

AG E N D A
JAMES CITY COUNTY BOARD OF SUPERVISORS
REGULAR MEETING
County Government Center Board Room
101 Mounts Bay Road, Williamsburg, VA 23185
April 12, 2016
6:30 PM

A. CALL TO ORDER

B. ROLL CALL

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE

1. Pledge Leader

E. PUBLIC COMMENT - Until 7 p.m.

F. PRESENTATIONS

1. Fair Housing Month
2. Adult Prevention Program

G. CONSENT CALENDAR

1. Minutes Adoption - March 22, 2016 Regular Meeting
2. Appropriation-Clerk's Excess Fees
3. Dedication of Streets within the River's Bend at Uncles Neck Subdivision

H. PUBLIC HEARING(S)

1. Berkeley A Division
2. AFD-09-86-01-2016, Gordon Creek Agricultural and Forestal District - 3703 Brick Bat Road Withdrawal
3. SUP-0002-2016 3703 Brick Bat Road Tourist Home
4. Z-0005-2015, MP-0002-2015, HW-0002-2015. Patriot's Colony Expansion

I. BOARD CONSIDERATION(S)

1. Ratification of the Form of the Public Offering and Appendix-Lease Revenue Bonds
2. Initiation of Consideration of Amendments to the Zoning Ordinance for Manufacture of Food and Food Products in the Planned Unit Development District
3. Initiation of Consideration of Amendments to the Zoning Ordinance to Allow Mobile Food Vending Vehicles (Food Trucks) in the M-1, Limited Business/Industrial District, the M-2, General Industrial District and the Planned Unit Development-Commercial District
4. Z-0001-2016, The Promenade at John Tyler Proffer Amendment
5. Z-0002-2016. The Village at Candle Station Proffer Amendment

J. BOARD REQUESTS AND DIRECTIVES

K. REPORTS OF THE COUNTY ADMINISTRATOR

1. County Administrator's Report

L. PUBLIC COMMENT

M. CLOSED SESSION

N. ADJOURNMENT

1. Adjourn until 9 am on April 22, 2016 for the Joint Meeting with the City and WJCC Schools at the Stryker Building

ITEM SUMMARY

DATE: 4/12/2016

TO: The Board of Supervisors

FROM: Teresa J. Fellows, Administrative Coordinator

SUBJECT: Pledge Leader

REVIEWERS:

Department	Reviewer	Action	Date
Board Secretary	Fellows, Teresa	Approved	3/29/2016 - 9:09 AM

ITEM SUMMARY

DATE: 4/12/2016

TO: Board of Supervisors

FROM: A. Vaughn Poller, Administrator of Housing and Community Development

SUBJECT: Fair Housing Month Presentation

This April marks the 48th anniversary of the signing of the Fair Housing Act. The attached memo request the Board recognize April as Fair Housing month with a presentation acknowledging the winning entry in the "build your dream home" contest. Contestants are participants of the JCC Parks and Rec After School program.

ATTACHMENTS:

	Description	Type
□	Fair Housing presentation Memo	Cover Memo

REVIEWERS:

Department	Reviewer	Action	Date
Housing & Community Development	Poller, Vaughn	Approved	3/24/2016 - 5:11 PM
Community Services	Vinroot, Rebecca	Approved	3/25/2016 - 10:14 AM
Publication Management	Boles, Amy	Approved	3/25/2016 - 10:18 AM
Legal Review	Kinsman, Adam	Approved	3/25/2016 - 11:15 AM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 11:18 AM
Board Secretary	Hill, Bryan	Approved	3/25/2016 - 1:58 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 3:24 PM

MEMORANDUM

DATE: April 12, 2016

TO: The Board of Supervisors

FROM: A. Vaughn Poller

SUBJECT: James City County Office of Housing and Community Development Marks Fair Housing Month

Each April the US Department of Housing and Urban Development marks the passage of the federal Fair Housing Act. This landmark law, intended to supplement the Civil Rights Act, was signed April 11, 1968, shortly after the assassination of Reverend Dr. Martin Luther King, Jr.

In 1972 the General Assembly enacted Virginia's first Fair Housing Law. Today the Virginia Fair Housing Law is somewhat broader than the federal Fair Housing Act and states:

“It is the policy of the Commonwealth of Virginia to provide for fair housing throughout the Commonwealth, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status or disability, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity and general welfare of all the inhabitants of the Commonwealth may be protected and insured. Code of Virginia Section 36-96.1”

To mark the anniversary of the federal Fair Housing Act, James City County's Office of Housing and Community Development and Parks and Recreation held a contest for children in the after-school program. The theme this year is “build your dream home.”

We want to thank Abbitt Woodall of Housing Partnerships Inc., Doug Harbin of Wayne Harbin Builders and Mike Payne of Trico Service Corporation, who judged the entries. The after-school team with the winning entry will receive an ice cream party. The winning entry, along with the other entries, will be available for viewing in the lobby of Building F before the Board meeting that evening. I also request that the winners be able to pose for a picture with the Board Chair.

AVP/ab
FairHousingMonth-mem

ITEM SUMMARY

DATE: 4/12/2016

TO: Board of Supervisors

FROM: Rebecca Vinroot, Interim Director, Community Services

SUBJECT: Adult Prevention Program

ATTACHMENTS:

	Description	Type
▣	Memo	Cover Memo
▣	Presentation	Presentation

REVIEWERS:

Department	Reviewer	Action	Date
Social Services	Vinroot, Rebecca	Approved	3/25/2016 - 10:21 AM
Community Services	Vinroot, Rebecca	Approved	3/25/2016 - 10:22 AM
Publication Management	Boles, Amy	Approved	3/25/2016 - 10:24 AM
Legal Review	Kinsman, Adam	Approved	3/25/2016 - 11:15 AM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 11:17 AM
Board Secretary	Hill, Bryan	Approved	3/25/2016 - 1:57 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 3:24 PM

MEMORANDUM

DATE: April 12, 2016

TO: The Board of Supervisors

FROM: Denise Kirschbaum, Adult Protective Services Supervisor
Rebecca Vinroot, Interim Director of Community Services

SUBJECT: Adult Prevention Program of James City County Division of Social Services

James City County continues to see a rise in the number of elderly and disabled citizens that could benefit from assistance with long-term care planning. The Division of Social Services (DSS) Adult Protective Services (APS) unit too often has to intervene to provide assistance for individuals who are in a care-giving role and are facing a health crisis. Recognizing this unmet need, DSS began a Prevention Program aimed at disseminating information to elderly and disabled citizens to ensure they are able to make the most appropriate plan for themselves and their loved ones.

The APS Supervisor, Denise Kirschbaum and the Interim Director of Community Services, Rebecca Vinroot, will provide a brief overview of the Adult Prevention Program during the April 12, 2016, Board of Supervisors meeting. They will also inform the Board members about an upcoming informational fair being held on May 20, 2016, at the James City County Recreational Center, entitled "Got Plans?" to continue to provide outreach regarding the helpful services available. This activity is occurring as part of Adult Abuse Prevention Month for May.

DK/RV/nb
AdultPrevention2016-mem

Attachment

Adult Services Prevention

Have you planned for your future?

April 12, 2016

Community Services

What is the Adult Services Prevention program?

- A FREE program that assists the elderly, disabled and caregivers in identifying resources to assist in long-term care planning.
- Criteria:
 - Must be 18-59 years old with and disability; or
 - 60 years of age or older
 - The individual cannot already be in a crisis
 - James City County Resident
 - A willingness to be open to services

What is long-term care planning?

Learning about the types of decisions that might be made, considering those decisions ahead of time, and letting others know about your preferences.

Examples:

- Identifying support systems
- Developing a will
- Appointing an Advanced Medical Directive
- Appointing a Power of Attorney (POA)
- Making end of life decisions
- Guardianship/Conservatorship
- Ways to assist when care-giving is needed in the home

Resources provided by JCC Prevention program

- Assistance with identifying the options for Long-Term Care (checklist provided)
- List of resources in the community to access (Assisted Living Facilities, home health agencies, elder law groups, State benefits)
- In-service and education training to those who work with the target population
 - Senior Living Communities
 - Facilities and agencies who work with seniors
 - Doctors' offices
 - Churches

Other services include...



- Referrals for
 - Companion Services
 - Supplemental Nutrition Assistance Program (SNAP)
 - Medicaid
 - Fuel Assistance/Cooling Assistance
 - Other Crisis Assistance
- Screening for Elderly and Disabled Consumer Directed (EDCD) Waiver
- Family Partnership Meetings (FPM) to assist the whole family with planning
- Multi-Disciplinary Team (MDT) with JCC Police, Fire and community agencies to increase collaboration

Referral sources & Partnerships



- Transportation
 - RIDES
 - Williamsburg Faith In Action
- Financial Counseling
 - Catholic Charities
 - Williamsburg Community Chapel
 - Community Action Agency
- Legal
 - W&M Elder Law Clinic
 - Local Elder Law Attorneys
- JCC Fire/EMS and Police Departments
- Colonial Behavioral Health (CBH)

How to make a referral...



Dionne McLean at 757-259-3154

Denise Kirschbaum at 757-259-3158

Dionne.McLean@jamescitycountyva.gov

Denise.Kirschbaum@jamescitycountyva.gov

APS Hotline – 757-259-3115

ITEM SUMMARY

DATE: 4/12/2016

TO: The Board of Supervisors

FROM: Teresa J. Fellows, Administrative Coordinator

SUBJECT: Minutes Adoption - March 22, 2016 Regular Meeting

ATTACHMENTS:

	Description	Type
▣	032216 BOS Mins	Minutes

REVIEWERS:

Department	Reviewer	Action	Date
Board Secretary	Fellows, Teresa	Approved	3/29/2016 - 9:05 AM

MINUTES
JAMES CITY COUNTY BOARD OF SUPERVISORS
REGULAR MEETING
County Government Center Board Room
101 Mounts Bay Road, Williamsburg, VA 23185
March 22, 2016
6:30 PM

A. CALL TO ORDER

B. ROLL CALL

John J. McGlennon, Vice Chairman, Roberts District
Ruth M. Larson, Berkeley District
Kevin D. Onizuk, Jamestown District
P. Sue Sadler, Stonehouse District
Michael J. Hipple, Chairman, Powhatan District - **Absent**

Bryan J. Hill, County Administrator
Adam R. Kinsman, County Attorney

C. MOMENT OF SILENCE

D. PLEDGE OF ALLEGIANCE

Pledge Leader - Olivia Prokup, a 2nd-grade student at Norge Elementary School and a resident of the Powhatan District.

E. PUBLIC COMMENT - Until 7 p.m.

1. Mr. Jack Fowler, 109 Wilderness Lane, addressed the Board regarding the water supply.
2. Ms. Betty Walker, 101 Locust Place, addressed the Board regarding the Federal Reserve Bank.
3. Mr. Joseph Swanenburg, 3026 The Pointe Drive, addressed the Board regarding the cost of the Longhill Road project versus the cost of widening Interstate 64.
4. Mr. William Luttrell, 3201 Deerfield Court addressed the Board and thanked it for its intervention with the Virginia Department of Transportation and getting the rumble strips removed from Route 5.
5. Mr. Chris Henderson, 101 Keystone, addressed the Board regarding the proposed fourth middle school.
6. Mr. Jay Everson, 103 Branscome Boulevard, addressed the Board regarding the proposed fourth middle school.
7. Ms. Juliet Wright, 805 North Henry Street, addressed the Board regarding the Americans with Disabilities Act and civil rights violations.

F. PRESENTATIONS

G. CONSENT CALENDAR

1. Minutes Adoption - February 23, 2016, Work Session

A motion to Approve was made by Mr. Onizuk and the motion result was Passed.

AYES: 4 NAYS: 0 ABSTAIN: 0 ABSENT: 1

Ayes: McGlennon, Larson, Onizuk, Sadler

Absent: Hipple

2. Proclamation - Local Government Education Week, April 3-9, 2016

A motion to Approve was made by Mr. Onizuk and the motion result was Passed.

AYES: 4 NAYS: 0 ABSTAIN: 0 ABSENT: 1

Ayes: McGlennon, Larson, Onizuk, Sadler

Absent: Hipple

3. Memoranda of Understanding with the Electoral Board and General Registrar

A motion to Approve was made by Mr. Onizuk and the motion result was Passed.

AYES: 4 NAYS: 0 ABSTAIN: 0 ABSENT: 1

Ayes: McGlennon, Larson, Onizuk, Sadler

Absent: Hipple

H. PUBLIC HEARING(S)

I. BOARD CONSIDERATION(S)

J. BOARD REQUESTS AND DIRECTIVES

The Board members generally discussed their activities in the community since the previous meeting.

Ms. Larson asked if an agenda had been published for the Joint Meeting with the City and the schools.

Mr. Hill stated that he has not seen one yet.

Mr. Onizuk updated the Board on the recent Williamsburg Area Destination Marketing Committee meeting and the advertising being done to kick off tourist season. He highlighted the recent awards that the advertising campaigns have received.

Ms. Sadler mentioned the 2016 Youth Career Expo in Hampton that is sponsored by the Peninsula Council for Workforce Development and the Easter Egg Hunt scheduled to take place at the Warhill Sports Complex.

Mr. McGlennon mentioned that he, Mr. Onizuk and Ms. Larson attended the reception for Mr. Carl Lum and wished him well in his new position in San Diego. He congratulated the Communications Department for winning four Tele Awards.

K. REPORTS OF THE COUNTY ADMINISTRATOR

1. County Administrator's Report

Mr. Hill announced the upcoming Strategic Plan Open Houses on March 30 from 2-4 p.m. and from 6-8 p.m. at Legacy Hall. He also announced the Prescription Drug Take-

Back Initiative event scheduled for April 30 at the Police Department, 4600 Opportunity Way.

L. PUBLIC COMMENT

As there were no additional speakers registered, Mr. McGlennon closed the Public Comment session.

M. CLOSED SESSION

N. ADJOURNMENT

1. Adjourn until 6:30 p.m. on April 12, 2016, for the Regular Meeting

A motion to Adjourn was made by Ms. Sadler and the motion result was Passed.

AYES: 4 NAYS: 0 ABSTAIN: 0 ABSENT: 1

Ayes: McGlennon, Larson, Onizuk, Sadler

Absent: Hipple

At 7:23 p.m., Mr. McGlennon adjourned the Board.

Bryan J. Hill
County Administrator

ITEM SUMMARY

DATE: 4/12/2016

TO: The Board of Supervisors

FROM: Mona A. Foley, Clerk of the Circuit Court

SUBJECT: Appropriation-Clerk's Excess Fees-\$88,000

ATTACHMENTS:

	Description	Type
▣	Appropriation Clerk's Excess Fees-\$88,000	Cover Memo
▣	Appropriation-Clerk's Excess Fees	Resolution

REVIEWERS:

Department	Reviewer	Action	Date
Financial Management	Mellen, Sue	Approved	3/25/2016 - 4:22 PM
Publication Management	Burcham, Nan	Approved	3/25/2016 - 4:32 PM
Legal Review	Kinsman, Adam	Approved	3/25/2016 - 4:33 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 4:48 PM
Board Secretary	Hill, Bryan	Approved	3/25/2016 - 5:00 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 5:03 PM

MEMORANDUM

DATE: April 12, 2016
TO: The Board of Supervisors
FROM: Mona A. Foley, Clerk of the Circuit Court
SUBJECT: Appropriation - Clerk Excess Fees - \$88,000

Attached is an appropriation of non-reverting Clerk's excess fees totaling \$88,000 that may be used at the Clerk's discretion for salary bonuses, supplies, materials and other items that support the function of the office. If these funds are not spent locally, they are required to be returned to the State.

MAF/ab
ClerkExFees-mem

Attachment

RESOLUTION

APPROPRIATION – CLERK OF THE CIRCUIT COURT - \$88,000

WHEREAS, the Clerk of the Circuit Court has excess fees totaling \$88,000; and

WHEREAS, these fees may be used at the Clerk's discretion for salary bonuses, supplies, materials and other items that support the function of the office.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation to the General Fund:

Revenue:

Clerk's Excess Fees	<u>\$88,000</u>
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Expenditure:

Clerk of the Circuit Court	<u>\$88,000</u>
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Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Bryan J. Hill
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCLENNON	_____	_____	_____
LARSON	_____	_____	_____
ONIZUK	_____	_____	_____
SADLER	_____	_____	_____
HIPPLE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of April, 2016.

ClerkExFees-res

ITEM SUMMARY

DATE: 4/12/2016

TO: The Board of Supervisors

FROM: Scott J. Thomas, Director of Engineering and Resource Protection

SUBJECT: Dedication of Streets within the River's Bend at Uncles Neck Subdivision

Initiation of a street acceptance into the Virginia Secondary System of State Highways.

ATTACHMENTS:

	Description	Type
▣	Staff Memo	Cover Memo
▣	Resolution	Resolution
▣	AM-4.3	Exhibit
▣	Map	Exhibit

REVIEWERS:

Department	Reviewer	Action	Date
Engineering & Resource Protection	Buchite, Joseph	Approved	3/25/2016 - 12:02 PM
Development Management	Purse, Jason	Approved	3/25/2016 - 1:04 PM
Publication Management	Boles, Amy	Approved	3/25/2016 - 2:31 PM
Legal Review	Kinsman, Adam	Approved	3/25/2016 - 2:54 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 3:24 PM
Board Secretary	Hill, Bryan	Approved	3/25/2016 - 4:21 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 4:49 PM

MEMORANDUM

DATE: April 12, 2016

TO: The Board of Supervisors

FROM: Scott J. Thomas, Director of Engineering and Resource Protection

SUBJECT: Dedication of Streets within the River's Bend at Uncles Neck Subdivision

Attached is a resolution requesting acceptance of the streets proposed as public rights-of-way in the River's Bend at Uncles Neck Subdivision into the State Secondary Highway System. The streets proposed for acceptance are Uncles Neck and Oak Landing Court, as shown in red on the attached map. The streets have been inspected and approved by representatives of the Virginia Department of Transportation (VDOT) as meeting the minimum requirements for secondary roadways.

VDOT's Secondary Street Acceptance Requirements (SSAR), effective March 2009 and updated December 2011, outline processes on how streets are designed, constructed and officially accepted for maintenance as part of the secondary system of state highways. Upon the satisfactory completion of construction of streets, VDOT advises and coordinates with the local governing body of the street's readiness for acceptance through the use of VDOT's Form AM-4.3. As part of the initial acceptance process, the County Board of Supervisors must request, by resolution, that VDOT accepts the street for maintenance as part of the secondary system of state highways. Administrative procedures outlined in the SSAR/24VAC30-92-70 lists criteria for street acceptance and what information is required on the local resolution. Once the resolution is approved, the signed Form AM-4.3 and the resolution are then returned to VDOT. VDOT then officially notifies the locality of the street's acceptance into the secondary system of state highways and the effective date of such action. This notification serves as the start of VDOT maintenance responsibility. As part of the process, the County will hold an appropriate amount of subdivision or public improvement surety for the roadway, as required by local ordinances, until the acceptance process is complete. Also, within 30 days of the local governing body's request (resolution), VDOT requires a maintenance surety to be posted by the developer to guarantee performance of the street for one year from the date of acceptance.

Staff recommends the adoption of the attached resolution.

SJT/ab
UnclesNStDed-mem

Attachment

RESOLUTION

DEDICATION OF STREETS WITHIN THE RIVER'S BEND AT UNCLES NECK SUBDIVISION

WHEREAS, the streets described on the attached AM-4.3, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of James City County; and

WHEREAS, the Residency Administrator for the Virginia Department of Transportation (VDOT) advised the Board that the streets meet the requirements established by the Subdivision Street Acceptance Requirements of VDOT; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests VDOT to add the streets described in the attached Additions Form AM-4.3 to the secondary system of state highways, pursuant to §33.2-705 of the Code of Virginia, and the Department's Subdivision Street Acceptance Requirements.

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

BE IT FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Residency Administrator for VDOT.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

VOTES

AYE NAY ABSTAIN

MCGLENNON
LARSON
ONIZUK
SADLER
HIPPLE

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Bryan J. Hill
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of April, 2016.

UnclesNStDed-res

In the County of James City

By resolution of the governing body adopted April 12, 2016

The following VDOT Form AM-4.3 is hereby attached and incorporated as part of the governing body's resolution for changes in the secondary system of state highways.

A Copy Testee

Signed (County Official): _____

Report of Changes in the Secondary System of State Highways

Project/Subdivision River's Bend at Uncles Neck

Type Change to the Secondary System of State Highways:

Addition

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

Reason for Change: New subdivision street

Pursuant to Code of Virginia Statute: §33.2-705

Street Name and/or Route Number

◆ Uncles Neck, State Route Number 1033

Old Route Number: 0

- From: Forge Road (Route 610)

To: Oak Landing Court (Route 1034), a distance of: 1.64 miles.

Recordation Reference: N/A

Right of Way width (feet) = 50-155

Street Name and/or Route Number

◆ Oak Landing Court, State Route Number 1034

Old Route Number: 0

- From: Uncles Neck (Route 1033)

To: cul-de-sac, a distance of: 0.09 miles.

