

RENOVATION AND CARETAKER LEASE AGREEMENT  
BETWEEN  
MONTGOMERY COUNTY, MARYLAND  
AND  
ROBERT B. HARNEY

THIS RENOVATION AND CARETAKER LEASE AGREEMENT ("Agreement") is made this \_\_\_\_\_ day of October, 2003, by and between MONTGOMERY COUNTY, MARYLAND, a body corporate and politic, hereinafter referred to as the County, and ROBERT B. HARNEY located at 7218 Beacon Terr and referred to as the "Caretaker".

WITNESSETH:

WHEREAS, the County is the owner of certain property known as the Chiswell Farm, comprising approximately 20 acres of land and several structures located at 20130 Wasche Road, Dickerson, Montgomery County, Maryland, (as more particularly shown on Exhibit A attached hereto and referred to as the "Property") which Property was purchased by the County in connection with the Site 2 landfill, and

WHEREAS, pursuant to Section 3.3.1.6 of the Montgomery County Comprehensive Solid Waste Management Plan for the Years 1998-2007, the Site 2 land is held in reserve for solid waste disposal if out-of-county disposal is no longer feasible, and

WHEREAS, the Property is improved with select historic structures that the County desires to have preserved. Structures on (and included in) the Property include a house constructed in the late 1700s (the "House"), a barn, corn crib, bank barn and other structures, some of which have been designated as having historic significance, and all of which are in need of substantial renovation and repair, and

WHEREAS, the County wants to save the Property from further destruction and disrepair by entering into an agreement for repair, renovation, maintenance and upkeep that will in the short run secure and weather proof the structures, and in the long run, repair and restore and aesthetically improve the Property into a site that will 1) restore the House and make agricultural use of the Property; and 2) offer educational opportunities to the community to appreciate the historic and agricultural resources on the Property.

WHEREAS, the County desires to have the Property repaired, renovated, maintained and cared for in a manner that is consistent with and protective of those portions of the Property that

are of historic significance and in a manner that is consistent with the surrounding agricultural and residential uses, and

WHEREAS, pursuant to Executive Regulation 67-91AM, Executive Order No. 28-98 was issued on February 27, 1998, wherein the County Executive determined that the Property is surplus to County needs, and may therefore be disposed of, and

WHEREAS, pursuant to said Executive Order the County issued a public request for proposals from individuals and organizations willing to accept the Property on an as is basis, and to undertake the needed renovations and repairs, with private funds and financial assistance from the County, and

WHEREAS, as a result of said public request, a number of proposals were received by the County, and were evaluated by a Selection Committee composed of representatives from the County's Department of Public Works and Transportation, the Facilities Implementation Group, and the Sugarloaf Citizens Association, and

WHEREAS, Paul Harney and Robert Harney submitted the proposal attached hereto and incorporated herein as Exhibit B (the "Proposal"), which proposal was selected by the Committee for the repair, renovation, maintenance and caretaking of the Property and in exchange therefore the County agrees to enter into this Agreement, subject to certain terms and conditions as hereinafter set forth (n.b., to the extent that there is any conflict between the Proposal and this Agreement, including, but not limited to the interest hereby created, this Agreement controls), and

WHEREAS, the Caretaker is to do the renovation work described in Exhibit B and is to do the ongoing maintenance, renovation, and caretaker work on the Property as described herein.

NOW, THEREFORE, in consideration of the sum of ten (\$10.00) dollars, the receipt of which is hereby acknowledged by the County, and for other good and valuable consideration as hereinafter set forth, the parties hereto agree as follows:

1. PROPERTY: The Property is shown as the area outlined in red on page 1 of Exhibit A attached hereto and incorporated herein by reference, and as further identified in the narrative metes and bounds description attached hereto as pages 2 and 3 of Exhibit A, being a portion of Parcel 405, Tax Map BU located at 20130 Wasche Road, in Dickerson, Montgomery

County, Maryland. Caretaker acknowledges that this agreement is a Renovation and Caretaker Lease Agreement and that Caretaker accepts the Property in an "as is" condition. The County is not responsible for, nor is it required to make, any repairs or to perform any maintenance upon the Property, except as expressly provided for herein. Caretaker agrees that he will not move into the residence (nor allow anyone else permitted to occupy the residence as provided herein to move into the residence) on the Property until the House is sufficiently complete that it is safe, clean and habitable, a certificate of occupancy has been issued, and the County, in its capacity as owner of the House, has approved the renovated House for occupancy. Neither the County, nor this Agreement, is subject to the requirements of Montgomery County Code 1994 as amended, Chapter 29 and Caretaker acknowledges that the primary purpose of this Agreement is to complete renovation work on the Property and to ensure that the Property is properly maintained and cared for so that it is an asset to the community consistent with its historic and agricultural significance.

2. TERM: The term of this Agreement shall begin on the above stated date (the "Commencement Date"). The term shall continue for a period of five (5) years, ending on the 5<sup>th</sup> anniversary of the Commencement Date. Notwithstanding the foregoing, in the event that all or a portion of the Property is needed for public purposes, or if any of the work hereunder is not being prosecuted and completed to the satisfaction of the County (in its sole, but reasonable discretion), the County may terminate this Agreement as to all or a portion of the Property upon not less than 30 days notice to the Caretaker. Caretaker acknowledges and agrees that if the County terminates the Agreement, Caretaker is not entitled to any compensation for such termination. Caretaker may, however, where the Agreement is terminated for a portion of the Property, elect to have the termination apply to the entirety of the Property. Caretaker must notify the County in writing of this election within 30 days of the notice from the County. Caretaker may at its election, terminate this Agreement term upon thirty (30) days advance written notice to the County. Caretaker (and anyone occupying the residence permissively with the Caretaker as provided herein) must by the date given in the applicable notice vacate and terminate its use of, and/or presence upon, the portion of the Property for which the Agreement is being terminated in accordance with the provisions of Section 15.

