

A G E N D A

JAMES CITY COUNTY BOARD OF SUPERVISORS

READING FILE

August 8, 2006

FOR YOUR INFORMATION

1. Use of Proceeds Certificate

In reference to Agenda Item No. E-4, Resolution Authorizing the Execution and Delivery of a Continuing Disclosure Agreement in Connection with the Issuance by the Virginia Public School Authority of its School Financing Bonds (1997 Resolution) Refunding Series 2003 D, a Portion of the Proceeds of which Refunded the James City County General Obligation School Bonds, Refunding Series 1994A; and Authorizing Any Other Actions Necessary to Achieve the Objectives Contemplated Hereby

2. Certificate of Public Hearing and Resolution

In reference to Agenda Item No. E-5, Resolution of Inducement with Financing the Site Acquisition, Construction, and Equipment of the College of William & Mary Foundation's Discovery I Building at New Town

3. Williamsburg Regional Library 4th Amended and Restated Contract Memo

- a. 4th Amended and Restated Contract - Red Copy
- b. 4th Amended and Restated Contract - Black Copy

4. Letter to Mr. John McDonald, FMS Manager, from GuideStar

In reference to Agenda Item No. F-3, Philanthropic Research Inc., (GuideStar)
Exemption from County Real and Personal Property Taxes

5. Deed of Easement for JCC TAX ID: 1220100008

In reference to Agenda Item No. G-2, Acquisition of Conservation Easements - Tax Parcel No. 1220100008 at 3200 Rochambeau Drive

USE OF PROCEEDS CERTIFICATE

This certificate is provided by James City County (the “County”) to the Virginia Public School Authority (VPSA) (the “Issuer”) in connection with the distribution by the Issuer to the County of an allocable share of the net savings realized by the Issuer (the “Distribution”) through the issuance of its \$286,670,000 School Financing Bonds (1997 Resolution) Refunding Series 2003 D (the “Bonds”).

We understand that the proceeds of the Bonds were used to refund portions of the Issuer’s (a) \$127,285,000 School Financing Bonds (1987 Resolution) 1991 Refunding Series C, dated December 1, 1991 (the “1987 Resolution 1991 C Bonds”) and (b) \$293,160,000 School Financing Bonds (1987 Resolution) 1993 Refunding Series B, dated May 1, 1993 (the “1987 Resolution 1993 B Bonds” and, together with the 1987 Resolution 1991 C Bonds, the “VPSA Refunding Bonds”).

A portion of the proceeds of the VPSA Refunding Bonds was used to refinance the purchase of certain of the County’s Bonds (the “Prior County Bonds”).

In connection with issuance of the VPSA Refunding Bonds, the County received a Lump Sum Cash Payment, representing its allocable share of the net savings realized by the Issuer, and the Prior County Bonds. In exchange therefor, the County issued a duly authorized County bond dated December 15, 1993 (the “1993 County Bond” and, together with the Prior County Bonds, the “County Bonds”). Concurrently with the issuance of the 1993 County Bond, the County executed a General Certificate (the “General Certificate”) that recognized that the 1993 County Bond was issued to refund the Prior County Bonds, the proceeds of which were used to finance certain capital school projects of the County (the “Prior School Projects”), that the Lump Sum Cash Payment would be used to finance certain capital school projects of the County (the “1993 School Projects” and, together with the Prior School Projects, the “Projects”) and that the exclusion from gross income of interest on the VPSA Refunding Bonds was based in part on the use of proceeds of the County Bonds and the Projects financed or refinanced by such proceeds by the County. Consequently, the General Certificate contained certain representations and covenants of the County regarding the use of the proceeds of the County Bonds and the Projects.

The County recognizes that the exclusion from gross income of interest on the Bonds is based in part on the representations contained in the General Certificate and contingent on the continuing compliance by the County with the covenants contained in the General Certificate.

Accordingly, the County certifies that it has reviewed the representations set forth in the General Certificate with respect to the Projects (the “UPC Representations”) and the use of the Projects and that it has discussed with the School Board of the County (the “School Board”) its use of the Projects. Based on such review and discussions, the County hereby certifies that the UPC Representations continue to be true and correct. Such provisions are hereby incorporated by reference into this certificate and shall be treated as representations made by the County as if set forth herein. Furthermore, the County has discussed the UPC Representations with the School Board and neither the County nor the School Board will take any action that is inconsistent with such UPC Representations.

The County further covenants that:

(a) it shall use the Distribution to pay for the cost of public school capital purposes within six months of the date hereof, that such public school capital purposes shall be used in a manner consistent with the UPC Representations (references to school projects shall hereinafter include the public school capital purposes acquired with the Distribution), it reasonably expects that at least eighty-five percent (85%) of the Distribution will be allocated to expenditures for the Project within six months of the date hereof and completion of the Project and the allocation of expenditures thereto will proceed with due diligence;

(b) it shall not sell or otherwise dispose of the Projects prior to the final maturity date of the Bonds of August 1, 2019 except as shall be permitted in the opinion of an attorney or firm of attorneys, acceptable to the Issuer, nationally recognized as experienced with respect to matters pertaining to the exclusion from gross income for federal income tax purposes of interest on obligations of States and political subdivisions;

(c) it shall not knowingly take any action which will, or fail to take any action which failure will, cause the interest on the Bonds to become includable in the gross income of the owners of the Bonds for federal income tax purposes pursuant to the provisions of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder in effect on the date of original issuance of the Bonds; and

(d) in furtherance of its obligations under its County Bonds, it shall obtain the same covenants contained in subparagraph (a), (b) and (c) above from the School Board with respect to the Projects.

JAMES CITY COUNTY

By _____
Sanford B. Wanner
County Administrator

_____, 2006

VPSArefund_proceeds.att

CONTINUING DISCLOSURE AGREEMENT

[This Continuing Disclosure Agreement will impose obligations on the Local Issuer if and only if the Local Issuer is or has become and remains a “Material Obligated Person”, as defined below]

This Continuing Disclosure Agreement (the “Disclosure Agreement”) is executed and delivered by the undersigned local issuer (the “Local Issuer”) in connection with the issuance by the Virginia Public School Authority (the “Authority”) of \$286,670,000 aggregate principal amount of its School Financing Bonds (1997 Resolution) Refunding Series 2003 D (the “Series 2003 D Bonds”) pursuant to the provisions of a bond resolution (the “1997 Resolution”) adopted on October 23, 1997, as amended and restated. The Series 2003 D Bonds and all other parity bonds heretofore or hereafter issued under the 1997 Resolution are collectively called the “Bonds”. A portion of the proceeds of the Series 2003 D Bonds are being used by the Authority to provide funds to refund in advance of their maturity certain bonds of the Authority. The proceeds of the refunded bonds were used to purchase general obligation school bonds (the “Transferred Local School Bonds”) issued by certain Virginia counties and cities (the “Transferred Local School Bond Issuers”) that have used the proceeds thereof for capital projects for public schools.

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Local Issuer for the benefit of the holders of the Series 2003 D Bonds and in order to assist the Participating Underwriters (defined below) in complying with the Rule (defined below). The Local Issuer acknowledges that it is undertaking primary responsibility for any reports, notices or disclosures that may be required under this Agreement.

SECTION 2. Definitions. In addition to the definitions set forth in the 1997 Resolution, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the Local Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Dissemination Agent” shall mean the Local Issuer, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by such Local Issuer and which has filed with such Local Issuer a written acceptance of such designation.

“Filing Date” shall have the meaning given to such term in Section 3(a) hereof.

“Fiscal Year” shall mean the twelve-month period at the end of which financial position and results of operations are determined. Currently, the Local Issuer’s Fiscal Year begins July 1 and continues through June 30 of the next calendar year.

“holder” shall mean, for purposes of this Disclosure Agreement, any person who is a record owner or beneficial owner of a Series 2003 D Bond.

“Listed Events” shall mean any of the events listed in subsection 5(b)(5)(i)(C) of the Rule.

“local school bonds” shall mean any of the Local School Bonds and any other bonds of the Local Issuer pledged as security for Bonds issued under the Authority’s 1997 Resolution.

“Material Obligated Person” (or “MOP”) shall mean the Local Issuer if it has local school bonds outstanding in an aggregate principal amount that exceeds 10% of the aggregate principal amount of all outstanding Bonds of the Authority.

“National Repository” shall mean any Nationally Recognized Municipal Securities Information Repository for purposes of the Rule.

“Participating Underwriter” shall mean any of the original underwriters of the Authority’s Series 2003 D Bonds required to comply with the Rule in connection with the offering of such Bonds.

“Repository” shall mean each National Repository and each State Repository.

“Rule” shall mean Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“State Repository” shall mean any public or private depository or entity designated by the State as a state depository for the purpose of the Rule. As of the date of this Agreement, there is no State Repository.

SECTION 3. Provision of Annual Reports.

(a) The Local Issuer shall, or shall cause the Dissemination Agent to, provide to each Repository an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. Such Annual Report shall be filed on a date (the “Filing Date”) that is not later than 12 months after the end of any Fiscal Year (commencing with its Fiscal Year ending June 30, 2005) as of the end of which such Local Issuer was a MOP, unless as of the Filing Date the Local Issuer is no longer a MOP.¹ Not later than ten (10) days prior to the Filing Date, the Local Issuer shall provide the Annual Report to the Dissemination Agent (if applicable) and shall provide copies to the Authority. In each case, the Annual Report (i) may be submitted as a single document or as separate documents comprising a package, (ii) may cross-reference other information as provided in Section 4 of this Disclosure Agreement and (iii) shall include the Local Issuer’s audited financial statements prepared in accordance with applicable State law or, if audited financial statements are not available, such unaudited financial statements as may be required by the Rule. In any event, audited financial statements of such Local Issuer must be submitted, if and when available, together with or separately from the Annual Report.

(b) If the Local Issuer is unable to provide an Annual Report to the Repositories by the date required in subsection (a), the Local Issuer shall send a notice to the Municipal Securities Rulemaking Board and any State Repository in substantially the form attached hereto as Exhibit A.

SECTION 4. Content of Annual Reports. Except as otherwise agreed, any Annual Report required to be filed hereunder shall contain or incorporate by reference, at a minimum, annual financial information relating to the Local Issuer, including operating data,

The Authority will advise the Local Issuer within 60 days of the end of each Fiscal Year if such Local Issuer was a Material Obligated Person as of the end of such Fiscal Year. Upon written request, the Authority will also advise the Local Issuer as to its status as a MOP as of any other date.

- (i) updating such information relating to the Local Issuer as shall have been included or cross-referenced in the final Official Statement of the Authority describing the Authority's Series 2003 D Bonds or
- (ii) if there is no such information described in clause (i), updating such information relating to the Local Issuer as shall have been included or cross-referenced in any comparable disclosure document of the Local Issuer relating to its tax-supported obligations or
- (iii) if there is no such information described in clause (i) or (ii) above, initially setting forth and then updating the information referred to in Exhibit B as it relates to the Local Issuer, all with a view toward assisting Participating Underwriters in complying with the Rule.

Any or all of such information may be incorporated by reference from other documents, including official statements of securities issues with respect to which the Local Issuer is an "obligated person" (within the meaning of the Rule), which have been filed with each of the Repositories or the Securities and Exchange Commission. If the document incorporated by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The Local Issuer shall clearly identify each such other document so incorporated by reference.

SECTION 5. Reporting of Listed Events. Whenever the Local Issuer is a Material Obligated Person required to file Annual Reports pursuant to Section 3(a) hereof and obtains knowledge of the occurrence of a Listed Event, and if such Local Issuer has determined that knowledge of the occurrence of a Listed Event with respect to its local school bonds would be material, such Local Issuer shall promptly file a notice of such occurrence with each National Repository or the Municipal Securities Rulemaking Board and each State Repository, if any, with a copy to the Authority.

SECTION 6. Alternative Filing. The Local Issuer may, in lieu of filing with the Repositories and each State Repository the Annual Reports and other notices referred to in Sections 3(a), 3(b) and 5, make such filings with DisclosureUSA, the central post office of the Municipal Advisory Council of Texas.

SECTION 7. Termination of Reporting Obligation. The Local Issuer's obligations under this Disclosure Agreement shall terminate upon the earlier to occur of the legal defeasance or final retirement of all the Transferred Local School Bonds.

SECTION 8. Dissemination Agent. The Local Issuer may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The Local Issuer shall advise the Authority of any such appointment or discharge. If at any time there is not any other designated Dissemination Agent, the Local Issuer shall be the Dissemination Agent.

SECTION 9. Amendment. Notwithstanding any other provision of this Disclosure Agreement, the Local Issuer may amend this Disclosure Agreement, if such amendment has been approved in writing by the Authority and is supported by an opinion of independent counsel, acceptable to the Authority, with expertise in federal securities laws, to the effect that such amendment is permitted or required by the Rule.

SECTION 10. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Local Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Local Issuer chooses to include any information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure

Agreement, such Local Issuer shall have no obligation under this Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 11. Default. Any person referred to in Section 12 (other than the Local Issuer) may take such action as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Local Issuer to file its Annual Report or to give notice of a Listed Event. The Authority may, and the holders of not less than a majority in aggregate principal amount of Bonds outstanding may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to challenge the adequacy of any information provided pursuant to this Disclosure Agreement, or to enforce any other obligation of the Local Issuer hereunder. A default under this Disclosure Agreement shall not be deemed an event of default under the applicable resolution or bonds of the Local Issuer, and the sole remedy under this Disclosure Agreement in the event of any failure of the Local Issuer to comply herewith shall be an action to compel performance. Nothing in this provision shall be deemed to restrict the rights or remedies of any holder pursuant to the Securities Exchange Act of 1934, the rules and regulations promulgated thereunder, or other applicable laws.

SECTION 12. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Authority, the Local Issuer, the Participating Underwriters, and holders from time to time of the Authority's Bonds, and shall create no rights in any other person or entity.

SECTION 13. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Date: _____, 2006

JAMES CITY COUNTY

By _____
Sanford B. Wanner
County Administrator

EXHIBIT A

**NOTICE OF FAILURE TO FILE ANNUAL REPORT
[AUDITED FINANCIAL STATEMENTS]**

**Re: VIRGINIA PUBLIC SCHOOL AUTHORITY
SCHOOL FINANCING BONDS (1997 Resolution)
Refunding Series 2003 D**

CUSIP Numbers: 92817F R57 -92817F V52

Dated: December 11, 2003

Name of Local Issuer: James City County

NOTICE IS HEREBY GIVEN that the James City County has not provided an Annual Report as required by Section 3(a) of the Continuing Disclosure Agreement, which was entered into in connection with the above-named bonds issued pursuant to that certain Series Resolution adopted on November 13, 2003, by the Board of Commissioners of the Virginia Public School Authority, the proceeds of which were used to refund certain School Bonds of the James City County. [The James City County anticipates that the Annual Report will be filed by _____.] The James City County is a material "obligated person" within the meaning of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended, with respect to the above-named bonds of the Authority.

Dated: _____

JAMES CITY COUNTY

By _____

CONTENT OF ANNUAL REPORT

Description of the Local Issuer. A description of the Local Issuer including a summary of its form of government, budgetary processes and its management and officers.