Recordation Reference: N/A

Right of Way width (feet) = 50

Street Name and/or Route Number

◆ Uncles Neck, State Route Number 1033

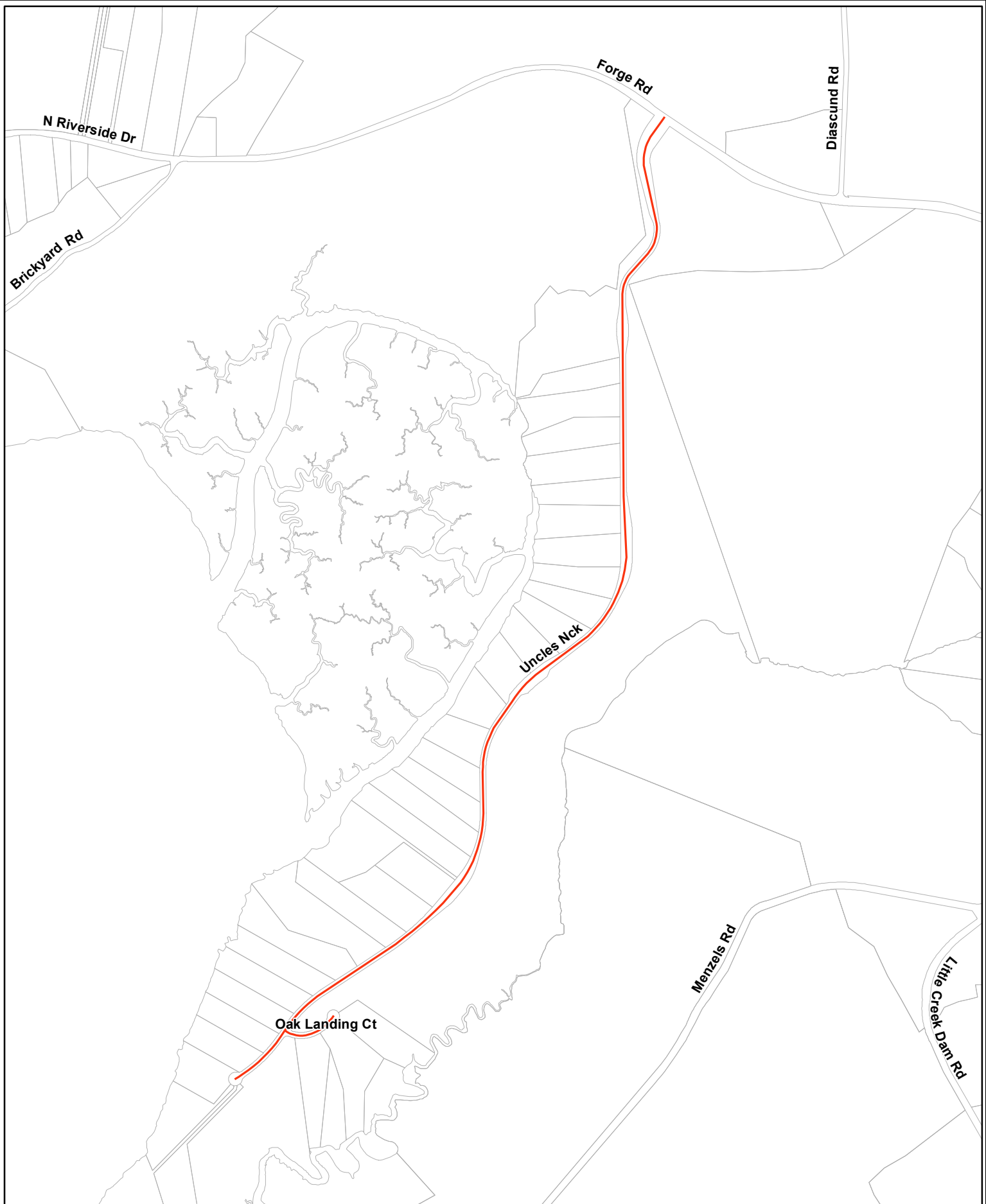
Old Route Number: 0

- From: Oak Landing Court (Route 1034)

To: cul-de-sac, a distance of: 0.12 miles.


Recordation Reference: N/A

Right of Way width (feet) = 50



Dedication of Streets within the River's Bend at Uncles Neck Subdivision

Legend

 Streets to be Dedicated

1 inch = 1,000 feet



ITEM SUMMARY

DATE: 4/12/2016

TO: The Board of Supervisors

FROM: Adam R. Kinsman, County Attorney, Dianna Moorman, General Registrar

SUBJECT: Berkeley A Division

Ordinance to establish a new Berkeley D precinct and revise the description of the Berkeley A precinct.

ATTACHMENTS:

	Description	Type
▣	Berkeley A Division Memo	Cover Memo
▣	Berkeley A Division Ordinance	Ordinance
▣	Berkeley A Division Final Ordinance Backup Material	

REVIEWERS:

Department	Reviewer	Action	Date
Attorney	Kinsman, Adam	Approved	4/1/2016 - 10:35 AM
Publication Management	Burcham, Nan	Approved	4/1/2016 - 10:46 AM
Legal Review	Kinsman, Adam	Approved	4/1/2016 - 10:47 AM
Board Secretary	Fellows, Teresa	Approved	4/1/2016 - 10:54 AM
Board Secretary	Hill, Bryan	Approved	4/2/2016 - 10:38 AM
Board Secretary	Fellows, Teresa	Approved	4/5/2016 - 10:23 AM

MEMORANDUM

DATE: April 12, 2016

TO: The Board of Supervisors

FROM: Adam R. Kinsman, County Attorney
Dianna Moorman, General Registrar

SUBJECT: Berkeley A Division

Following a 2016 determination by the United States Fourth Circuit, the boundaries of Congressional District 2 were required to change. This resulted in multiple Congressional Districts within the Berkeley A precinct. As a result, Berkeley A must be divided into two precincts in order to avoid confusion that would result from having one local precinct contain multiple congressional districts. Accordingly, Berkeley A should be divided, creating a new Berkeley D. Each local precinct will be wholly contained within one Congressional District.

The Electoral Board, upon the advice of the Virginia Department of Elections, has considered this proposed change and has voted unanimously for its approval. We recommend that the Board adopt the attached Ordinance changes to establish a new Berkeley D precinct and revise the description of the Berkeley A precinct.

ARK/DM/ab
BerkeleyDiv-mem

Attachment

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 2, ADMINISTRATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE II, MAGISTERIAL DISTRICT, ELECTION DISTRICTS AND ELECTION PRECINCTS, BY AMENDING SECTION 2-4, ELECTION PRECINCTS AND POLLING PLACES ESTABLISHED; AND SECTION 2-5, ELECTION DISTRICT BOUNDARIES.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 2, Administration, is hereby amended and reordained by amending Article II, Magisterial District, Election Districts and Election Precincts, by amending Section 2-4, Election precincts and polling places established; and Section 2-5, Election district boundaries.

Chapter 2. Administration

Article II. Magisterial District, Election Districts and Election Precincts

Sec. 2-4. Election precincts and polling places established.

- (a) Pursuant to authority contained in the Code of Virginia, Chapter 24.2, the precincts and their respective polling places for the county are hereby created and established as set forth in this section.
- (b) The precincts for each election district and the polling place for each precinct shall be set forth below:

Berkeley Election District 01:

Precinct 0101 - Jamestown High School polling place.

Precinct 0102 - Clara Byrd Baker Elementary School polling place.

Precinct 0103 - Matoaka Elementary School polling place.

Precinct 0104 – James City County Fire Administration polling place.

Sec. 2-5. Election district boundaries.

Berkeley Election District 01:

Precinct 0101. Beginning at the intersection of Jamestown Road and the James City County-City of Williamsburg boundary line; thence northwesterly following the James City County-City of Williamsburg boundary line to its intersection with State Route 5; thence westerly following the centerline of State Route 5 to Mill Creek; thence southerly following the centerline of Mill Creek to Hickory Signpost Road; thence westerly following the centerline of Hickory Signpost Road to its intersection with Ironbound Road; then southerly following the centerline of Ironbound Road to its intersection with Sandy Bay Road; thence southerly following the centerline of Sandy Bay Road to its intersection with State Route 31; thence westerly following the centerline of State Route 31 to its intersection with State Route 614; thence northwesterly following the centerline of State Route 614 to its intersection with State Route 5; thence westerly following the centerline of State Route 5 to its intersection with Shellbank Creek; thence southerly following the centerline of Shellbank Creek extended to the centerline of the James River and the James City County-Surry County boundary line; thence southeasterly following the centerline of the James River and the James City County-Surry County boundary line to the easterly side of Jamestown Island; thence northeasterly to its intersection with Mill Creek and the Colonial National Historical Parkway; thence northwesterly along the southerly side of the Colonial National Historical Parkway to its intersection with an unnamed National Park Service driveway; thence northeasterly along the centerline of the unnamed National Park Service driveway to its intersection with Neck

~~O Land Road; thence northeasterly along the centerline of Neck O Land Road to its intersection with State Route 31; thence northeasterly following the centerline of State Route 31 to the point of beginning.~~
Beginning at the intersection of State Route 629 and Mill Creek; thence southerly following the centerline of Mill Creek following the easterly side of Lake Powell; thence along the easterly side of Lake Powell to its intersection with State Route 31; thence southerly along State Route 31 to its intersection with State Route 682; thence southerly along the centerline of State Route 682 to its intersection with an unnamed National Park Service driveway; thence southwesterly along the centerline of the unnamed National Park Service driveway to its intersection with Colonial National Historical Parkway; thence westerly along the centerline of Colonial National Historical Parkway to its intersection with Colonial National Historical Parkway Route 359; thence along the centerline of Colonial National Historical Parkway Route 359 to its intersection with State Route 31; thence southwesterly along the centerline of State Route 31 extended to its intersection with the centerline of the James River and the James City County –Surry County boundary line; thence northwesterly along the centerline of the James River and the James City County –Surry County boundary line to the centerline of Shellbank Creek extended to the centerline of the James River and the James City County – Surry County boundary line; thence along the centerline of Shellbank Creek to its intersection with State Route 5; thence easterly along the centerline of State Route 5 to its intersection with State Route 614; thence southeasterly along the centerline of State Route 614 to its intersection with State Route 31; thence northwesterly along the centerline of State Route 31 to its intersection with State Route 615; thence northerly along the centerline of State Route 615 to its intersection with State Route 629; thence easterly along the centerline of State Route 629 to the point of beginning.

Precinct 0104. Beginning at the intersection of State Route 31 and the James City County-City of Williamsburg boundary line; thence northwesterly following the James City County-City of Williamsburg boundary line to its intersection with State Route 5; thence westerly following the centerline of State Route 5 to Mill Creek; thence southerly following the centerline of Mill Creek to the easterly side of Lake Powell; thence along the easterly side of Lake Powell to State Route 31; thence northeasterly following the centerline of State Route 31 to the point of beginning. And beginning at the intersection of State Route 31 and the Colonial National Historical Parkway Route 359 to its intersection with Colonial National Historical Parkway Route 90003; thence easterly following the centerline of Colonial National Historical Parkway Route 90003 to Mill Creek; thence southeasterly to the centerline of The Thorofare; thence southeasterly following the centerline of The Thorofare extended to the centerline of the James River and the James City County –Surry County boundary line; thence northwesterly following the centerline of the James River and the James City County – Surry County boundary line to the extended centerline of State Route 31 to the point of beginning.

Michael J. Hipple
Chairman, Board of Directors

ATTEST:

Bryan J. Hill
Secretary to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
LARSON	_____	_____	_____
ONIZUK	_____	_____	_____
SADLER	_____	_____	_____
HIPPLE	_____	_____	_____

Adopted by the Board of Directors of the James City Service Authority, James City County, Virginia, this 12th day of April, 2016.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 2, ADMINISTRATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE II, MAGISTERIAL DISTRICT, ELECTION DISTRICTS AND ELECTION PRECINCTS, BY AMENDING SECTION 2-4, ELECTION PRECINCTS AND POLLING PLACES ESTABLISHED; AND SECTION 2-5, ELECTION DISTRICT BOUNDARIES.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 2, Administration, is hereby amended and reordained by amending Article II, Magisterial District, Election Districts and Election Precincts, by amending Section 2-4, Election precincts and polling places established; and Section 2-5, Election district boundaries.

Chapter 2. Administration

Article II. Magisterial District, Election Districts and Election Precincts

Sec. 2-4. Election precincts and polling places established.

- (a) Pursuant to authority contained in the Code of Virginia, Chapter 24.2, the precincts and their respective polling places for the county are hereby created and established as set forth in this section.
- (b) The precincts for each election district and the polling place for each precinct shall be set forth below:

Berkeley Election District 01:

- Precinct 0101 - Jamestown High School polling place.
- Precinct 0102 - Clara Byrd Baker Elementary School polling place.
- Precinct 0103 - Matoaka Elementary School polling place.
- Precinct 0104 – James City County Fire Administration polling place.

Sec. 2-5. Election district boundaries.

Berkeley Election District 01:

Precinct 0101. Beginning at the intersection of State Route 629 and Mill Creek; thence southerly following the centerline of Mill Creek following the easterly side of Lake Powell; thence along the easterly side of Lake Powell to its intersection with State Route 31; thence southerly along State Route 31 to its intersection with State Route 682; thence southerly along the centerline of State Route 682 to its intersection with an unnamed National Park Service driveway; thence southwesterly along the centerline of the unnamed National Park Service driveway to its intersection with Colonial National Historical Parkway; thence westerly along the centerline of Colonial National Historical Parkway to its intersection with Colonial National Historical Parkway Route 359; thence along the centerline of Colonial National Historical Parkway Route 359 to its intersection with State Route 31; thence southwesterly along the centerline of State Route 31 extended to its intersection with the centerline of the James River and the James City County –Surry County boundary line; thence northwesterly along the centerline of the James River and the James City County –Surry County boundary line to the centerline of Shellbank Creek extended to the centerline of the James River and the James City County –Surry County boundary line; thence along the centerline of Shellbank Creek to its intersection with State Route 5; thence easterly along the centerline of State Route 5 to its intersection with State Route 614; thence southeasterly along the centerline of State Route 614 to its intersection with State Route 31; thence

northwesterly along the centerline of State Route 31 to its intersection with State Route 615; thence northerly along the centerline of State Route 615 to its intersection with State Route 629; thence easterly along the centerline of State Route 629 to the point of beginning.

Precinct 0104. Beginning at the intersection of State Route 31 and the James City County-City of Williamsburg boundary line; thence northwesterly following the James City County-City of Williamsburg boundary line to its intersection with State Route 5; thence westerly following the centerline of State Route 5 to Mill Creek; thence southerly following the centerline of Mill Creek to the easterly side of Lake Powell; thence along the easterly side of Lake Powell to State Route 31; thence northeasterly following the centerline of State Route 31 to the point of beginning. And beginning at the intersection of State Route 31 and the Colonial National Historical Parkway Route 359 to its intersection with Colonial National Historical Parkway Route 90003; thence easterly following the centerline of Colonial National Historical Parkway Route 90003 to Mill Creek; thence southeasterly to the centerline of The Thorofare; thence southeasterly following the centerline of The Thorofare extended to the centerline of the James River and the James City County – Surry County boundary line; thence northwesterly following the centerline of the James River and the James City County – Surry County boundary line to the extended centerline of State Route 31 to the point of beginning.

ITEM SUMMARY

DATE: 4/12/2016

TO: The Board of Supervisors

FROM: Ellen Cook, Senior Planner II

SUBJECT: Case No. AFD-09-86-01-2016, Gordon Creek Agricultural and Forestal District - 3703 Brick Bat Road Withdrawal

ATTACHMENTS:

	Description	Type
▣	Staff Memo	Cover Memo
▣	Ordinance	Ordinance
▣	Planning Commission Minutes	Minutes
▣	AFD Committee Minutes	Minutes
▣	Location Map	Exhibit
▣	Applicant Letter and Exhibit	Backup Material
▣	AFD Withdrawal Policy	Backup Material
▣	AFD Withdrawal Policy Analysis	Backup Material
▣	Gordon Creek Renewal Staff Report and Ordinance	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	3/24/2016 - 3:02 PM
Development Management	Purse, Jason	Approved	3/25/2016 - 8:01 AM
Publication Management	Boles, Amy	Approved	3/25/2016 - 8:24 AM
Legal Review	Kinsman, Adam	Approved	3/25/2016 - 8:32 AM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 11:18 AM
Board Secretary	Hill, Bryan	Approved	3/25/2016 - 1:57 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 3:24 PM

AFD-09-86-01-2016. Gordon Creek Agricultural and Forestal District - 3703 Brick Bat Road Withdrawal
Staff Report for the April 12, 2016, Board of Supervisors Meeting

SUMMARY FACTS

Applicant: Mr. Will Holt, Kaufman and Canoles

Land Owners: The Carol Sansone Jamison Marital Trust
Two and the Carol Sansone Jamison
Family Trust

Proposal: Withdrawal of 1.45 acres, in conjunction
with Special Use Permit (SUP) application
for operation of a Tourist Home

Location: 3703 Brick Bat Road

Tax Map/Parcel No.: 3540100009

Project Acreage: +/-57.6

Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands

Primary Service Area: Outside

PUBLIC HEARING DATES

Planning Commission: March 2, 2016, 7:00 p.m.
Board of Supervisors: April 12, 2016, 6:30 p.m.

Staff Contact: Ellen Cook, Senior Planner II

FACTORS FAVORABLE

1. Request meets several of the criteria set forth in the Board's policy governing the withdrawal of property from Agricultural and Forestal Districts (AFD).
2. The overall district will not be disrupted.
3. The proposed use on the site is located such that it minimizes impacts to agricultural and forestal uses.

FACTORS UNFAVORABLE

1. Request does not fully meet all four criteria set forth in the Board's policy.

SUMMARY STAFF RECOMMENDATION

The adopted Board of Supervisors policy governing withdrawal of property from AFD states that it is the policy of the Board to discourage the withdrawal of properties from an AFD during the terms of those districts. This withdrawal request was submitted approximately 16 months after the most recent renewal of the Gordon Creek AFD in September 2014. While staff acknowledges that the overall district will not be disrupted and that the proposed land use (Tourist Home) is consistent with the Comprehensive Plan, staff cannot support this request for withdrawal, due to the withdrawal request not fully meeting all four of the criteria set forth in the Board's policy. As such, staff recommends that the Board of Supervisors deny this withdrawal application.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission recommended approval of this withdrawal application at its March 2, 2016 meeting by a vote of 7-0.

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

Staff Report for the April 12, 2016, Board of Supervisors Meeting

PROPOSED CHANGES MADE SINCE PLANNING COMMISSION MEETING

None.

AFD ADVISORY COMMITTEE RECOMMENDATION

The AFD Advisory Committee recommended approval of this withdrawal application at its February 18, 2016 meeting by a vote of 8-0 (absent: P. Harcum, W. Harcum).

PROJECT DESCRIPTION

- In September 2014 the Board of Supervisors renewed the Gordon Creek AFD for a period of four years (corresponding staff report and adopted ordinance enclosed).
- The Gordon Creek AFD, currently comprised of 35 parcels, was originally created in 1986. The District consists of approximately 3,129 acres located generally west of Brick Bat Road and along Jolly Pond and Centerville Roads.
- The property at 3703 Brick Bat has been part of the district since 1986 and has not previously withdrawn any land.
- The property owner seeks to remove a 1.45-acre portion of the 57.6-acre parcel in conjunction with seeking an SUP to operate a Tourist Home (bed and breakfast) within the existing residential structures.

PLANNING AND ZONING HISTORY

- The Gordon Creek AFD was created by the Board in 1986 and was most recently renewed on September 9, 2014.

SURROUNDING ZONING AND DEVELOPMENT

- Located on Brick Bat Road approximately three-quarters of a mile southwest of Matoaka Elementary School.
- The surrounding zoning of all properties is A-1, General Agricultural. The properties across Brick Bat Road are residential lots and properties to the north and south are undeveloped forested land.

COMPREHENSIVE PLAN

The property is designated Rural Lands, as are all of the surrounding parcels.

- Appropriate primary uses include traditional agricultural and forestal activities, but also innovative uses such as agri-tourism. Staff finds the proposed use to fit within the agri-tourism category.
- The development standards state that non-agricultural/non-forestal uses should be sited to minimize impacts or disturbance to agricultural and forestall uses, open fields and important agricultural/forestal soils and resources. Staff finds the use to be consistent with this standard, given that the proposal will take place within existing structures and that the forested and agricultural aspects of the property will be maintained.
- The Comprehensive Plan's Land Use Goals, Strategies and Actions include support for implementation of the County's Strategy for Rural Economic Development. The Strategy specifically encourages agri-tourism uses.

Staff Report for the April 12, 2016, Board of Supervisors Meeting

ANALYSIS

On September 28, 2010, the Board of Supervisors adopted a policy and withdrawal criteria for AFD parcels (Attachment No. 6). The policy states “It is the policy of the Board of Supervisors to discourage the withdrawal of properties from AFDs during the terms of those districts” and lists four criteria, which if met would establish “good and reasonable cause” for a property owner to withdraw. A more detailed analysis of these four conditions is provided as Attachment No. 7 and the applicant’s request letter is provided as Attachment No. 5. In summary, staff does not find that this withdrawal request fully meets all four conditions:

- Primarily, the request does not fully meet Criteria B as it is not explicitly for a public purpose. Staff does acknowledge that the desired use of the property is consistent with broader community goals.
- With regard to Criteria A, this property was in trust ownership since prior to the last AFD renewal. The applicant has indicated that a change in circumstance that was not anticipated occurred when a family member passed away in 2015 (see Attachment No. 5 for further details); the property remains in trust ownership.
- The request fully meets Criteria C and D, by not causing damage or disruption to the existing district and by being submitted in conjunction with a use that staff finds to be in conformance with the Comprehensive Plan.