3. USE OF THE PROPERTY:

- A. The Property will be used by the Caretaker solely as a single family residence and farm, in a manner that is (i) compatible with the historic and agricultural character of the surrounding area, (ii) consistent with the property's zoning, and (iii) approved by the County. The House is the only structure that may be used as a residence and may only be occupied by Robert B. Harney. Notwithstanding the foregoing, provided that Caretaker is an occupant of the House, he may have one roommate live in the dwelling with him. Prior to any such roommate moving into the House, he or she must deliver to the County, in form and substance acceptable to the County, a binding written commitment to abide by the terms and conditions of this Agreement.
- B. Caretaker will not use the Property, nor permit the Property to be used, for any disorderly or unlawful purposes or in any manner offensive to others and will comply with all applicable Federal, State, County and local laws and ordinances. Caretaker expressly agrees not to allow or permit controlled dangerous substances of any type, or paraphernalia used in connection with controlled dangerous substances, on the Property.
- C. The Caretaker will make the Property (excluding the House) available from time to time to members of the public, for the purpose of holding farm visits, educational field trips and similar low intensity events, provided such low-intensity events do not result in more than 40 persons being on the Property at one time.
- D. The Property may not be used by the Caretaker or anyone other than the County to generate revenue unless the County has first approved such use and any revenue generate by such approved use shall belong to the County. The County may agree in its approval of any such use to allow Caretaker to recoup approved costs that it incurs in connection with such revenue generating use.
- E. Caretaker and any roommate as provided above may keep their personal horses on the Property, but may not use the Property for public horseback riding or for-profit horseback riding, or stabling purposes.

4. CONSIDERATION: The parties are entering into this Agreement in consideration of the mutual undertakings provided for herein, each of which is deemed to be material and significant consideration. It is a material inducement to the County that the Caretaker shall manage, arrange for and perform the work described in the Exhibit attached hereto and incorporated herein as Exhibit C in accordance with the schedule attached and incorporated herein as Exhibit D and that the Caretaker take care of and maintain the Property in a good, safe, clean and neat condition in accordance with the terms of this Agreement, and that Caretaker perform the repairs, renovations, and ongoing maintenance provided for herein. Failure to repair, maintain or renovate the Property in accordance with the Agreement is a material breach and grounds for termination of the Agreement.

5. RENOVATION, REPAIR, MAINTENANCE AND CARETAKER SERVICES:

A. House. The work to be provided by Caretaker consists of providing the design, construction, management and oversight of the renovation work to the House. Any additional repairs or costs beyond such amount shall be borne by the Caretaker. The County approves the concept plan for such renovation work attached and incorporated herein as Exhibit C. Caretaker shall within thirty (30) days of execution of this Agreement provide the County, for its approval, detailed plans and cost estimates for the renovation work for the House (the approved plans are the "Renovation Plans"). Caretaker shall apply for and obtain all permits and approvals, including historic work permits, required for any work on the Property. Caretaker may not make any changes to the House other than as shown on the Renovation Plans. The work on the Renovation Plans must be completed in accordance with the schedule attached and incorporated herein as Exhibit D, which work must be completed by Caretaker no later than September 1, 2004.

B. Barn. Caretaker has obtained several bids for the stabilization of the main structure of the bank barn and the repair of its roof system. The County has approved the proposal from Cornerstone, Inc dated April 29, 2003, a copy of which is attached hereto as Exhibit E. Caretaker shall promptly engage Cornerstone, Inc. (provided that it 1. is a duly qualified and licensed contractor; 2. has provided insurance coverage in form and substance acceptable to the County and naming the County as an additional insured with provision that such coverage shall not be terminated nor materially modified without 60 days advance notice to the County; 3. obtained and indemnification of the County from the contractor in form and substance reasonably acceptable to the County; and 4. entered into a binding contract with Caretaker for the work

described in Exhibit E -- including obtaining any necessary permits) to perform the work described in Exhibit E. The County will pay Caretaker for such work in accordance with the provisions of section 8 below.

6. ASSIGNMENT OR LICENSING OF THE PROPERTY: Caretaker shall not assign this Agreement, nor sublease or license or allow the use of the Property or any part thereof without the County's written approval. Prior to execution of any license, assignment or use agreement for the Property, the Caretaker must first obtain the County's written consent, which consent may be withheld or granted in the County's sole discretion. In order to receive County consent to a prospective license, use agreement or assignment, the Caretaker shall submit to the County copies of the proposed license, use or assignment agreement, a description of the activities of the proposed user, licensee or assignee, and any other information pertinent to the proposed use. The County shall respond in writing within 30 days of receipt of the above materials. No response on the part of the County shall be deemed a denial. In the event this Agreement is assigned or any portion of the Property is licensed by the Caretaker, the Caretaker shall nonetheless remain responsible for the performance of all obligations required of the Caretaker under this Agreement.

7. MAINTENANCE AND OPERATION OBLIGATIONS OF THE CARETAKER:

- A. Caretaker is acting as a caretaker of the Property and is fully responsible, at Caretaker's sole risk and expense, to perform all maintenance, repair, and/or replacement necessary for the Property to be in a good, safe condition. As consideration for entering into this agreement, Caretaker expressly agrees to invest a minimum amount of \$1500 per month into the repair, restoration and maintenance of the Property. This amount may be established by receipts for labor and material provided in the provision of Caretaker services, or by providing acceptable evidence of the performance and value of work done to the Property. By the 15th of each month during this Agreement, Caretaker will provide the County with a listing of the repair, renovation and maintenance work which will be performed on the Property during the following month and the estimated cost and time involved with such work. Caretaker shall also provide the County with receipts and a full statement of the repair, renovation and maintenance work performed on the Property during the previous month.

The County shall review the repair, renovation and maintenance work proposed for the upcoming month and promptly advise the Caretaker whether any additional repair, renovation or maintenance is required during the upcoming month restore the Property to a good, safe condition or to protect the Property from damage or deterioration.