Debt. A description of the terms of the Local Issuer's outstanding tax-supported and other debt including a historical summary of outstanding tax-supported debt; a summary of authorized but unissued tax-supported debt; a summary of legal debt margin; a summary of overlapping debt; and a summary of annual debt service on outstanding tax-supported debt as of the end of the preceding fiscal year. The Annual Report should also include (to the extent not shown in the latest audited financial statements) a description of contingent obligations as well as pension plans administered by the Local Issuer and any unfunded pension liabilities.

Financial Data. Financial information respecting the Local Issuer including a description of revenues and expenditures for its major funds and a summary of its tax policy, structure and collections as of the end of the preceding fiscal year.

Capital Improvement Plan. A summary of the Local Issuer's capital improvement plan.

Demographic, Economic and Supplemental Information. A summary of the Local Issuer's demographic and economic characteristics such as population, income, employment, and public school enrollment and infrastructure data as of the end of the preceding fiscal year. The Annual Report should also include a description of material litigation pending against the Local Issuer.

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CERTIFICATE OF PUBLIC HEARING AND RESOLUTION

The undersigned Secretary of the Economic Development Authority of James City County, Virginia (the "Authority") hereby certifies as follows:

1. A regular meeting of the Authority was duly called and held on July 20, 2006, at 3:00 p.m., in the Board Room of Building C, James City Government Center, 101 Mounts Bay Road, Williamsburg, Virginia 23185. The meeting was open to the public. At such meeting all of the Directors of the Authority were present or absent as follows:

PRESENT:	Virginia B. Hartmann	Mark G. Rinaldi
	Thomas G. Tingle	Matthew John Diedzic, Jr.
	Vincent A. Campana, Jr.	Brien R. Craft
	Bernard H. Ngo	

ABSENT: None


2. The Chairman announced the commencement of a public hearing on the application of The College of William & Mary Foundation (formerly, The Endowment Association of the College of William & Mary in Virginia, Incorporated) (the "Foundation"), and announced that a notice of the hearing was published once a week for two consecutive weeks (July 5 and July 12), in the *Daily Press*, a newspaper having general circulation in James City County, Virginia (the "Notice"). A copy of the Notice attached to a Proof of Publication of such Notice has been filed with the records of the Authority and is attached hereto as Attachment No. 1.

3. The individuals noted on Attachment 2 appeared and addressed the Authority. A reasonably detailed summary of their statements, together with the Fiscal Impact Statement required by the Code of Virginia of 1950, as amended, under the Industrial Development and Revenue Bond Act, are attached hereto as Attachments 2 and 3, respectively.

4. Attached hereto as Attachment 4 is a true, correct and complete copy of a resolution (the "Resolution") adopted at such meeting of the Authority by the affirmative roll call vote of all Directors noted above, with the exception of Mr. Ngo, who abstained.

The Resolution constitutes all formal action taken by the Authority at such meeting relating to matters referred to in the Resolution. The Resolution has not been repealed, revoked, rescinded or amended, and is in full force and effect, on the date hereof.

WITNESS my hand and the seal of the Authority this ____ day of July, 2006.


Secretary, Economic Development Authority of
James City County, Virginia

(SEAL)

STATE OF VIRGINIA
CITY OF NEWPORT NEWS

This day personally appeared before the undersigned, a Notary Public in and for the State aforesaid, Rita Greene, and made oath as follows:

1. She is in the Tearsheet Department for The Daily Press, a newspaper published in the City of Newport News, Virginia.
2. The attached advertisement was published for 2 insertions in The Daily Press, commencing on

July 5, 2006 and ending on July 12, 2006.

George Hunt
George Hunt

Subscribed and sworn before me

This 17th day of July 2006

My commission expires: March 31, 2009.

Rita Greene
Rita Greene
NOTARY PUBLIC

**NOTICE OF PUBLIC HEARING ON PROPOSED
REVENUE BOND FINANCING BY THE ECONOMIC
DEVELOPMENT AUTHORITY OF JAMES CITY
COUNTY, VIRGINIA FOR THE BENEFIT OF
THE COLLEGE OF WILLIAM & MARY FOUNDATION**

Notice is hereby given that the Economic Development Authority of James City County, Virginia (the "Authority") will hold a public hearing on the application and plan of financing of The College of William & Mary Foundation (the "Foundation"), formerly The Endowment Association of the College of William and Mary in Virginia, Incorporated, for the Authority to issue its revenue bonds in a principal amount not to exceed \$9,500,000 (the "Bonds") pursuant to the Virginia Industrial Development and Revenue Bond Act (the "Act"). The proceeds of the Bonds will be used to assist the Foundation or an affiliate thereof, including a real estate foundation established for the benefit of the College of William and Mary in Virginia (the "College") and/or the Foundation, in financing or refinancing the acquisition, construction and equipping of a three-story building in New Town (the "Project") across from Sullivan Square at the corner of Ironbound and Discovery Roads, the anticipated address of which is 5300 Discovery Park Boulevard, in James City County, Virginia (the "County"). The Project is to be owned by the Foundation or an affiliate thereof, including a real estate foundation established for the benefit of the College and/or the Foundation, and will be leased to and used by the College as its office building and may also be used by the Foundation, its affiliates and related organizations. The Project is to be situated on approximately 2.25 acres of land and comprise approximately 35,000 square feet and will also include relocation costs of employees to the building.

The Foundation is a nonprofit Virginia nonstock corporation that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. It has its principal place of business at 46 Tennis Court, Dillard Complex, The College of William & Mary in Virginia. The Foundation's primary charitable and educational purposes are to aid, strengthen and expand in every proper and useful way the work, usefulness and objects of the College, to develop, strengthen and utilize the ties of interest, sympathy and affection existing between the College and its alumni and friends throughout the country, to seek private funds, support and development for the College's benefit and to manage and distribute such funds to enhance the College's mission. The College is a higher educational institution constituting a public body and governmental instrumentality of the Commonwealth of Virginia and also has its principal place of business in Williamsburg.

The public hearing, which may be continued or adjourned, will be held at 3:00 p.m. on Thursday, July 20, 2006 in the Board Room of Building C, James City Government Center, 101 Mounts Bay Road, Williamsburg, Virginia 23185. The Authority's offices are located at the County's Office of Economic Development, at 101 C Mounts Bay Road, Post Office Box 8784, Williamsburg, Virginia 23187, and written comments to the Authority may be sent to such address.

As required by the Act, the Bonds will not pledge the credit or the taxing power of the Commonwealth of Virginia, James City County, Virginia, or the Authority, but will be payable solely from revenues derived from or on behalf of the Foundation and pledged therefor. Any person interested in the issuance of the Bonds or the location or nature of the Project may appear and be heard.

Economic Development Authority of
James City County, Virginia

Summary of Statements

James R. Golden, Ph.D., Director, Economic Development and Corporate Affairs of the College of William and Mary (the “College) , and Samuel E. Jones, Vice President for Finance of the College, appeared on behalf of the College of William & Mary Foundation (the “Foundation”) and the College, as well as Eric E. Ballou, of Christian & Barton, L.L.P., the Foundation’s Bond Counsel. These individuals reviewed the Foundation’s plans to finance the construction of the three-story building referred to as “Discovery I,” in James City County, Virginia, and other materials previously submitted to the Authority by or behalf of the Foundation.

Messrs Golden, Jones and Ballou addressed questions raised by Directors and Staff of the Authority regarding the nature and schedule for the project, related development matters in Newtown, the Foundation and College’s development efforts and the tax-exempt status of the Foundation’s real estate holdings.

No other members of the general public made any comments, whether oral or written, at the public hearing.

FISCAL IMPACT STATEMENT
Economic Development Authority of James City County, Virginia

To the Board of Supervisors of
 James City County, Virginia

Date: July 20, 2006

Applicant: *The College of William & Mary Foundation (formerly
 The Endowment Association of the College of William
 and Mary in Virginia, Inc.)*

Facility: *Discovery I Office Building*

1.	Maximum amount of financing sought	\$ <u>9,500,000</u>
2.	Estimated taxable value of the facility's real property to be constructed in the locality (<i>estimated</i>)	<u>7,000,000</u>
3.	Estimated real property tax per year using present tax rates	<u>54,950</u>
4.	Estimated personal property tax per year using present tax rates	<u>N/A</u>
5.	Estimated merchants' capital tax per year using present tax rates	<u>N/A</u>
6.	a. Estimated dollar value per year of goods that will be purchased from Virginia companies within the locality	<u>65,000*</u>
	b. Estimated dollar value per year of goods that will be purchased from non-Virginia companies within the locality	<u>150,000*</u>
	c. Estimated dollar value per year of services that will be purchased from Virginia companies within the locality	<u>20,000*</u>
	d. Estimated dollar value per year of services that will be purchased from non-Virginia companies within the locality	<u>1,000*</u>
7.	Estimated number of regular employees on year round basis	<u>77*</u>
8.	Average annual salary per employee	<u>\$55,000</u>



Chairman, Economic Development Authority of
 James City County, Virginia

** This estimate is of the Applicant's anticipated purchase of goods/services for the facility and through the offices/departments that are expected to use the facility, as well as employees at the facility. Does not include costs to operate and maintain the facility.*

**INDUCEMENT RESOLUTION OF THE
ECONOMIC DEVELOPMENT AUTHORITY OF
JAMES CITY COUNTY, VIRGINIA**

The Economic Development Authority of James City County, Virginia (the "Authority") is empowered by the Industrial Development and Revenue Bond Act (the "Act") to issue its revenue bonds for the purposes of, among other things financing or refinancing facilities for use by organizations (other than organizations organized and operated exclusively for religious purposes) that are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), thereby promoting the safety, health, welfare, convenience and prosperity of the residents of the Commonwealth of Virginia (the "Commonwealth").

The Authority has received a request from The College of William & Mary Foundation (formerly, The Endowment Foundation of the College of William and Mary in Virginia, Incorporated), a Virginia nonstock corporation that is exempt from taxation pursuant to Section 501(c)(3) of the Code (the "Foundation"), requesting that the Authority issue its revenue bonds to assist in financing or refinancing the acquisition, construction and equipping of a three-story building in New Town (the "Project") across from Sullivan Square at the corner of Ironbound and Discovery Roads in James City County, Virginia (the "County"). The Project is to be owned by the Foundation or an affiliate thereof, including a real estate foundation established for the benefit of The College of William and Mary in Virginia (the "College") and/or the Foundation, and will be leased to and used by the College as an office building and may also be used by the Foundation, its affiliates and related organizations. The Project is to be at the anticipated address of 5300 Discovery Park Boulevard, situated on approximately 2.25 acres of land and comprise approximately 35,000 square feet and will also include relocation costs of employees to the building.

The Foundation has its principal place of business at 46 Tennis Court, Dillard Complex, College of William & Mary, and the College has its principal place of business in Williamsburg.

A preliminary proposal for the Project has been described to the Authority by representatives of the Foundation. After careful study of the nature of such proposal, the Authority has determined that its assistance will further the purposes of the Act, thereby benefiting the inhabitants of the County, the surrounding communities and the Commonwealth.

The Foundation has advised the Authority that the estimated cost of acquiring, constructing, equipping and financing the Project will require an issue of revenue bonds (the "Bonds") in an aggregate principal amount now estimated not to exceed \$9,500,000.

A part of the cost of the Project may be paid by the Foundation from its unrestricted general funds prior to the issuance of the bonds, and the Foundation desires that it be able to be reimbursed for such payments (the "Reimbursable Expenditures") from proceeds of the Bonds, if the Bonds are issued.

Just prior to the consideration of this Inducement Resolution, a public hearing was held by the Authority on the Project and the issuance of the Bonds, following reasonable public notice, as required by, and in compliance with, Section 147(f) of the Code and Section 15.2-4906 of the Act. The Authority desires to recommend approval of the Project and the issuance of the Bonds to the Board of Supervisors of James City County, Virginia (the "Board").

NOW, THEREFORE, BE IT RESOLVED BY THE ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA:

1. It is hereby found and determined that the acquisition, construction, equipping and financing of the Project will promote the safety, health, welfare, convenience and prosperity of the inhabitants of the Commonwealth by enhancing the ability of the Foundation to provide its services to the inhabitants of the Commonwealth.

2. As a further inducement to the Foundation to acquire, construct and equip the Project in the County, the Authority hereby agrees to assist the Foundation in every reasonable way to finance the acquisition, construction and equipping of the Project and to undertake the issuance of its qualified 501(c)(3) revenue bonds or notes in an aggregate principal amount now estimated not to exceed \$9,500,000 (the "Bonds") upon terms and conditions mutually agreeable to the Authority and the Foundation. The proceeds of the Bonds shall be loaned to the Foundation pursuant to a loan agreement, the terms of which loan agreement shall obligate the Foundation to make payments to or on behalf of the Authority sufficient to pay interest on, premium (if any), and principal of the Bonds and to pay all other expenses in connection with the Project. The Bonds will be issued pursuant to documents satisfactory to the Authority and a bond trustee or the purchaser of the Bonds which (a) will set forth the form and terms of the Bonds, and (b) as security for the Bonds, will assign the Authority's rights to payments under the loan agreement with the Foundation to the bond trustee or the purchaser of the Bonds. The Bonds may also be secured by other collateral. Such Bonds shall be issued after the Authority has received the approving opinion of bond counsel as to the qualification of the Bonds under the Act. The Bonds may be issued at one time or from time to time in one or more series.

Principal of and premium, if any, and interest on the Bonds shall be limited obligations of the Authority payable solely from the revenues and receipts derived by the Authority under the loan agreement and the security therefor. The principal of and premium, if any, and interest on the Bonds shall not be deemed to constitute a debt or pledge of the faith and credit of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the County. Neither the Commonwealth of Virginia nor any political subdivision thereof, including the Authority and the County, shall be obligated to pay the principal of or premium, if any, or interest on the Bonds or other costs incident thereto except from payments received pursuant to the loan agreement and the security therefor, and neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the County, will be pledged to the payment of the principal of or premium, if any, or interest on the Bonds or other costs incident thereto. No covenant, condition or agreement contained in the Bonds or in any financing instrument executed and delivered in connection therewith shall be deemed to be a covenant, agreement or obligation of any past, present or future director, officer, employee or agent of the Authority in his or her individual

capacity, and no officer of the Authority executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

3. It having been represented to the Authority that it is necessary to proceed immediately with the acquisition, construction, equipping and financing of the Project, the Authority hereby agrees that the Foundation may proceed to develop further plans for the Project, enter into contracts for the acquisition, construction, equipping and financing of the Project and take such other steps, including interim borrowing, as the Foundation may deem appropriate in connection therewith, including the location of a purchaser or purchasers for the Bonds; *provided* that nothing herein shall be deemed to authorize the Foundation to obligate the Authority without its consent in each instance to the payment of any moneys or the performance of any acts in connection with the Project or the Bonds. The Authority agrees that the Foundation may be reimbursed from the proceeds of the Bonds for all expenditures so made and costs so incurred by it, insofar as such expenditures and costs are properly reimbursable under the Act and other applicable state and federal laws.

4. All fees, costs and expenses in connection with the acquisition, construction, equipping and financing of the Project, including the Authority's annual administrative fee and the other fees and expenses of the Authority, bond counsel and Authority counsel, shall be paid from the proceeds of the Bonds or from moneys provided by the Foundation. If for any reason such Bonds are not issued, it is understood that all such expenses shall be paid by the Foundation and that the Authority shall have no responsibility therefor. Neither the Authority, including its officers, directors, employees and agents, nor the County, shall be liable and hereby disclaim all liability to the Foundation and its affiliated entities for any damages, direct or consequential, resulting from the failure of the Authority to issue the Bonds for any reason.