STAFF RECOMMENDATION

The adopted Board of Supervisors policy governing withdrawal of property from AFDs states that it is the policy of the Board to discourage the withdrawal of properties from AFDs during the terms of those districts. This withdrawal request was submitted approximately 16 months after the most recent renewal of the Gordon Creek AFD in September 2014. While staff acknowledges that the overall district will not be disrupted and that the proposed land use (Tourist Home) is consistent with the Comprehensive Plan, staff cannot support this request for withdrawal due to the withdrawal request not fully meeting all four of the criteria set forth in the Board’s policy. As such, staff recommends that the Board of Supervisors deny this withdrawal application.

EC/ab

AFD-09-86-01-GordonCreek

Attachments:

1. Ordinance
2. Planning Commission Minutes
3. AFD Advisory Committee Meeting Minutes
4. Location Map
5. Applicant Letter and Exhibit
6. Policy Governing the Withdrawal of Property from AFDs
7. Policy Analysis
8. Gordon Creek Renewal Staff Report and Ordinance

ORDINANCE NO. _____

AFD-09-86-01-2016, GORDON CREEK AGRICULTURAL AND FORESTAL DISTRICT,

3703 BRICK BAT ROAD WITHDRAWAL

- WHEREAS, a request has been filed with the Board of Supervisors of James City County, Virginia (the "Board of Supervisors") to withdraw ± 1.45 acres of land as shown on Exhibit A attached to a letter prepared by William L. Holt dated February 8, 2016, which is a portion of the ± 57.6 -acre property owned by The Carol Sansone Jamison Marital Trust Two and the Carol Sansone Jamison Family Trust, located along Brick Bat Road and identified as James City County Real Estate Tax Map No. 3540100009 from AFD 09-86, which is generally known as the $\pm 3,129$ -acre "Gordon Creek Agricultural and Forestal District" (the "Application"); and
- WHEREAS, at its February 18, 2016, meeting the Agricultural and Forestal District Advisory Committee voted 8-0 to recommend approval of the Application; and
- WHEREAS, a public hearing was advertised and held by the Planning Commission (the "Commission") at its March 2, 2016, meeting, pursuant to Section 15.2-4314 of the Code of Virginia, 1950, as amended (the "Virginia Code"), after which the Commission voted 7-0 to recommend approval of the Application; and
- WHEREAS, pursuant to Section 15.2-4214 of the Virginia Code a public hearing was advertised and held by the Board of Supervisors; and
- WHEREAS, the Board of Supervisors finds that the withdrawal request meets the criteria set forth in the Board of Supervisors' Withdrawal Policy for Agricultural and Forestal Districts, dated September 28, 2010.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby removes ± 1.45 acres owned by The Carol Sansone Jamison Marital Trust Two and the Carol Sansone Jamison Family Trust, as referenced herein, from the Gordon Creek Agricultural and Forestal District.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

VOTES

AYE NAY ABSTAIN

MCLENNON

LARSON

ONIZUK

SADLER

HIPPLE

Bryan J. Hill
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of April,
2016.

AFD-09-86-01GordonCreek-res

Minutes of the March 2, 2016 Planning Commission (Unapproved)

**Case No. AFD-09-86-01-2016, Gordon Creek Agricultural and Forestal District – 3703
Brick Bat Road Withdrawal**

Ms. Ellen Cook, Senior Planner II, stated that Mr. Will Holt, Kaufman and Canoles, has applied, on behalf of the Carol Sansone Jamison Marital Trust Two and the Carol Sansone Jamison Family Trust, to withdraw 1.45 acres of a +/- 58 acre property from the Gordon Creek Agricultural and Forestal District, in conjunction with a Special Use Permit application for operation of a Tourist Home.

Ms. Cook stated that on September 28, 2010, the Board of Supervisors adopted a policy governing withdrawal of property from AFDs. Ms. Cook noted that the policy states that it is the policy of the Board to discourage the withdrawal of properties from AFDs during the terms of those districts unless four criteria which, if met, would establish good and reasonable cause for a property owner to withdraw.

Ms. Cook stated that staff does not find that this request fully meets all four criteria; primarily the request does not fully meet Criteria “B” as it is not explicitly for a public purpose. Ms. Cook stated that staff does recognize that the proposed use of the property is consistent with broader community goals. Ms. Cook stated that with regard to Criteria “A” the property was in trust ownership prior to the last AFD renewal in 2014. Ms. Cook stated that the applicant has indicated that a change in circumstances occurred when a family member passed away in 2015. Ms. Cook stated that the request fully meets Criteria “C” and “D” by not causing damage or disruption to the existing district and by being submitted with a use that staff finds to be in conformance with the Comprehensive Plan.

Ms. Cook stated that the AFD Committee did recommend approval of the application. Ms. Cook further stated that because the request does not fully meet all four criteria in the Board of Supervisor’s policy, staff cannot support the request and recommends that the Planning Commission recommend denial of this application to the Board of Supervisors.

Mr. Heath Richardson inquired if the property owner would have the option to remove this portion of the property from the AFD at the next renewal in 2018.

Ms. Cook stated that the property owner would be able to remove the property at the next renewal.

Mr. Richardson inquired whether the question about the death of a property owner qualifying as change in circumstances under State Code to permit a by right withdrawal had been resolved.

Ms. Cook stated that it was not resolved at the time of the AFD Committee meeting; however, it was resolved shortly thereafter by an opinion from the County Attorney’s Office. Ms. Cook stated that because the property was held in trust it would not qualify.

Mr. Richardson inquired whether this circumstance was something the AFD Committee considered in making the recommendation.

Ms. Cook stated that one of the factors the AFD Committee took into consideration was that there had been a death in the family.

Mr. O'Connor inquired whether the AFD Committee used the same four criteria to evaluate a withdrawal request.

Ms. Cook confirmed.

Mr. Krapf requested that Ms. Cook elaborate on the staff perspective on whether the proposed withdrawal meets a public purpose by generating tourism and meeting the objectives of the Rural Economic Development Committee by providing an economic value for rural lands.

Ms. Cook stated that staff agrees that the proposed use meets the broader community goals and is consistent with the goals of the Comprehensive Plan; however, it is not explicitly for a public purpose such as a school.

Mr. Wright requested confirmation that the 1.45 acres in question are not currently receiving land use valuation.

Ms. Cook confirmed and stated that while the entire parcel is enrolled in the AFD, the Commissioner of Revenue generally excludes the home site and access from the land use valuation. Ms. Cook further stated that for this property, the house is being taxed at normal rates.

Mr. O'Connor inquired about the development potential for the almost 60 acre parcel should the owner choose not to renew the property at the next cycle.

Ms. Cook stated that it would be one unit per three acres.

Ms. Bledsoe opened the public hearing.

Mr. Will Holt, Kaufman & Canoles, 4801 Courthouse Street, stated that the AFD withdrawal is part of a two phase application and withdrawing the property from the AFD is necessary to be able to proceed with the application for the SUP. Mr. Holt stated that the Board policy should be interpreted broadly and the criteria evaluated individually. Mr. Holt further stated that if the criteria related to public purpose was construed narrowly to be a school or similar public building and all criteria had to be met, then that criteria would override the others.

Mr. O'Connor inquired if the property owners have operated other bed and breakfasts.

Mr. Holt stated that the property owners have operated other bed and breakfasts.

Ms. Bledsoe inquired if the barn was included in the property being withdrawn.

Mr. Holt stated that the barn is not included. Mr. Holt stated that the facilities included in the withdrawal are the house, the pool house and the driveway/parking area

Mr. Richardson inquired whether the property would have qualified for withdrawal prior to the renewal date if the property had not been held in trust.

Mr. Holt confirmed.

Mr. Wright inquired if the owner is the only remaining member of the trust.

Mr. Holt confirmed that the owner is the only beneficiary.

Mr. Wright noted that he had discussed the application with the Mr. Holt prior to the meeting.

As no one else wished to speak, Ms. Bledsoe closed the public hearing.

Ms. Bledsoe stated that she also had a discussion with Mr. Holt and called for disclosures from the other Commissioners.

Mr. Richardson stated that he also had spoken with Mr. Holt.

Ms. Bledsoe opened the floor for discussion by the Commission.

Mr. Basic requested that Mr. Max Hlavin explain the difference between a trust and outright ownership and how that affected the ability to use the State Code statute allowing by right withdrawal of a property within two years of the death of a property owner.

Mr. Hlavin stated the State Code language limits the provision for a by right withdrawal to any heir at law, devisee, surviving cotenant or personal representative of a sole owner of any fee simple interest. Mr. Hlavin stated that by being in a trust the ownership does not fall under any of those categories.

Ms. Bledsoe stated that by placing the property in trust, the family was being prudent in estate planning. Ms. Bledsoe further stated that she believes the proposed use of the property does fulfill the public purpose criteria. Ms. Bledsoe stated that she supports the request.

Mr. Basic moved to recommend approval of the application.

Mr. Richardson stated that he understands the intent of the Board of Supervisors policy regarding withdrawal of property from an AFD. Mr. Richardson further stated that he believes the criteria for public purpose is not met by the proposed use. Mr. Richardson further stated that he understands the need to remove the property outside the normal renewal cycle.

Mr. Krapf stated that staff is required to look at the Board policy in its totality and interpret it narrowly, while the Planning Commission and Board have more latitude. Mr. Krapf stated that he can support the application because the area being withdrawn is only a small part of the property and because even though the request does not meet strict interpretation of the Board Policy, it does support the strategic initiative of encouraging rural economic development.

Mr. Basic noted that the strength of an AFD is in the contiguous acreage and that this represents a minute portion of the entire district.

Mr. O'Connor inquired if Mr. Hlavin concurred with Mr. Holt's comments regarding the narrow interpretation of Criteria B.

Mr. Hlavin stated that the Commission has more latitude than staff in interpreting the policy. Mr. Hlavin further stated that there is a catch all phrase in the policy that allows the Commission and the Board to consider other factors as they deem prudent.

Mr. O'Connor stated that he believes the proposed use will serve the public good and the amount of property being withdrawn would not be detrimental to the integrity of the AFD. Mr. O'Connor also stated that he believes this is a good use of the property to bring revenue to the County. Mr. O'Connor stated that he would support the application.

Mr. Danny Schmidt stated that one factor he finds particularly favorable is that the existing structure will not be changed or expanded.

On a roll call vote the Commission voted to recommend approval of AFD-09-86-01-2016, Gordon Creek Agricultural and Forestal District – 3703 Brick Bat Road Withdrawal (7-0).

UNAPPROVED MINUTES OF THE AGRICULTURAL AND FORESTAL ADVISORY COMMITTEE OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE EIGHTEENTH DAY OF FEBRUARY, TWO THOUSAND AND SIXTEEN, AT 4:00 P.M. AT THE BUILDING A CONFERENCE ROOM, 101 MOUNTS BAY ROAD, WILLIAMSBURG, VIRGINIA.

1. Roll Call:

Members Present

Ms. Smith
Mr. Bradshaw
Mr. W. Taylor
Mr. Abbott
Ms. Garrett
Ms. Sadler
Mr. Ford
Mr. Hitchens

Also Present

Ms. Ellen Cook (Planning)
Mr. Will Holt (Kaufman & Canoles, PC)

Absent

Mr. W. Harcum
Mr. P. Harcum

2. New Business:

A. Approval of the March 12, 2015 Meeting Minutes

On a voice vote the minutes of the March 12, 2015 meeting were unanimously approved.

B. Case No. AFD-0001-2016, 3703 Brick Bat Road, Gordon Creek Withdrawal

Ms. Ellen Cook presented the staff report stating that in September of 2014, the Board of Supervisors renewed the Gordon Creek Agricultural and Forestal District (AFD) for a period of four years. Ms. Cook stated that the property located at 3703 Brick Bat Road consists of approximately 57.6 acres and has been part of the AFD since its creation. Ms. Cook stated that the applicant is requesting to remove only 1.45 acres

Ms. Cook further stated that the applicant had approached the County about operating a Bed & Breakfast/Tourist Home on the property which requires a Special Use Permit (SUP) in the A-1, General Agricultural district. Ms. Cook noted that the Ordinance for the Gordon Creek AFD prohibits this type of SUP to be issued for a property enrolled in the AFD, which generated the request to withdraw the property.

Ms. Cook stated that the Board of Supervisors' policy regarding the withdrawal of property from an AFD sets forth four criteria that, if met, would establish acceptable cause for withdrawal. Ms. Cook stated that staff does not find that the request fully meets all four criteria. Primarily, the request is not explicitly to serve a public purpose (Criteria B),

although it is consistent with broader community goals. Ms. Cook further stated that it does not appear that the property meets the criteria of a change in circumstances, although the applicant may have some clarifying information he wishes to offer.

Ms. Cook stated that while staff acknowledges that the overall district will not be disrupted and that the proposed land use (tourist home) is consistent with the Comprehensive Plan, staff cannot support this request for withdrawal due to the withdrawal request not fully meeting all of the criteria set forth in the Board's policy. Ms. Cook stated that staff recommends that the AFD Advisory Committee recommend denial of this withdrawal application to the Planning Commission and to the Board of Supervisors.

Mr. Will Holt, stated that he represents the Jamison Trust. Mr. Holt stated that the property was placed in trust by Carol & John Jamison for the benefit of their daughter. Mr. Holt stated that Mr. Jamison passed away in February of 2015 and the daughter is now owner of the property and wishes to use the property as a bed & Breakfast. Mr. Holt noted that overall, staff is supportive of that SUP application. Mr. Holt further stated that while the entire parcel is enrolled in the AFD, approximately five acres comprising the house and the access road are not receiving the land use valuation and are taxed at the regular rate.

Mr. Holt further stated that the death of Mr. Jamison, who was a property owner would qualify as a change of circumstance that would meet the criteria. Mr. Holt further stated that the State Code section governing withdrawals from an AFD specifically states that property may be withdrawn within two years of the death of a property owner. Mr. Holt noted, however, that this would require interpretation from the County Attorney's Office due to the Trust.

Mr. Hitchens inquired if the house was a new structure or an existing structure or if there would be additions to the structure or changes to the timberland.

Mr. Holt responded that it is an existing structure and there would be no additions or changes.

Mr. Bradshaw inquired if the requested use would be allowed were the property not in an AFD.

Ms. Cook stated that the use could be considered since it is a SUP use; however, County Code does not permit an SUP of this type to be issued to a property that is in an AFD.

Mr. Bradshaw stated that he believed the property meets the statute for withdrawal, as well as the criteria for change in circumstance; the area proposed to be withdrawn is only a portion of the property and is not receiving land use valuation; it is a use that would be allowed with an SUP; and the tax consequences would be zero. Mr. Bradshaw inquired whether it is even necessary to withdraw the property.

Ms. Cook stated that the adopted Ordinance requires the withdrawal to allow an SUP to be granted.

Ms. Garrett inquired what the staff recommendation would be based on the death of a property owner meeting the criteria of change in circumstances.

Ms. Cook stated that staff believes all four criteria must be met.

Mr. Bradshaw stated that State Code would supersede County Code.

The Committee and Mr. Holt discussed how the property being held in a Trust would align with interpretation of the State Code section governing withdrawal of a property within two years of the death of an owner.

Mr. Ford stated that he would recommend that the Committee approve the withdrawal.

Mr. Bradshaw seconded the motion.

Ms. Cook stated that it would be necessary to have an interpretation from the County Attorney's Office regarding whether the death of Mr. Jamison met the State Code statute. Ms. Cook further stated that it would be helpful for the Committee to vote on the matter so that, should the County Attorney's Office find that the State Code statute was not met, the applicant would not be delayed in pursuing the SUP.

Mr. Ford stated that under normal circumstances the Committee would recommend denial because property owners are well aware of the restrictions that they have agreed to for the district term.

Mr. Abbott inquired if there would be any new structures or renovation of the existing structure.

Mr. Holt stated that there would be no additions or renovation aside from possible redecorating.

Ms. Sadler requested that Mr. Holt clarify his comment regarding the determination about the proposed use not meeting the criteria of serving a public purpose.

Mr. Holt stated that if each request is considered in relation to whether they meet all criteria, then the only criteria that matters is the public purpose because it is a narrow criteria. Mr. Holt stated that the request should be evaluated by each individual criteria.

Mr. Abbott stated that this application meets the broader goal of encouraging tourism.

Ms. Garrett requested a roll call vote.

On a roll call vote, the committee voted 8-0 to recommend approval of the withdrawal request.

Mr. Abbott moved to adjourn.

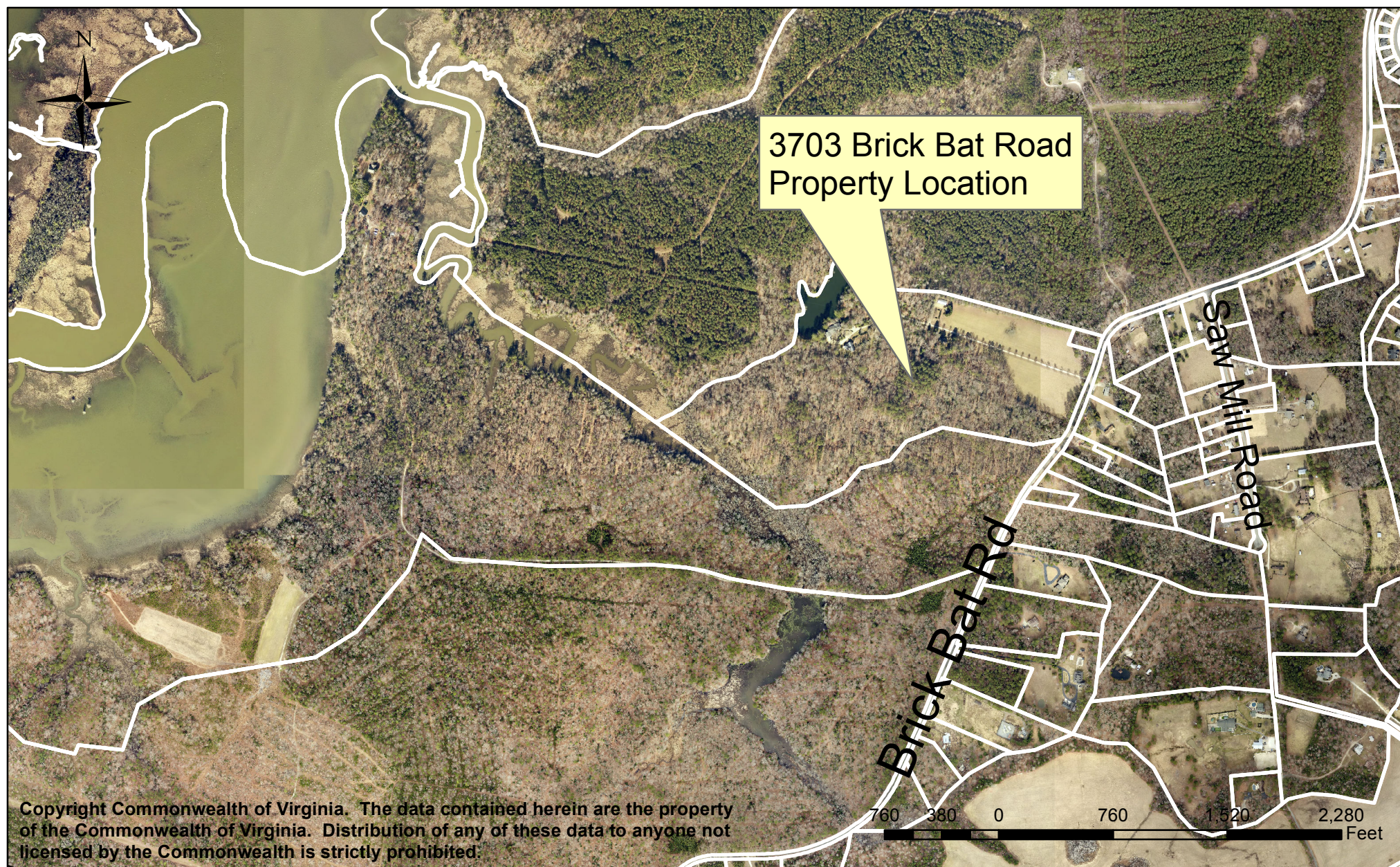
On a voice vote, the meeting was adjourned at 4:25 p.m.

Ms. Smith, Chair

Ellen Cook,

AFD-09-86-01-2016

3703 Brick Bat Road Withdrawal



KAUFMAN & CANOLES
attorneys at law

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wlholt@kaufcan.com

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F (757) 259.3838

kaufCAN.com

February 8, 2016

VIA EMAIL

Paul Holt
Director of Planning
James City County
101-A Mount Bays Road
Williamsburg, VA 23185

**Re: 3703 Brick Bat Road Tourist Home SUP-0002-2016
Request for Removal from Gordon Creek Agricultural & Forestal District
Our Matter No. 0162968**

Dear Mr. Holt:

On behalf of my client The Carol Sansone Jamison Marital Trust Two and The Carol Sansone Jamison Family Trust (collectively, the "Trust"), I write to request that the area which is the subject of the above-referenced special use permit application be formally removed from the Gordon Creek Agricultural and Forestal District ("AFD"). The area requested to be removed is shown on the attached exhibit and comprises only 1.45 acres of my client's 57.6 acre property currently included in the AFD. Aside from the 1.45 acres shown on the exhibit and covered by the SUP application, my client wishes to leave the remaining 56.15 acres of the subject parcel in the AFD. The details of this request are as follows.

My client has applied for a special use permit to allow the existing residence on the subject property to be used as a "tourist home" (bed and breakfast) in accordance with James City County Code Sec. 24-212. No expansion of any existing structures or additional impervious area is proposed by the SUP, rather the application simply seeks to permit to the rental of bedrooms in the residence to accommodate overnight bed and breakfasts guests. The remainder of the Trust property will remain in agricultural and forestal use with no changes from the current usage. In the event that the Board of Supervisors does not approve the SUP at issue, my client will seek to place the 1.45 acre portion of the property back into the AFD.