- B. As substantial consideration for the right to occupy the Property, Caretaker assumes, at Caretaker's exclusive risk and expense, full responsibility for the maintenance and repair of, including but not limited to, the building and equipment, fixtures, roof, windows, floors, walls, electrical systems, heating and air conditioning systems, and plumbing systems.
- C. The Caretaker is fully responsible at Caretaker's sole risk and expense, for all operating expenses for the Property, including, but not limited to, utility bills and expenses, trash removal, pest control, grounds maintenance, preventative maintenance, day-to-day minor and major maintenance, tree removal (but only with County consent), fence repair and/or replacement, repair or replacement of equipment and security of the Property.

8. INITIAL REPAIRS, RENOVATIONS AND CAPITAL IMPROVEMENTS:

- A. General: Caretaker must complete, at Caretaker's risk and expense, all repairs and renovations to the Property, in accordance with Exhibits B and C. Failure to complete such repairs and renovations in accordance with the schedule set out in Exhibit D and in a good and workmanlike manner shall be grounds for terminating this Agreement. County has the right to inspect, review and approve all work, materials and contractors being used on the Property. Caretaker's work is subject to the following conditions:
  - i. Caretaker must perform or cause to be performed all repairs, renovations and other work permitted hereunder in a good, safe, workmanlike manner.
  - ii. Caretaker must immediately pay and discharge all invoices and bills incurred in connection with any repairs or renovations or other

work performed hereunder, subject to payments by the County as set forth in subsection 8 D and E.

iii. Caretaker must not allow any liens to attach to the Property.

- B. Applicable Laws and Regulations: The Caretaker shall be responsible for observing any and all laws, rules, regulations, codes and statutes relating to the work to be performed on the Property, and shall be responsible for obtaining all necessary work, building and historic area permits as required to complete the work. Recognizing that certain structures on the Property have been designated as having historic significance, the Caretaker shall observe the Secretary of the Interior's Standards for Historic Preservation Projects; Montgomery County Code Chapter 24A, entitled Preservation of Historic Resources; guidelines and regulations issued by the Montgomery County Historic Preservation Commission, and any other applicable laws, standards, codes and regulations relating to the renovation and preservation of historic structures.
- C. Hazardous Materials: Due to the age of some of the structures on the Property, Caretaker acknowledges that lead based paint, asbestos, and other hazardous materials may exist within the Property. The Caretaker shall be responsible for compliance with all applicable codes, rules, laws and regulations relating to the removal, mitigation or encapsulation of any such materials, at the Caretaker's risk and expense. Upon discovering any such material, Caretaker shall immediately provide the County with written notice of the presence of such material. Any removal, handling or encapsulation of such material must be in accordance with a plan first approved by the County. Caretaker shall also take all necessary measures to protect any individuals who may be exposed to such materials while on the Property, during or following the renovation period.
- D. County's Contribution: The County shall make a contribution toward the renovation and restoration of the Property and all structures thereon (including the barn), in an amount not to exceed THREE HUNDRED THOUSAND DOLLARS (\$300,000.00), of which amount an amount not

ceed \$240,000 shall be for restoration and repairs to the house and an amount not to exceed \$60,000 shall be for repairs to the barn per Exhibit E. With the approval of the County, amounts can be shifted between the House and the Barn. All project costs exceeding the County's contribution, as set forth hereinabove, shall be the responsibility of the Caretaker. The County and Caretaker acknowledge that the total cost of completing the full Scope of Requirements attached as Exhibits B, C and E is likely to exceed the County's contribution as herein set forth. It is the intent of the County and Caretaker that the Caretaker will generate the additional resources needed to complete the project through a variety of means, including donated or volunteer resources, private fund raising, and other sources identified by the Caretaker.

E. Disbursement of Funds: Exhibits B and C set forth estimates of the cost of completing each of the project milestones. The County shall disburse its contribution Payment for restoration and repair work as provided herein. No portion of the County's funds may be used for equipment or tools to be used in connection with work on the Property. The County will pay only for the fair and reasonable costs of repair and renovation work that it expressly authorizes to be performed in a notice to proceed containing a not to exceed amount for such work. Payments will be made only for work that 1) is actually completed and not defective; 2) has been approved by the County; and 3) for which waivers of liens have been provided by the Caretaker and its subcontractors or materialmen providing work on the Property. Caretaker shall use best efforts to comply with the County's MFD requirements. The County will use good faith efforts to process payment for each completed task within thirty (30) days following its inspection and approval of the completed work.

- i. Caretaker will not be entitled to any disbursement or contribution from the County for any finance charges, administrative costs, contractor fees other than for third party work, operating, routine maintenance or routine repair expenses, or any other ancillary costs except the actual cost of design, engineering and construction and/or costs directly related to the work specified in Exhibits B, C and E, which costs must be fully documented by Caretaker and must not exceed the amount allocated for the tasks as set out in Exhibits B, C and E (unless the County approves such excess amount in writing in which event the remaining available

contribution will be reduced by a like amount). In no event will the County be obligated to pay for anything for which it has not appropriated funds.

- ii. Repairs or improvements completed by Caretaker without the prior knowledge or written approval of the County will not be approved for disbursement.
- iii. In the event the work performed is not in compliance with the plans and specifications previously approved by the County, Caretaker will immediately undertake any necessary corrections at Caretaker's sole cost and expense. Corrective measures are not eligible for disbursement or reimbursement by the County. In the event Caretaker fails to take necessary corrective actions, if they are required by the County to correct deficiencies in work performed by Caretaker, any provision by the County for further disbursement of funds will be terminated, the Caretaker shall be considered to be in material breach of this agreement, and the County may proceed to terminate this Agreement, and pursue any and all other remedies available to the County under the law.
- iv. The County will not disburse funds in the event of default by Caretaker of any of the terms and conditions of this Agreement.