5. By submitting this Inducement Resolution to the Authority, the Foundation has agreed to indemnify and save harmless the Authority, its officers, directors, employees and agents from and against all liabilities, obligations, claims, damages, penalties, losses, costs and expenses in any way connected with the Project or the Bonds.

6. The Authority hereby recommends and requests that, within sixty days hereof, the Board approve the issuance of the Bonds and the acquisition, construction, equipping and financing or refinancing of the Project. The Authority hereby directs the Secretary or Assistant Secretary of the Authority to submit to the Board this Inducement Resolution, the Foundation's Fiscal Impact Statement, and a summary of the comments made at the public hearing held by the Authority.

7. In adopting this resolution, the Authority is evidencing its "official intent" to allow for the use of the proceeds of the bonds to reimburse the Foundation or the Authority for the Reimbursable Expenditures incurred with respect to the undertaking of the Project, its acquisition or its financing, pursuant to and to the fullest extent permitted by Treasury Regulation Section 1.150-2 and Sections 103 and 141 through 150 of the Code. The Authority and the Foundation reasonably expect that they will reimburse the Reimbursable Expenditures with the proceeds of the Bonds. This resolution is a declaration of "official intent" under Treasury Regulations Section 1.150-2.

8. As requested by the Foundation, the Authority approves the use of Christian & Barton, L.L.P., as bond counsel for the Bonds. As requested by the Foundation, the Authority approves the use of SunTrust Capital Markets, as the investment banker and initial purchaser of the Bonds.

9. All other acts of the Authority that are in conformity with the purposes and intent of this Inducement Resolution and in furtherance of the issuance and sale of the Bonds and the acquisition, construction, equipping and financing of the Project are hereby ratified, approved and confirmed.

10. This Inducement Resolution shall take effect immediately upon its adoption. This Inducement Resolution will expire one year after the date that the Board approves the issuance of the Bonds, as described in Paragraph 6 above, unless it is extended by the Authority or unless some of the Bonds are issued by such date.

Adopted: July 20, 2006.

MEMORANDUM

DATE: August 8, 2006


TO: The Board of Supervisors

FROM: Sanford B. Wanner, County Administrator

SUBJECT: Williamsburg Regional Library 4th Amended and Restated Contract

Attached are two copies of the draft of the Williamsburg Regional Library 4th Amended and Restated Contract (WRL draft contract). The first copy is a "red" copy. This copy shows all the proposed additions to the contract (in red), all language proposed to be struck from the contract (red with strikeout), and the original language in the contract proposed to be retained (in black).

This second copy is a "clean" black copy of the recommended WRL draft contract.



Sanford B. Wanner

SBW/gs
WRLdrftcontract.mem

Attachments

READING FILE

THIS **4th AMENDED AND RESTATED** CONTRACT, made and entered into this ~~14th~~ **1ST** day of ~~January, 1999~~ **July, 2006**, by and between the CITY OF WILLIAMSBURG, (CITY); the COUNTY OF JAMES CITY, (COUNTY); and the WILLIAMSBURG REGIONAL LIBRARY ~~SYSTEM~~, (LIBRARY).

WHEREAS, all parties are desirous of extending the full services of, ~~T~~ the ~~Williamsburg Regional Library~~ **LIBRARY**, created on May 26, 1977, in accordance with Title 42.1, Chapter 2 of the Code of Virginia of 1950, as amended, to as many of the citizens of both the ~~City~~ **CITY** and the ~~County~~ **COUNTY** as possible; and,

WHEREAS, the Contract was amended by the parties on February 16, 1993, January 14, 1999 and June 14, 2001; and

WHEREAS, the parties wish to amend the contract **as set forth below**.

NOW, THEREFORE, WITNESSETH: That the parties hereto mutually agree as follows:

1. Effective July 1, 2006, ~~T~~the LIBRARY shall be operated by a Board of Trustees, ~~(TRUSTEES)~~ (BOARD), consisting of ~~seven (7)~~ **nine (9)** members ~~(TRUSTEES)~~. ~~The CITY shall appoint three (3) Trustees, effective July 1, 1999, and the COUNTY shall appoint four (4) Trustees in conformity with Section 42.1-35 of the State Code. The Trustees shall operate the LIBRARY. The terms of office and duties of the Trustees shall be in conformity with the law and the provisions hereafter set out. Five (5) of the TRUSTEES shall be appointed by the COUNTY and four (4) of the TRUSTEES shall be appointed by the CITY. One TRUSTEE from the COUNTY and the CITY shall serve as a government representative from senior management. The TRUSTEES shall operate the LIBRARY. The terms of office and duties of the TRUSTEES shall be in conformity with the by-laws of the BOARD and the provisions hereafter set out. In order to achieve staggered terms of the TRUSTEES, the one (1) additional TRUSTEE appointed by the COUNTY in July 2006, shall serve a four-year (4) term. The additional TRUSTEE appointed by the CITY in July 2006 shall be appointed to a one-year (1) term. Such TRUSTEE shall be eligible to serve two (2) consecutive additional four-year (4) terms. TRUSTEES shall not serve for more than two (2) consecutive four-year (4) terms.~~
2. ~~Prior to January 15 of each year, the LIBRARY shall provide a budget request for the following fiscal year to the City Manager and the County Administrator. The budget request shall include estimates of all revenues, from whatever source, and all expected expenditures for the following fiscal year. At its January Board meeting the BOARD shall adopt a proposed budget for the Fiscal Year beginning July 1 of that year. Immediately thereafter the proposed budget shall be sent to the CITY Manager and COUNTY Administrator. If either the CITY or the COUNTY requests, the LIBRARY shall make presentation of the present its budget to the requesting locality. In the absence of mutual agreement of the CITY and the COUNTY, the LIBRARY operating budget~~

approved for any fiscal year shall not be less than the total operating budget approved for the preceding fiscal year.

3. The library building situated in the City of Williamsburg shall be the administrative center for the ~~regional library system~~ LIBRARY. ~~The library building situated in the City, and all branch libraries, shall be open to the public for periods of time not less than from 1:00 p.m. to 5:00 p.m. on Sundays, and from 10:00 a.m. to 9:00 p.m. each day Monday through Thursday, 10 a.m. to 6 p.m., on Friday, 10 a.m. to 5 p.m., on Saturday, except for holidays. A list of holiday closures shall be prepared by the LIBRARY, in consultation with the City Manager and County Administrator. LIBRARY buildings shall be open to the public for periods of time not less than 1:00 p.m. to 5:00 p.m. on Sundays, and 10:00 a.m. to 9:00 p.m. each Monday through Thursday, 10:00 a.m. to 6:00 p.m. on Friday, 10:00 a.m. to 5:00 p.m. on Saturday, except for holidays. These hours may be adjusted by mutual agreement of the parties to this Contract. Holiday closures shall be determined by the BOARD.~~

4. ~~For the fiscal year beginning July 1, 1999, the~~ CITY and the COUNTY shall define all costs of the LIBRARY that are not recovered from all other sources as "Local Funds." ~~For the 2000 fiscal year and thereafter Subject to appropriations,~~ the CITY and the COUNTY agree to contribute Local Funds toward the mutual costs of operating the library LIBRARY on the basis of circulation by residency. This calculation shall be based on the last fiscal year, for a twelve-month period. In no case, however, shall either the CITY or the COUNTY local funds drop below the level of funding approved by the City Council and/or the Board of Supervisors for the previous fiscal year. ~~In Fiscal Year 2000, the first \$60,880 of local costs shall be paid by the CITY to correct for an error in funding allocations for Fiscal Year 1999. Thereafter, the contributions of both the CITY and the COUNTY will be on the basis of circulation by residency.~~ William and Mary students shall be classified by their place of residence. The LIBRARY shall prepare annually a budget which shall include all projected costs of library operation, including, but not limited to: salaries, employee benefits, employer's contributions to Social Security, Liability Insurance and Workers' Compensation, utilities, maintenance of physical plant, and furnishings and acquisition costs furnishings, equipment and books library materials. ~~Equipment requirements in excess of \$50,000 and facility renovation and/or improvement projects, defined as capital costs by the CITY and the COUNTY, shall be submitted to each locality as part of its respective Capital Improvement Program (CIP). Capital costs include the following: 1) land acquisition or lease; 2) inclusion in the public facilities plan; 3) acquisition or improvement of property exceeding \$50,000; 4) major additions or rehabilitation to public buildings exceeding \$50,000; 5) major studies such as engineering, feasibility, etc., related to public facilities; and 6) equipment requirements exceeding \$50,000, either individually or in one aggregate purchase. Capital Budget submissions will be considered as a proposal submitted to the locality in which the facility is located if the project involves the building envelope, a major structural component or a building system such as an HVAC system. Otherwise, the project will be considered for funding under the same formula as the operating budget.~~

~~The budget(s) shall be submitted to both the CITY and the COUNTY for consideration.~~
The LIBRARY shall report annually on the total unspent funds at fiscal year end and may retain such funds, from whatever source, and use them for any purpose deemed appropriate by the ~~LIBRARY TRUSTEES in the best interest of the LIBRARY.~~
Nonrecurring savings are encouraged to be used for nonrecurring expenses such as ~~books library materials and other material for the collection~~ or capital outlay.

5. Capital items will be defined by both the CITY and the COUNTY as non-recurring items exceeding \$50,000 and shall be submitted to each locality as a part of its respective Capital Improvement Program (CIP). Capital items include the following: 1) land acquisition or lease purchase agreements; 2) renovation to existing facilities; 3) major additions, or rehabilitation of public buildings; 4) major studies such as engineering, feasibility, etc., related to public facilities; and 5) equipment requirements. Capital Budget submissions will be considered as a proposal submitted to the locality in which the facility is located if the project involves the existing building envelopes or newly constructed buildings pursuant to paragraph 6, a major structural component or a building system such as an HVAC system. Otherwise, the project will be considered for funding under the same formula as the operating budget. The budget(s) shall be submitted to both the CITY and the COUNTY for consideration.

~~56.~~ Any additional locations, land acquisition capital expansion and/or renovation of the ~~regional library system~~ LIBRARY shall be approved, funded and constructed at the sole expense of the locality wherein the building is situated. It is understood and agreed that any facilities made available to the LIBRARY subsequent to the execution of this ~~document~~ Contract shall become a part of the LIBRARY system and the terms and conditions set forth herein shall apply in total to those facilities. The locality in which the improvement is located shall be responsible for maintenance of all walkways, parking lots, landscaping and ~~and~~ any other site improvements. The locality will also be directly responsible for maintenance involving the outer shell of the ~~library~~ LIBRARY building, except that performed by the ~~library~~ LIBRARY as noted below. The outer shell is defined to include: roof and roof drainage systems, exterior brickwork, woodwork, metal, stone or other coverings, outside windows and doors, and any portico or other appendage to the building. Unless defined as a capital project per paragraph 4-5, the LIBRARY shall be responsible for repair, component replacement and maintenance of HVAC equipment, including that located outside the building envelope, and for performance of routine and preventive maintenance on the exterior. These items include cleaning of roof drains, replacing light bulbs, lubricating and adjusting doors and door opening systems, security devices, door mats, and other routine and preventive maintenance measures which the parties (~~signatory to the this eContract~~) agree in writing to add to this list. During the term of this ~~Agreement~~ Contract and any extensions thereof, the LIBRARY'S occupancy of the existing library building and parking areas in both the CITY and the COUNTY as well as any additions thereto shall be rent free. The LIBRARY shall, however, pay all costs of water, sewer, electricity, telephone and other utilities. ~~and shall further, at its expense maintain in force at all times a broad form general public liability insurance policy issued by an insurer qualified to do business in Virginia, having a single limit coverage of at least \$3,000,000.00 for all occurrences.~~

~~Such policy shall name the CITY and the COUNTY as additional insureds and shall require 30 days notice to both additional insureds prior to modification or cancellation.~~ The CITY and the COUNTY shall carry hazard insurance with extended coverage on all ~~library~~ LIBRARY buildings located in their respective localities as they deem appropriate. The LIBRARY shall also be responsible for maintaining contents coverage on ~~books~~ library materials, fixtures, and equipment such amount as shall be adequate to cover said items.

7. The LIBRARY shall at its expense maintain in force at all times one or more broad form general public liability insurance policies issued by an insurer or insurers qualified to do business in Virginia, having a combined single limit coverage of at least \$5,000,000 for all occurrences, including, but not limited to employment discrimination claims. Such policy shall name the CITY and the COUNTY as additional insureds and shall require 30 days notice to both additional insureds prior to modification or cancellation. There shall be no deductibles and legal defense costs may be included in the coverage amount. As to claims in excess of available insurance coverage or not covered by insurance, whether asserted against some or all of the parties, the CITY and the COUNTY shall contribute toward the defense of such claims and toward defense thereof on the same basis as provided in paragraph 4 hereinabove, with the date of such determination being as of the beginning of the fiscal year in which the payment is to be made.

~~68. The custody of all funds to which the library is entitled shall be held by the CITY.~~ Each locality shall transfer, monthly, to the CITY, one-twelfth of its annual appropriation for the operation of ~~said library system~~ the LIBRARY. The CITY shall account for all LIBRARY receipts and disbursements ~~except for salary and benefit costs~~ and shall provide the LIBRARY with a detailed monthly report. ~~Salary and benefit costs will be handled as per Sections 9 and 10 below. The CITY shall also provide financial support services Such as auditing, treasury, and insurance.~~ In addition to accounting for LIBRARY Funds, the CITY shall procure professional auditing services, which will be billed directly to the LIBRARY each year. In consideration for these services, the CITY may bill the LIBRARY ~~a reasonable~~ an amount ~~that is~~ not to exceed 1.5 percent of the most recently adopted annual operating budget excluding salary and fringe benefits costs. ~~and may further bill the LIBRARY for the cost off any annual audit performed by an independent auditor.~~ The LIBRARY may contract with the CITY, the COUNTY, or another provider for support services other than those described above. ~~Excess~~ LIBRARY funds will be invested according to the policies of the BOARD.

9. The Library Director is an employee of the LIBRARY and serves at the pleasure of the BOARD. The Library Director is subject to the recruitment, selection, discipline and termination procedures set forth by the BOARD. The Library Director will be covered by the applicable benefits outlined in the Benefits Chapter of the COUNTY'S Personnel Policies and Procedures Manual with the exception of holiday and leave sections. The Library Director's paycheck will be issued by the COUNTY. The Library Director shall administer COUNTY personnel policies with regard to all other LIBRARY staff members. As the chief administrative officer of the LIBRARY, the Library Director shall be accountable to the BOARD for the administration of COUNTY personnel policies.

Where a COUNTY department manager has authority to make decisions under the COUNTY personnel policies, the Library Director shall have the same authority. Where the County Administrator must make decisions under the COUNTY personnel policies, he shall consult with the Library Director on those decisions, and the decisions may be communicated under the Library Director's signature.