As you know, the Board of Supervisors has a policy governing withdrawals from the AFD during the terms of those districts. The criteria for withdrawal are outlined below along with a brief discussion of how this minor request meets the criteria. With regard to application of the specific criteria, the policy states that "[t]he Board shall weight each of the above criteria in its deliberation, but may also use whatever other criteria as it deems appropriate for the individual case."

AFD Withdrawal Criteria

A. Change in Circumstances: At the time of the last renewal of the AFD, John Jamison, the prior owner and occupant of the residence was still living and the plans of using this property as a bed and breakfast had not yet materialized. Had these circumstances arisen prior to the renewal of the AFD, my client could have requested removal of this 1.45 acre portion of the subject property prior to renewal of the AFD.


B. Public Purpose: This request does serve a public purpose in promoting tourism in James City County and the Historic Triangle through the use of the residence on the subject property as a "tourist home" in accordance with James City County Code Sec. 24-212. This property has rich history dating back to the 1800s, when it began as a small farm and hunting lodge as part of the Warburton Plantation. As the home is already existing and used for residential purposes, the SUP and withdrawal from the AFD only seeks to open and share this home with the public as a "tourist home".

C. No Damage or Disruption to Existing District: This request would only apply to a very minor 1.45-acre portion of the larger 57.6-acre parcel. This removal of 1.45 acres from the AFD constitutes less than 0.046% of the overall 3,129.05 acres in the AFD. Additionally, as stated herein, no expansion of any existing structures or additional impervious area is proposed on the property. Further, the residence and driveway on the subject property are already treated separately from the remaining property from a tax standpoint and are not assessed at the lower "use value" like the rest of the property.

D. Consistent with Comprehensive Plan: The subject property is designated as "Rural Lands" on the 2035 Comprehensive Plan. Clearly, the primary recommended uses for the Rural Lands designation are traditional agricultural and forestal uses, consistent with the current use of 56.15 of the total 57.6 acres of the subject property. Additionally, the Comprehensive Plan speaks of "*agricultural or forestal-support uses including 'eco-tourism, home-based occupations, or certain uses which require very low intensity settings relative to the site in which it will be located[.]'*" The proposed low intensity use of a very minor portion of this property as a "tourist home" fits precisely within the Comprehensive Plan description of the supporting uses desired in Rural Lands. This is not a typical bed and breakfast in Downtown Williamsburg or an urban area, but rather guests at the Mallardee Farm are drawn to the rural and farm feeling of this property with animals, gardens, barns, and pastures. This property began as a small farm and hunting lodge and remains a great reflection and showpiece of the County's agricultural and forestal roots. This low intensity use is precisely the type of "supporting" use the Comprehensive Plan envisions for Rural Lands.

I hope this correspondence is useful in your consideration of this matter and I welcome any further questions or comments that may arise. Thank you for your kind attention to this matter.

Very truly yours,



William L. Holt

cc: Ellen Cook, Planner
Gregory R. Davis, Trustee
Kelly Supplee

EXHIBIT A

3703-Brick Bat Road

1.45 Acres for Withdrawal from Gordon Creek AFD



RESOLUTION

POLICY GOVERNING THE WITHDRAWALS OF PROPERTY FROM AGRICULTURAL

AND FORESTAL DISTRICTS (AFDs)

WHEREAS, the Board of Supervisors has determined that Agricultural and Forestal Districts (AFDs) are a valuable tool to help protect the agricultural and forestal lands and industry in James City County; and

WHEREAS, premature withdrawals of land from the Districts is contrary to the intent of the Board in allowing the establishment of these Districts.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby establishes the following policy relating to the withdrawal of lands from AFDs during the terms of those Districts. This policy in no way supersedes the provisions for withdrawal by right under Sections 15.2-4311 or 15.2-4314D of the Code of Virginia.

1. It is the policy of the Board of Supervisors to discourage the withdrawal of properties from AFDs during the terms of those districts.
2. The criteria for withdrawal during the terms of the districts are as follows:

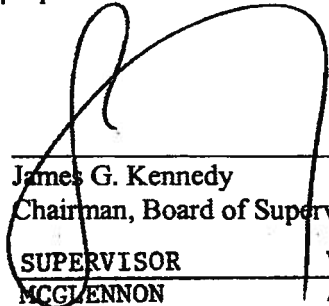
In order to establish "good and reasonable cause," a landowner requesting to withdraw property from an AFD must submit written information to demonstrate compliance with the following criteria:

- A. The request is caused by a change in circumstances that could not have been anticipated at the time application was made for inclusion in the district.
- B. The request would serve a public purpose, as opposed to the proprietary interest of the landowner that could not otherwise be realized upon expiration of the AFD.
- C. The request would not cause damage or disruption to the existing district.
- D. If the request for withdrawal is in conjunction with a proposal to convert the land use of a property to a different use than is currently in place on the property, the new land use would be in conformance with the Comprehensive Plan.

The Board shall weigh each of the above criteria in its deliberation, but may also use whatever other criteria as it deems appropriate for the individual case.

ATTEST:


Robert C. Middaugh
Clerk to the Board


James G. Kennedy
Chairman, Board of Supervisors

SUPERVISOR	VOTE
MCGLENNON	AYE
GOODSON	AYE
ICENHOUR	AYE
JONES	AYE
KENNEDY	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 28th day of September, 2010.

AGRICULTURAL AND FORESTAL DISTRICT ANALYSIS

On September 28, 2010, the Board of Supervisors adopted a policy and withdrawal criteria for AFD parcels. The withdrawal policy, as adopted by the Board, states that it is the policy of the Board of Supervisors to discourage the withdrawal of properties from AFDs during the terms of those districts. The withdrawal criteria in the policy are listed below with staff comments following in italics:

The criteria for withdrawal during the terms of the districts are as follows:

- A. The request is caused by a change in circumstances that could not have been anticipated at the time application was made for inclusion in the district.

This property has been in trust ownership since before the last renewal of the AFD in 2014. The applicant has indicated that Mr. Jamison, prior owner and occupant of the house, and father of current resident Ms. Supplee, passed away in 2015. Prior to that time, the plans of using this property as a bed and breakfast had not yet materialized..

- B. The request would serve a public purpose, as opposed to the proprietary interest of the landowner, that could not otherwise be realized upon expiration of the AFD.

While staff acknowledges that the desired use of the property is consistent with broader community goals as expressed in the Comprehensive Plan, the withdrawal of this parcel would not explicitly serve a public interest. Previous examples of withdrawals that served a public purpose included the Matoaka Elementary School.

- C. The request would not cause damage or disruption to the existing district.

Should this withdrawal be approved, the size of the Gordon Creek would be 3,127.6 acres and will still meet minimum acreage requirements for Agricultural and Forestal Districts. Staff finds that no damage to the District will result from this withdrawal.

- D. If the request for withdrawal is in conjunction with a proposal to convert the land use of a property to a different use than is currently in place, the new land use would be in conformance with the Comprehensive Plan.

In conjunction with this withdrawal request, the applicant has submitted a special use permit application for a tourist home. The tourist home will involve the rental of up to five rooms within the existing residential structures on this property. Staff finds this use to be compatible with surrounding property and meets rural economic development goals. Staff finds the proposed tourist home would be consistent with the Comprehensive Plan's Rural Lands designation.

**Case No. AFD-09-86-1-2014. Gordon Creek Agricultural and Forestal District Renewal
Staff Report for the September 9, 2014, Board of Supervisors Public Hearing**

This staff report is prepared by the James City County Planning Division to provide information to the AFD Advisory Committee, Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

PUBLIC HEARINGS

AFD Advisory Committee:

Planning Commission:

Board of Supervisors:

Building F Board Room: County Government Complex

July 7, 2014, 4:00 p.m. (Human Services Building)

August 6, 2014, 7:00 p.m.

September 9, 2014, 7:00 p.m.

SUMMARY FACTS

Owners:

<u>Owners:</u>	<u>Parcel No.</u>	<u>Acres</u>
Martha W. McMurran and SWR-Pinewood	3540100001.....	394.50
Edward Warburton, III and Regina L.	3520100001B.....	29.00
Edward Warburton	2940100011.....	56.20
David H. Allen and Stephanie M.	3420100002.....	132.98
Thomas R. Tucker, Trustee	3420100002A.....	25.02
Martha W. McMurran and SWR-Pinewood	3630100003.....	264.00
Thomas L. Hitchens	3610100006.....	35.00
W.A. Thompson and Charles Flemming	3620100040.....	136.96
Claybank Landing, LLC	4320100012.....	33.83
Claybank Landing, LLC	4320100013.....	46.04
Claybank Landing, LLC	4320100014.....	44.92
Richardson Holdings Limited Partnership	3640100007.....	116.65
Richardson Holdings Limited Partnership	3030100003.....	33.00
Jane T. Carswell	3610100003.....	44.00
Martha W. McMurran and SWR-MISC, LLC	3610100004.....	37.62
Powhatan Associates	4410100001.....	387.42
Powhatan Associates	3530100001.....	241.68
Mary Rebecca Richardson Abbott	3620100018.....	43.55
Trust Company of Virginia, c/o Greg Davis	3540100009.....	57.60
Linda Henderson Gordon	3420100001.....	35.30
Williamsburg Pottery, Inc.	4410100002.....	26.00
Naysey Bay Land Co.	3510100003.....	32.00
Naysey Bay Land Co.	3510100006.....	34.30
William Kane	2940100003.....	4.00
William Kane	3030100007.....	8.00
William Kane	3520100007.....	131.00
William Kane	3610100001.....	8.33
William Kane	3610100002.....	13.00
Baxter I. Bell Jr., Trustee	4320100003.....	207.95
Robert Anson and S. Carswell	3520100010.....	28.36
Beatrice Richardson Est.	3640100009.....	22.00
Richardson Holdings Limited Partnership	3640100008.....	38.00
Pickett Holdings, LLC	3510100001.....	349.00
Jerry W. Nixon and Martha M.	3730100003.....	30.74
Michael B. Isler and Michelle Ann	3630100004.....	1.10
	TOTAL ACRES	<u>3,129.05</u>

Zoning: A-1, General Agricultural

Comprehensive Plan: Low Density Residential, Rural Lands and Conservation Area

Primary Service Area: Two parcels inside, with the remainder located outside the Primary Service Area (PSA)

STAFF RECOMMENDATION

Staff finds this Agricultural and Forestal District (AFD) consistent with the surrounding zoning and consistent with the goals of the Comprehensive Plan. Staff recommends the Board of Supervisors renew the Gordon Creek AFD for a period of four years, subject to the conditions listed in the attached resolution.

Staff Contact: Luke Vinciguerra Phone: 253-6783

PLANNING COMMISSION RECOMMENDATION

At its August 6, 2014, meeting, the Planning Commission recommended the continuation of the District by a vote of 6-0 (Richardson absent).

AFD ADVISORY COMMITTEE RECOMMENDATION

At its July 7, 2014, meeting, the AFD Advisory Committee voted 8-0 to recommend the continuation of the District to the Planning Commission and Board of Supervisors.

Proposed Changes Made Since the Planning Commission Meeting

A property owner has requested not to continue 516.17 acres in the AFD (Attachment No. 9).

SUMMARY

As required by State Code, the County must review all established AFDs prior to their expiration. During this review, districts must be continued, modified, or terminated. This report will review AFD-9-86, Gordon Creek, which is scheduled to expire October 31, 2014.

Staff is attempting to synchronize the expiration dates of all districts. As part of the 2014 renewal process, staff is recommending a term of four years, making the expiration date October 31, 2018.

DISTRICT HISTORY

The District was approved on December 1, 1986, for a term of four years. It was subsequently renewed for four-year terms in October 1990, October 1994, September 1998, August 2002, and July 2006. There have been several additions to the Gordon Creek AFD since 1994. Approximately 40 acres of land was taken out of the District in May 2006 for the purpose of constructing the 8th Williamsburg-James City County (W-JCC) Elementary School. Originally, the property was a part of the approximately 164-acre parcel placed in the AFD by the previous owner. During the April 2006 renewal, the Barrett's Ferry AFD was terminated and the remaining land was transferred to the Gordon Creek AFD. The transfer consisted of one parcel of approximately 210 acres in land, mostly wooded in nature. On July 8, 2008, the Board of Supervisors removed 165.50 acres of land from the Gordon Creek AFD District as a part of the Ford's Colony, Section 37 rezoning. In 2010, the District was renewed for a four-year term with no addition or withdrawal of property. Since the 2010 renewal, property owned by Claybank Landing, LLC has been subdivided; however, this does not affect the size of the district. Additionally, 30.74 acres were added by Martha and Jerry Nixon, 349 acres were added by Pickett Holdings LLC, 38 acres were added by Richardson Holdings Limited Partnership, and 22 acres were added by Beatrice Richardson Estate.

The District includes all the land on the above-referenced properties with the exception of all land within 25 feet of arterial road rights-of-way. That property has been excluded from the District to allow for possible road and/or drainage improvements.

The Gordon Creek AFD consists of approximately 3,129.05 acres located in and around the Centerville Road/News Road area. The AFD contains parcels which front on the following roads: News Road, John Tyler Highway, Centerville Road, Bush Neck Road, Jolly Pond Road, and Brick Bat Road.

ANALYSIS

The majority of the District contains woodlands. All of the land within this District is zoned A-1, General Agricultural, and a major portion of the surrounding property is presently zoned A-1 and is forested. Most of the District is designated Rural Lands by the Comprehensive Plan. The Nayses Bay area is designated as Conservation Area by the Comprehensive Plan. The majority of the District is located outside of the PSA and the area remains relatively rural in nature. A small portion (340.74 acres) is located inside the PSA, the area of the County that has been designated for growth. The continuation of AFD property within the PSA is consistent with the Comprehensive Plan as this would serve the public purpose of holding key tracts of land temporarily while development plans can be created, maximizing the potential use of the property.

REQUEST NOT TO CONTINUE IN THE AFD

A property owner of 3010 Jolly Pond Road, 4085 Centerville Road, and additional unaddressed property has requested not to continue in the AFD (Attachment No.9).

ADDITIONS

No property owner has requested land be added to the District during this renewal period.

CHANGE IN CONDITIONS

Staff is recommending a revision to Condition No. 2 to correct language that references the Board of Supervisor's policy pertaining to Withdrawal of Lands from Agricultural and Forestal Districts to refer to the most recent policy adopted in 2010. The proposed change is as follows:

~~"No land outside the Primary Service Area (PSA) and within the Agricultural and Forestal District may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land outside the PSA, and within the Agricultural and Forestal District, may be withdrawn from the District in accordance with the Board of Supervisors' policy pertaining to Withdrawal of Lands from Agricultural and Forestal Districts Outside the Primary Service Area, adopted September 24, 1996, as amended. Land inside the PSA, and within the Agricultural and Forestal District, may be withdrawn from the District in accordance with the Board of Supervisors' policy pertaining to Withdrawal of Lands from Agricultural and Forestal Districts Within the Primary Service Area, adopted September 24, 1996, as amended."~~

No land outside the Primary Service Area and within the AFD may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the AFD may be withdrawn from the District in accordance with the Board of Supervisors' Policy Governing the Withdrawals of Property from AFDs, adopted September 28, 2010, as amended.

STAFF RECOMMENDATION

Staff finds this AFD consistent with the surrounding zoning and consistent with the goals of the Comprehensive Plan. At its August 6, 2014, meeting, the Planning Commission voted to recommend the continuation of the District by a vote of 6-0 (Richardson absent). At its July 7, 2014, meeting, the AFD Advisory Committee voted 8-0 recommending the continuation of the District to the Planning Commission and Board of Supervisors. Staff recommends the Board of Supervisors renew the Gordon Creek AFD for a period of four years, subject to the conditions listed in the attached resolution.


Luke Vinciguerra

CONCUR:


Allen J. Murphy, Jr.

LV/nb
AFD09-86-14GordonCk

Attachments:

1. Ordinance
2. Location Map
3. Existing ordinance and conditions, dated September 28, 2010
4. Ordinance for the addition of property, dated December 14, 2010
5. Ordinance for the addition of property, dated March 8, 2011
6. Ordinance for the addition of property, dated July 9, 2013
7. Approved minutes of the July 7, 2014, AFD Advisory Committee meeting (under separate cover)
8. Unapproved minutes of the August 6, 2014, Planning Commission meeting (under separate cover)
9. Property owner non-continue request.

ADOPTED

SEP 09 2014

ORDINANCE NO. 170A-20

**Board of Supervisors
James City County, VA**

AGRICULTURAL AND FORESTAL DISTRICT 09-86

GORDON CREEK 2014 RENEWAL

WHEREAS, James City County has completed a review of the Gordon Creek Agricultural and Forestal District; and

WHEREAS, in accordance with Section 15.2-4311 of the Code of Virginia, 1950, as amended (the "Virginia Code") property owners have been notified, public notices have been filed, public hearings have been advertised, and public hearings have been held on the continuation of the Gordon Creek Agricultural and Forestal District; and

WHEREAS, the Agricultural and Forestal District Advisory Committee at its meeting on July 7, 2014, voted 8-0 to recommend renewal of the district; and

WHEREAS, the Planning Commission following its public hearing on August 6, 2014, concurred with the recommendation of staff and the AFD Advisory Committee and voted 6-0 to recommend renewal of the district with the conditions listed below.


NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of James City County, Virginia, that:

- 1. The Gordon Creek Agricultural and Forestal District is hereby continued to October 31, 2018, in accordance with the provisions of the Virginia Agricultural and Forestal District Act, Virginia Code Section 15.2-4300 et. seq.**
- 2. That the district shall include the following parcels, provided, however, that all land within 25 feet of road rights-of-way is excluded from the district:**

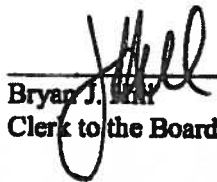
<u>Owner</u>	<u>Parcel No.</u>	<u>Acres</u>
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Edward Warburton, III and Regina L	3520100001B	29.00
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Pickett Holdings, LLC	3510100001.....	349.00
Jerry W. Nixon and Martha M.	3730100003.....	30.74
Michael B. Isler and Michelle Ann	3630100004.....	1.10
Total:.....		<u>3,129.05</u>

3. That pursuant to the Virginia Code, Section 15.2-4312 and 15.2-4313, the Board of Supervisors requires that no parcel in the Gordon Creek Agricultural and Forestal District be developed to a more intensive use without prior approval of the Board of Supervisors. Specifically, the following restrictions shall apply:
- a. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of Wireless Communications Facilities (WCF), provided: a) the subdivision does not result in the total acreage of the District to drop below 200 acres; and b) the subdivision does not result in a remnant parcel of less than 25 acres.
 - b. No land outside the Primary Service Area and within the AFD may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the District. Land within the AFD may be withdrawn from the District in accordance with the Board of Supervisors' Policy Governing the Withdrawal of Properties from AFDs, adopted September 28, 2010.
 - c. No special use permit shall be issued except for agricultural, forestal, or other activities and uses consistent with Virginia Code, Section 15.2-4301 et. seq., which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue special use permits for wireless communications facilities on AFD properties which are in accordance with the County's policies and ordinances regulating such facilities.


Mary K. Jones
Chairman, Board of Supervisors

ATTEST:


Bryan J. Hill
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
KENNEDY	<u>X</u>	—	—
JONES	<u>X</u>	—	—
MCGLENNON	<u>X</u>	—	—
ONIZUK	<u>X</u>	—	—
HIPPLE	<u>X</u>	—	—

Adopted by the Board of Supervisors of James City County, Virginia, this 9th day of September, 2014.

AFD09-86-14GordonCk-res

ITEM SUMMARY

DATE: 4/12/2016

TO: The Board of Supervisors

FROM: Ellen Cook, Senior Planner II

SUBJECT: Case No. SUP-0002-2016, 3703 Brick Bat Road Tourist Home

ATTACHMENTS:

	Description	Type
▣	Staff Report	Staff Report
▣	Resolution	Resolution
▣	Planning Commission Minutes	Minutes
▣	Location Map	Exhibit
▣	Master Plan, Applicant Narrative and Site Photographs	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	3/24/2016 - 3:04 PM
Development Management	Purse, Jason	Approved	3/25/2016 - 8:02 AM
Publication Management	Boles, Amy	Approved	3/25/2016 - 8:30 AM
Legal Review	Kinsman, Adam	Approved	3/25/2016 - 8:33 AM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 11:19 AM
Board Secretary	Hill, Bryan	Approved	3/25/2016 - 2:00 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 3:25 PM

SPECIAL USE PERMIT-0002-2016. 3703 Brick Bat Road Tourist Home
Staff Report for the April 12, 2016, Board of Supervisors Public Hearing

SUMMARY FACTS

Applicant: Mr. Will Holt, Kaufman and Canoles

Land Owners: The Carol Sansone Jamison Marital Trust
Two and the Carol Sansone Jamison Family Trust

Proposal: Operation of a Tourist Home

Location: 3703 Brick Bat Road

Tax Map/Parcel No.: 3540100009

Parcel Acreage: +/-57.6 acres

Zoning: A-1, General Agricultural

Comprehensive Plan: Rural Lands

Primary Service Area: Outside

PUBLIC HEARING DATES

Planning Commission: March 2, 2016, 7:00 p.m.
Board of Supervisors: April 12, 2016, 6:30 p.m.