F. Future Changes or Improvements to Property: Caretaker must obtain the prior written consent of the County for all changes or improvements to the Property. Caretaker must submit complete plans, drawing, and specifications at least 45 days prior to beginning work. Caretakers's submittal must be of sufficient detail and content to permit the County to fully evaluate Caretaker's anticipated project. The County will respond in writing to Caretaker's submission within 45 days of the receipt of all required documentation. The County reserves the right to deny approval of any and all improvements proposed by Caretaker.

- i. In the event of an emergency need for major repair or improvement, Caretaker will notify the County immediately, and the County will respond within an appropriate period of time, as dictated by the emergency situation and by the requirements of this Agreement.
- ii. The County has the right to inspect all work and materials before, during and after construction.
- iii. The total cost of all such changes or improvements will be borne solely by Caretaker. Caretaker will be solely responsible for obtaining all permits and licenses from all appropriate County, State, and/or municipal authorities.

G. Audit: The County has the right to audit all construction or other costs for which Caretaker requests payment. The Caretaker certifies that all information it has provided or will provide to the County is true and correct and can be relied upon by the County in entering into this Agreement, in making payments provided for herein, or in taking any other action with respect to this Agreement. Any false or misleading information provided by Caretaker is a material breach of this Agreement. The Caretaker certifies that its accounting system conforms with generally accepted accounting principles, is sufficient to produce reliable financial information. The County may examine the Caretaker's and its contractors' and subcontractors' records to determine and verify compliance with this Agreement and to verify the proper expenditure and use of funds upon and for the Property. The Caretaker, its contractors and subcontractors must grant the County access to these records at all reasonable time during the Agreement and for three years after the termination of the Agreement. The Caretaker must include conforming language to the requirements of this section in all of its contracts and subcontracts for work on and about and for the Property.

8. UTILITIES: The Caretaker shall be responsible for the payment of all utilities, including electricity, water, fuel, and telephone.

9. CONDITION OF THE PROPERTY:

- A. The Caretaker accepts the Property in its “as is” condition. The County makes no representation or warranties as to habitability or fitness for a particular purpose. Caretaker agrees that it has no claim for breach of any covenant of quiet enjoyment or habitability arising out of the condition of the Property. The Caretaker agrees to maintain the Property in good condition and state of repair and free of clutter throughout the term of this Agreement and any extensions thereof. The Caretaker agrees to keep the Property clean and neat in appearance at all times. The Caretaker shall not suffer or commit any waste to, in or upon said Property or fixtures, nor commit waste with regard to utilities furnished by the County. The Caretaker shall be liable for and make repairs to the Property, fixtures and appliances belonging thereto, resulting from damage by misuse or neglect of the Caretaker, the Caretaker’s agents, servants or invitees. No improvement or alteration of the Property shall be made without the prior written consent of the County. The County shall not be responsible for any work or materials furnished on or to said Property, and Caretaker has no authority to incur any debt or make any charge against the County or to create any lien upon said Property for any work or materials furnished to the Property. The Caretaker shall give the County prompt notice of any defects in or accidents to the structures, plumbing, electrical wiring, heating or air conditioning apparatus or any other part of said Property in order that the same can be repaired with due diligence.
- B. Excavation Prohibited: Without the express written consent of the County, the Caretaker shall not cause, permit or suffer any grading, alteration, excavation, subsoiling, drainage improvement, or other undertaking which would materially disturb the surface or subsurface of the ground on the Property. Nothing herein contained, however, shall be construed so as to prohibit ordinary and customary agricultural practices on the Property, according to sound land management practices established by the American Soil Conservation Service.

10. INSURANCE:

- A. Caretaker agrees to obtain and maintain, during the full term of this Agreement, a policy of liability insurance with a minimum limit for bodily injury and property damage in the amount of one million dollars (\$1,000,000.00) per occurrence issued by an insurance company licensed in the State of Maryland and acceptable to the County. Montgomery County Government shall be named an additional insured under this policy.
- B. Caretaker agrees to obtain and maintain, during the term of this Agreement, a policy of All Risk Property insurance on the single family residence covering one hundred percent (100%) of the value of the improvements. The maximum deductible under this policy shall not exceed five hundred dollars (\$500.00). Montgomery County Government shall be named as loss payee under this policy. Caretaker agrees to include in any caretaker agreement a provision requiring that the caretaker obtain and maintain during the term of the caretaker agreement renter's insurance covering his or her personal property on the Property and general liability.
- C. In the event that work is done at the request of Caretaker, by persons who could make a claim against Caretaker, Workmans' Compensation Insurance Policy, if one is in effect, Caretaker must provide such coverage in amounts required by law.
- D. Additional Insured: Montgomery County Government must be named as an additional insured on all liability policies.
- E. Policy Cancellation: Forty-five (45) days written notice of cancellation or material change of any of the policies is required.
- F. Certificate Holder: The Certificate Holder on all insurance policies shall be Montgomery County Government, Department of Public Works and Transportation, 101 Monroe Street, Rockville, Maryland 20850.

- G. The Caretaker shall, no later than ten (10) days from the execution term of this Agreement pursuant to Paragraph 2 hereof, deliver to the County the said policies or certificates of insurance evidencing the coverage hereinabove stated. The Caretaker has the obligation to assure that the County has a valid unexpired certificate of insurance.

11. DEFAULT:

- A. Caretaker shall be considered in default of this Agreement upon the occurrence of any of the following:
- i. Failure to perform under any term, covenant or condition of this Agreement (“breach”) and the continuance thereof for thirty (30) days after written notice from the County specifying said failure, unless the exigencies of the circumstances require a shorter time for rectifying the breach.
  - ii. The commencement of any action or proceeding for the dissolution or liquidation of Caretaker, or for the appointment of a receiver or trustee of Caretaker’s property, and the failure to discharge any such action within thirty (30) days.
  - iii. The making of any assignment for the benefit of Caretaker’s creditors.
  - iv. The abandonment of the Property by Caretaker.
- B. In the event that the Caretaker shall be in default as hereinabove stated, and shall fail to cure the breach within thirty (30) days (or such shorter time as the exigencies of the circumstances may require) after written notice from the County (or such period as may be reasonably required to correct the breach with exercise of due diligence), then and in every such case thenceforth, at the option of the County or the County’s assigns, the Caretaker’s right of use and possession shall thereupon end, and the County may proceed to recover possession under the laws of the State of Maryland (free and clear of Caretaker and his roommate) and seek any

other remedy to which the County may be entitled under this Agreement and under the laws of the State of Maryland.

