with the Master Plan, with only minor changes thereto that the Development Review Committee determines do not change the basic concept or character of the development. There shall be a maximum of 78 lots on the Property.

2. **Owners Association.** There shall be organized an owner's association or associations (the "Association") in accordance with Virginia law in which all property owners in the

development, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and restrictive covenants (together, the "Governing Documents") creating and governing each Association shall be submitted to and reviewed by the County Attorney for consistency with this Proffer. The Governing Documents shall require that each Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs, recreation areas, sidewalks, and all other common areas (including open spaces) under the jurisdiction of each Association, shall require each initial purchaser of a lot to make a capital contribution to the Association for reserves in an amount equal to one-sixth of the annual general assessment applicable to the lot (but no less than \$100.00) and shall require that the Association (i) assess all members for the maintenance of all properties owned or maintained by the Association and (ii) file liens on members' properties for non-payment of such assessments. The Governing Documents shall grant each Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing Documents. If there is more than one Association created for the Property the Associations shall enter into a costs sharing agreement allocating responsibility for maintenance and expenses for common areas described above between the Associations.

3. **Water Conservation.** (a) The Association shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority and subsequently for enforcing these standards. The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. The standards shall be approved by the James City Service Authority prior to final subdivision or site plan approval.

4. **Cash Contributions for Community Impacts.** (a) A contribution of \$1,061.00 for each dwelling unit on the Property shall be made to the James City Service Authority ("JCSA") in order to mitigate impacts on the County from the physical development and operation of the Property. The JCSA may use these funds for development of alternative water sources or any project related to improvements to the JCSA water system in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property.

(b) A contribution of \$312.00 for each dwelling unit on the Property shall be made to the JCSA in order to mitigate impacts on the County from the physical development and operation of the

Property. The JCSA may use these funds for any project related to improvements to the JCSA sewer system in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property.

(c) A contribution of \$3,939.00 for each dwelling unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including, without limitation, for school uses.

(d) The contributions described above shall be payable for each dwelling unit on the Property at the time of final subdivision plat approval for such unit or, at the election of Owner, such contributions shall be payable within one year from the date of final subdivision plat approval provided Owner has posted with the County a letter of credit in form acceptable to the County Attorney in the amount of such deferred payment to secure Owner's obligation to make such payment.

(e) The per unit contribution(s) paid in each year pursuant to this Section shall be adjusted annually beginning January 1, 2006 to reflect any increase or decrease for the preceding year

in the Consumer Price Index, U.S. City Average, All Urban Consumers (CPI-U) All Items (1982-84 = 100) (the "CPI") prepared and reported monthly by the U.S. Bureau of Labor Statistics of the United States Department of Labor. In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in paragraphs (a) through (c) of this Section. The adjustment shall be made by multiplying the per unit contribution for the preceding year by a fraction, the numerator of which shall be the CPI as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the CPI as of December 1 in the preceding year, In the event a substantial change is made in the method of establishing the CPI, then the per unit contribution shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing CPI. 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 increasing the per unit contribution to approximate the rate of annual inflation in the County.

5. Route 614 Community Character Buffer. There shall be a variable width buffer along the Route 614 frontage of the

Property generally as shown on the Master Plan. The buffer shall be exclusive of any lots or units. The portion of the buffer located south of the entrance into the Property shall have a width of at least 150 feet and shall be left undisturbed and in its natural state except as provided herein. Owner shall remove storm debris from this portion of the buffer and, if required by the Director of Planning, shall replant pine seedlings in areas where storm debris has been removed. The portion of the buffer located north of the entrance into the Property shall have a width of at least 75 feet and there shall be installed within this portion of the buffer a landscaped berm pursuant to a landscaping plan approved by the Director of Planning generally as shown on the Master Plan. With the prior approval of the Development Review Committee, trails, sidewalks, bike lanes, utilities, lighting, entrance features and signs may be located in the buffer. Dead, diseased and dying trees or shrubbery, invasive or poisonous plants, windfalls and deadfalls may be removed from the buffer area.

6. **Streetscape Guidelines.** The Owner shall provide and install streetscape improvements in accordance with the applicable provisions of the County's Streetscape Guidelines policy. The streetscape improvements shall be shown on development plans for that portion of the Property and submitted

to the Director of Planning for approval during the development plan approval process.

7. Recreation. (a) Prior to the County being obligated to issue building permits for more than 39 lots on the Property, Owner shall provide a gazebo/picnic shelter with grill, tot lot with play equipment, and open play area of approximately one acre and a soft-surface pedestrian trail generally in the location shown on the Master Plan.

8. Archaeology. A Phase I Archaeological Study for the entire Property shall be submitted to the Director of Planning for review and approval prior to land disturbance. A treatment plan shall be submitted 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 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 III 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 areas. 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 *Standards 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 the Property and the clearing, grading or construction activities thereon.

9. **Entrance Tapers.** There shall be installed or bonded in form acceptable to the County Attorney prior to final subdivision plat approval a 100 foot right turn taper from south bound Route 614 into the entrance to the Property and a 48 foot right turn taper from the entrance to the property onto southbound Route 614. Such tapers will be striped to include the existing bike lane along Centerville Road.