~~710. All employees of the LIBRARY, with the exception of the Library Director, shall be included in the compensation plan, personnel policies, and benefit programs of the COUNTY in order to treat all locally funded personnel equitably. The compensation plan shall include salary and all considerations relevant thereto. For all purposes other than personnel policies, LIBRARY staff is governed by the strategic plan and operating policies of the LIBRARY as set by the Library Director and the BOARD. For purposes of personnel policies only, LIBRARY staff is governed by the COUNTY'S Personnel Policies and Procedures Manual. The foregoing notwithstanding, the Library Director may establish programs, such as recognition and volunteer programs, exclusively for LIBRARY staff. Personnel policies include, but are not limited to, all rules, and regulations, policies, and safeguards involved with or pertaining to employee recruitment, selection, and discipline, including grievance procedure, and terminations. The COUNTY shall also issues paychecks and maintains leave records for LIBRARY employees staff members. In consideration for these services, the COUNTY may will bill the library a reasonable LIBRARY an amount that is not to exceed 1.5 percent of the total salary and fringe benefit costs in the most recently adopted annual budget. The monthly transfer of funds by the County COUNTY under Section 67 of this agreement Contract shall be reduced by the actual payments by the County COUNTY of salaries and benefits for the LIBRARY Director and Library LIBRARY employees staff members. In addition, an existing full-time position with personnel experience may report to the James City County Human Resource Manager for up to 20 hours per week. The Library Director will not be bound by County personnel policies and procedures. The Director, however, shall follow County personnel policies with regards to other Library employees including their selection and termination. The Library Director will be covered by the applicable benefits outlined in the Benefits Chapter of the County's Personnel Policies and Procedures Manual, with the exception of holiday and leave sections. The Library Director will be held accountable for the execution of the duties of the office by the Library Board which may set standards and guidelines for the Director.~~

~~811. The term of this contract shall be from July 1, 19992006, to June 30, 2004 2011, and shall continue thereafter from year to year until discontinued by appropriate action of any either the CITY or the COUNTY. The parties agree that this agreement will be reviewed every five years. In the event either the CITY or the COUNTY desires to discontinue this agreement Contract, the party desiring to terminate shall give too two years notice in writing to the other party of such intent to terminate the agreement Contract. Such notice when given during any fiscal year shall be deemed given at the end of the current fiscal year so that termination shall become effective at the end of the second fiscal year thereafter. This contract may be terminated, modified or, changed, terminated by the mutual consent of the CITY and the COUNTY and the BOARD without the aforesaid~~

notice. At the time of termination of this ~~e~~Contract each jurisdiction shall be entitled to receive a refund of all its funds not then expended, and in addition shall be entitled to a pro rata distribution of the tangible personal property purchased during the operation of the LIBRARY, based on its percentage of contribution thereto. It is expressly understood, however, that the present building or any future buildings in the CITY shall remain the sole property of the CITY and that all tangible personal property owned by the CITY on May 26, 1977, or funded exclusively by the CITY shall remain the sole property of the CITY. It is further understood that buildings situated in ~~and~~ or owned by the COUNTY and used for the purpose of operations of the ~~regional library~~ LIBRARY shall remain the property of the COUNTY ~~and that all tangible personal property funded exclusively by the County shall remain the sole property of the County.~~

~~9. This contract is in conformity with Title 42.1, Chapter 2 of the Code of Virginia of 1950, as amended, commonly cited as Virginia Code Sections 42.1-33 to 42.1-45 inclusive.~~

Amended ~~June~~ July 200~~4~~6

4th AMENDED AND RESTATED CONTRACT

THIS 4th AMENDED AND RESTATED CONTRACT, made and entered into this 1st day of July 2006, by and between the CITY OF WILLIAMSBURG, (CITY); the COUNTY OF JAMES CITY, (COUNTY); and the WILLIAMSBURG REGIONAL LIBRARY, (LIBRARY).

WHEREAS, all parties are desirous of extending the full services of the LIBRARY created on May 26, 1977, in accordance with Title 42.1, Chapter 2 of the Code of Virginia of 1950, as amended, to as many of the citizens of both the CITY and the COUNTY as possible; and,

WHEREAS, the Contract was amended by the parties on February 16, 1993, January 14, 1999 and June 14, 2001; and

WHEREAS, the parties wish to amend the Contract as set forth below.

NOW, THEREFORE WITNESSETH: That the parties hereto mutually agree as follows:

1. Effective July 1, 2006, the LIBRARY shall be operated by a Board of Trustees, (BOARD), consisting of nine (9) members (TRUSTEES). Five (5) of the TRUSTEES shall be appointed by the COUNTY and four (4) of the TRUSTEES shall be appointed by the CITY. One TRUSTEE from the COUNTY and the CITY shall serve as a government representative from senior management. The TRUSTEES shall operate the LIBRARY. The terms of office and duties of the TRUSTEES shall be in conformity with the by-laws of the BOARD and the provisions hereafter set out. In order to achieve staggered terms of the TRUSTEES, the one (1) additional TRUSTEE appointed by the COUNTY in July 2006, shall serve a four-year (4) term. The additional TRUSTEE appointed by the CITY in July 2006 shall be appointed to a one-year (1) term. Such TRUSTEE shall be eligible to serve two (2) consecutive additional four-year (4) terms. TRUSTEES shall not serve for more than two (2) consecutive four-year (4) terms.
2. At its January Board meeting the BOARD shall adopt a proposed budget for the Fiscal Year beginning July 1 of that year. Immediately thereafter the proposed budget shall be sent to the CITY Manager and COUNTY Administrator. If either the CITY or the COUNTY requests, the LIBRARY shall present its budget to the requesting locality. In the absence of mutual agreement of the CITY and the COUNTY, the LIBRARY operating budget approved for any fiscal year shall not be less than the total operating budget approved for the preceding fiscal year.
3. The LIBRARY building situated in the City of Williamsburg shall be the administrative center for the LIBRARY. LIBRARY buildings shall be open to the

public for periods of time not less than 1:00 p.m. to 5:00 p.m. on Sundays, and 10:00 a.m. to 9:00 p.m. each Monday through Thursday, 10:00 a.m. to 6:00 p.m. on Friday, 10:00 a.m. to 5:00 p.m. on Saturday, except for holidays. These hours may be adjusted by mutual agreement of the parties to this Contract. Holiday closures shall be determined by the BOARD.

4. The CITY and the COUNTY shall define all costs of the LIBRARY that are not recovered from all other sources as "Local Funds." Subject to appropriations, the CITY and the COUNTY agree to contribute Local Funds toward the mutual costs of operating the LIBRARY on the basis of circulation by residency. This calculation shall be based on the last fiscal year, for a twelve-month period. In no case, however, shall either the CITY or the COUNTY local funds drop below the level of funding approved by the City Council and/or the Board of Supervisors for the previous fiscal year. William & Mary students shall be classified by their place of local residence. The LIBRARY shall prepare annually a budget which shall include all projected costs of library operation, including, but not limited to salaries, employee benefits, employer's contributions to Social Security, liability insurance and workers' compensation, utilities, maintenance of physical plant, furnishings, equipment and library materials. The LIBRARY shall report annually on the total unspent funds at fiscal year end and may retain such funds, from whatever source, and use them for any purpose deemed appropriate by the TRUSTEES in the best interest of the LIBRARY. Nonrecurring savings are encouraged to be used for nonrecurring expenses such as library materials or capital outlay.
5. Capital items will be defined by both the CITY and the COUNTY as non-recurring items exceeding \$50,000 and shall be submitted to each locality as a part of its respective Capital Improvement Program (CIP). Capital items include the following: 1) land acquisition or lease purchase agreements; 2) renovation to existing facilities; 3) major additions, or rehabilitation of public buildings; 4) major studies such as engineering, feasibility, etc., related to public facilities; and 5) equipment requirements. Capital Budget submissions will be considered as a proposal submitted to the locality in which the facility is located if the project involves the existing building envelopes or newly constructed buildings pursuant to paragraph 6, a major structural component or a building system such as an HVAC system. Otherwise, the project will be considered for funding under the same formula as the operating budget. The budget(s) shall be submitted to both the CITY and the COUNTY for consideration.
6. Any additional locations, land acquisition capital expansion and renovation of the LIBRARY'S buildings shall be approved, funded and constructed at the sole expense of the locality wherein the building is situated. It is understood and agreed that any facilities made available to the LIBRARY subsequent to the execution of this Contract shall become a part of the LIBRARY and the terms and conditions set forth herein shall apply in total to those facilities. The locality in which the improvement is located shall be responsible for maintenance of all

walkways, parking lots, landscaping and any other site improvements. The locality will also be directly responsible for maintenance involving the outer shell of the LIBRARY building, except that performed by the LIBRARY as noted below. The outer shell is defined to include: roof and roof drainage systems, exterior brickwork, woodwork, metal, stone or their coverings, outside windows and doors, and any portico or other appendage to the building. Unless defined as a capital project per paragraph 5, the LIBRARY shall be responsible for repair, component replacement and maintenance of HVAC equipment, including that located outside the building envelope, and for performance of routine and preventive maintenance on the exterior. These items include cleaning of roof drains, replacing light bulbs, lubricating and adjusting doors and door opening systems, security devices, door mats, and other routine and preventive maintenance measures which the parties to this Contract agree in writing to add to this list. During the term of this Contract and any extensions thereof, the LIBRARY'S occupancy of the existing building and parking areas in both the CITY and the COUNTY as well as any additions thereto shall be rent free. The LIBRARY shall, however, pay all costs of water, sewer, electricity, telephone and other utilities. The CITY and the COUNTY shall carry hazard insurance with extended coverage on all LIBRARY buildings located in their respective localities as they deem appropriate. The LIBRARY shall also be responsible for maintaining contents coverage on library materials, fixtures, and equipment in such amount as shall be adequate to cover said items.

7. The LIBRARY shall at its expense maintain in force at all times one or more broad form general public liability insurance policies issued by an insurer or insurers qualified to do business in Virginia, having a combined single limit coverage of at least \$5,000,000 for all occurrences, including, but not limited to employment discrimination claims. Such policy shall name the CITY and the COUNTY as additional insureds and shall require 30 days notice to both additional insureds prior to modification or cancellation. There shall be no deductibles and legal defense costs may be included in the coverage amount. As to claims in excess of available insurance coverage or not covered by insurance, whether asserted against some or all of the parties, the CITY and the COUNTY shall contribute toward the defense of such claims and toward defense thereof on the same basis as provided in paragraph 4 hereinabove, with the date of such determination being as of the beginning of the fiscal year in which the payment is to be made.
8. Each locality shall transfer, monthly, to the CITY as fiscal agent, one-twelfth of its annual appropriation for the operation of the LIBRARY. The CITY shall account for all LIBRARY receipts and disbursements except for salary and benefit costs, and shall provide the LIBRARY with a detailed monthly report. Salary and benefit costs will be handled as per Sections 9 and 10 below. In addition to accounting for LIBRARY Funds, the CITY shall procure professional auditing services, which will be billed directly to the LIBRARY each year. In consideration for these services, the CITY may bill the LIBRARY an amount not to exceed 1.5 percent of the most recently adopted annual operating budget.

excluding salary and fringe benefit costs. The LIBRARY may contract with the CITY, the COUNTY, or another provider for support services other than those described above. Excess LIBRARY funds will be invested according to the policies of the BOARD.

9. The Library Director is an employee of the LIBRARY and serves at the pleasure of the BOARD. The Library Director is subject to the recruitment, selection, discipline and termination procedures set forth by the BOARD. The Library Director will be covered by the applicable benefits outlined in the Benefits Chapter of the COUNTY'S Personnel Policies and Procedures Manual with the exception of holiday and leave sections. The Library Director's paycheck will be issued by the COUNTY. The Library Director shall administer COUNTY personnel policies with regard to all other LIBRARY staff members. As the chief administrative officer of the LIBRARY, the Library Director shall be accountable to the BOARD for the administration of COUNTY personnel policies. Where a COUNTY department manager has authority to make decisions under the COUNTY personnel policies, the Library Director shall have the same authority. Where the County Administrator must make decisions under the COUNTY personnel policies, he shall consult with the Library Director on those decisions, and the decisions may be communicated under the Library Director's signature.
10. For all purposes other than personnel policies, LIBRARY staff is governed by the strategic plan and operating policies of the LIBRARY as set by the Library Director and the BOARD. For purposes of personnel policies only, LIBRARY staff is governed by the COUNTY'S Personnel Policies and Procedures Manual. The foregoing notwithstanding, the Library Director may establish programs, such as recognition and volunteer programs, exclusively for LIBRARY staff. Personnel policies include, but are not limited to, all rules and regulations pertaining to employee recruitment, selection, and discipline, including grievance procedure and terminations. The COUNTY issues paychecks and maintains leave records for LIBRARY staff members. In consideration for these services the COUNTY will bill the LIBRARY an amount not to exceed 1.5 percent of the total salary and benefit costs in the most recently adopted annual budget. The monthly transfer of funds by the COUNTY under Section 7 of this Contract shall be reduced by the actual payments by the COUNTY of salaries and benefits for the LIBRARY Director and LIBRARY staff members.
11. The term of this Contract shall be from July 1, 2006 to June 30, 2011 and shall continue thereafter until discontinued by appropriate action of either the CITY or the COUNTY. In the event either the CITY or the COUNTY desires to discontinue this Contract, the party desiring to terminate shall give two years notice in writing to the other party of such intent to terminate the Contract. Such notice when given during any fiscal year shall be deemed given at the end of the current fiscal year so that termination shall be come effective at the end of the second fiscal year thereafter. This Contract may be modified, changed, or terminated by the mutual consent of the CITY the COUNTY and the BOARD

without aforesaid notice. At the time of termination of this Contract each jurisdiction shall be entitled to receive a refund of all its funds not then expended, and in addition shall be entitled to a pro rata distribution of the personal property purchased during the operation of the LIBRARY, based on its percentage of contribution thereto. It is expressly understood, however, that the present building and any future buildings in the CITY shall remain the sole property of the CITY. It is further understood that buildings situated in or owned by the COUNTY and used for the purpose of operations of the LIBRARY shall remain the property of the COUNTY.

Amended July 1, 2006

CITY OF WILLIAMSBURG, VIRGINIA

Jackson C. Tuttle, II
City Manager

COUNTY OF JAMES CITY, VIRGINIA

Sanford B. Wanner
County Administrator

WILLIAMSBURG REGIONAL LIBRARY

John A. Moorman
Library Director



July 5, 2006

4801 Courthouse Street | Suite 220
Williamsburg, VA 23188

John E. McDonald, Manager
Department of Financial & Management Services
James City County
101-F Mounts Bay Road
P. O. Box 8784
Williamsburg, Virginia 23187-8784

Dear Mr. McDonald:

This will follow up on your recent conversation with our attorney, Penn Rogers of LeClair Ryan, and respond to your questions about the compensation practices of Philanthropic Research Inc. (GuideStar) and the benefits it provides to the County, in connection with GuideStar's application for exemption from personal property tax.

In general, our compensation practices are guided by two important elements: (1) our national focus and status, and (2) guidelines issued by the IRS on compensation for nonprofit organizations.

GuideStar was founded as a nonprofit organization in 1994 with the proposition that donor decision-making and nonprofit practices could be improved by providing more information on the nonprofit sector. Today, GuideStar is the largest source of information on the 1.5 million nonprofit organizations operating in the United States, and we are nationally recognized for our work. We have a staff of nearly 50 people that gathers data from the IRS and other sources, processes this data in a complicated and complex operation, delivers this information to users via the Internet and provides a variety of products and services so that people can utilize this data. Over 20,000 people visit our web site every day, from every state in the nation, and we had nearly 8 million web site visits during 2005. Our users include nonprofit organizations, individual donors, most levels of government, foundations, and many service providers to the nonprofit sector.