12. NON-DISCRIMINATION: Caretaker agrees to comply with the non-discrimination and employment policies in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code, 1994, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination and housing discrimination. The Caretaker assures the County that in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of age, color, creed, national origin, race, religious belief, sexual preference or handicap.

13. COUNTY NOT A PARTNER: It is expressly understood that the County shall not be construed or held to be a partner or associate of the Caretaker in the conduct of Caretaker's business; it being expressly understood that the relationship between the parties hereto is and shall remain at all times that of County and Caretaker.

14. CONTRACT SOLICITATION: The Caretaker represents that the Caretaker has not retained anyone to solicit or secure this Agreement from Montgomery County, Maryland, upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting for bona fide employees or bona fide established commercial, selling or leasing agencies maintained by the Caretaker for the purpose of securing business or an attorney rendering professional legal services consistent with applicable canons of ethics.

15. SURRENDER OF POSSESSION: Caretaker covenants, at the expiration or other termination of this Agreement, or upon the County's recovery of possession of the Property, to remove all personal property from the Property not the property of the County, and to yield up to the County the Property and all keys, locks and other fixtures connected therewith (except furnishings belonging to Caretaker) in good repair, order and condition in all respects, reasonable wear and use thereof and damage by fire or other casualty and damage from any risk with respect to which Caretaker is not herein expressly made liable excepted. All improvements made upon and fixtures installed upon the Property will be the property of the County.

16. ACCESS: The Caretaker shall allow the County and the County's employees or agents to have access to the Property at all reasonable times, during normal working hours for the

purpose of inspection, or in the event of fire or other property damage, or for the purpose of performing any work which the County considers necessary or desirable, or for any other purpose pursuant to the reasonable protection of the Property. The Caretaker and any occupant shall allow access by the County to the single family residence in accordance with applicable law. The Caretaker shall not alter or change the exterior locks installed on the Property, and in the event of an approved change, shall provide the County with keys to the facility, said keys to be used by the County to obtain access to the Property in emergency situations.

17. STANDING: The Caretaker hereby agrees that it will not rely on its interests in real property created by this Agreement to establish its standing to pursue either administrative or judicial remedies with regard to any solid waste or recycling facility of the County, either existing, proposed or proposed in the future.

18. FORCE MAJEURE: Anything in this Agreement to the contrary notwithstanding, providing such cause is not due to the willful act or a neglect of either party, neither party shall be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Agreement if the same shall be due to any strike, lockout, civil commotion, warlike operation, invasion, rebellion, hostilities, military or upsurged power, sabotage, government regulations or controls, inability to obtain any material, service or financing, through an act of God or other cause beyond the control of either party. In the event that any of the above events beyond the control of either party shall render the Property uninhabitable or shall frustrate the caretaking and restoration purposes of this agreement, either party shall have the right to terminate this Agreement by providing thirty (30) days notice to the other.

19. HOLD HARMLESS: Caretaker agrees to protect, indemnify and hold harmless the County, its officers, employees and agents (the "Indemnified Parties") from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, liens, encumbrances, suits or actions and attorneys' fees, and the cost of the defense of the Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person or persons, or loss or damage to property caused by any act, intentional or negligent of the Caretaker, its agents, roommates, licensees, invitees, contractors, subcontractors or employees, at or upon the Property or any part thereof, or in connection with or as a result of this Agreement any use or rights hereunder, or the performance by the Caretaker of its obligations hereunder, except to the extent that the injury, death, loss or damage was the result of the willful misconduct or negligent acts,

errors or omissions of such Indemnified Party. The foregoing indemnification also applies to any liabilities or penalties arising out of any violation of any law, ordinance regulation or permit. These indemnification provisions are for the protection of the Indemnified Parties only and must not establish, of themselves, any liability to third parties.

20. RESPONSIBILITIES OF CARETAKER: Caretaker covenants and agrees as follows:

- A. Caretaker shall not strip, overload, damage or deface the Property, hallways, stairways or other approaches thereto or the fixtures thereupon or used therewith, nor suffer or permit any waste in or upon said Property.
- B. Caretaker shall not keep gasoline or other flammable material or any explosive within the Property which will increase the rate of all risk insurance on the Property beyond the ordinary risk established for the type of operations described herein. Any such increase in the insurance rate due to the above, or due to Caretaker's special operations within the Property, shall be borne by Caretaker. Caretaker shall not willfully do any act or thing in or about the Property which may make void or voidable any insurance on the Property, and Caretaker agrees to conform to all rules and regulations established from time to time by the County, the Maryland Insurance Rating Bureau, or any other authority having jurisdiction over such matters.
- C. Caretaker shall not use the Property or allow the Property to be used or any part thereof for any illegal, unlawful or improper purpose or for any activity which will constitute a public or private nuisance to adjacent properties or the adjacent neighborhood.
- D. Caretaker shall not place upon the Property any placard, sign, lettering or awning except such, and in such place and manner as shall have been first approved in writing by the County, and provided that the Caretaker complies with all relevant local ordinances and regulations.
- E. Caretaker acknowledges that all responsibilities of Caretaker relating to the use or misuse of the Property and anything therein shall be construed

to include use or misuse thereof by Caretaker's agents, employees, contractors, subcontractors, roommates and invitees.