10. **Sidewalks.** There shall be sidewalks five feet in width installed along one side of all streets within the Property generally as shown on the Master Plan.

11. Greenway Easement. At or prior to the County being obligated to approve any final subdivision plat of the Property, Owner shall grant to the County free of charge an easement 35 feet in width over the area of the Property immediately adjacent to Route 614 as shown on the Master Plan permitting the County to construct and maintain a greenway trail in the easement area. Owner, in its sole discretion, shall either (i) construct a 10 foot wide multi-use path within the easement area pursuant to plans approved by the Director of Planning (such path to be a part of the County greenway system and maintained by the County) or (ii) in lieu thereof, make a cash contribution to the County for use by the County for greenway capital improvements in an amount acceptable to the Director of Planning based on the estimated costs of construction of the path.

WITNESS the following signatures.

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Prepared by:
Vernon M. Geddy, III, Esquire
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Williamsburg, VA 23185
(757) 220-6500

Armin U. Ali
ARMIN U. ALI

Amina Adossa Ali
AMINA ADOSSA-ALI

POWHATAN-OLDE TOWNE SQUARE,
LLC

By: [Signature]
Title: MANAGER

STATE OF New York
CITY/COUNTY OF New York to-wit:

The foregoing instrument was acknowledged this 30th
day of April, 2005, by ARMIN U. ALI.

[Signature]
NOTARY PUBLIC

DANUTA J. KOCH
Notary Public, State of New York
No. 31-4950299
Qualified in New York County
~~Commission Expires April 24, 2007~~

My commission expires:

STATE OF New York
CITY/COUNTY OF New York to-wit:

The foregoing instrument was acknowledged this 30th
day of April, 2005, by AMINA ADOSSA-ALI.

[Signature]
NOTARY PUBLIC

DANUTA J. KOCH
Notary Public, State of New York
No. 31-4950299
Qualified in New York County
~~Commission Expires April 24, 2007~~

My commission expires:

STATE OF Virginia
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 2
day of May, 2005, by Lawrence E. Beamer, as manger
of POWHATAN-OLDE TOWNE SQUARE, LLC on behalf of the company.

Barbara J. Claus
NOTARY PUBLIC

My commission expires: 1/31/07.

EXHIBIT A

PARCEL 1

ALL that certain piece or parcel of land with appurtenances thereto, situate, being and lying in the Powhatan Magisterial District, James City County, Virginia and containing twenty one-half (20-1/2) acres of land more or less by actual survey and being a portion of the tract of land commonly called the Marston "tract of land" or "The triangle" near Centerville and bounded as follows to wit: on the North by the road and on the South and West by the land now or formerly of B. Clarence Vaiden.

LESS AND EXCEPT, that the conveyance by Andrew Byrd Estate, C.C. Byrd Agent got James City County Virginia to the Commonwealth of Virginia which Deed is recorded in the Clerks Office of the Circuit Court of James City County, Virginia in Deed Book 30, page 541.

BEING the same property conveyed in part to Armin U. Ali and Francis P. Ali, as joint tenants with right of survivorship as at common law, dated September 23, 1981 and recorded in Deed Book 220, page 402. The said Francis P. Ali having departed this life on May 20, 2001. And further being the same as conveyed in part to Armin U. Ali by Deed from Alvin Gary Parker dated September 26, 2002, and recorded in James City County, November 12, 2002 as Instrument Number 02002665; and by Deed from Shirley P. Holmes dated September 26, 2002, and recorded in James City County, November 12, 2002 as Instrument Number 02002665.

PARCEL 2

All that certain lot of land, estimated to contain eight (8) acres, more or less, enclosed within the following boundaries: beginning at a point on the Centerville Road opposite an oak stump; thence running west along a chopped line to a dogwood tree, then a white oak, then another dogwood, then a red oak, then an oak tree along the road separating this property from the property now or formerly of W.B. Vaiden thence in a southeasterly course along the road separating this property from the property formerly of W.B. Vaiden to the Centerville Road; thence in a northerly course

along the Centerville Road to the point of the beginning.

Together with all and singular the buildings and improvements thereon, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Subject, however, to all easements, restrictions, conditions and covenants of record or apparent on the ground.

Being the same property as that conveyed to Signor Bradby by Deed dated April 24, 1937 from Berkley Jones and Mary Lee Jones, his wife, Ernest Jones and Carries Jones, his wife, and Annie Bradby, of record at James City County Deed Book 29, page 273. The said Signor Bradby died testate on January 25, 1959, his Will is of record at James City County Will Book 6, page 478. By virtue of said Will, the only devisee of Signor Bradby was his daughter, Elizabeth Carter. Elizabeth Carter died testate on October 23, 2003, her Will is of record at James City County Will File Number 5703. By virtue of Article Four of said Will Elizabeth Carter devised that subject real property described herein to her daughter, Celestine Elizabeth Overbey, and her grandson, A. Dudley Overbey, the Grantors herein.