Operating an organization serving the entire United States from Williamsburg is difficult and challenging. Many have urged us to move our operations to bigger cities, such as Washington or New York where most nonprofit organizations are located, but we are proud of our Williamsburg heritage and promote it prominently. Over one-third of our staff is engaged in highly sophisticated technical operations and we compete with much larger and mostly commercial companies for hires. Other staff have obligations for selling and marketing our service offerings, where we again must compete with commercial operations. Our unusual location for a national organization, coupled with our highly technical and sophisticated operations, drive up our operational costs, including salaries.

Our compensation practices are guided by a compensation committee of our board of directors. They in turn are guided by IRS guidelines concerning compensation practices for nonprofit organizations. More information on these guidelines can be found at: <http://www.irs.gov/charities/index.html>. The IRS guidelines state that nonprofit organizations should provide *reasonable compensation* – namely the amount ordinarily paid for like services, by like enterprises (whether taxable or tax-exempt), under like circumstances. It suggests these steps for good compensation governance practices:

1. Establishment of appropriate procedures to determine compensation. In GuideStar's case, all compensation is established through procedures established by the board of directors and executed by the President and CEO.
2. Board evaluation and approval of compensation. GuideStar hired the nationally recognized compensation consultant, Quatt Associates of Washington D.C., to review comparable salaries for national organizations similar to GuideStar and recommended to our board a compensation plan. More information on the work of Quatt Associates can be found on their web site: <http://www.quatt.com/services.html>.
3. Board oversight. Finally, the Board of Directors is expected to maintain appropriate oversight of compensation. GuideStar's board does this through its compensation and audit committees and through reports by the President to the board.

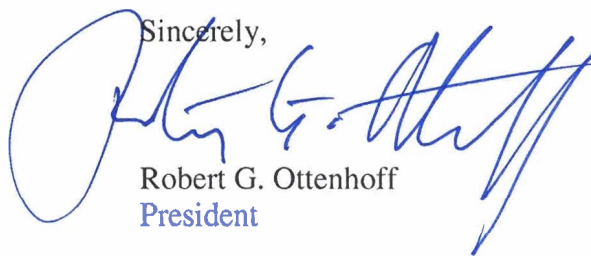
We would be pleased to provide whatever additional information might be helpful to you in understanding our compensation system. We do believe that the employees of GuideStar, as a result of this system, are compensated fairly, reasonably and on a comparable basis with similar organizations.

In your May 10 letter to me, you also indicated that you could not find any benefits to the citizens of James City County that would be enhanced by an exemption from County property taxes. Although the application form did not ask for such information, we do believe that such benefits are extensive. For example, the employment opportunities and tax base of the County are enhanced by having our operations in the County, because many of our employees live in the area and patronize County businesses. Our presence in the County also brings favorable light on the County as a place to do business, and as noted above, we actively promote our Williamsburg heritage.

In conclusion, because of GuideStar's national prominence, the good will and employment we bring to Williamsburg, and our adherence to compensation guidelines established by the IRS, we respectfully request that you reconsider our application and issue a recommendation that an exemption from personal property tax would be appropriate for GuideStar.

Thank you for your consideration. If you have any questions or need additional information, please contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. G. Ottenhoff", with a large, stylized initial "R" and a long, sweeping flourish at the end.

Robert G. Ottenhoff
President

cc: N. Pendleton Rogers, Esquire

JCC TAX ID: 1220100008
CONSIDERATION: \$260,072.00

THIS DEED IS EXEMPT FROM TAXATION UNDER VIRGINIA CODE
§§ 58.1-811 (A)(3) AND 58.1-811(C)(4)

DEED OF EASEMENT

THIS DEED OF EASEMENT, made this ____ day of _____, 2006, by and between **BERTRAND E. GEDDY, JR.**, Trustee of the Bertrand E. Geddy, Jr. Living Trust, hereinafter referred to as the "Grantor," and the **COUNTY OF JAMES CITY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "County" or "Grantee"), whose address is 101 Mounts Bay Road, Williamsburg, Virginia 23185.

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of the property located in James City County, Virginia, that is commonly known as 3200 Rochambeau Drive, Toano, Virginia and is identified as number 1220100008 on the James City County Real Estate Tax Map (the "Property"); and described in Exhibit A attached, and hereinafter referred to as the "Property"; and

WHEREAS, the Grantor has voluntarily agreed to have a portion of the Property, delineated as "JAMES CITY COUNTY CONSERVATION EASEMENT" on that certain plat entitled "PLAT OF SUBDIVISION OF PROPERTY STANDING IN THE NAME OF BERTRAND E. GEDDY, JR., TRUSTEE OF THE BERTRAND E. GEDDY, JR. LIVING TRUST, STONEHOUSE DISTRICT, JAMES CITY COUNTY, VIRGINIA", dated April 3, 2006 and revised July 17, 2006 and attached hereto as Exhibit B and made a part hereof by reference and recorded simultaneously herein and hereinafter referred to as the "Easement Property", be subject to the terms of this easement; and

WHEREAS, the County's acquisition of the conservation easement identified herein furthers the purposes of the Greenspace Program in that such acquisition, among other things, assures that the County's resources are protected and efficiently used, establishes and preserves open space, and furthers the goals of the James City County Comprehensive Plan to protect the County's natural, scenic and historic resources, promotes the continuation of a viable agricultural and forestal industry and resource base, and protects the quality of the County's surface water and groundwater resources; and

WHEREAS, the Grantor has offered to sell a conservation easement and the County has agreed to pay the Grantor the sum of TWO HUNDRED SIXTY THOUSAND SEVENTY TWO and 00/100 Dollars (\$260,072.00) for this conservation easement, such sum being based upon the fair market value of the easement, as determined by a qualified appraiser; and

NOW, THEREFORE, in consideration of the recitals and the mutual benefits, covenants and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor hereby grants, conveys, covenants and agrees as follows:

- A. **GRANT AND CONVEYANCE OF EASEMENT.** The Grantor hereby grants and conveys to the Grantee and their successors and assigns, with General Warranty and English Covenants of Title, a conservation easement in gross, over the Property as shown and depicted on the attached Exhibit B.
- B. **DESCRIPTION.** The Easement Property described in Exhibit B is shown as a portion of Tax Parcel ID #1220100008 among the land records of the County. The Easement Property shall be considered to be one parcel for the purposes of this easement, and the restrictions and covenants of this easement shall apply to the Easement Property as a whole.
- C. **USES AND ACTIVITIES.** In order to accomplish the purposes of the County and the Open-Space Land Act (Virginia Code § 10.1-1700 et seq.) the Property shall be subject to the following restrictions:
1. **Construction, installation, location, placement of structures and improvements.** There shall be no construction, placement or maintenance of any structure or improvements on the Easement Property unless the structure or improvements are either on the Easement Property as of the date of this Deed of Easement or are authorized as follows:
 - a. Types of structures. The following structures may be established: (a) farm buildings and structures including greenhouses and horse fencing; and (b) accessory structures incidental to the commercial uses allowed herein.
 - b. Size of structures. Each new farm building, farm structure, and accessory structure shall have a structural footprint of not more than four thousand five hundred (4,500) square feet and total buildings, structures, and impervious surfaces shall not exceed ten (10) percent of the surface area of the property, unless prior written approval for a greater footprint or surface area is obtained from the Grantee.
 - c. Improvements. The following may be constructed, placed, or maintained, provided they are consistent with the Deed of Easement and the James City County Comprehensive Plan with prior written approval by the Grantee: private roads, utilities, and other improvements customary and related to the use of the existing dwelling or permitted buildings and structures on the Easement Property and the Property.
 2. **Commercial and industrial uses prohibited; description of uses not deemed to be commercial and industrial uses.** There shall be no industrial or commercial uses or activities conducted on the Easement Property except as noted below. However, the following uses are not deemed to be commercial or industrial uses for the purposes of this Deed of Easement:

- a. Agricultural uses, consisting of establishing, reestablishing, maintaining or using cultivated fields, orchards or pastures in accordance with generally accepted agricultural practices for the purpose of producing or maintaining crops, including horticultural specialties; livestock, including all domestic and domesticated animals; livestock products; and commercial and recreational equine activities, including training, boarding and riding. The processing of agricultural products is not an agricultural use, except as an accessory use with prior written approval by the Grantee.
- b. Forestal uses, consisting of reforestation, timber harvesting and forest management activities undertaken to produce wood products and/or improve the health and productivity of the woodland. The processing of wood products is not a forestal use, except as an accessory use with prior written approval by the Grantee.
- c. Seasonal activities that do not permanently alter the physical appearance of the Easement Property that are related to and consistent with an authorized use of the Easement Property delineated herein, including but not limited to the sale of agricultural products grown or raised on the Easement Property, and the granting of licenses to enter and use the Easement Property for hunting or fishing.
- d. Uses that are subordinate and customarily accessory to a principal use of the Easement Property that are not expressly prohibited by this Deed of Easement and are otherwise consistent with the purposes of this Deed of Easement, the James City County Comprehensive Plan and the County Code.
- e. Uses or activities not expressly excepted herein, but which are determined by the Grantee in writing not to be a commercial or industrial use or activity, and to be consistent with the purposes of this Deed of Easement, the James City County Comprehensive Plan and the County Code. In making this determination, the Grantee may consider, among other things, whether the scope of a use or activity excepted herein has evolved over the term of this Deed of Easement as a result of changes in the law or customary practices.

Division of the Property. The Easement Property is currently comprised of single legal parcel described in Exhibit A. Unless prior written permission is obtained from the Grantee, the Grantor shall maintain the single parcel comprising the Easement Property, and all interests therein, under common ownership. Subdivision of the parcel or any attempt to divide any of the said parcels into two or more legal parcels without written permission of the Grantee is prohibited.

Billboards and signs. There shall be no display of billboards, signs or other advertisements on the Easement Property, except to: (1) state solely the name of the Grantor, the name of the farm, and/or the address of the Easement Property; (2) advertise the sale or lease of the Easement Property; (3) advertise the sale of goods or services produced pursuant to a permitted use of the Easement Property; (4) give directions to visitors; or (5) provide warnings pertaining to trespassing, hunting, dangerous conditions and other similar such warnings. No sign shall exceed thirty-two (32) square feet nor shall it be internally illuminated.

Grading, excavation, earth removal, blasting, and mining. Earth removal and blasting are prohibited, except for those activities allowed within the aforementioned Paragraph C, Uses and Activities. The exploration for, or development and extraction of minerals and hydrocarbons by mining or any other method is prohibited. Grading and excavation is allowed but shall not materially alter the topography of the Easement Property; grading and excavation shall be allowed for dam construction to create private conservation ponds with prior written approval by the Grantee, and grading and excavation shall be allowed during the construction of permitted structures or associated improvements. Common agricultural activities such as plowing, erosion control and restoration are permitted activities that do not materially alter the topography of the Easement Property.

6. Management of agricultural and forestal resources. The application of Best Management Practices, as established by the Virginia Department of Agriculture and the Virginia Department of Forestry, shall be undertaken in all agricultural and forestal activities to control erosion and protect water quality provided; however, the Best Management Practices for agricultural use as established by the Virginia Department of Agriculture must be consistent with the Conservation Plan. Management of forest resources, including commercial timber harvest, shall be in accord with a forest stewardship plan approved by the Grantee. All forestry activities shall be carried out so as to preserve the environmental and scenic qualities of the area. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any material forestry activity is undertaken. No timber harvest shall be permitted within 50 feet on either side of any permanent stream on the Easement Property, except that the cutting of trees that have died naturally, that, were they not removed, would jeopardize the health of the forest or that would present an imminent hazard to human health or safety is permitted. The Grantor shall notify the Grantee no later than 30 days prior to the start of any material forest activity as well as within 7 days of its completion.

Accumulation of waste material. There shall be no accumulation or dumping of trash, refuse or junk on the Easement Property. This restriction shall not prohibit customary agricultural, horticultural or wildlife management practices including, but not limited to, establishing brush, compost piles, or the routine and customary short-term accumulation of household trash.

D. **MISCELLANEOUS PROVISIONS.**

1. **No public right-of-access to Easement Property.** This Deed of Easement does not create, and shall not be construed to create, any right of the public to enter upon or to use the Easement Property or any portion thereof, except as Grantor may otherwise allow in a manner consistent with the terms of this Deed of Easement.
2. **Easement applies to the whole Easement Property and runs with the land.** The covenants, terms, conditions, and restrictions of this Deed of Easement shall apply to the Easement Property as a whole, and shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs, and be considered a servitude running with the land in perpetuity.
3. **Enforcement.** In addition to any remedy provided by law or equity to enforce the terms of this Deed of Easement, the parties shall have the following rights and obligations:
 - i). **Monitoring.** Employees or agents of Grantee may enter the Easement Property from time to time, at reasonable times, for the purpose of monitoring compliance with the terms of this Deed of Easement. Grantee shall have the right to photograph the Easement Property, and the interior and exterior of all structures on the Easement Property. The Grantee shall give reasonable prior notice before entering the Easement Property. The Grantor shall not unreasonably withhold permission.
4. **Baseline Data.** In order to establish the present condition of the Easement Property, the Grantee has examined the Easement Property and prepared an inventory of relevant features, conditions, and improvements (“Baseline Documentation”) which is incorporated by this reference. A copy of the Baseline Documentation has been provided to Grantor, and the original shall be placed and remain on file with Grantee. The Grantor and Grantee agree that the Baseline Documentation is an accurate representation of the Easement Property at the time of this grant and is intended to serve as an objective information baseline for monitoring compliance with this Deed of Easement. The Grantor and Grantee further agree that in the event a controversy arises with respect to the condition of the Easement Property or a particular resource thereof, the Grantor and Grantee shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy.
5. **Hazardous materials.** Grantor warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substance or toxic wastes on the Easement Property. Further, Grantor shall not permit any hazardous substance or wastes to be placed on the Easement Property, except for storage permitted pursuant to this easement.

6. Environmental warranty. "Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

Grantor warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Easement Property.

Grantor warrants that it has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Easement Property. Moreover Grantor hereby promises to defend and indemnify the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Easement Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Easement Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantor with respect to the Property or any restoration activities carried out by Grantee at the Easement Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

7. Subordination. Any mortgage or lien arising after the date of this Deed of Easement shall be subordinated to the terms of this Deed of Easement.
8. Action at law inadequate remedy. The parties agree that monetary damages would not be an adequate remedy for the breach of any terms, conditions and restrictions herein contained, and therefore, in the event that the Grantors, their successors or assigns, violate or breach any of the terms, conditions and

restrictions herein contained, the Grantee, its successors, or assigns, may institute a suit, and shall be entitled, to enjoin by ex parte temporary and/or permanent injunction such violation and to require the restoration of the Easement Property to its prior condition.

Restoration. Upon any breach of the terms of this Deed of Easement by Grantor, Grantee may require by written demand to the Grantor that the Easement Property be restored promptly to the condition required by this Deed of Easement. Furthermore the Grantor retains the right to restore the Easement Property to a condition consistent with the terms of this Deed of Easement and assess the cost of such restoration against the owner of the parcel in violation of this Deed of Easement and as a lien against the Easement Property in violation of this Deed of Easement, provided however, that no such lien shall affect the rights of a subsequent bona fide purchaser unless a memorandum of such lien was recorded among the land records prior to such purchase, and such lien shall be subordinate to any deed of trust recorded prior to the recordation of a memorandum of such lien.