- F. Caretaker shall comply with all reasonable rules and regulations with regard to the use of the Property that may be from time to time promulgated by the County and any violation of said rules and regulations shall be deemed to constitute a violation of this Agreement. It is understood that such rules and regulations shall not unreasonably interfere or prevent the intended uses of the Property as set forth in this Agreement.

21. DESTRUCTION OF PROPERTY:

- A. In the event the Property is destroyed or damaged from whatever cause so as to render all or a substantial portion of the Property unfit for the purposes for which the Property is used, and the repair of said destruction or damage cannot reasonably be accomplished within available insurance proceeds within ninety (90) days from the date of such damage, Caretaker and the County shall each be entitled to terminate this Agreement by written notice to the other within thirty (30) days after the destruction or damage occurred.
- B. In the event that the County or Caretaker as their interests may appear, are able to undertake the repair of the Property, they shall complete said repairs within ninety (90) days or within a reasonable time, given the circumstances of the necessary repairs, from the date of destruction or damage and this Agreement shall not be affected.
- C. In the event that parties are not able to repair the Property as hereinabove provided, this Agreement shall terminate immediately upon notice from the County and Caretaker shall not be entitled to any compensation or payment from the County for the value of any remaining term of the Agreement.

- D. All insurance proceeds (except “renter” insurance proceeds specifically covering Caretaker’s personal belongings) shall be immediately paid to the County.

22. NOTICE OF DEFECTS: Caretaker shall give to the County prompt written notice of accidents in or damages to the Property.

23. COMPLIANCE WITH LAWS: It is understood, agreed and covenanted by and between the parties hereto that Caretaker, at Caretaker’s expense, will promptly comply with, observe and perform all of the requirements of all of the statutes, ordinances, rules, orders and regulations now in effect or hereinafter promulgated whether required by the Federal Government, State of Maryland, Montgomery County Government, Montgomery County Department of Environmental Protection, Montgomery County Department of Public Works and Transportation, Montgomery County Health Department or Montgomery County Fire Marshal’s Office. The foregoing shall not be construed to preclude the Caretaker from exercising its legal right to contest the validity of legislation through judicial process, provided that the Caretaker shall continue to fully comply with the provisions of this Paragraph pending the outcome of the Caretaker’s efforts.

24. PARTIAL INVALIDITY: In case any provision or any part of any provision contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or remaining part of the affected provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or part thereof had never been contained herein but only to the extent it is invalid, illegal or unenforceable. In the event that any such provision may be construed so as to overcome any such potential invalidity, illegality or unenforceability, then a liberal interpretation shall be applied and the Agreement shall be interpreted in such a manner favorable to its validity, legality and enforceability, it being the express intention of the parties hereto to fully perform the obligations contained herein and the purposes sought hereby. And it is also the intention of the both parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added, as a part of this Agreement, a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible and be valid, legal and enforceable.

25. WAIVER: The failure of either party to insist on any occasion upon the strict performance of any covenant, condition or agreement herein contained shall not constitute or operate as a waiver of such covenant, condition or agreement on that occasion or any subsequent occasion. No mention in this Agreement of any specific right or remedy shall preclude either party from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled either at law or in equity. The County specifically does not waive its police powers or any authority to enact legislation or administer or enforce its legal rights or obligations.

26. PUBLIC EMPLOYMENT: Caretaker understands that unless authorized under Section 11B-52 and Chapter 19A of the Montgomery County Code (1994), as amended, it is unlawful for any person transacting business with Montgomery County, Maryland, to employ a public employee for employment contemporaneous with his or her public employment.

27. HOLDOVER: In the event that the Caretaker shall continue to occupy the Property or any part thereof after the conclusion of the term of this Agreement, or any extensions thereof, with prior written authorization of the County the tenancy thus created shall be deemed to be upon a month-to-month basis and may be terminated by either party giving the other not less than thirty (30) days written notice, to expire on the day of the month from which the tenancy commenced. During any month-to-month tenancy, both parties shall continue to observe all agreements, covenants and conditions contained in this Agreement.

28. PROHIBITION OF HAZARDOUS SUBSTANCES: The Caretaker agrees not to store or bring hazardous substances onto the Property. The Caretaker shall be responsible for and shall indemnify and defend the County against any and all claims of any personal injuries or personal and real property damage as a result of any hazardous substance being brought on the Property by the Caretaker, its agents, contractors, subcontractors, employees, roommate, or invitees.

29. NON-APPROPRIATION: This Agreement and expenditures hereunder are subject to the annual appropriation of funds. The County shall give Caretaker at least thirty (30) days written notice of the lack of appropriation and either party may terminate this Agreement due to such non-appropriation.

30. MAILING NOTICES: Unless otherwise provided herein, whenever notice is to be given under the terms of this Agreement, such notice shall be deemed to have been given three (3) United States Postal Service working days after enclosed in an envelope having the proper postage, addressed to the party, and deposited at the United States Post Office or mailbox. Any such notice shall be in the form of Certified Mail, Return Receipt Requested. Notices to the respective parties shall be addressed as follows:

COUNTY:

Montgomery County Executive  
101 Monroe Street  
Rockville, Maryland 20850

With a copy by First-Class Mail to:  
County Attorney for Montgomery County, Third Floor  
101 Monroe Street  
Rockville, Maryland 20850

and

Montgomery County  
Department of Public Works  
and Transportation  
Chief, Division of Solid Waste  
101 Monroe Street, Tenth Floor  
Rockville, Maryland 20850

CARETAKER:

Robert B. Harney  
7218 Beacon Terrace  
Bethesda, Maryland 20817

31. GENERAL PROVISIONS: This document represents the entirety of the Agreement between the parties hereto with respect to the subject matter hereof and shall not be amended, altered or modified except by writing duly executed by each of the parties hereto. This Agreement shall be binding upon the parties and their respective successors and assigns. This Agreement and its provisions shall be governed and construed in accordance with the laws of the State of Maryland.