Staff Contact: Ellen Cook, Senior Planner II

FACTORS FAVORABLE

1. With the proposed conditions, the proposal is compatible with surrounding development.
2. The proposal is consistent with the recommendations of the Comprehensive Plan.

FACTORS UNFAVORABLE

1. Should the Board of Supervisors deny the applicant's request to withdraw the acreage where this use will be sited from the Gordon Creek Agricultural and Forestal District (AFD), then this use would not be consistent with the terms of the AFD.

SUMMARY STAFF RECOMMENDATION

Approval, subject to the proposed conditions and to removal of the property from the AFD.

PLANNING COMMITTEE RECOMMENDATION

The Planning Commission recommended approval of this Special Use Permit (SUP) application and the attached conditions at its March 2, 2016 meeting by a vote of 7-0.

PROPOSED CHANGES MADE SINCE THE PLANNING COMMISSION MEETING

None.

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

SPECIAL USE PERMIT-0002-2016. 3703 Brick Bat Road Tourist Home
Staff Report for the April 12, 2016, Board of Supervisors Public Hearing

PROJECT DESCRIPTION

- Proposal to operate a bed and breakfast, classified under the ordinance as a Tourist Home.
- The Tourist Home will have rental of up to five rooms. The property owner plans to live on site, but note that the Zoning Ordinance definition and the SUP conditions allow flexibility with regard to future occupancy.
- No changes in the size of the house or other buildings.
- The property has an existing driveway and an existing parking area sufficient to accommodate guests.

PLANNING AND ZONING HISTORY

- The Gordon Creek AFD was created by the Board in 1986 and was renewed on September 9, 2014.

SURROUNDING ZONING AND DEVELOPMENT

- Located on Brick Bat Road approximately three-quarters of a mile southwest of Matoaka Elementary School.
- The surrounding zoning of all properties is A-1, General Agricultural. The properties across Brick Bat Road are residential lots and properties to the north and south are undeveloped forested land.

COMPREHENSIVE PLAN

The property is designated Rural Lands, as are all of the surrounding parcels.

- Appropriate primary uses include traditional agricultural and forestal activities, but also innovative uses such as agri-tourism.

Staff finds this use to fit within the agri-tourism category.

- The development standards state that non-agricultural/non-forestal uses should be sited to minimize impacts or disturbance to agricultural and forestal uses, open fields and important agricultural/forestal soils and resources. Staff finds the use to be consistent given that the proposal will take place within existing structures and the forested and agricultural aspects of the property will be maintained.
- The Comprehensive Plan's Land Use Goals, Strategies and Actions include support for implementation of the County's Strategy for Rural Economic Development. The Strategy specifically encourages agri-tourism uses.

PUBLIC IMPACTS

Anticipated impact on public facilities and services: None.

Nearby and surrounding properties: No impacts anticipated.

PROPOSED SUP CONDITIONS

- The full text of the conditions is provided in Attachment No. 1.

STAFF RECOMMENDATION

Staff finds the proposal to be compatible with surrounding development and consistent with the 2035 Comprehensive Plan and Zoning Ordinance. Staff recommends the Board of Supervisors approve this application, subject to the attached conditions and to removal of the property from the AFD.

EC/ab

SUP-02-16BrickBatTourHome

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

Attachments:

1. Resolution
2. Planning Commission Minutes
3. Location Map
4. Master Plan, Applicant Narrative and Site Photographs

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

RESOLUTION

CASE NO. SUP-0002-2016. BRICK BAT ROAD TOURIST HOME

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

WHEREAS, Mr. Will Holt has applied for an SUP on behalf of the Carol Sansone Jamison Marital Trust Two and the Carol Sansone Jamison Family Trust (together, the “Owner”) to allow a tourist home on property consisting of approximately 57.6 acres zoned A-1, General Agricultural District, located at 3703 Brick Bat Road and further identified as James City County Real Estate Tax Map Parcel No. 3540100009; and

WHEREAS, the proposed use is shown on a plan entitled “JCC SUP-0002-2016: 3703 Brick Bat Road Tourist Home” and date stamped February 26, 2016; and

WHEREAS, the Planning Commission, following its public hearing on March 2, 2016, voted 7-0 to recommend approval of this application; and

WHEREAS, a public hearing was advertised, adjoining property owners notified and a hearing conducted on Case No. SUP-0002-2016; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2035 Comprehensive Plan Land Use Map designation for the Property and the considerations of Section 24-9 of the County Code.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby approves the issuance of SUP-0002-2016 as described herein with the following conditions:

1. **Master Plan:** This SUP shall permit a tourist home on property located at 3703 Brick Bat Road and further identified as James City County Real Estate Tax Map Parcel No. 3540100009 (the “Property”). The use and layout of the Property shall be generally located as shown on the document entitled “JCC SUP-0002-2016: 3703 Brick Bat Road Tourist Home” and date stamped February 26, 2016 (the “Master Plan”), with any deviations considered per Section 24-23(a)(2) of the Zoning Ordinance, as amended.
2. **Number of Rental Rooms:** There shall be no more than five bedrooms available for rental to visitors.
3. **Signage:** One freestanding, non-illuminated sign, not exceeding four square feet in area, may be permitted to identify this use.
4. **Virginia Department of Health:** Prior to commencing operation of the tourist home, the Owner shall submit lodging accommodation plans to the Virginia Department of Health and meet any other applicable Department of Health regulations. The Owner shall furnish a copy of the lodging and accommodation plans and any paperwork

indicating Department of Health approvals to the Director of Planning prior to issuance of a new Certificate of Occupancy.

5. **Certificate of Occupancy:** The Owner shall obtain a new Certificate of Occupancy within 36 months of issuance of this SUP or the permit shall be void.
6. **Severance Clause:** This SUP is not severable. Invalidation of any word, phrase, clause, sentence or paragraph shall invalidate the remainder.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Bryan J. Hill
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCLENNON	_____	_____	_____
LARSON	_____	_____	_____
ONIZUK	_____	_____	_____
SADLER	_____	_____	_____
HIPPLE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of April, 2016.

SUP-02-16BrickBatTourHome-res

Minutes of the March 2, 2016 Planning Commission Meeting (Unapproved)

Case No. SUP-0002-2016, 3703 Brick Bat Road Tourist Home

Ms. Ellen Cook, Senior Planner II, stated that Mr. Will Holt, Kaufman and Canoles, on behalf of the Carol Sansone Jamison Marital Trust Two and the Carol Sansone Jamison Family Trust, has applied to for a Special Use Permit to operate a Tourist Home at 3703 Brick Bat Road. Ms. Cook stated that the Tourist Home will have rental of up to five rooms with no changes in the size of the house or other buildings. Ms. Cook stated that the property has an existing driveway and an existing parking area sufficient to accommodate guests.

Ms. Cook stated that the property is designated rural lands on the 2035 Land Use Map, as are all the surrounding parcels. Ms. Cook further stated that the use is consistent with the recommended uses in the Comprehensive Plan and meets rural lands development standards, given that the use would take place within existing structures and the forested and agricultural aspects of the property will be maintained. Ms. Cook stated that staff further finds the use to be consistent with the Comprehensive Plan goals for supporting implementation of the County's Strategy for Rural Economic Development.

Ms. Cook stated that staff finds the proposal to be consistent with surrounding development and the 2035 Comprehensive Plan. Ms. Cook stated that staff recommends that the Planning Commission recommend approval of the application to the Board of Supervisors subject the suggested conditions and removal of the property from the AFD.

Ms. Bledsoe opened the floor for questions from the Commission.

Mr. Richardson inquired why a separate application was required for the operation of a Tourist Home.

Ms. Cook stated that it is a separate matter and a separate vote is required for a recommendation on the SUP.

Ms. Bledsoe opened the public hearing.

Mr. Will Holt, Kaufman & Canoles, 4801 Courthouse Street, stated that he represents the property owner. Mr. Holt noted that the proposed use will not require any changes to the existing structures; the property would be used as is with rooms rented out as a bed & breakfast.

Mr. O'Connor inquired if the property owner was comfortable with the five-room cap.

Mr. Holt confirmed.

As no one else wished to speak, Ms. Bledsoe closed the public hearing.

Ms. Bledsoe called for disclosures from the Commission.

There were no disclosures.

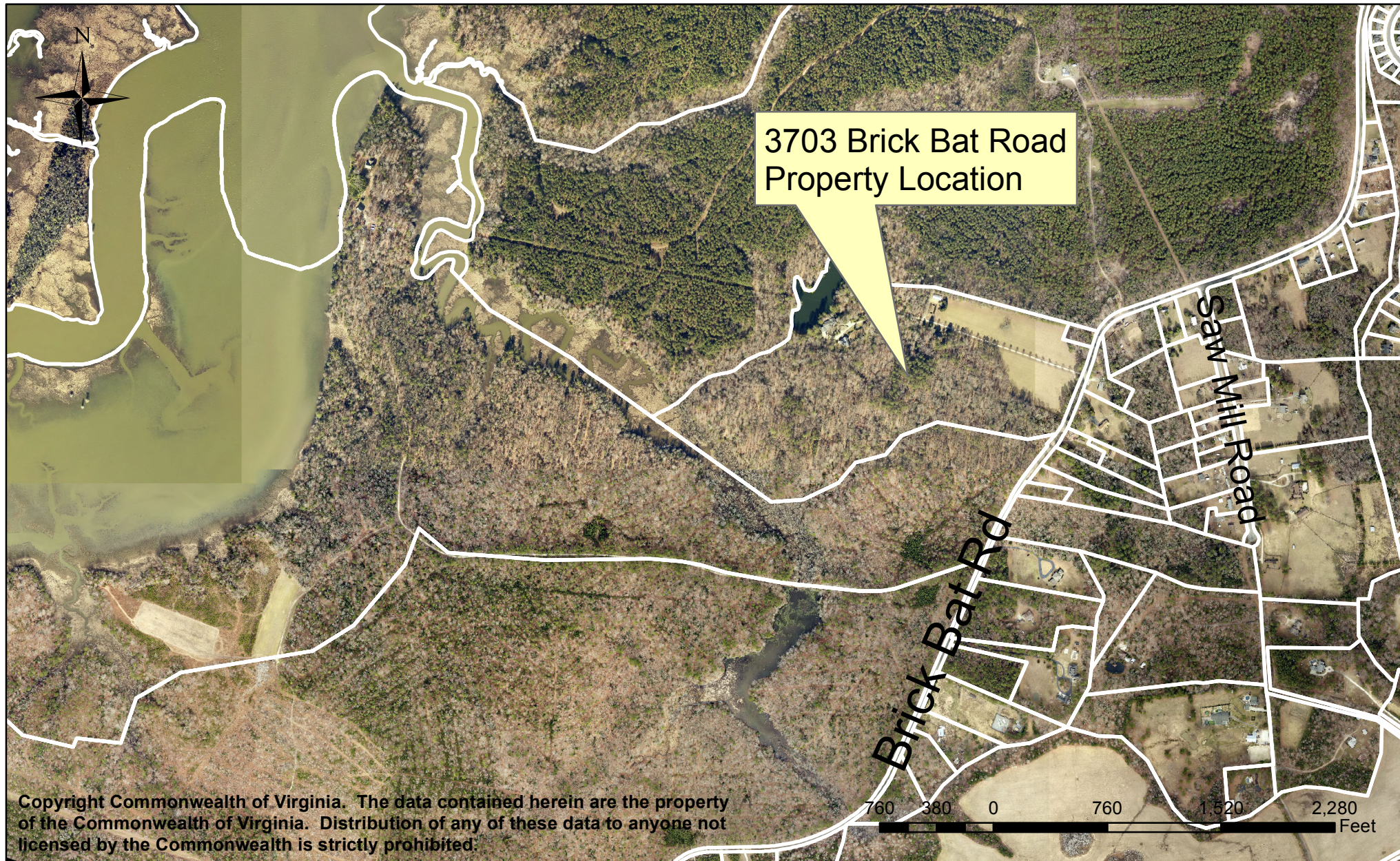
Ms. Bledsoe opened the floor for discussion.

Mr. Krapf moved to approve the application.

On a roll call vote the Commission voted to recommend approval of SUP-0002-2016, 3703 Brick Bat Road Tourist Home (7-0).

SUP-0002-2016

3703 Brick Bat Road Tourist Home



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JCC SUP-0002-2016: 3703 Brick Bat Road Tourist Home

Master Plan for a five-bedroom tourist home (bed and breakfast).

Address: 3703 Brick Bat Road

Tax Map ID: 3540100009

Zoning: A-1, General Agricultural

General Notes:

1. No expansion of the existing structures or additional impervious area is proposed
2. The tourist home will be served by the existing well and on-site sewage disposal system.
3. Property has an existing paved driveway.
4. Parking:
 - a. Required: 2 spaces for single family unit
5 spaces for the rental rooms
7 total
 - b. Existing: 12 spaces (A two-car garage, the remainder outside)

Sheet Index:

1. Cover sheet
2. SUP Exhibit



Date Stamp: February 26, 2016

MALLARDEE TOURIST HOME - SUP EXHIBIT



MALLARDEE TOURIST HOME – 3703 Brick Bat Road

SUP APPLICATION NARRATIVE

Background

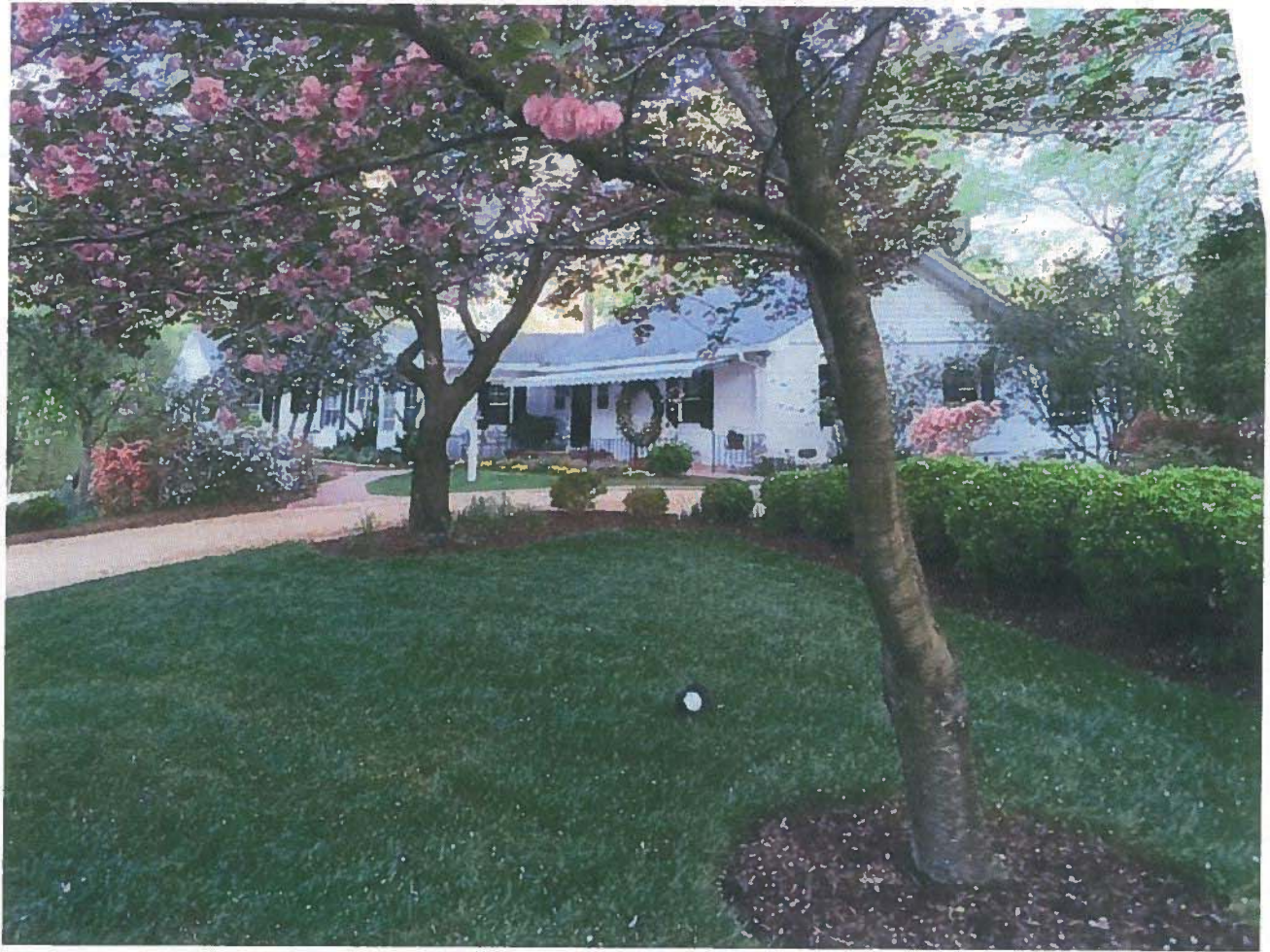
Mallardee, aptly named for the ducks on its pond and ubiquitous chickadees on the property, is a 56-acre retreat which began as a small farm and hunting lodge on Brick Bat Road as part of the Warburton Plantation in the 1800s. The lane, lined with crepe myrtles, runs through a field where acres of jonquils bloom in the spring and sheep are grazing in the pasture. A beautiful red barn, and English conservatory greenhouse can be seen while making your way to the main house. Just beyond the greenhouse, the lane descends through the woods beneath a tall oak grove covering formal English gardens, a recreational pool house, and the original home overlooking Pinewoods Pond. Inside the home, the chair rails and brass fittings reflect previous ownership by Charles Hackett, the Williamsburg Inn's former construction manager. Successive owner Sally Eddy, daughter of Mr. and Mrs. Archibald McRae (former proprietors of Carter's Grove Plantation), added the formal garden and expanded the home to its current size, while maintaining the scale of its modest facade and old hunting lodge interiors.

The home was purchased in 1982 by Carol and John Jamison when they relocated to Williamsburg from New York City. Mr. Jamison served as the Dean of the Business School at The College of William and Mary, CEO of the Mariner's Museum in Newport News, and founded the Williamsburg Community Foundation. The Jamison's loved Williamsburg, and served it accordingly. The property is now home to Kelly and Paul Supplee, daughter and son-in-law of Mr. and Mrs. Jamison. Kelly and Paul were innkeepers in the 1990's when their children were very young, while living near Colonial Williamsburg.

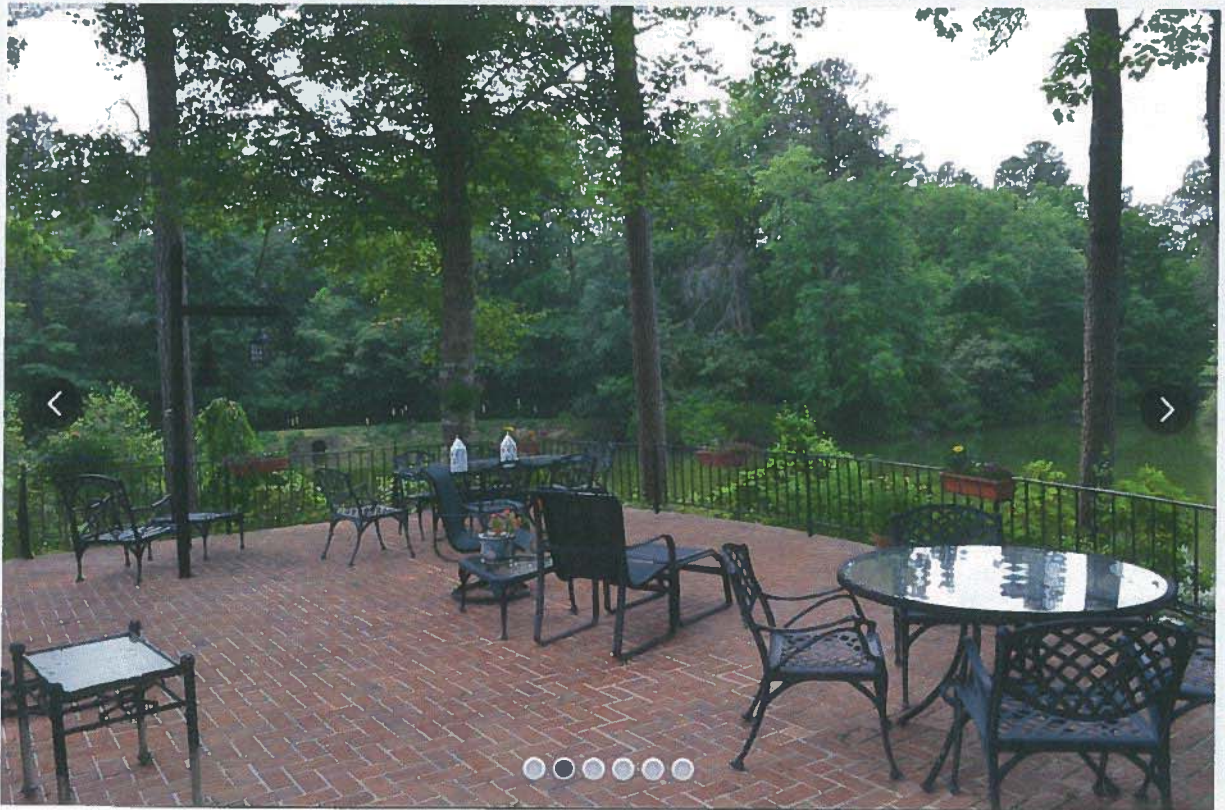
Proposal

The Supplees propose to operate the property as a bed & breakfast ("tourist home" as defined in the County Zoning Ordinance), while continuing to live on the property as their primary residence. No structural expansions at the property are proposed, and the Supplees propose to utilize the home in its existing condition. Five bedrooms are proposed to be available for rental to guests at Mallardee. Paved parking for 12 cars is available on the property, including a 2-car garage. Structures on the property include the main house, a pool house, a barn, and a conservatory greenhouse. All structures on the property are proposed to be open to guests during their stay.