10. Failure to enforce does not waive right to enforce. The failure of Grantee to enforce any term of this Deed of Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve Grantor from thereby complying with any such term. Furthermore, the Grantor hereby waives any defense of laches, estoppel, or prescription.
11. Costs of Enforcement. Any costs incurred by the Grantee in enforcing the terms of this Deed of Easement against the Grantor, including, without limitation, costs of suit and reasonable attorneys' fees shall be borne by the Grantor.
12. No right of enforcement by the public. This Deed of Easement does not create, and shall not be construed to create, any right of the public to maintain a suit for any damages against the Grantor for any violation of this Deed of Easement.
13. Judicial Extinguishment. Grantor agrees that the purchase of the perpetual conservation restriction contained in this Deed of Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the purchase bears to the value of the Easement Property as a whole at that time, which is thirty-four and twenty two one hundredths percent (34.22%) as established by the appraisal conducted by Simerlein Appraisals Ltd., dated May 16, 2005 and updated July 21, 2006. If a subsequent unexpected change in the conditions surrounding the Easement Property makes impossible or impractical the continued use of the Easement Property for the conservation purposes specified herein, and the restrictions set forth in this Deed of Easement are extinguished, whether in whole or part, by a judicial proceeding, such extinguishment shall also satisfy the requirements of the Open-Space Land Act (Virginia Code §§ 10.1-1700 et seq.). The Grantee, upon a sale, exchange or

involuntary conversion due to an extinguishment, shall be entitled to a portion of the proceeds determined by multiplying all the proceeds by the proportionate value established above. All proceeds to which Grantee is entitled from such sale, exchange or involuntary conversion shall be used by the Grantee in a manner consistent with the original conservation purposes of this Deed of Easement.

14. Notice of proposed transfer or sale. The Grantor shall notify the Grantee in writing at the time of closing on any transfer or sale of the Easement Property. In any deed conveying all or any part of the Easement Property, this Deed of Easement shall be referenced by deed book and page number in the deed of conveyance and shall state that this Deed of Easement is binding upon all successors in interest in the Easement Property in perpetuity.
15. Approvals and Notices. Grantor shall notify the Grantee, in writing, no less than thirty (30) days prior to undertaking any activities requiring notification and/or approval by the Grantee. Grantor's notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to enable the Grantee to make informed judgments as to its consistency with the conservation purposes of this easement. The Grantee's approval or disapproval, if required, shall be communicated to Grantor in writing with reasonable promptness, taking into account the complexity of the proposed activity.

All notices required or permitted hereunder will be deemed to have been delivered when posted with the U.S. Postal Service, Federal Express, United Parcel Service, or sent by facsimile, telecopier or other such electronic device, with proof of transmission, directed as follows:

Grantor:

Bertrand E. Geddy, Jr., Trustee
8297 Richmond Road
Toano, Virginia 23168

Grantee:

James City County, Virginia
Attn: Development Management
101-A Mounts Bay Road
Williamsburg, Virginia 23185

16. Relation to applicable laws. This Deed of Easement does not replace, abrogate or otherwise supersede any Federal, State or local laws applicable to the Easement Property.
17. Zoning Ordinance. Notwithstanding any other provision of this Deed of Easement, the James City County Zoning Ordinance shall apply to the Easement Property and shall take precedence over this Deed of Easement to the extent that

the Zoning Ordinance regulations are more restrictive than the terms of this Deed of Easement.

18. Severability. If any provision of this Deed of Easement is determined to be invalid by a court of competent jurisdiction, the remainder of this Deed of Easement shall not be affected thereby.
19. Recordation. Upon execution by the parties, this Deed of Easement shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of Williamsburg/James City County, Virginia.
20. Authority to convey easement. The Grantor covenants that he is vested with good title to the Easement Property and may convey this Deed of Easement.
21. Authority to accept easement. The Grantee is authorized to accept this Deed of Easement pursuant to Virginia Code § 10.1-1701 and pursuant to the resolution adopted by the Board of Supervisors on August 8, 2006.
22. Proceeds from eminent domain. If all or any part of the Easement Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Deed of Easement, in whole or part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Easement Property subject to the taking and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount received. Grantee's share of the balance of the amount recovered shall be determined by multiplying all proceeds by the proportionate value established in this Deed of Easement. Grantee shall have the right to appear as a party in any eminent domain proceeding concerning the Property.
23. Transfer of easement by grantee. Neither Grantee nor their successors and assigns may convey or lease the conservation easement established and conveyed hereby unless the Grantee conditions the conveyance or lease on the requirements that: (1) the conveyance or lease is subject to contractual arrangements that will assure that the Easement Property is subject to the restrictions and conservation purposes set forth in this Deed of Easement, in perpetuity; and (2) the transferee is an organization then qualifying as an eligible donee as defined by Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder, or is a public body within the meaning of Virginia Code § 10.1-1700.
24. Construction. This Deed of Easement shall be construed to promote the purposes of this Deed of Easement and the James City County Comprehensive Plan.

Liability and Indemnification. Grantor agrees that Grantee has no obligations, express or implied, relating to the maintenance or operation of the Easement Property. Grantor agrees to indemnify and hold Grantee harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys' fees arising from any personal injury, accidents, negligence, damage, or any claim relating to the Easement Property. Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Easement Property and agrees to hold harmless, indemnify, and defend Grantee from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees arising from or out of the existence, actual or alleged, of any and all environmentally hazardous or toxic substances or materials on or under the Easement Property.

26. Taxes and Assessments. Grantor shall be responsible for paying all taxes, levies, assessments and other governmental charges which may become a lien on the Easement Property.
27. Controlling Law. The interpretation and performance of this Deed of Easement shall be governed by the laws of the Commonwealth of Virginia.
28. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to this Deed of Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Deed of Easement, all of which are merged herein.
29. Amendments. This Deed of Easement may be amended only with the written consent of the Grantee and Grantor, and such amendment shall be duly recorded. Any amendment shall be at the sole discretion of the Grantee, and shall be consistent with the Open-Space Land Act (Virginia Code §§ 10.1-1700 et seq.) and James City County Comprehensive Plan. Any such amendment shall also be consistent with the overall purposes and intent of this Deed of Easement.

WITNESS the following signatures and seals:

GRANTOR:

BERTRAND E. GEDDY, JR.
Trustee of the Bertrand E. Geddy, Jr. Living Trust

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this ____ day of Month, 200X, by Bertrand E. Geddy, Jr., Trustee of the Bertrand E. Geddy, Jr. Living Trust, Grantor.

WITNESS my signature and notarial seal.

[SEAL]

Notary Public

My Commission Expires:

The form of this Deed of Easement is approved, and pursuant to Resolution of the Board of Supervisors of James City County, Virginia, duly executed on the ____ day of Month, 200X, and this conveyance is hereby accepted on behalf of said County.

Date

County Attorney

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

I, _____, a Notary Public for the Commonwealth of Virginia, do hereby certify that _____, Attorney for James City County, Virginia, has acknowledged the same before me in the jurisdiction aforesaid.

Give under my hand this ____ day of Month, 200X.

Notary Public

My Commission Expires:

EXHIBIT "A"

Parcel 1 A: All that certain tract of land known as "White Hall" in Stonehouse District, James City County, Virginia, commencing on the main county road at a small cedar tree, running in a northeasterly direction to a large sycamore tree back of the old stable; thence to the old spring and down the spring swamp until it strikes the line of R.G. Simmons and the line of J.M. Jennings; thence along the line of J.M. Jennings until it strikes the Richardson's Mill Road' thence in a westerly direction along the Richardson's Mill Road until it strikes the main road near the gate of J.M. Jennings; thence southeast down the main road until it reaches the point of beginning.

Parcel 1 B: That certain portion of "White Hall" situate in Stonehouse District, James City County, Virginia, bounded and described as follows: Commencing at the public road at the line of John M. Geddy's land; thence running up said road to a cross fence just back of the old stable; thence following said old fence down to the swamp, and thence in a straight line until it strikes the line of R.G. Simmons; thence along the Simmons line to the land of W.R. Branch and then along the W.R. Branch land to the land of John M. Geddy, and then along the last mentioned line to the point of beginning. Parcel 1 B is a portion of the same property as that devised to the said R.B. Geddy by the Will of Lucy E. Geddy, dated August 18, 1903 and probated before the Circuit Court of James City County on the 11th day of October, 1906, and recorded in James City County Will Book 2, page 412. But the following described parcel of land, formerly a portion of the foregoing "White Hall," tract, containing 11 acres, more or less, is expressly excluded from the operation of this conveyance, namely, that certain tract of parcel of land, conveyed by R.B. Geddy and wife, to L.J. Haley by deed dated November 8, 1919 and recorded in James City County Deed Book 20, page 67, bounded and described as follows: On the southwest side by Main Stage Road; on the southwest side by the road leading from the Main Road at L.J. Haley's gate to Richardson's old mill; and on the southeast by a private road leading from the main road to the road above mentioned leading to Richardson's Mill.

There is expressly excluded from this conveyance the following parcel of land: All that certain parcel of land in the Stonehouse District of James City County, Virginia, shown and described as "PARCEL A, 726, 427 SF+/-, 16.68 AC +/-" on a plat of survey entitled "16.68 +/- ACRES FOR CONVEYANCE TO: ROBERT W. SR. & JUDY G. COWAN, JAMES CITY COUNTY, VIRGINIA", on which plat is dated October 15, 1997, revised January 22, 1998, was made by Charles Reid Scheckler, Certified Land Surveyor, and a copy of which plat is recorded as part of a certain Deed, and Boundary Line Agreement between Bertrand E. Geddy, Jr. and Sharon W. Geddy, husband and wife, and Robert W. Cowan and Judy G. Cowan, husband and wife dated January 24, 1998 and recorded as James City County Instrument No. 980002028.

This conveyance is also subject to (1) a certain easement of right of way conveyed to the Virginia Electric and Power Company by deed from R.B. Geddy, and wife, dated September 5, 1929, and recorded in James City County Deed Book No. 25, at page 279; and (2) that certain parcel or strip of land containing .29 acre which was conveyed to the Commonwealth of Virginia, for highway purposes by deed from R.B. Geddy and wife, dated March 14, 1929, and recorded in James City County Deed Book No. 24, at pages 553-4.

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

Subject to all easements, restrictions covenants and conditions of record affecting said property.

Parcel 2: All that certain lot, piece or parcel of land situate in James City County, Virginia, as shown on a plat entitled, "Survey of 0.50 Acres Standing in the name of Trittie W. Geddy To Be Conveyed to Bertrand Edward Geddy, Jr., Stonehouse District, James City County, Virginia," dated September 14, 1976, and made by Paul C. Small, C.L.S., a copy of which is recorded in James City County Deed Book 171, page 584 and on which plat the property is more particularly described as follows: Beginning on the easterly right-of-way Line of Dept Street where the property hereby described, the property of the Geddy Estate and said Depot Street converge, thence South 40° 22' 25" East, a distance of 149.58 feet to an iron pipe, thence South 50° 42' 00" West, a distance of 145.61 feet to an iron pipe, thence North 40° 22' 25" West, a distance of 149.58 feet to an iron pipe, thence North 50° 42' 00" East a distance of 146.61 feet to an iron pipe which is the point of beginning and being bounded on the Northwest by said Depot Street and on all other sides by the Geddy Estate and being the same property conveyed to Bertrand E. Geddy, Jr. and Sharon W. Geddy by deed dated April 17, 1977 and recorded in James City County Deed Book 176 at page 406.

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

Subject to all easements, restrictions, covenants and conditions of record affecting said property.

BEING the same property conveyed unto Bertrand E. Geddy, Jr., Trustee under the Bertrand E. Geddy, Jr. Living Trust dated November 30, 2005 by deed of transfer from Bertrand E. Geddy, Jr., dated November 30, 2005 and recorded in the Circuit Court Clerk's Office of the City of Williamsburg and County of James City on December 22, 2005 as Instrument Number 050030505.

JCC TAX ID: 1220100008
CONSIDERATION: \$500,000.00

THIS DEED IS EXEMPT FROM TAXATION UNDER VIRGINIA CODE
§§ 58.1-811 (A)(3) AND 58.1-811(C)(4)

DEED OF EASEMENT

THIS DEED OF EASEMENT, made this ____ day of _____, 2006, by and between **BERTRAND E. GEDDY, JR.**, Trustee of the Bertrand E. Geddy, Jr. Living Trust, hereinafter referred to as the “Grantor,” and the **COUNTY OF JAMES CITY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “County” or “Grantee”), whose address is 101 Mounts Bay Road, Williamsburg, Virginia 23185.

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of the property located in James City County, Virginia, that is commonly known as 3200 Rochambeau Drive, Toano, Virginia and is identified as number 1220100008 on the James City County Real Estate Tax Map (the “Property”); and described in Exhibit “A” attached, and hereinafter referred to as the “Property”; and

WHEREAS, the Grantor has voluntarily agreed to have a portion of the Property, approximately 20.673 acres delineated as “FRPP EASEMENT” on that certain plat entitled “PLAT OF SUBDIVISION OF PROPERTY STANDING IN THE NAME OF BERTRAND E. GEDDY, JR., TRUSTEE OF THE BERTRAND E. GEDDY, JR. LIVING TRUST” made by AES Consulting Engineers and dated April 3, 2006 and updated July 17, 2006, and attached hereto as Exhibit “B”, recorded simultaneously herewith and hereinafter referred to as the “FRPP Easement Property”, be subject to the terms of this Deed of Easement (“Easement”); and

WHEREAS, the Easement Property contains an existing residential dwelling commonly known as the Whitehall Tavern, and Grantor has voluntarily applied for a Preliminary Information Form and formal nomination to the Commonwealth of Virginia, Department of Historic Resources State Review Board (“Historic Board”) to have the Whitehall Tavern and certain surrounding historic buildings, hereinafter referred to as the “Tavern Buildings” as shown in the attached Exhibit C, registered on the Virginia Landmarks Register and/or the National Register of Historic Places; and

WHEREAS, the Historic Board is authorized by Title 10.1, Chapters 17 and 22 of the Code of Virginia to hold and administer easements, and the Grantor desires that the County shall have in the future the right to assign this easement to the Historic Board as co-holder of this Easement; and

WHEREAS, a significant portion of the Easement Property has been identified by the United States Department of Agriculture’s Natural Resources Conservation Service (“NRCS” also

known as the “United States”) as prime or unique soils under the Farm and Ranch Land Protection Program (“FRPP”); and

WHEREAS, the Easement Property provides a view shed or scenic vista for the County of James City, the State of Virginia, and the people of the United States worthy of protection; and

WHEREAS, the historic, agricultural, and scenic values described above are the “Conservation Values” which are of great importance to the Grantor, the people of the County of James City, the people of the State of Virginia, and the public in general and are worthy of protection; and

WHEREAS, the Conservation Values of the Property are documented in an inventory of relevant features, conditions and improvements of the Property (“Baseline Documentation”) which is incorporated by reference into this Conservation Easement, and

WHEREAS, the County’s acquisition of the conservation easement identified herein furthers the purposes of the Greenspace Program in that such acquisition, among other things, assures that the County’s resources are protected and efficiently used, establishes and preserves open space, and furthers the goals of the James City County Comprehensive Plan to protect the County’s natural, scenic and historic resources, promotes the continuation of a viable agricultural and forestal industry and resource base, and protects the quality of the County’s surface water and groundwater resources; and

WHEREAS, the Grantor has offered to sell a conservation easement and the County has agreed to pay the Grantor the sum of FIVE HUNDRED THOUSAND and 00/100 Dollars (\$500,000.00) for this conservation easement, such sum being based upon the fair market value of the easement, as determined by a qualified appraiser; and

WHEREAS, the purpose of the Federal Farm and Ranch Lands Protection Program, 16 U.S.C. § 3838h-i, is to purchase conservation easements on land with prime, unique, or other productive soil for the purpose of protecting topsoil from conversion to nonagricultural uses. Under the authority of the FRPP, the United States has provided \$250,000.00 to the Grantee for the acquisition of the conservation easement, entitling the United States to the certain rights herein; and

WHEREAS, by this Easement Grantor and Grantee mutually intend that the Property be preserved in perpetuity in substantially its existing state, thereby furthering conservation and agricultural protection and the protection of open space for the scenic enjoyment of the general public, which preservation will yield a significant public benefit.