32. VENUE: This Agreement covers property in Montgomery County, Maryland. Any suit filed meeting the jurisdictional requirements of the Circuit Court for Montgomery County must be filed in that forum and the parties expressly agree to a waiver of jury trial in any such proceedings.

33. ASSIGNMENT: This Agreement is not assignable.

34. APPROVALS: In each instance in this Agreement requiring County approval or consent, such consent or approval must be in writing signed by a duly authorized representative of the County. Caretaker may not rely upon verbal approval or consent.

35. CONDEMNATION: In the event that the Property, or any part thereof, is taken or condemned for public use or purpose by any competent authority, Caretaker shall have no claim against the Landlord and shall not have any claim or right to any portion of the amount that may be awarded as damages or paid as a result of any such condemnation; and all rights of the Caretaker to damages therefore, if any, are hereby assigned by the Caretaker to the Landlord. Upon such condemnation or taking, the term of this Agreement shall, at the option of either party, cease and terminate from the date of such governmental taking or condemnation and the Caretaker shall have no claim against the Landlord for the value of any unexpired term of this Agreement. The foregoing notwithstanding, Caretaker shall be entitled to claim in a separate proceeding and to prove and receive in such separate proceeding such award as may be allowed for relocation expenses.

36. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT:

Performance under this agreement may be terminated in whole or in part, whenever the Chief Administrative Officer of Montgomery County shall determine that termination of this Agreement is in the best interest of Montgomery County. In the event of termination, the County shall be liable for performance due or becoming due prior to the effective date of termination. Termination hereunder shall be effected by delivery to the Lessee of written Notice of Termination, upon which date the termination shall become effective.

37. INCORPORATION OF RECITALS: The recitals are incorporated into this Agreement as if fully set forth herein.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be properly executed.

WITNESS:

By: Rebecca J. Domaruk

Date: Oct. 10, 2003

COUNTY:  
MONTGOMERY COUNTY, MARYLAND

By: William M. Mooney, Jr.  
William M. Mooney, Jr., Assistant  
Chief Administrative Officer

Date: 10/23/03

WITNESS:

By: Shirley Taylor

Date: 10-17-03

CARETAKER:  
ROBERT B. HARNEY

By: Robert B. Harney

Date: 10-13-03

APPROVED AS TO FORM & LEGALITY  
OFFICE OF THE COUNTY ATTORNE

By: Deane L. A. Jones

Date: 10/16/2003

RECOMMENDED

By: Shirley Taylor

Date: 10-13-03

EXHIBIT A

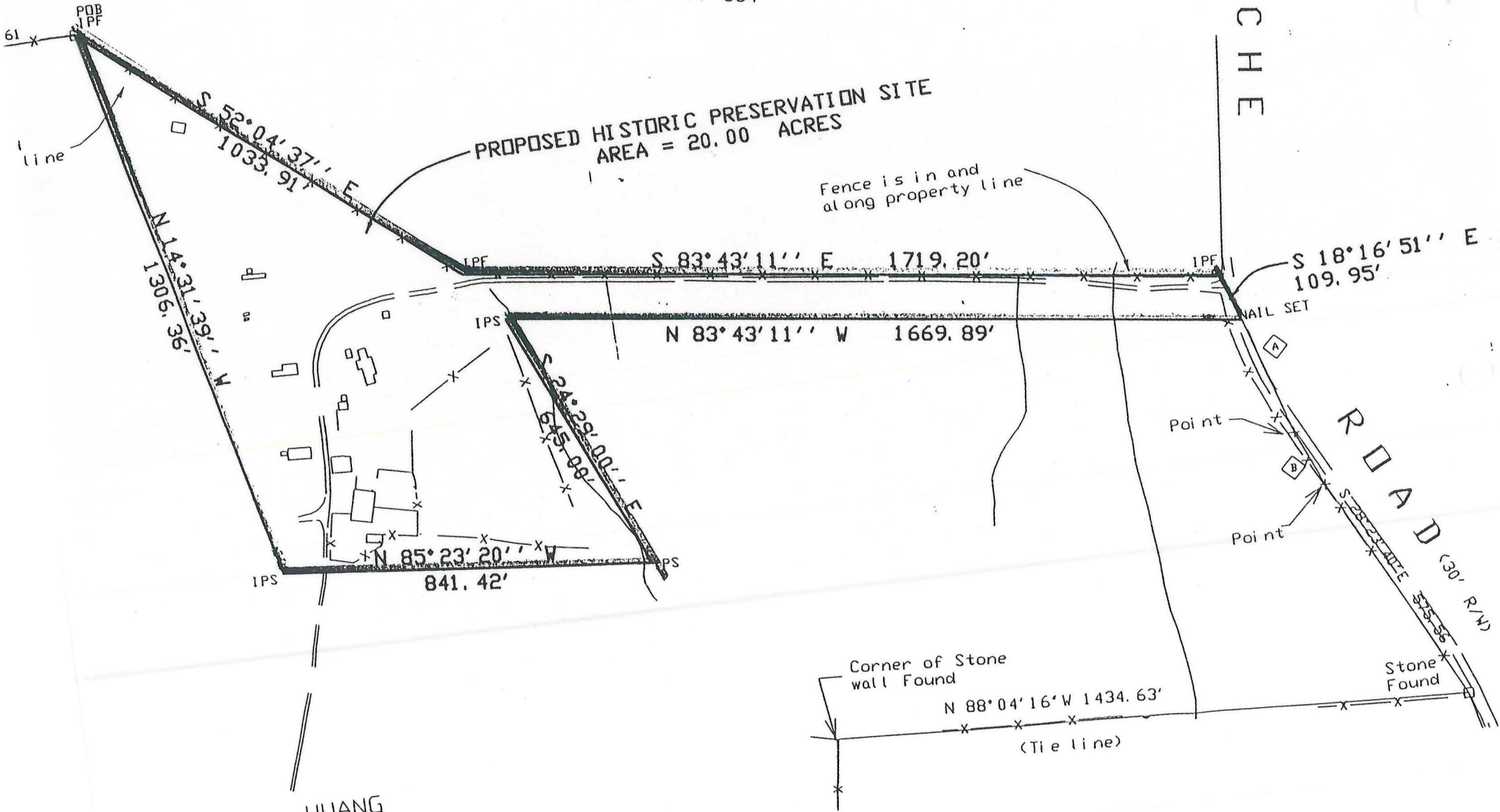
ELECTRIC POWER COMPANY

L. 5203 F. 854

WASSCHE

PROPOSED HISTORIC PRESERVATION SITE  
AREA = 20.00 ACRES

Fence is in and along property line



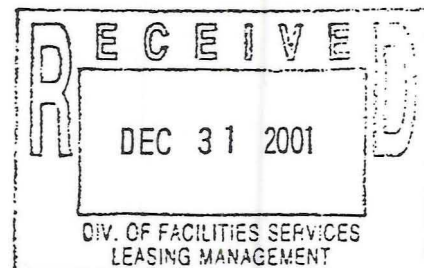
CHIN HUANG  
natory Deed L. 9121 F. 134  
Descriptive Deed L. 5056 F. 543

Proposal for the Leasing  
And Restoration  
Of  
The Edward Chiswell Farm Property

20130 Wasche Rd.  
Dickerson, MD 20842

Prepared by:  
Paul Harney and Robert Harney  
17553 Kohlhoss Rd.  
Poolesville, MD 20837  
301-972-7510 phone  
240-255-0726 fax  
301-717-1577 cell

EXHIBIT B



December 2001

Mr. Steve Hayes  
Montgomery County Division of Facilities and Services  
101 Orchard Ridge Dr., 2<sup>nd</sup> Floor  
Gaithersburg, MD 20878

Dear Steve,

I would like to thank you for the opportunity to submit a proposal to Lease and Restore the Chiswell Property in Dickerson. As long time Poolesville / upper Montgomery County residents for over 20 years, we have a great appreciation for what this area has to offer. The county is filled with treasures from the past, some well known, and others not. We feel it would be a great asset to the surrounding area, to have access to, as well as a more thorough knowledge of the Chiswell Property.

On the pages that follow, I have presented a plan that we feel would be in the best interest of the property as well as the county.

If our proposal were not "individually" accepted, we would like to be considered as a part of a co-tenant or sub-lease situation. We may not have the financial backing or reserves required to satisfy the County requirements for taking on the entire project, but we have a great deal of experience (over 40 years) in assisting on a Restoration of the Chiswell Property. I have also been doing a great deal of research into the grants, donations and low-interest loans that are available for such a project.

Thank you in advance for your consideration in the approval process.

Sincerely,

Paul Harney and Family

CHISWELL FARM  
SCHEDULE OF WORK

\*

Attention Mr. Steve Hayes

Via fax # 240-777-6047

From: Paul Harney

Date: January 2, 2002

I am sorry this did not arrive on Monday. We were out of town and I was trying to fax it from my laptop, but it appears I was unable to do so. I tried calling in the afternoon, but it appears that either your office closed early or someone was not available to answer the main phone line?!

This is not a full proposal, but more so an application to be the long-term tenants and caretakers of the Chiswell Property. I hope that you can review and/or submit this into the process. We just did not have enough response, in a timely manner, from a few different sources we contacted to assist in obtaining all of the quotes, costs and estimates for a detailed proposal. There are some general figures that my dad's many years of contracting experience, along with pricing research I did from home improvement warehouse sources, have enabled us to provide.

As per my cover-page that follows, maybe we can be involved with a commercial group, such as Historic Medley District. They may be interested in the Restoration, but would be in need of a long-term tenant family to occupy and maintain the property. It may help strengthen our position with the fact that my dad and I have construction and maintenance backgrounds, as well as the fact that I worked part-time at Home Depot for over 3 years. I also own my own business and that makes the time needed to care for the property a lot more flexible.

Thanks again for the opportunity. Please contact me if you have any further questions.

*Paul Harney*

*5 total pages*

CHISWELL FARM  
SCHEDULE OF WORK

Time Element For Job:

Existing House:

1. Demolition will be done first.
2. Electrical and plumbing rough-in. All times for work will depend upon sub-contractor's schedule.
3. Point up of all plaster walls.
4. Install chair rails and wainscoting.
5. Refurbish all doors and woodwork.
6. Refurbish all windows.
7. Install all drywall ceilings and finish ready for paint.
8. Paint all walls, ceilings, doors and woodwork.
9. Refinish all floors.
10. Refinish front porch.

The time element from start to finish for existing house will be 18 to 24 months.

New Addition:

The time element for the new addition, from start to finish after approved plans and building permit, will be 12 months, weather permitting. All work will progress in order of normal building practices, and county building in sections.

EXHIBIT D

CHISWELL FARM  
SCHEDULE OF WORK

New Addition:

1. Construction of a new, two-story addition on rear of house - size to be 25' x 26' approximately - to include kitchen, powder room, and family room on first floor. On second floor a master bedroom with two closets, a master bath, a bathroom with shower for the existing house, and a porch on the second floor.

All finishes according to approved plans. Plans are to be approved by the historical society.

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**Cornerstone, Inc.**

P.O. Box 6  
Beallsville, MD 20839  
(301)972-8700 Fax (301)428-8032

**Proposal**

Date: April 29, 2003

To: Bob Harney

From: Ron Magaha

RE: Chiswell Farm - 20130 Wasche Road  
45' x 72' Bark Barn

(1)	Shore up under barn - move barn floor back and straighten main beams - replace main support posts under beams and set on concrete footers	\$ 32,000.00
(2)	Shore up main doors up stairs and replace with new sliding doors	8,000.00
(3)	Tear off and replace roof with colored metal	18,000.00
	<b>TOTAL COST</b>	<b><u>\$ 58,000.00</u></b>

EXHIBIT E

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