ITEM SUMMARY

DATE: 4/12/2016

TO: The Board of Supervisors

FROM: Leanne Pollock, Senior Planner II

SUBJECT: Z-0005-2015, MP-0002-2015, HW-0002-2015. Patriot's Colony Expansion

There will be a video presentation shown for this agenda item.

ATTACHMENTS:

	Description	Type
▣	Staff report	Staff Report
▣	Attachment 1: Rezoning and master plan resolution	Resolution
▣	Attachment 2: Height limitation waiver resolution	Resolution
▣	Attachment 3: Location Map	Backup Material
▣	Attachment 4: Unapproved minutes of the March 2, 2016 Planning Commission	Minutes
▣	Attachment 5: Master plan	Backup Material
▣	Attachment 6: Proffers	Backup Material
▣	Attachment 7: Viewshed exhibit	Backup Material
▣	Attachment 8: Traffic memorandum	Backup Material
▣	Attachment 9: Fiscal impacts worksheet	Backup Material
▣	Attachment 10: Hybrid building elevations	Backup Material
▣	Attachment 11: Photos from balloon test	Backup Material
▣	Attachment 12: Photos of existing 5-story apartment building	Backup Material
▣	Attachment 13: Letter from the National Park Service	Backup Material
▣	Attachment 14: Public comment #1	Backup Material
▣	Attachment 14: Public comment #2	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	3/18/2016 - 8:25 AM

Development Management	Purse, Jason	Approved	3/18/2016 - 8:41 AM
Publication Management	Burcham, Nan	Approved	3/18/2016 - 8:46 AM
Legal Review	Kinsman, Adam	Approved	3/25/2016 - 8:34 AM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 11:20 AM
Board Secretary	Hill, Bryan	Approved	3/25/2016 - 2:00 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 3:25 PM

SUMMARY FACTS

Applicant: Mr. Todd Martin, Riverside

Land Owner: Riverside Healthcare Associates, Inc.

Proposal: To amend Land Bay M-10 of the Greensprings Master Plan to adjust unit types and unit type maximums for the existing Patriot's Colony continuing care retirement community. The proposal also includes a height limitation waiver request for four hybrid buildings, up to a maximum height of 70 feet above finished grade.

Location: 3400 John Tyler Highway

Tax Map/Parcel No.: 4520100013

Project Acreage: +/- 88.59 acres

Zoning: R-4, Residential Planned Community, with proffers

Proposed Zoning: R-4, Residential Planned Community, with amended proffers

Comprehensive Plan: Low Density Residential/Rural Lands

Primary Service Area: Inside/Outside

PUBLIC HEARING DATES

Planning Commission: March 2, 2016, 7 p.m.
Board of Supervisors: April 12, 2016, 6:30 p.m.

Staff Contact: Leanne Pollock, Senior Planner II

FACTORS FAVORABLE

1. With the proposed amended proffers, the proposal is compatible with surrounding development.
2. The proposal is consistent with the recommendations of the 2035 Comprehensive Plan.
3. Overall the project is a fiscal positive to the community.
4. Decreases the originally proposed density of Land Bay M-10 of the Greensprings Master Plan and the Virginia Department of Transportation concurred that it will not adversely impact the existing surrounding roadway network.
5. Height waiver limits maximum building height to a height that is lower than surrounding trees and with the proposed conditions, meets the criteria outlined in Section 24-286 relative to the granting of height limitation waivers.
6. The National Park Service (NPS) has concurred with proffers proposed to minimize visual impacts to Green Spring National Historical Landmark and stop land disturbance in the event of a previously undiscovered archaeological find.
7. Proffers include a conservation management plan to address habitat identified as suitable for the Northern long-eared bat.
8. First floor parking for hybrid buildings minimizes impervious cover and land disturbance for Phase A of the project.
9. Addresses housing needs of the County's aging population identified in the 2035 Comprehensive Plan.
10. Overall Greensprings Plantation planned residential community will continue to meet Zoning Ordinance requirements for 40% open space and will not exceed 2 du/ac.

FACTORS UNFAVORABLE

1. Does not comply with the Board of Supervisor's policies and guidelines regarding Housing Opportunities and schools.
2. Does not fully comply with the Parks and Recreation Proffer Guidelines.
3. Detailed plans for Phase B for the Future Institutional building have not been finalized and include generous limits of clearing that could increase visibility of buildings from First Colony's entrance.
4. Does not provide a proffer for an archaeologist to monitor all on-site land disturbance as recommended by the NPS.

SUMMARY STAFF RECOMMENDATION

Approval of the proposed height limitation waiver, master plan amendment and rezoning and acceptance of the voluntary proffers.

PLANNING COMMISSION RECOMMENDATION

At its March 2, 2016 meeting, the Planning Commission recommended approval of this master plan amendment and rezoning and acceptance of the voluntary proffers by a vote of 7-0. The Planning Commission was not required to vote on the height waiver.

CHANGES SINCE PLANNING COMMISSION

No changes.

PLANNING AND ZONING HISTORY

- Greensprings Plantation was rezoned from A-1, General Agricultural and A-2, Limited Agricultural, to R-4, Residential Planned Community, with proffers in 1989.
- Amendments approved in 1992, 1993, 1997, 1998 and 1999.

- Approved master plan for Land Bay M-10 (1999) permits:
 - o 24 single-family detached units (Type A)
 - o 76 multi-family attached, 2-4 units per building (Type B)
 - o 56 multi-family attached, more than four units per building, less than three stories (Type C)
 - o 144 multi-family attached, more than four units per building, over three stories (Type D)
 - o 120 nursing beds
 - o 10,000 square feet of associated commercial uses
- In 2012 the unit type definitions (Type A-D) were amended in the Zoning Ordinance and nursing and assisted living units were reclassified as institutional uses that are not included in the calculation of residential density.

PROJECT DESCRIPTION

- Re-states and amends proffers applicable to Land Bay M-10 only.
- Adjusts unit type definitions and reclassifies existing uses in Land Bay M-10 to conform to current Zoning Ordinance.
- Proposed master plan would permit:
 - o 24 single-family detached units (Type A)
 - o 8 multi-family, up to four units per building (Type B)
 - o 60 multi-family units, more than four units per building (Type C)
 - o 170 apartments (Type D)
 - o 236 institutional beds (assisted living and nursing)
 - o 10,000 square feet of associated commercial uses
- Increases permitted institutional units, but decreases the number of residential units (Type A-D).
- Results in a decrease in density from 3.39 du/acre to 2.96 du/ac.

HEIGHT LIMITATION WAIVER

- Includes 10-foot height waiver for four hybrid buildings that will be no taller than 70 feet in height above finished grade (which is the equivalent of 111 feet above mean sea level). Buildings will

Staff Report for the April 12, 2016, Board of Supervisors Public Hearing

contain the 80 proposed independent living apartments.

- There is an existing 5-story building on the property that is slightly over 60 feet in height (see Attachment No. 12).
- The applicant conducted a balloon test in January and results are included in Attachment No. 11. The applicant also provided a viewshed exhibit in Attachment No. 7.
- Section 24-286 of the Zoning Ordinance states that structures in excess of 60 feet in height may be erected only upon the granting of a height limitation waiver by the Board of Supervisors and upon finding:

1. Structure is in accordance with uses, densities, design and traffic analysis on the master plan;

Staff finding: Owner has requested a master plan and proffer amendment to align the request with the master plan and satisfy this standard.

2. Structure will not obstruct light from adjacent property;

Staff finding: Structures will be approximately the same height or shorter than surrounding existing trees.

3. Structure will not impair the enjoyment of historic attractions and areas of significant historic interest and surrounding developments;

Staff finding: Staff has worked extensively with the NPS to ensure that any concerns regarding potential visual impacts are addressed through proffers and architectural review. Please see Attachment No. 13 for letter from the NPS.

4. Structure will not impair property values in the area;

Staff finding: The Director of Real Estate Assessments reviewed the proposal and determined that buildings will not negatively affect the surrounding property values.

5. Structure is adequately designed and served from the standpoint of safety and that the County Fire Chief finds the fire safety equipment installed is adequately designed and that the structure is reasonably well located in relation to fire stations and equipment, so as to offer adequate protection to life and property;

Staff finding: The Fire Department indicates that it has no concerns with the proposed buildings from a fire service standpoint.

6. Such structure will not be contrary to the public health, safety and general welfare.

Staff finding: Based on the current proposal and supporting information submitted by the applicant, staff finds that the proposed buildings will not unduly or adversely affect the public health, safety or general welfare.

SURROUNDING ZONING AND DEVELOPMENT

- Located on Route 5 near First Colony.
- Surrounding zoning designations include:
 - o R-4, Residential Planned Community and PL, Public Land to the north and west (Greensprings Plantation, vacant)
 - o R-1, Limited Residential to the south (First Colony)
 - o PL, Public Land to the north and east (Fire Station 5, Green Spring National Historical Landmark)

COMPREHENSIVE PLAN

- Surrounding Comprehensive Plan designations include:
 - o Rural Lands to the north and west
 - o Low Density Residential to the south
 - o Open Space or Recreation to the east
- Designated Low Density Residential and Rural Lands on the 2035 Comprehensive Plan.

This staff report is prepared by the James City County Planning Division to provide information to the Planning Commission and Board of Supervisors to assist them in making a recommendation on this application. It may be useful to members of the general public interested in this application.

Staff Report for the April 12, 2016, Board of Supervisors Public Hearing

- Gross density between 1- and 4-units per acre are consistent when particular public benefits are provided.
- Continuing Care Retirement Communities are a Group 3 recommended use and may be approved if certain standards are met:
 - i. Complements the residential character of the area;
 - ii. Has traffic, noise, lighting and other impacts similar to surrounding residential uses;
 - iii. Generally located on collector or arterial roads at intersections;
 - iv. Acts as a transitional use between residential and commercial areas or, if located within a residential community, serves to complement the residential character of the area rather than altering its nature; and
 - v. Provides adequate screening and buffering to protect the character of nearby residential areas.

PUBLIC IMPACTS

I. Anticipated impact on public facilities and services

a. Transportation:

- A traffic impact study was completed for Greensprings Plantation in 1992 and various road improvements were proffered and completed to address the identified traffic impacts. The applicant compared the original 1992 trip generation for Land Bay M-10 with the proposal to demonstrate that the current project is expected to generate fewer trips than originally anticipated for this Land Bay.
- The Board of Supervisors adopted a Route 5 Improvement Proffer Policy in 1996 that stated an intent for rezonings on the Route 5 corridor that increase trip generation to contribute cash or in-kind traffic mitigation. The proposed project is unlikely to have an appreciable impact over existing traffic.

b. Schools:

- Current and proposed proffers provide that no permanent resident of Patriot's Colony can be under the age of 18.
- The Cash Proffer Policy for Schools indicates that the evaluation of a development's impact to schools is based on gross number of proposed dwelling units including any "age-restricted" units.
- 80 residential apartments would be anticipated to generate 25 school children.
- The application does not comply with the Cash Proffer Policy for Schools; however, the Board of Supervisors can evaluate applications individually and, in consideration of the proposal and proffers provided, determine if impacts to public schools have been mitigated.

c. Utilities:

- Project receives public water and sewer.
- Proffers include development of water conservation standards and cash contributions for water.
- The James City Service Authority has reviewed the master plan and proffers and concurs with the proposal.

d. Parks and Recreation:

- Application does not fully comply with the Parks and Recreation Proffer Guidelines, which were adopted after original approval for this development. Specific deficiencies are in the categories for biking/jogging trails (though there is a network of internal sidewalks and will be a connection to the Capital Trail), courts or pools (Patriot's Colony has a pool, but it does not meet the size standards in the guidelines) and multi-use fields.
- Patriot's Colony has numerous existing age-appropriate recreational amenities, such as a garden, putting green, pool and fitness center, that have been developed in consultation with residents and in accordance with 1999 proffers.

II. Anticipated impact on environmental, cultural and historic resources

- Application identifies and avoids Resource Protection Area and dedicates additional areas to permanent open space.
- Project is located on a Community Character Corridor (CCC) designated as Wooded. Application proposed to retain a permanent wooded 150-foot CCC buffer.
- Project is located adjacent to Green Spring National Historical Landmark, which is listed on the National Register of Historic Places. Application includes a 50-foot historical buffer with supplemental evergreen plantings and review of building materials and colors.

III. Anticipated impact on nearby and surrounding properties

- The applicant held a community meeting in January to address concerns of adjacent property owners and particularly residents in First Colony regarding visual impacts, noise, stormwater and traffic.

PROPOSED PROFFERS

Signed proffers have been submitted in accordance with the County's Proffer Policy and are provided as Attachment No. 6. In addition to proffers that have been restated from the original approval of the Greensprings master planned community, the applicant has proposed the following:

- Conservation management plan for Northern long-eared bat.
- Planning Director review of building materials and colors and lighting limitations for facades facing Green Spring National Historical Landmark.
- Supplemental plantings in 50-foot historical buffer.
- Amendments to height restrictions within certain distances from Route 5.
- Water conservation standards.

- \$500 water contribution for each new independent living unit, assisted living unit and nursing bed.

OTHER DISCUSSION

The original Greensprings Plantation Master Plan accounted for significant residential development on Land Bay M-10. In subsequent amendments, the use of the Land Bay became the Patriot's Colony continuing care retirement community and the property has developed in-line with the approved master plan and proffers. Patriot's Colony is located along an arterial road with an entrance that aligns with Heritage Landing Road across the street. The developer has made several commitments to making sure Patriot's Colony is compatible with adjacent residential and historical uses such as building turn lanes to accommodate traffic, preserving large areas of open space and CCC buffers, providing buffering and architectural review to protect Green Spring National Historical Landmark, limiting on-site lighting and taking steps to reduce noise of generators and complying with natural resource and archaeological proffer policies. Staff finds that these commitments help make the plan compatible with the Low Density Residential Group 3 recommended uses.

While the proposal does not meet all of the Board's adopted policies and guidelines, this is a unique application in that it amends an older master plan and proffers for a residential planned community and is a continuing care retirement center (CCRC) which offers a spectrum of services on-site ranging from age-restricted residential to institutional. Age-appropriate recreational amenities are provided based on input received from residents; however, the amenities are not in accordance with the Parks and Recreation Proffer Guidelines. The Guidelines were established to identify how residential development could help offset impacts to Parks and Recreation facilities. Patriot's Colony does not permit permanent residents under 18 years old, which is a demographic that is more likely to contribute

Staff Report for the April 12, 2016, Board of Supervisors Public Hearing

to demand for multi-use fields and sport courts. By providing on-site amenities that are more age-appropriate and are vetted by residents, staff finds that the intent of the Proffer Guidelines are met even though the exact types and sizes of facilities that are specified in the Guidelines have not been provided.

The application also does not comply with the Housing Opportunities Policy either through providing housing at target amounts or through a cash-in-lieu contribution. CCRCs are not typical for-sale or for-rent market-rate housing units and have specific financial requirements for new residents due to the spectrum of services provided over the life of the resident. The applicant has indicated that Riverside does provide opportunities for residents to receive financial assistance to remain in their homes once they move to Patriot's Colony.

STAFF RECOMMENDATION

At its March 2, 2016 meeting, the Planning Commission recommended approval of this master plan amendment and rezoning and acceptance of the voluntary proffers by a vote of 7-0. The Planning Commission was not required to vote on the height waiver.

Staff finds the proposal to be compatible with surrounding development and consistent with the 2035 Comprehensive Plan and Zoning Ordinance. Staff recommends that the Board of Supervisors approve these applications and accept the voluntary proffers. Staff also recommends that the Board of Supervisors approve the height limitation waiver subject to the resolution in Attachment No. 2.

LP/nb
ReZn-MPln-HW02-15PatColExp

Attachments:

1. Rezoning and master plan resolution
2. Height limitation waiver resolution
3. Location map
4. Unapproved minutes of the March 2, 2016, Planning Commission
5. Master plan (under separate cover)
6. Proffers
7. Viewshed exhibit (under separate cover)
8. Traffic memorandum
9. Fiscal impacts worksheet
10. Hybrid building elevations
11. Photos from balloon test
12. Photos of existing 5-story apartment building
13. Letter from the National Park Service
14. Public comment from a resident of First Colony

RESOLUTION

CASE NO. Z-0005-2015/MP-0002-2015. PATRIOT'S COLONY EXPANSION

WHEREAS, in accordance with § 15.2-2204 of the Code of Virginia and Section 24-13 of the James City County Zoning Ordinance, a public hearing was advertised, adjacent property owners notified and a hearing scheduled for Case No. Z-0005-2015/MP-0002-2015 for rezoning approximately 88.59 acres from R-4, Residential Planned Community with proffers to R-4, Residential Planned Community with amended proffers and amending an existing master plan; and

WHEREAS, the property is located at 3400 John Tyler Highway and can be further identified as James City County Real Estate Tax Map Parcel No. 4520100013; and

WHEREAS, the Planning Commission of James City County, following its public hearing on March 2, 2016, recommended approval of the rezoning and master plan amendment, by a vote of 7 to 0; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds Case No. Z-0005-2015/MP-0002-2015 to be required by public necessity, convenience, general welfare and good zoning practice.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. Z-0005-2015/MP-0002-2015 as described herein and accepts the voluntary proffers.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Bryan J. Hill
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MC GLENNON	_____	_____	_____
LARSON	_____	_____	_____
ONIZUK	_____	_____	_____
SADLER	_____	_____	_____
HIPPLE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of April, 2016.

ReZn-MPln02-15PatColExp-res

RESOLUTION

CASE NO. HW 0002-2015. PATRIOT'S COLONY EXPANSION

WHEREAS, the Board of Supervisors of James City County, Virginia, has adopted by ordinance specific land uses that shall be subjected to a Height Limitation Waiver process; and

WHEREAS, Mr. Todd Martin of Riverside Healthcare Association, Inc. (the "Owner") has applied for a Height Limitation Waiver to allow for four hybrid buildings (the "Buildings"), up to a maximum height of 70 feet above finished grade on property zoned R-4, Residential Planned Community with proffers, that is further identified as James City County Real Estate Tax Map Parcel No. 4520100013; and

WHEREAS, the proposed locations of the Buildings are depicted on the plan prepared by Bowman Consulting, dated February 17, 2016 and entitled "Master Plan Patriot's Colony (Land Bay M-10 of Greensprings);" and

WHEREAS, a public hearing was advertised, adjoining property owners notified and a hearing conducted on Case No. HW-0002-2015; and

WHEREAS, the Board of Supervisors finds that the requirements of Section 24-286 of the James City County Zoning Ordinance have been satisfied, in order to grant a Height Limitation Waiver to allow for the erection of structures in excess of 60 feet in height.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Height Limitation Waiver No. HW-0002-2015 to grant a ten-foot waiver to the height limitation requirements set forth in the James City County Code to allow for the erection of the Buildings up to 70 feet tall from finished grade as described herein, pursuant to the following conditions:

1. **Plan:** This Height Limitation Waiver (the "Waiver") shall be valid for a ten-foot waiver to the height limitation requirements set forth in the James City County Code to allow for the erection of four hybrid buildings (the "Buildings") up to 70 feet above finished grade on property zoned R-4, Residential Planned Community, further identified as James City County Real Estate Tax Map Parcel No. 4520100013, as generally shown on the plan prepared by Bowman Consulting, dated February 17, 2016 and entitled "Master Plan Patriot's Colony (Land Bay M-10 of Greensprings)" (the "Master Plan"). For the purposes of the Waiver, the maximum "finished grade" for the Buildings shall be 41 feet above mean sea level. The height of the Buildings shall be calculated in accordance with the Zoning Ordinance definition for "Building, height of" in effect as of the adoption date of the Waiver.
2. **Landscaping:** The area along Patriot's Colony Drive that is shown on the Master Plan as "Approx. Area of Landscape Screening" shall be preserved and supplemented as needed and/or replanted with low, mid and high canopy vegetation that is primarily evergreen to provide effective visual screening (the "Visual Buffer"). The Owner shall submit a landscape plan for the Visual Buffer for review and approval by the Director of Planning, or his designee, prior to final site plan approval for any portion of development of the area on the Master Plan identified as "Phase B, Future Institutional, 120 beds/units proposed."

3. **Lighting:** No building-mounted lighting shall be installed on the side of the Buildings adjacent to the 50-foot historical buffer as shown on the Master Plan (the “Historical Buffer”). Any parking lot lighting along the Historical Buffer shall be directed downward and shall not illuminate the vertical surfaces of the Buildings. The Owner shall demonstrate compliance with this by submitting a lighting plan for review and approval by the Director of Planning or his designee prior to final site plan approval for any building adjacent to the Historical Buffer.
4. **Severability:** This Waiver is not severable. Invalidation of any word, phrase, clause, sentence or paragraph shall invalidate the remainder.