NOW, THEREFORE, in consideration of the recitals and the mutual benefits, covenants and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor hereby grants, conveys, covenants and agrees as follows:

- A. **GRANT AND CONVEYANCE OF EASEMENT.** The Grantor hereby grants and conveys to the Grantee and their successors and assigns, with General Warranty and English Covenants of Title, a conservation easement in gross over the Easement Property

more particularly described in the attached Exhibit “B”, restricting in perpetuity the use of the Easement Property in the manner set forth in this Deed of Easement.

- B. **PURPOSE.** The purpose of this Easement is to protect the Conservation Values of the Easement Property, including its agricultural soils, open space and historic characteristics, in perpetuity by requiring that all activities on the Easement Property be carried out consistent with the terms of this Easement
- C. **DESCRIPTION.** The Easement Property described in Exhibit “B” is shown as a portion of Tax Parcel ID #1220100008 among the land records of the County. The Easement Property shall be considered to be one parcel for the purposes of this easement, and the restrictions and covenants of this easement shall apply to the Easement Property as a whole.
- D. **IMPERVIOUS SURFACE LIMITATION.** Notwithstanding any other provision of this Easement, the total impervious surface on the Easement Property shall not exceed one (1) acre. Impervious surfaces include, without limitation, the footprint of all existing and future buildings, structures and/or improvements, roofs, decks, paved parking and roads areas and any concrete.
- E. **USES AND ACTIVITIES.** In order to accomplish the purposes of the County and the Open-Space Land Act (Virginia Code § 10.1-1700 et seq.) the Property shall be subject to the following restrictions:
 - 1. **Construction, installation, location, placement of structures and improvements.** There shall be no construction, placement or maintenance of any structure or improvements on the Easement Property unless the structure or improvements are either existing on the Easement Property as of the date of this Deed of Easement and/or are authorized as follows:
 - a. **Existing buildings.**
 - i. **Non-Historic Agricultural buildings.** Existing agricultural structures and improvements shown in Exhibit “B” may be repaired, replaced, or reasonably enlarged at their current locations in order to carry-out the permitted agricultural uses of the Easement Property.
 - ii. **Historic buildings.** The Whitehall Tavern is the only existing residential dwelling located on the Easement Property as of the date of this Deed of Easement and, together with certain surrounding historic buildings (“Tavern Buildings”), is located in the “Historic Preservation Area” as shown in Exhibit “B”. The Tavern Buildings, which are eligible to be listed on the Register of National Historic Places may not be relocated and must be maintained in accordance with the following:

- A. Documentation. The parties agree that the photographs of the Tavern Buildings and Easement Property taken by Calder Loth of the Department of Historic Resources on [DATE] (Department of Historic Resources negative number____) accurately document the appearance and condition of the Tavern Buildings and Easement Property as of the date of this Easement. The negatives of the photographs shall be stored permanently in the archives of the Virginia Department of Historic Resources, which is located at 2801 Kensington Avenue, Richmond, Virginia, or its successors. Hereafter, the Tavern Buildings shall be maintained, preserved, and protected in its documented state as nearly as practicable, except for changes that are expressly permitted hereunder.
- B. Exterior Alterations. The Whitehall Tavern and its established historical outbuildings shall not be demolished or removed from the Tavern Property, nor shall they be materially altered, restored, renovated, or extended, except in a way that would, in the opinion of the County, be in keeping with the historic character of the Easement Property, and provided that the prior written approval of the County to such actions shall have been obtained. The County may elect to consult with an architectural historian to assist the County in this determination.
- C. Masonry. The cleaning, repointing, waterproofing or painting of the exterior masonry of the Whitehall Tavern shall not be undertaken unless Grantor has obtained the prior written approval of the County.
- D. Interiors. The character-defining historic interior architectural elements of the Tavern Buildings, including mantels, windows, window frames, doors, door frames, stairs, staircases, baseboards, cornices, chair rails, floorboards, wainscoting, and hardware shall not be altered or removed from the Tavern Buildings without the prior written approval of the County.
- E. Destruction. In the event any of the Tavern Buildings is destroyed or damaged by causes beyond Grantor's reasonable control, including fire, flood, storm, earth movement, or other acts of God, to such an extent that in the opinion of the County the building's historic integrity is irremediably compromised, nothing herein shall obligate Grantor to reconstruct the building or return it to its condition prior to such calamity.
- F. New Construction. No other building, structure, or improvement shall be constructed or placed in the Historic Preservation Area, except as specifically permitted under this Easement. The location

and design of these structures in the Historic Preservation Area shall receive prior written approval by the County that they are consistent with the historic character of the Easement Property. The County may elect to consult with an architectural historian to assist the County in this determination.

- G. Notwithstanding anything to the contrary, the Tavern Buildings shall be subject to the standards of rehabilitation as defined by the National Park Service, Department of Interior, codified in 36 C.F.R. 68.1 et.al.

b. Future structures.

- i. Except for the Farm Support Housing, any new structure permitted below may have a footprint of not more than four-thousand five hundred (4,500) square feet, unless prior written approval for a greater footprint is obtained from the Grantee.
- ii. Other than the Farm Support Housing allowed directly below, no additional residential dwellings may be built on the Easement Property.
- iii. Farm Support Housing. One single-family apartment or structure of no more than 2,500 square feet in living area, to be used primarily to house farm tenants, farm employees or others currently engaged in agricultural production on the Property ("Farm Support Housing") may be built in the Farmstead Area inside or contained within a farm building or structure (such as a barn or stable). Such Farm Support Housing shall not be subdivided from the Easement Property. Grantee shall only grant permission for the construction of such structure if Grantor demonstrates to Grantee's satisfaction that such Farm Support Housing is reasonable and necessary for the agricultural operation of the Easement Property. The occupancy of the Farm Support Housing shall comply at all times with the James City County Zoning Ordinance.
- iv. Agricultural Buildings. New farm buildings and other structures and improvements to be used solely for agricultural purposes on the Easement Property, may be built in the Farmstead Area. Such buildings, structures or improvements proposed for locations outside the Farmstead Area may only be built with the written permission of the Grantee when the Grantee determines that such construction is consistent with the purposes of this easement and necessary for agricultural production and only if the building(s) are not located on prime or unique soils. Any farm building or other

structure or improvement to be used for agricultural purposes located outside of the Farmstead Area may not have any residential dwelling unit located inside of it.

- v. Outbuildings. Non-residential outbuildings and structures commonly and appropriately incidental to the permitted dwellings, such as garden structures may be built within the Farmstead Area.
- vi. Fences. Existing fences may be repaired and replaced, or removed and new fences may be built on the Easement Property for purposes of reasonable and customary management of livestock and wildlife.

c. Other Improvements.

- i. Roads. Construction or maintenance of unpaved farm roads for necessary improvements and uses permitted on the Easement Property are allowed, provided the construction of new roads outside the Farmstead Area is limited to agricultural uses. Other than roads and yard areas indicated within the Farmstead Area, no portion of the Easement Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious surface material, unless approved in writing by Grantee in its sole discretion as being consistent with the purposes of the Easement.
- ii. Utilities. Installation of new utilities is prohibited, except that, with prior written approval, the Grantor may install utilities necessary for permitted uses of the Easement Property as long as such installation is not inconsistent with the purposes of this Easement, is done in such a manner as to minimize to the greatest extent possible the impact on prime, unique, and important soils, and is in a location approved in writing by the Grantee. Existing utilities may be replaced or repaired at their current locations.
- iii. Cell phone towers. Cell phone towers are prohibited on the Easement Property.

- 2. Industrial and commercial activities and property use. Industrial or commercial activities, including commercial recreational activities, other than the following are prohibited: (1) plant and animal agriculture, including but not limited to horticulture, raising of livestock, and commercial and recreational equine activities, including training, boarding and riding; (2) temporary or seasonal outdoor activities consistent with the purposes of the easement; (3) and activities which can be and in fact are conducted within permitted buildings without material alteration to the external appearance thereof. None of the foregoing permitted activities shall harm prime agricultural soils or permanently alter the

physical appearance of the Easement Property. None of the foregoing permitted activities, and no noncommercial activity, which involves 100 or more people shall occur on more than seven days in any calendar month unless approved by the Grantee in advance in writing; and (4) De minimus and undeveloped recreational and educational activity is permitted as long as such activity is consistent with the purposes of this easement and does not adversely impact the soils and/or agricultural operations on the Easement Property. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or helicopters pads, motocross biking, or any other improvement or activity inconsistent with current or future agricultural production be permitted on the Easement Property.

3. Rural enterprises. Grantor shall retain the right to conduct rural enterprises consistent with the purpose of this Easement, such as a bed and breakfast establishment, especially the economically viable use of the Easement Property for agriculture, forestry and open space and the conservation of agriculturally and silviculturally productive so long as such uses are subordinate to the agricultural uses of the Easement Property and are carried out within the structures otherwise permitted under this Easement.
4. Division of the Property. The Easement Property is currently comprised of single legal parcel described in Exhibit "A". The Grantor shall maintain the single parcel comprising the Easement Property, and all interests therein, under common ownership.
5. Billboards and signs. There shall be no display of billboards, signs or other advertisements on the Easement Property, except to: (1) state solely the name of the Grantor, the name of the farm, and/or the address of the Easement Property; (2) advertise the sale or lease of the Easement Property; (3) advertise the sale of goods or services produced pursuant to a permitted use of the Easement Property; (4) give directions to visitors; or (5) provide warnings pertaining to trespassing, hunting, dangerous conditions and other similar such warnings. No sign shall exceed thirty-two (32) square feet nor shall it be internally illuminated.
6. Grading, blasting, mining. Extraction of soil, sand, gravel, natural gas, or other minerals is prohibited, except that the Grantor may extract soil, sand and gravel solely for use on the Easement Property as necessary and incidental to carrying out the improvements and agricultural uses permitted on the Easement Property. Such removal shall not exceed one acre, shall not breach the water table, shall be sited so as to minimize the impact to prime, unique, and important soils, and shall be consistent with the purposes of the conservation easement. The area disturbed by such grading, blasting, or soil removal shall be restored to its natural state to the greatest extent practicable immediately upon completion of the activity. Mining including exploration for or extraction of minerals and hydrocarbons by any surface methods on the Easement Property is prohibited.

7. Management of agricultural and forestal resources. The application of Best Management Practices, as established by the Virginia Department of Agriculture and the Virginia Department of Forestry, shall be undertaken in all agricultural and forestal activities to control erosion and protect water quality provided; however, the Best Management Practices for agricultural use as established by the Virginia Department of Agriculture must be consistent with the Conservation Plan. Management of forest resources, including commercial timber harvest, shall be in accord with a forest stewardship plan approved by the Grantee. All forestry activities shall be carried out so as to preserve the environmental and scenic qualities of the area. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any material forestry activity is undertaken. No timber harvest shall be permitted within 50 feet on either side of any permanent stream on the Easement Property, except that the cutting of trees that have died naturally, that, were they not removed, would jeopardize the health of the forest or that would present an imminent hazard to human health or safety is permitted. The Grantor shall notify the Grantee no later than 30 days prior to the start of any material forest activity as well as within 7 days of its completion.
8. Trash. Accumulation or dumping of trash, refuse, or junk is not permitted on the Easement Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products, or agricultural byproducts on the Easement Property, as long as such practices are in accordance with Federal, state, and local laws and regulations and are consistent with the Conservation Plan. For the purposes of this paragraph, agricultural products and byproducts shall include products that are generally accepted as necessary for agricultural production, such as but not limited to: machinery fuel, livestock and crop protection products, livestock feeds and supplements and commercial fertilizers.
9. Off-Road Vehicles. Off-Road Vehicles may not be used on the Easement Property except on roads, as necessary for agricultural use, or as necessary for limited de minimus recreational use (for example, to pick up a downed game animal)
10. Water courses, ponds, and riparian buffers. Grantor retains the right to use, maintain, and improve water sources, water courses and water bodies on the Easement Property if that activity does not impair the water quality in violation of applicable Virginia water quality standards or alter the natural course or flow volume of water over or through the Easement Property, provided that alteration of the natural flow of water over the Easement Property is permitted in order to improve drainage of agricultural soils, reduce soil erosion, or improve the agricultural potential of the Easement Property, if such alteration is consistent with the Conservation Plan. Any exercise of this retained right must be done in a manner consistent with the conservation purposes of this easement, including the

protection of prime and unique soils, and protection of floodplains and jurisdictional wetlands.

Any ponds constructed shall be for agricultural or storm-water management purposes only, shall not exceed two acres in size, and shall be located in areas so that disturbance to prime, unique, and important soils is minimized.

F. CONSERVATION PLAN.

Conservation Plan. As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, his heirs, successors, or assigns, shall conduct all agricultural operations on the Property in a manner consistent with a conservation plan (hereinafter referred to as the "Conservation Plan") prepared in consultation with the Natural Resources Conservation Service of the United States Department of Agriculture (hereinafter referred to as "NRCS") and approved by the Colonial Soil and Water Conservation District. This Conservation Plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect the day the easement is signed. However, the Grantor may develop and implement the Conservation Plan with a higher level of conservation if it is consistent with the NRCS Field Office Technical Guide standards and specifications.

NRCS shall have the right to enter upon the Easement Property, with advance notice to the Grantor, in order to monitor compliance with the conservation plan.

In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the Conservation Plan, NRCS will inform Grantee of the Grantor's noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the Conservation Plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the Conservation Plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

G. CONTINGENT RIGHT OF THE UNITED STATES

Contingent Right in the United States of America. In the event that the Grantee fails to enforce any of the terms of this Easement, as determined in the sole discretion of the Secretary of the United States Department of Agriculture, the said Secretary of Agriculture and his or her successors and assigns shall have the right to enforce the terms of the Easement through any and all authorities available under Federal or State law. In the event that the Grantee attempts to terminate, transfer, or otherwise divest itself of any right, title, or interest in this Easement without the prior consent of the Secretary of the United States Department of Agriculture, then, at the option of such Secretary, all right, title, and interest of the Grantee in this Easement shall become vested in the UNITED STATES OF AMERICA.

H. **MISCELLANEOUS PROVISIONS.**

1. No public right-of-access to Easement Property. This Deed of Easement does not create, and shall not be construed to create, any right of the public to enter upon or to use the Easement Property or any portion thereof, except as Grantor may otherwise allow in a manner consistent with the terms of this Deed of Easement.
2. Easement applies to the whole Easement Property and runs with the land. The covenants, terms, conditions, and restrictions of this Deed of Easement shall apply to the Easement Property as a whole, and shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs, and be considered a servitude running with the land in perpetuity.
3. Enforcement and monitoring. Grantee shall have the right to enforce by proceedings at law or in equity the provisions of this easement, including, but not limited to, the right to require the restoration of the Easement Property to its condition on the date of this easement, subject to the reserved rights of Grantor set forth herein. Grantor and Grantee acknowledge that they each have received a copy of the Baseline Documentation Report which shall serve as an objective information baseline for the purpose of monitoring compliance with the terms of this easement, but shall not preclude the use of other evidence to establish the condition of the Easement Property on the date of this easement in the event of a controversy over the use of the Easement Property. Grantee's prior failure to act shall not waive or forfeit its right to take such action as may be necessary to ensure compliance with the terms and conditions of this easement.

Grantor and Grantee agree that monetary damages would not be an adequate remedy for the breach of any of the terms, conditions and restrictions of this Deed of Easement and, therefore, in the event that the Grantor violates or breaches, or attempts or threatens to violate or to breach any of such terms, conditions and restrictions, the Grantee may institute a suit, and shall be entitled, to enjoin by ex parte temporary and/or permanent injunction such violation (including any attempted or threatened violation), and to require the restoration of the Easement Property to its prior condition. The Grantee shall be entitled to the costs, including reasonable attorney fees, of enforcing any of the terms, conditions and restrictions

contained herein; provided, however, that if Grantor ultimately prevails in a judicial enforcement proceeding, each party shall bear its own costs.

Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against Grantor for any changes to the Easement Property due to causes beyond Grantor's control, such as changes caused by fire, flood, storm, natural deterioration or unauthorized acts of third parties. Grantor shall take reasonable action to prevent and to mitigate the effects of such causes.

Grantee shall have the right to enter the Easement Property upon advanced notice to the Grantor, his heirs, successors or assigns for the purposes of: inspecting the Easement Property to determine compliance with the provisions of this easement or to obtain evidence for the purpose of seeking judicial enforcement.

4. No right of enforcement by the public. This Deed of Easement does not create, and shall not be construed to create, any right of the public to maintain a suit for any damages against the Grantor for any violation of this Deed of Easement.
5. Failure to enforce does not waive right to enforce. The failure of Grantee to enforce any term of this Deed of Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve Grantor from thereby complying with any such term. Furthermore, the Grantor hereby waives any defense of laches, estoppel, or prescription.
6. Monitoring. Employees or agents of Grantee may enter the Easement Property from time to time, at reasonable times, for the purpose of monitoring compliance with the terms of this Deed of Easement. Grantee shall have the right to photograph the Easement Property, and the interior and exterior of all structures on the Easement Property. The Grantee shall give reasonable prior notice before entering the Easement Property.
7. Baseline Data. In order to establish the present condition of the Easement Property, the Grantee has examined the Easement Property and prepared an inventory of relevant features, conditions, and improvements ("Baseline Documentation") which is incorporated by this reference. A copy of the Baseline Documentation has been provided to Grantor, and the original shall be placed and remain on file with Grantee. The Grantor and Grantee agree that the Baseline Documentation is an accurate representation of the Easement Property at the time of this grant and is intended to serve as an objective information baseline for monitoring compliance with this Deed of Easement. The Grantor and Grantee further agree that in the event a controversy arises with respect to the condition of the Easement Property or a particular resource thereof, the Grantor and Grantee shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy.

8. Judicial Extinguishment. Grantor agrees that the purchase of the perpetual conservation restriction contained in this Deed of Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the purchase bears to the value of the Easement Property as a whole at that time, which is sixty-five and seventy-eight one hundredths percent (65.78%) as established by the appraisal conducted by Simerlein Appraisal Ltd., dated May 16, 2005 and revised July 21, 2006. If this easement is extinguished by termination or condemnation, in whole or in part, then Grantee and the United States are entitled to their proportional share of the value of the Easement Property above. The proportional shares of the Grantee and the United States are 50% and 50% respectively, representing the proportion of the easement purchase price each party contributed. Due to the federal interest in this action, any condemnation, extinguishment or termination must be consented to by the United States. In addition to the United States' consent, such extinguishment must also satisfy the requirements of the Open-Space Land Act (Virginia Code §§ 10.1-1700 et seq.).
9. Notice of proposed transfer or sale. The Grantor shall notify the Grantee in writing at the time of closing on any transfer or sale of the Easement Property. In any deed conveying all or any part of the Easement Property, this Deed of Easement shall be referenced by deed book and page number in the deed of conveyance and shall state that this Deed of Easement is binding upon all successors in interest in the Easement Property in perpetuity.
10. Relation to applicable laws. This Deed of Easement does not replace, abrogate or otherwise supersede any Federal, State or local laws applicable to the Easement Property.
11. Zoning Ordinance. Notwithstanding any other provision of this Deed of Easement, the James City County Zoning Ordinance shall apply to the Easement Property and shall take precedence over this Deed of Easement to the extent that the Zoning Ordinance regulations are more restrictive than the terms of this Deed of Easement.
12. Severability. If any provision of this Deed of Easement is determined to be invalid by a court of competent jurisdiction, the remainder of this Deed of Easement shall not be affected thereby.
13. Recordation. Upon execution by the parties, this Deed of Easement shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of Williamsburg/James City County, Virginia.
14. Authority to accept easement. The Grantee is authorized to accept this Deed of Easement pursuant to Virginia Code § 10.1-1701.

15. Transfer of easement by grantee. Neither Grantee nor their successors and assigns may convey or lease the conservation easement established and conveyed hereby unless the United States consents in writing and the Grantee conditions the conveyance or lease on the requirements that: (1) the conveyance or lease is subject to contractual arrangements that will assure that the Easement Property is subject to the restrictions and conservation purposes set forth in this Deed of Easement, in perpetuity; (2) the transferee is an organization then qualifying as an eligible donee as defined by Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder, or is a public body within the meaning of Virginia Code § 10.1-1700.
16. Construction. This Deed of Easement shall be liberally construed to promote the purposes of this Deed of Easement, the James City County Comprehensive Plan and the United States' Farm and Ranch Lands Protection Program.
17. Liability and Indemnification. Grantor agrees that neither Grantee nor the United States have any obligations, express or implied, relating to the maintenance or operation of the Easement Property. Grantor agrees to indemnify and hold Grantee and the United States harmless from any and all costs, damages, expenses, causes of action, claims, demands, judgments or liability, including but not limited to reasonable attorneys' fees arising from any personal injury, physical damage, accidents, negligence, damage, or any claim resulting from any act or any omission relating to the Easement Property.
18. Taxes and Assessments. Grantor shall be responsible for paying all taxes, levies, assessments and other governmental charges which may become a lien on the Easement Property.
19. Controlling Law. The interpretation and performance of this Deed of Easement shall be governed by the laws of the Commonwealth of Virginia and applicable laws of the United States.
20. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to this Deed of Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Deed of Easement, all of which are merged herein.
21. Amendments. This Deed of Easement may be amended only with the written consent of the Grantee, Grantor, and the United States and such amendment shall be duly recorded. Any amendment shall be consistent with the Farm and Ranch Lands Protection Program and implementing regulations, 16 U.S.C. 3838h-i, 7 C.F.R. Part 1491, Open-Space Land Act (Virginia Code §§ 10.1-1700 et seq.), James City County Comprehensive Plan. Any such amendment shall also be consistent with the overall purposes and intent of this Deed of Easement.

22. Environmental warranty. Environmental Law or Environmental Laws means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

Hazardous Materials means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

Grantor warrants that it is in compliance with and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property.

Grantor warrants that it has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Property exceeding regulatory limits. Moreover, Grantor hereby promises to indemnify and hold harmless the United States and Grantee against all costs, claims, demands, penalties and damages, including reasonable attorneys fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantors indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantor with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

23. Title. Grantor warrants that Grantor has good title to the property, that Grantor has the right to convey this Easement.
24. Approvals. Grantor shall notify the Grantee, in writing, no less than thirty (30) days prior to undertaking any activities requiring notification and/or approval by the Grantee. Grantor's notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to enable the Grantee to make informed judgments as to its consistency with the

conservation purposes of this easement. The Grantee's approval or disapproval, if required, shall be communicated to Grantor in writing with reasonable promptness, taking into account the complexity of the proposed activity.

25. Subordination. Any mortgage or lien arising after the date of this Deed of Easement shall be subordinated to the terms of this Deed of Easement.
26. Notices. All notices required or permitted hereunder will be deemed to have been delivered when posted with the U.S. Postal Service, Federal Express, United Parcel Service, or sent by facsimile, telecopier or other such electronic device, with proof of transmission, directed as follows:

GRANTOR:

Bertrand E. Geddy, Jr., Trustee
8297 Richmond Road
Toano, Virginia 23168

NRCS:

M. Denise Doetzer
U.S. Department of Agriculture
1606 Santa Rosa Road
Richmond, Virginia 23229

GRANTEE:

James City County, Virginia
Attn: Development Management
101-A Mounts Bay Road
Williamsburg, Virginia 23185

WITNESS the following signatures and seals:

GRANTOR:

BERTRAND E. GEDDY, JR.
Trustee of the Bertrand E. Geddy, Jr. Living Trust

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

The foregoing Deed of Easement was signed, sworn to and acknowledged before me this ____day of Month, 200X, by Bertrand E. Geddy, Jr., Trustee of the Bertrand E. Geddy, Jr. Living Trust, Grantor.

WITNESS my signature and notarial seal.

[SEAL]

Notary Public

My Commission Expires:

The form of this Deed of Easement is approved, and pursuant to Resolution of the Board of Supervisors of James City County, Virginia, duly executed on the ____day of Month, 200X, and this conveyance is hereby accepted on behalf of said County.

Date

County Attorney

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

I, _____, a Notary Public for the Commonwealth of Virginia, do hereby certify that _____, Attorney for James City County, Virginia, has acknowledged the same before me in the jurisdiction aforesaid.

Give under my hand this _____ day of Month, 200X.

Notary Public

My Commission Expires:

ACCEPTANCE OF PROPERTY INTEREST BY THE UNITED STATES

NRCS: M. Denise Doetzer
State Conservationist

By:_____

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

I, _____, a Notary Public for the Commonwealth
of Virginia, do hereby certify that _____, of the U.S.
Department of Agriculture, has acknowledged the same before me in the jurisdiction aforesaid.

Give under my hand this ____ day of Month, 200X.

Notary Public

My Commission Expires:

EXHIBIT "A"

Parcel 1 A: All that certain tract of land known as "White Hall" in Stonehouse District, James City County, Virginia, commencing on the main county road at a small cedar tree, running in a northeasterly direction to a large sycamore tree back of the old stable; thence to the old spring and down the spring swamp until it strikes the line of R.G. Simmons and the line of J.M. Jennings; thence along the line of J.M. Jennings until it strikes the Richardson's Mill Road; thence in a westerly direction along the Richardson's Mill Road until it strikes the main road near the gate of J.M. Jennings; thence southeast down the main road until it reaches the point of beginning.

Parcel 1 B: That certain portion of "White Hall" situate in Stonehouse District, James City County, Virginia, bounded and described as follows: Commencing at the public road at the line of John M. Geddy's land; thence running up said road to a cross fence just back of the old stable; thence following said old fence down to the swamp, and thence in a straight line until it strikes the line of R.G. Simmons; thence along the Simmons line to the land of W.R. Branch and then along the W.R. Branch land to the land of John M. Geddy, and then along the last mentioned line to the point of beginning. Parcel 1 B is a portion of the same property as that devised to the said R.B. Geddy by the Will of Lucy E. Geddy, dated August 18, 1903 and probated before the Circuit Court of James City County on the 11th day of October, 1906, and recorded in James City County Will Book 2, page 412. But the following described parcel of land, formerly a portion of the foregoing "White Hall," tract, containing 11 acres, more or less, is expressly excluded from the operation of this conveyance, namely, that certain tract of parcel of land, conveyed by R.B. Geddy and wife, to L.J. Haley by deed dated November 8, 1919 and recorded in James City County Deed Book 20, page 67, bounded and described as follows: On the southwest side by Main Stage Road; on the southwest side by the road leading from the Main Road at L.J. Haley's gate to Richardson's old mill; and on the southeast by a private road leading from the main road to the road above mentioned leading to Richardson's Mill.

There is expressly excluded from this conveyance the following parcel of land: All that certain parcel of land in the Stonehouse District of James City County, Virginia, shown and described as "PARCEL A, 726, 427 SF+/-, 16.68 AC +/-" on a plat of survey entitled "16.68 +/- ACRES FOR CONVEYANCE TO: ROBERT W. SR. & JUDY G. COWAN, JAMES CITY COUNTY, VIRGINIA", on which plat is dated October 15, 1997, revised January 22, 1998, was made by Charles Reid Scheckler, Certified Land Surveyor, and a copy of which plat is recorded as part of a certain Deed, and Boundary Line Agreement between Bertrand E. Geddy, Jr. and Sharon W. Geddy, husband and wife, and Robert W. Cowan and Judy G. Cowan, husband and wife dated January 24, 1998 and recorded as James City County Instrument No. 980002028.

This conveyance is also subject to (1) a certain easement of right of way conveyed to the Virginia Electric and Power Company by deed from R.B. Geddy, and wife, dated September 5, 1929, and recorded in James City County Deed Book No. 25, at page 279; and (2) that certain parcel or strip of land containing .29 acre which was conveyed to the Commonwealth of Virginia, for highway purposes by deed from R.B. Geddy and wife, dated March 14, 1929, and recorded in James City County Deed Book No. 24, at pages 553-4.

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

Subject to all easements, restrictions covenants and conditions of record affecting said property.

Parcel 2: All that certain lot, piece or parcel of land situate in James City County, Virginia, as shown on a plat entitled, "Survey of 0.50 Acres Standing in the name of Trittie W. Geddy To Be Conveyed to Bertrand Edward Geddy, Jr., Stonehouse District, James City County, Virginia," dated September 14, 1976, and made by Paul C. Small, C.L.S., a copy of which is recorded in James City County Deed Book 171, page 584 and on which plat the property is more particularly described as follows: Beginning on the easterly right-of-way Line of Dept Street where the property hereby described, the property of the Geddy Estate and said Depot Street converge, thence South 40° 22' 25" East, a distance of 149.58 feet to an iron pipe, thence South 50° 42' 00" West, a distance of 145.61 feet to an iron pipe, thence North 40° 22' 25" West, a distance of 149.58 feet to an iron pipe, thence North 50° 42' 00" East a distance of 146.61 feet to an iron pipe which is the point of beginning and being bounded on the Northwest by said Depot Street and on all other sides by the Geddy Estate and being the same property conveyed to Bertrand E. Geddy, Jr. and Sharon W. Geddy by deed dated April 17, 1977 and recorded in James City County Deed Book 176 at page 406.

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

Subject to all easements, restrictions, covenants and conditions of record affecting said property.

BEING the same property conveyed unto Bertrand E. Geddy, Jr., Trustee under the Bertrand E. Geddy, Jr. Living Trust dated November 30, 2005 by deed of transfer from Bertrand E. Geddy, Jr., dated November 30, 2005 and recorded in the Circuit Court Clerk's Office of the City of Williamsburg and County of James City on December 22, 2005 as Instrument Number 050030505.