ATTEST:

Bryan J. Hill
Clerk to the Board

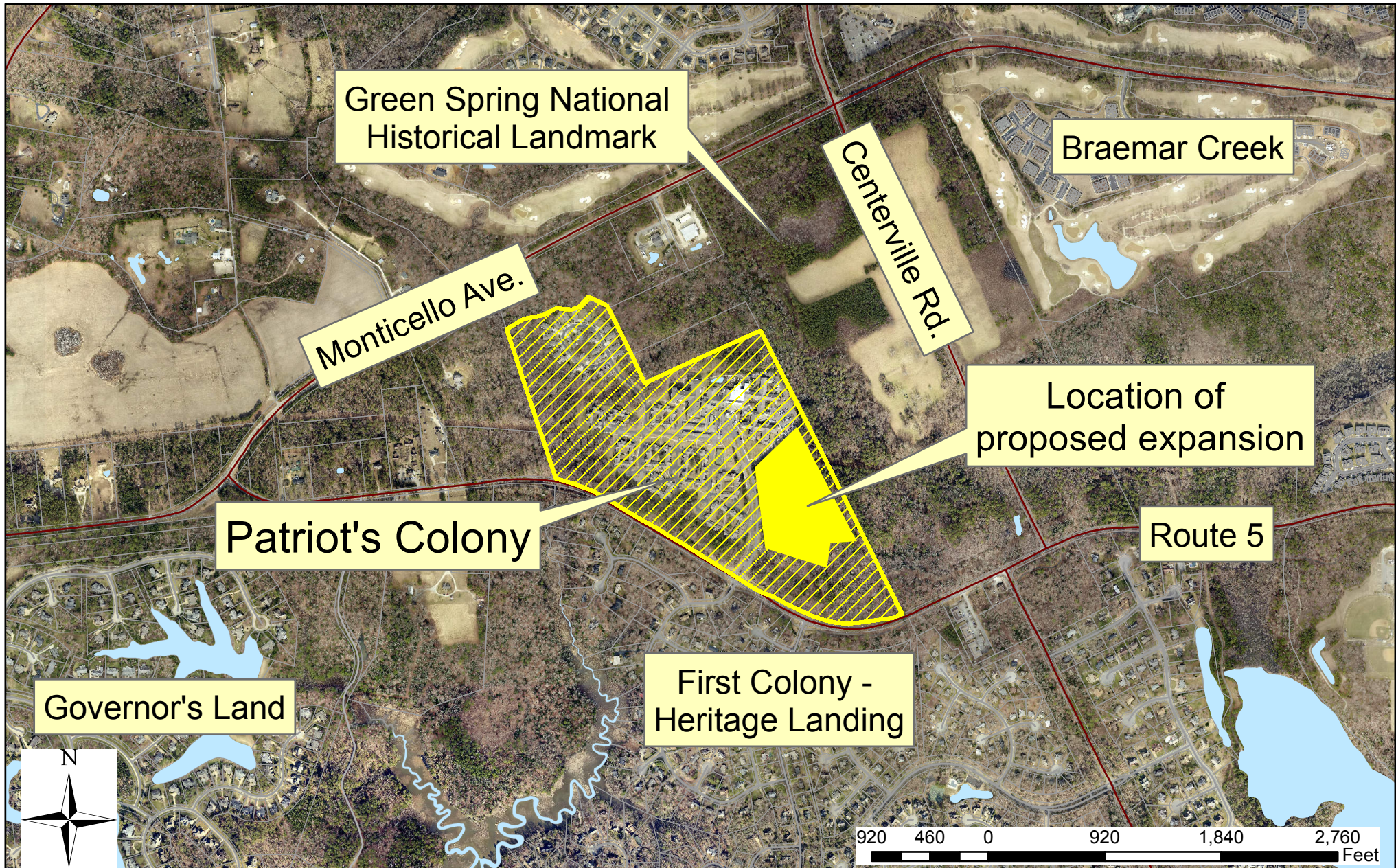
Michael J. Hipple
Chairman, Board of Supervisors

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
LARSON	_____	_____	_____
ONIZUK	_____	_____	_____
SADLER	_____	_____	_____
HIPPLE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of April, 2016.

HW02-15PatColExp-res

Z-0005-2015, MP-0002-2015, HW-0002-2015 Patriot's Colony Expansion



Unapproved Minutes of the March 2, 2016 Planning Commission Meeting

Case Nos. Z-0005-2015/MP-0002-2015/HW-0002-2015, Patriot's Colony Expansion

Ms. Leanne Pollock, Senior Planner II, stated that Mr. Todd Martin of Riverside Healthcare Associates has applied for a rezoning and master plan amendment for Land Bay M-10 of the Greensprings Plantation Master Plan. Ms. Pollock stated that this land bay contains the Patriot's Colony continuing care retirement community and is located at 3400 John Tyler Highway. Ms. Pollock stated that the land bay is adjacent to both First Colony and Green Spring National Historic Landmark. Ms. Pollock stated that the proposed amendment is to adjust unit types and unit type maximums resulting in an overall decrease in the density of the land bay. Ms. Pollock stated that Patriot's Colony is zoned R-4, Residential Planned Community with proffers and the area of the proposed expansion is designated Low Density Residential on the Comprehensive Plan Land Use Map. Ms. Pollock noted that the request includes a height limitation waiver for four hybrid apartment buildings for up to a maximum height of 70 feet above grade. Ms. Pollock stated that the height waiver will be considered by the Board of Supervisors with the rezoning and master plan amendment but does not require a vote by the Planning Commission.

Ms. Pollock stated that the applicant has restated the original applicable proffers and has proposed additional voluntary proffers to address impacts of the development. Ms. Pollock stated that the revised proffers include a change to maximum building height with a height limitation waiver, a conservation management plan for threatened species, review of materials and design, limitations on lighting for the portions of the development that will face Greens Spring National Historic Landmark, undisturbed buffers along John Tyler Highway and adjacent to the Park Service property, development of water conservation standards, and cash contributions for water. Ms. Pollock further stated that the original proffers addressed transportation improvements which have already been satisfied, archaeology, recreation, open space and prohibitions on timeshares. Ms. Pollock further stated that the proposal; however, does not meet several of the Board of Supervisors' policies and guidelines including the Housing Opportunities Policy, the Parks and Recreation Proffer Guidelines and the School Cash Proffer Policy.

Ms. Pollock stated that the application is unique due to the nature of the continuing care retirement community and similar facilities in the County have also not met all of the Board's policies. Ms. Pollock further stated that the applicant has demonstrated that age appropriate recreational facilities are provided for residents; has mechanisms in place to provide financial assistance to residents and prohibits permanent residents under the age of 18 through their proffers and residency agreements.

Ms. Pollock stated that staff has discussed the expansion with reviewing agencies and the National Park Service. Ms. Pollock further stated that agency comments can generally be addressed at the development review stage. Ms. Pollock stated that the National Park Service concurs that the development will not adversely affect the viewshed and cultural landscape at the Historic Green Spring Landmark but recommended that an archaeologist be on hand to monitor land disturbing.

Ms. Pollock stated that staff finds the proposal to be compatible with surrounding development and consistent with the 2035 Comprehensive Plan and Zoning Ordinance. Staff recommends the James City County Planning Commission recommend approval of these applications and acceptance of the proffers to the Board of Supervisors.

Ms. Bledsoe opened the floor for questions from the Commission.

Mr. Richardson asked for a summary of public input regarding the effect of the expansion on the viewshed.

Ms. Pollock stated that the comments center around concerns that the clearing needed for the one-story nursing facility will make the taller hybrid apartment buildings more visible. Ms. Pollock stated that a balloon test was done at the end of January and that the balloon was visible from the entrance to First Colony through the trees; however, it did not go above the tree line. Ms. Pollock further stated that staff worked with the applicant to identify areas for tree preservation along Patriot's Colony Drive to reduce that visibility.

Ms. Bledsoe inquired if the buffer areas would require time to mature.

Ms. Pollock stated that the tree preservation areas were on the masterplan and pertained to existing trees. Ms. Pollock stated that the 50-foot buffer adjacent to the National Park Service property would be supplemented by additional plantings to fill in the taller more mature trees with denser low-lying vegetation.

Mr. O'Connor inquired about what archeology has been done on the property and the substance of the discussions with the National Park Service.

Ms. Pollock stated that since Land Bay M-10 was initially part of the Greensprings Master Plan, an archaeologist had conducted a full Phase I archaeological survey of the entire Greensprings Plantation area. Ms. Pollock noted that several sites were identified on the Patriot's Colony property and several Phase II studies have been performed. Ms. Pollock stated that one concern expressed by the National Park Service was that the distance between shovel tests might have been greater than desirable. Ms. Pollock further stated that a proffer is in place that all work will stop if a resource is uncovered during construction. Ms. Pollock noted that a road trace was previously discovered and that it is primarily within the 150-foot buffer along John Tyler Highway. Ms. Pollock noted that a Phase II study will be required prior to land disturbance in that area. Ms. Pollock stated that the National Park Service has been included in the review process from the very beginning and has been provided with all materials.

Mr. Basic inquired if the methodology for the Phase I archaeological survey was approved by the State.

Ms. Pollock responded that the ultimate results of the Phase I study were approved by the Virginia Department of Historic Resources.

Mr. Schmidt inquired whether the representatives from the National Park Service were present for the balloon test.

Ms. Pollock responded that they were not able to see the balloon test due to technical difficulties with the lift; however, the applicant did fly an additional balloon during the site visit with the National Park Service and Planning Division staff provided them with photos taken during the balloon test.

Ms. Bledsoe opened the public hearing.

Ms. Molly Trant, 701 Town Center Drive, stated that she represents the applicant. Ms. Trant stated that Patriot's Colony is a continuing care retirement community that is available to retired and former officers of the seven uniformed services, retired and former civilian employees of the Federal government and their spouses; however, the health care facilities are open to the public. Ms. Trant noted that part of the current request focuses on providing more of those facilities to meet anticipated demand from the community.

Ms. Trant stated the height waiver is being requested to allow for parking under the four hybrid apartment buildings to minimize disturbance of greenspace. Ms. Trant further stated that there is an existing five-story apartment building with a mean height of 60 feet located on the property. Ms. Trant stated that the mean height of the proposed buildings are 65 feet. Ms. Trant further stated that the materials and colors to be used in the proposed buildings were chosen to ensure that the building would blend with the natural environment.

Mr. O'Connor asked if the proposal involved clearing for all of the project phases at this time.

Ms. Trant stated that the intent was to clear for Phase A first in order to maintain the community appeal and to maintain the integrity of the tree buffer for as long as possible.

Ms. Bledsoe inquired if a height waiver would be requested in Phase B.

Ms. Trant responded that the building in Phase B would be a traditional single floor skilled nursing facility.

Ms. Bledsoe inquired if the reason for moving forward with Phase A first was to meet current needs.

Ms. Trant stated that 335 people are currently on the waiting list for independent living facilities. Ms. Trant further stated the Phase B facility is to address the future needs of those residents.

Mr. Schmidt noted he shares the concerns voiced by the National Park Service regarding the existence of cultural resources on the property that may have been missed during the previous archaeological survey. Mr. Schmidt stated that he would be more comfortable if an archaeological review could be done once the clearing was complete.

Ms. Trant stated that they believe the entire site was tested appropriately and that they do not want to set a precedent of questioning or invalidating a Phase I archaeological survey that was previously accepted by the Virginia Department of Historic Resources.

Ms. Bledsoe inquired what guidance is given on recognizing historic resources to the workmen doing land disturbance.

Ms. Trant responded that the construction manager and staff are instructed to be watchful. Ms. Trant further stated that the applicant also has a construction management division and that they would work side by side with the construction crew.

Ms. Bledsoe inquired if that process was in place during the initial Patriot's Colony development.

Ms. Trant stated that she believed those precautions were taken during the initial development.

Mr. O'Connor inquired whether the conceptual BMP was proposed as part of Phase A or Phase B.

Ms. Trant stated that it would be part of Phase B. Ms. Trant stated that once the entire site was disturbed, the BMP would be required.

Mr. O'Connor requested confirmation that the resource protection area buffer would not be developed.

Ms. Trant confirmed. Ms. Trant further stated that the greenbelt along John Tyler Highway would remain undeveloped.

Mr. Wright inquired about the demographics for the typical resident of the proposed apartment buildings.

Ms. Trant stated that the typical resident was a former member of the armed services or civilian Federal government employee in their 70s and their spouse.

Mr. Wright asked if there were any assurances that the apartments would not be sublet to other individuals.

Ms. Trant stated that there were stipulations in the residency agreement to prevent the units from being sublet. Ms. Trant further stated that there was also a strict policy on the length of visitor stays.

Mr. Wright stated that he was also looking for assurances that there would not be school-aged children in residence.

Ms. Trant confirmed that there was a strict policy prohibiting school-aged children from residing there long-term.

Mr. O'Connor requested information on the financial assistance available to residents to allow them to stay in their homes.

Ms. Trant stated that because the residents are also buying into a health care plan, it is not possible to meet the affordable housing guidelines; however, if someone encounters financial constraints while they are an active resident, there is a fund to provide financial assistance.

Mr. O'Connor inquired how this differed from an age-restricted apartment complex that was able to proffer a certain number of affordable units.

Ms. Trant stated that a continuing care retirement facility was different because it also provides assisted living and skilled nursing in addition to the independent living so that there is a full spectrum of care available.

Ms. Bledsoe inquired about the relationship between Patriot's Colony and Riverside Hospital for continuity of care.

Ms. Trant stated that Riverside Healthcare is the parent organization for both Patriot's Colony and Riverside Doctor's Hospital. Ms. Trant further stated that medical staff from Riverside oversee the medical practice at Patriot's Colony. Ms. Trant state that the ability to share information with the hospital is an advantage to the residents.

Mr. Paul Treolo, 3017 Kitchums Close, stated that his residence is approximately a mile west from Patriot's Colony on Route 5. Mr. Treolo stated that he is a long time James City County resident and a member of the Patriot's Colony Board of Directors. Mr. Treolo stated that the proposed expansion is well designed and is necessary to meet existing needs. Mr. Treolo stated that the project will benefit the County with an increase in job opportunities and revenue. Mr. Treolo requested that the Commission recommend approval of the application.

As no one else wished to speak, Ms. Bledsoe closed the public hearing.

Ms. Bledsoe called for disclosures from the Commission

Ms. Bledsoe, Mr. Wright, Mr. Basic and Mr. O'Connor each stated that they had spoken with Ms. Trant.

Ms. Bledsoe opened the floor for discussion by the Commission.

Mr. Richardson noted that based on recent studies and reports, the County does have a need for affordable housing. Mr. Richardson further stated that Patriot's Colony is not a typical for-sale or for-rent development and by its nature it is hard to make it dovetail with the Housing Opportunities Policy and the School and Parks and Recreation Proffer Policies. Mr. Richardson stated that he could support the application.

Mr. Krapf stated that he would support the application. Mr. Krapf further stated that demographic trends support the need for this type of facility. Mr. Krapf noted that the project has several positive aspects including a reduction in the density of the development, a positive fiscal impact and that the development is environmentally friendly.

Mr. Schmidt stated that the level of inclusion of the National Park Service reassured him that measures will be taken to protect and preserve cultural resources.

Mr. Wright stated that the 2035 Comprehensive Plan data shows an increase in the number of seniors as well as a high percentage increase. Mr. Wright stated that this application addresses an unmet demand.

Mr. Basic stated that he appreciated the applicant's willingness to work with the Development Review Committee (DRC) as the application was developed. Mr. Basic noted that the application was stronger because of the DRC input.

Mr. O'Connor inquired if the reduction in density was for all of the Greensprings development or just Patriot's Colony.

Ms. Pollock stated that it was just for Land Bay M-10, Patriot's Colony. Ms. Pollock further stated that the current unit caps for Greensprings would remain in place.

Mr. O'Connor asked for clarification on how the reduction in density was achieved.

Ms. Pollock stated that part of the reduction came from skilled nursing beds and assisted living units being counted as institutional units rather than as residential dwelling units. Ms. Pollock further stated that the actual number of independent residential units is being decreased by about 38 units.

Mr. Richardson inquired if there would be more frequent site visits by an archaeologist as recommended by the National Park Service.

Ms. Pollock stated that as proposed in the proffers, an archaeologist would only be on site if something is uncovered during the course of work.

Mr. Richardson inquired about the nature of concern with the archaeological study.

Ms. Pollock stated that the study was done in 1992 and that there was some concern over the distance between shovel tests. Ms. Pollock stated that there was no overall map showing the location of the shovel tests.

Mr. Richardson inquired if staff felt it would be wise to add a requirement for additional testing.

Ms. Pollock stated that staff is comfortable with the proffer. Ms. Pollock further stated that she was not aware of any legislative cases that required an archaeologist on site monitoring land disturbance; however there have been a few by-right developments that have used this approach.

Mr. Richardson inquired which firm provided archaeological survey for Patriot's Colony

Ms. Pollock stated that she believed it was Espy-Houston.

Ms. Bledsoe inquired if anything was found.

Ms. Pollock stated that several sites were found on the Patriot's Colony property – Land Bay M-10 – and a couple of sites were found across the broader Greensprings Plantation.

Ms. Bledsoe inquired if those sites were addressed at the time they were found.

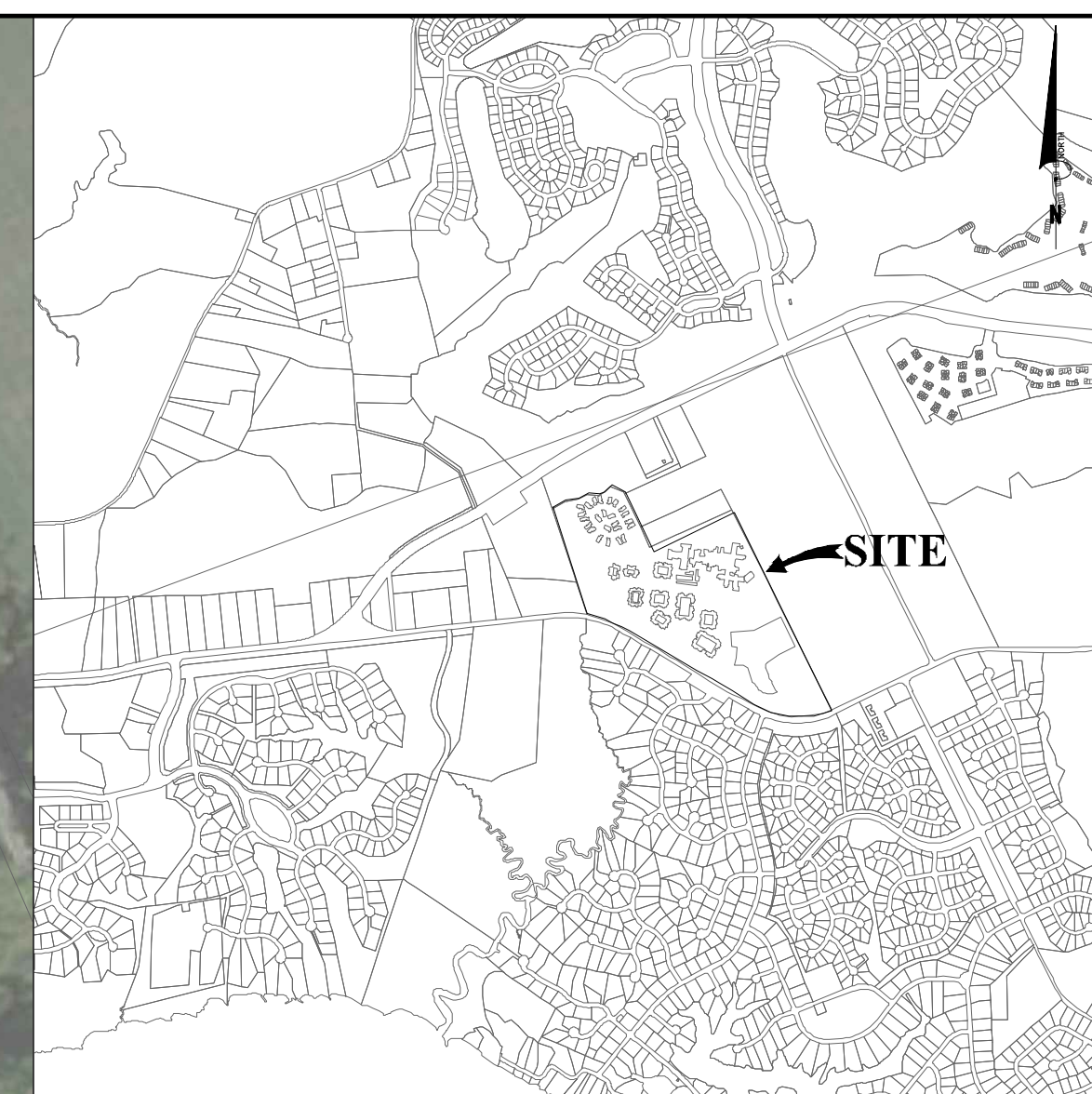
Ms. Pollock stated that they are addressed as land disturbance takes place. Ms. Pollock stated that when the 24 independent living units were built, a Phase II study was conducted for the two sites identified in that area.

Ms. Bledsoe requested confirmation that a Phase II study would be done if any sites were identified

Ms. Pollock confirmed.

Mr. Krapf made a motion to recommend approval of the application.

On a roll call vote the Commission voted to recommend approval of Z-0005-2015/MP-0002-2015, Patriot's Colony Expansion (7-0). The Planning Commission was not required to vote on the height limitation waiver, which will be acted on by the Board of Supervisors.



Bowman
CONSULTING

SITE DATA:

1. SITE ADDRESS: 3400 John Tyler Highway
Williamsburg, VA 23185-1457
2. ACREAGE: 88.59 acres (Per PB 62, PG 12 and County GIS)
3. PARCEL NUMBER: GPIN #4520100013
Parcel ID: 8098
4. OWNER/DEVELOPER: Riverside Healthcare Association, Inc.
5. ENGINEER: Bowman Consulting Group
Contact: Jonathan Jackson, P.E.
3951 Westerre Parkway, Suite 150
Richmond, Virginia 23233
Phone: (804) 616-3240
Fax: (804) 270-2008
e-mail: jjackson@bowmanmcg.com
6. PREVIOUS ZONING CASE: MP-0002-1999 and Z-0011-1999
7. CURRENT ZONING: R-4, Residential Planned Community District
9. SETBACKS: Front: 150' Greenbelt buffer along Route 5

<u>OPEN SPACE:</u>	See calculations, this sheet. 25.32/88.59 = 28.6% open space
<u>GROSS ACREAGE:</u>	Non-developable land (RPAs, steep slopes, FEMA floodzones) = 13.92 acres Developable land = 88.59 - 13.92 = 74.67 ac. (15.7% Since percent non-developable land < 20%, use total parcel acreage. Gross acreage = 88.59 ac.

- | UNIT TYPE | CURRENT | PLANNED EXPANSION | TOTAL | DENSITY |
|---------------------------------|---------|-------------------|-------|---------|
| Greenspring Homes (Type A) | 24 | 0 | 24 | 0.27/ac |
| Villa Homes (Type B ≤ 4) | 8 | 0 | 8 | 0.09/ac |
| Villa Homes (Type C > 4) | 60 | 0 | 60 | 0.67/ac |
| Ind. Living Apartments (Type D) | 90 | 0 | 90 | 1.02/ac |
| NEW CONSTRUCTION | | | | |
| Hybrid Homes (Type D) | | 80 | 80 | 0.90/ac |
| Totals | 182 | 80 | 262 | 2.95/ac |

Note that assisted living, nursing home, and memory care units are considered institutional uses and therefore do not fall under density requirements.

INSTITUTIONAL UNIT COUNT:

UNIT TYPE	CURRENT	PLANNED EXPANSION	PLANNED REMOVAL	TOTAL
Nursing (Skilled Nursing)	60	80	-30	110
Assisted Living/Memory Care	68	78	-20	126
Total Institutional	128	158	-50	236

Note: The institutional unit counts shown are based on the number of proposed/existing beds.

1. NOTES:
 - A. All streets shown within the M10 land bay are private.
 - B. A height limitation waiver request has been submitted. Whereas, a portion of the property was proffered to restrict the maximum height permitted to 45 feet and two of the structures shown on the master plan exceed the 45 foot restriction and whereas the remainder of the property is in the R4 district where the maximum height permitted is 60 feet. Whereas, waivers are available for taller structures. Applicant is requesting a height limitation waiver to allow four buildings that will be five stories high that not exceed 70 feet above average finished grade. Please note that average height above mean sea level will range up to 111' based on existing grade, tentative finished floor elevations, and maximum building height permissible (under the proposed height waiver).
 - C. Existing vegetation to be preserved and supplemented as needed, or replaced, with low, mid and high canopy vegetation so as to provide aural and visual screening of proposed buildings from Rte. 5/First Colony neighborhood.
 - D. Clearing limits/proposed stormwater management limits for Phases A, B, C, and future parking area shown hereon total approximately 12 acres. Note that these acre calculations are preliminary only.

COUNTY PROJECT NUMBER

PLAN STATUS

DATE	DESCRIPTION
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KC/JJ	KC	JJ
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DESIGN	DRAWN	CHRD
SCALE	H: 150'	

JOB No. 000216 01 004

DATE : Feb 17 2016

FILE No. 009316-01-004

37

SHEET	2	2
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**RIVERSIDE HEALTHCARE
ASSOCIATION, INC. PROFFER AGREEMENT**

This Proffer Agreement is made as of this ____ day of February, 2016, by RIVERSIDE HEALTHCARE ASSOCIATION, INC., a Virginia corporation (“Owner”) (to be indexed as grantor), and JAMES CITY COUNTY VIRGINIA, a political subdivision of the Commonwealth of Virginia (the “County”) (to be indexed as grantee) and provides as follows:

RECITALS:

R-1 Owner is the owner of certain real property containing 88.59 ± acres, more or less, located at 3400 John Tyler Highway and further identified as James City County Tax Map Parcel No. 4520100013, being the same property described in the deed dated February 9, 1995 recorded in the Clerk’s Office of the Circuit Court for the City of Williamsburg and the County of James City, Virginia (the “Clerk’s Office”) as Deed Book 726, page 629 (the “Boundary Deed”) as more particularly set forth in Exhibit A (the “Property”).

R-2 Prior to Greensprings Plantation, Inc. (“Greensprings”) conveying to Owner the Property, Greensprings applied for and the Board of Supervisors of James City County, Virginia (the “Board”) granted a rezoning of the Greensprings property (including the Property) from Limited and General Agricultural Districts, A-2 and A-1 to Residential Planned Community District R4, with a master plan and proffered conditions as set forth in that certain Greensprings Proffer Agreement dated February 6, 1989 and recorded in the Clerk’s Office in James City County Deed Book 427, page 466 (the “Original Proffer Agreement”). The Original Proffer Agreement and the original master plan have been amended from time to time and all such amendments are recorded in the Clerk’s Office of James City County.

R-3 Owner applied to the County for a fourth amendment to the master plan and the provisions of the Original Proffer Agreement as modified by the amendments referenced above. The Fourth Amendment to the Amended and Restated Greensprings Proffer Agreement is dated October 29, 1999 and recorded in the Clerk's Office as James City County Instrument No. 990025600 (the "Fourth Amendment"). Owner sought the Fourth Amendment in connection with approval of Phase II of the Patriot's Colony Continuing Care Retirement Community, as shown on the conceptual plan attached hereto as Exhibit B entitled "Patriot's Colony, Phase II, Continuing Care Retirement Community, Developer; Riverside Retirement Services, Inc., Berkeley District, James City County, Virginia" made by AES, Consulting Engineers (the "Conceptual Plan").

R-4 Owner has applied to the County for an amendment to the existing master plan and the provisions of the proffers. The amendments requested by Owner are sought in connection with approval of the updated Master Plan for Patriot's Colony Continuing Care Retirement Community as shown on the plan attached hereto as Exhibit C entitled "Master Plan for Patriot's Colony (Land Bay M-10 of Greensprings) Jamestown Magisterial District, James City County, Virginia" made by Bowman Consulting and dated February 16, 2016 (the "Master Plan").

R-5 This Proffer Agreement modifies certain proffers as they pertain to the Property and restates other proffers as they pertain to the Property. References to Owner in proffers below shall be read to refer to the record titleholder of the property affected by such proffers, whether Owner or its successors and assigns.

NOW, THEREFORE, and pursuant to Section 15.2-2303 of the Virginia Code Owner agrees that it shall meet and comply with the following proffers in developing the Property.

PROFFERS:

1. Master Plan The Master Plan for the Property shall be as set forth within that certain plan entitled “Master Plan for Patriot’s Colony (Land Bay M-10 of Greensprings) Jamestown Magisterial District, James City County, Virginia” made by Bowman Consulting and dated February 16, 2016 (the “Master Plan”) and attached hereto as Exhibit C.

2. Number of Dwelling Units Land Bay M-10 The number of residential units within the Property as shown on the Master Plan as amended and submitted herewith shall be as follows:

<u>Project Land Bay</u>	<u>R-4 Master Plan Designation</u>	<u>Maximum Number Of Dwelling Units</u>
M-10	A	24
M-10	B	8
M-10	C	60
M-10	D	170

In addition in Project Land Bay M-10 there will be Institutional Uses not to exceed 236 Assisted Living Beds, Memory Care Beds, and Skilled Nursing Beds combined.

3. Height Limitations Any structure on the Property within 600 feet from the centerline of Route 5 (John Tyler Highway) shall not exceed 35 feet in height. On the Property, any structure located in that area in between 600 feet from the centerline of Route 5 (John Tyler Highway) and 900 feet from the centerline of Route 5 (John Tyler Highway) shall not exceed a maximum height of 45 feet. Provided, however, if Owner applies for and receives a height limitation waiver from the Board, the limitations set forth above shall not be applied.

4. Historical Site Buffer There shall be a 50-foot buffer (undisturbed and exclusive of any lots) along the eastern and western boundaries of the Greensprings National Historic Site subject only to appropriate stormwater management and utility improvements/easements as approved by the Development Review Committee (the “Historical Site Buffer”). During any construction on the Property that is in close proximity to the Historical Site Buffer, the Owner shall provide temporary fencing along the Historical Site Buffer in order to avoid damage to the Historical Site Buffer.

5. Screening Landscaped areas have been created as a part of development of the Property under the Conceptual Plan, so as to create an evergreen buffer and visual screening between buildings one (1) through four (4) inclusive shown on the Conceptual Plan and the Greensprings Plantation National Historic Site (“Historic Site”) as shown on the Conceptual Plan. The landscaping and plantings within such areas shall be subject to approval by the County’s Director of Planning (the “Director of Planning”) prior to final site plan approval. Furthermore, landscaped areas shall be created as part of future development of the Property under the Master Plan, so as to create an evergreen buffer and visual screening between the buildings shown on Phase A, Phase B and Phase C of the Master Plan and the Historic Site. Lower ever-green plantings shall be integrated within the 50 foot Historical Site Buffer so as to provide additional screening. The landscaping and plantings within such area shall be subject to approval by the Director of Planning prior to final site plan approval.

6. Building Materials Exterior building/siding materials employed in buildings one (1) through six (6) inclusive shown on the Conceptual Plan shall be of brick or other non-glossy materials which are dark, naturally occurring colors, on such surfaces which front upon, face or are visible from the Historic Site. Samples of such building materials and colors shall be

approved by the Director of Planning prior to final site plan approval. Trim colors shall be a neutral color and shall be approved by the Director of Planning prior to site plan approval. Furthermore, exterior building/siding materials employed on the buildings shown as Phase A, Phase B and Phase C of the Master Plan shall be of brick or other non-glossy materials which are earth tone, naturally occurring colors on such surfaces which front upon, face or are visible from the Historic Site. Samples of such building materials and colors shall be approved by the Director of Planning prior to final site plan approval. Trim colors shall be a neutral color and shall be approved by the Director of Planning prior to site plan approval.

7. Changes in Conceptual Plan and Master Plan Owner may from time to time in final plats or site plans submitted to the County, relocate the specific uses shown on the Conceptual Plan and the Master Plan provided (a) that such uses are permitted by the County Zoning Ordinance, the Master Plan, and these Proffers, and (b) that the Director of Planning determines that such relocations do not alter the basic concept or character of the development shown on the Conceptual Plan and the Master Plan.

8. Commercial Uses in the Property Any accessory commercial uses located on the Property, such as bank offices, beauty salons, and barbershops, shall be located and designed to serve residents of the Property. Commercial uses shall not be advertised from any public right-of-way.

9. Residency Agreement Prior to the start of construction on the Property, Owner shall submit to the County a copy of the agreements between Owner and the future residents of the Property which agreements shall provide that permanent residents under the age of 18 (or such higher age determined by Owner) shall not be permitted on the Property.

10. Water Conservation Owner shall be responsible for developing and enforcing water conservation standards applicable to the Property, which standards shall be submitted to and approved by the James City Service Authority (the "JCSA") in accordance with the Water Conservation Guidelines adopted by the Board on November 27, 2007. The standards shall address, but not be limited to, such water conservation measures as limitations on the use of irrigation systems and irrigation wells, the use of approved landscaping materials including the use of drought resistant native and other low water use landscaping materials and warm season turf where appropriate, and the use of water conserving fixtures and appliances all in an effort to promote water conservation and to eliminate the use of public water resources. The standards shall be submitted to and reviewed by the County Attorney for general consistency with this proffer and shall be approved by the JCSA prior to final development plan approval.

11. Contributions to the JCSA A contribution shall be made to the JCSA in the amount of Five Hundred Dollars (\$500.00) for each new independent living unit, assisted living unit and nursing bed constructed as shown on the Master Plan (the "Per Unit Contribution"). The JCSA shall make these monies available for development of water supply alternatives, the need for which is generated by the development of the Property. In the event the monies are not used by the JCSA for the purpose designated within ten years from the date of receipt by the JCSA, the amounts not used shall be used at the discretion of the Board of Directors of the JCSA for any other project in the JCSA's capital improvement plan, the need for which is generated by the development of the Property.

A. Such Per Unit Contribution shall be payable for each of the independent living units, additional assisted living units and the additional nursing beds developed within the Property after the completion of final inspection and prior to the time of the issuance of a

certificate of occupancy by the County for any particular independent living unit, assisted living unit or bed or any grouping, phase, or section of assisted living units or beds.

B. The Per Unit Contribution(s) paid in each year shall be adjusted annually beginning January 1, 2017, to reflect any increase or decrease for the proceeding year in the Marshall & Swift Building Cost Index (the "MSI"). In no event shall the Per Unit Contribution be adjusted to a sum less than Five Hundred Dollars (\$500.00) per additional independent living unit, assisted living unit and nursing bed. The adjustment shall be made using Section 98, Comparative Cost Multipliers, Regional City Averages of the MSI. In the event a substantial change is made in the method of the establishing the MSI, then the Per Unit Contribution shall be adjusted based upon the figure that would have resulted had no changes occurred in the manner of computing MSI. In the event that the MSI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the MSI, approved in advance by the County's Manager of Financial Management Services, shall be relied upon in establishing an inflationary factor for purposes of increasing the Per Unit Contribution to approximate the rate of annual inflation in the County.

12. Archaeological Sites A Phase I Archaeological Study of the Property was conducted which met the guidelines set forth in the Virginia Department of Historic Resource's Guidelines for Preparing Archaeological Resource Management Records and conducted under the supervision of a qualified archaeologist who met, at a minimum the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. The phase I Archaeological Study was prepared and previously submitted to and approved by the Director of Planning. Owner, at its expense, shall undertake a Phase II and/or, subject to the following sentence, a Phase III study of archeological sites identified in the Phase I study, if identified by the Phase I

study heretofore submitted as warranting any Phase II or Phase III study, and shall submit such studies to the Director of Planning for review and approval prior to any land disturbing on or adjacent to such sites. Owner may at its option leave undisturbed an archaeological site planned for development in lieu of performing a Phase III study thereon. The recommendations of such studies shall be incorporated into the plan of development for the site and the clearing, grading or construction activities thereon. If as a result of a Phase II study of a site, the Director of Planning determines the site is eligible for inclusion in the National Register of Historic Places based on the criteria established by the Department of the Interior, Owner shall develop and implement a plan for inclusion of the site on the National Register of Historic Places and for the mitigation of potential adverse impacts on the site. All sites to be left undisturbed or upon which a Phase III study is to be conducted shall be protected from development activities by temporary fencing until development activities adjacent to the site or the Phase III study, as the case may be, is complete.

If a previously unidentified archeological site is discovered during land disturbing activities, all construction work involving subsurface disturbance will be halted in the area of the site and in the surrounding area where further subsurface remains can reasonably be expected to occur and Owner will immediately notify the Director of Planning or his designee of the discovery. The Director of Planning or his designee, or an archeologist approved by him, will immediately inspect the work site and determine the area and the nature of the affected archeological site and its potential eligibility for inclusion on the National Register of Historical Places. Construction work may then continue in the project area outside the archeological site. Within 15 working days of the original notification of discovery, the Director of Planning or his designee shall determine the National Register eligibility of the site. The Director of Planning or

his designee may extend this 15 working day period for determining the National Register eligibility one time by an additional 5 working days by written to Owner prior to the expiration date of said 15 working day period.

If the site is determined to meet the National Register Criteria (36 CFR Part 60.0), Owner shall, at its expense, prepare a plan for its avoidance, protection, recovery of information, or destruction without data recovery. The plan shall be approved by the Director of Planning or his designee prior to implementation. Work in the affected area shall not proceed until either (a) the development and implementation of appropriate data recovery or other recommended mitigation procedures, or (b) the determination is made that the located remains are not eligible for inclusion on the National Register.

13. Route 5 Greenbelt Owner shall designate 150- foot greenbelt buffers along the Property's Route 5 frontage measured from the existing Route 5 right-of-way. The greenbelt buffers shall be exclusive of any lots and, except as set forth below, shall be undisturbed. Utilities, drainage improvements, community entrance roads as shown generally on the Master Plan (limited to one entrance to the Property), pedestrian/bicycle trails, and signs shall be allowed in the greenbelt buffer as approved by the Development Review Committee.

14. Multi-Family Neighborhood Recreation Centers Currently there are recreational facilities located within the Property. Any future recreational facilities on the Property shall be determined by the Owner following consultation with the residents of the Property. Any new recreational facilities shall be shown on the site plans for the Property and prior to approval of the site plan, the Owner shall provide evidence of consultation with the residents of the Property (in the form of meeting minutes or a letter) to the Director of Planning or his designee.

15. Lighting No building-mounted lighting shall be installed on the side of any of

the buildings shown on Phase B of the Master Plan that are adjacent to the Historical Site Buffer. Any parking lot lighting along the Historical Site Buffer shall be directed downward and shall not illuminate the vertical surfaces of the buildings shown on Phase B of the Master Plan. The Owner shall demonstrate compliance with this by submitting a lighting plan for review and approval by the Director of Planning or his designee prior to final site plan approval for any building in Phase B of the Master Plan adjacent to the Historical Site Buffer.

16. Restrictions on Timeshare Owner shall not create or operate a “time-share project” as defined in the Virginia Real Estate Time-Share Act, VA. Code 55-360 et. seq. on the Property.

17. Major Open Space Areas shown on the Master Plan listed as Dedicated Open Space and Proposed Dedicated Open Space (collectively “Open Space”) and within subdivisions or sites shown on the subdivision plat or site plan as green space areas shall be exclusive of any lots and undisturbed, except as provided below. With the prior approval of the Director of Engineering and Resource Protection or his designee on a case by case basis, (i) dead, diseased, and dying trees or shrubbery and invasive or poisonous plants may be removed from such areas; (ii) select hand clearing and pruning of trees shall be permitted in such areas to permit sight lines or vistas; and (iii) utilities, stormwater best management practices, roads, pedestrian and golf cart paths, trails, and bridges may intrude or cross such areas. If vegetation is removed from such areas it shall be replaced by vegetation that is equally or more effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution. Utility crossings shall be generally perpendicular through such areas and Owner shall endeavor to design utility systems that do not intrude into such areas. All such Open Space and green space areas and other common areas shall be maintained by Owner.

18. Natural Resource Policy Owner has conducted a habitat study and determined that the habitat for the Northern long-eared bat (*Myotis septentrionalis*) currently is present on the Property. For so long as the habitat for the Northern long-eared bat is present on the Property, Owner shall comply with the tree clearing restrictions for the Northern long-eared bat as promulgated by the U.S. Army Corps of Engineers. In addition, Owner shall submit its conservation management plan with regard to the Northern long-eared bat to the Director of Planning for approval prior to the issuance of a land disturbing permit for Phase A, Phase B, or Phase C of development as shown on the Master Plan.

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

20. Successors and Assigns These Proffers shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors and/or assigns.

21. Severability In the event that any clause, sentence, paragraph, section or subsection of these Proffers shall be judged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States, or if the application thereof to any owner of any portion of the Property or to any government agency is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof, or the specific application thereof directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other such clause, sentence, paragraph, section or provision hereof.

22. Headings All section and subsection headings of Proffers herein are for convenience only and are not a part of this Agreement.

23. Conditions Applicable Only to the Property Notwithstanding anything in the Proffers, as hereby supplemented and modified, to the contrary, the failure to comply with one or more of the conditions herein in developing the Property shall not affect the rights of Owner or its successors in interest to develop its other property in accordance with the other applicable provisions of the Zoning Ordinance.

24. Recitals The Recitals set forth above shall be included and read as a part of these Proffers and are incorporated herein by reference.

WITNESS the following signatures, thereunto duly authorized:

[SIGNATURE PAGES TO FOLLOW]

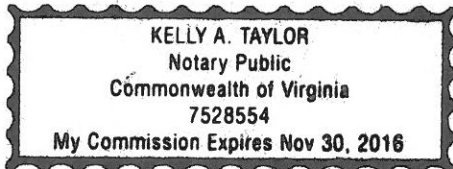
[Signature page to the Proffer Agreement.]

RIVERSIDE HEALTHCARE ASSOCIATION,
INC., a Virginia corporation

By: [Signature]
Name: Wade D. Broughman
Title: Chief Operating Officer

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me this the 16th day of February, 2016, by Wade D. Broughman, who ☒ is personally known to me, or who ☐ produced _____ as identification, as Chief Operating Officer of Riverside Healthcare Association, Inc., a Virginia corporation, in its behalf.



[Signature]
Notary Public

My commission expires: November 30, 2016

My registration number is: 7528554

[Signature page to the Supplemental and Amendatory Proffer Agreement.]

COUNTY OF JAMES CITY, VIRGINIA, a
political subdivision of the Commonwealth
of Virginia

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this the ____ day of _____, 2016, by _____, who ☐ is personally known to me, or who ☐ produced _____ as identification, as _____ of the County of James City, Virginia, a political subdivision of the Commonwealth of Virginia, in its behalf.

Notary Public

My commission expires: _____

My registration number is: _____

APPROVED AS TO FORM:

County Attorney

Exhibit A

All that certain lot, piece or parcel of land located in the Berkley District of the County of James City, and more particularly shown on the plat entitled "Plat of Subdivision, A Parcel Containing 89.404 Ac. Being a Portion of the Property Owned by Greensprings Plantation, Inc.", dated November 22, 1994, and made by AES, Consulting Engineers, Williamsburg, Virginia, of record in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City in Plat Book 60, page 100.

Exhibit B

Conceptual Plan

See Attached

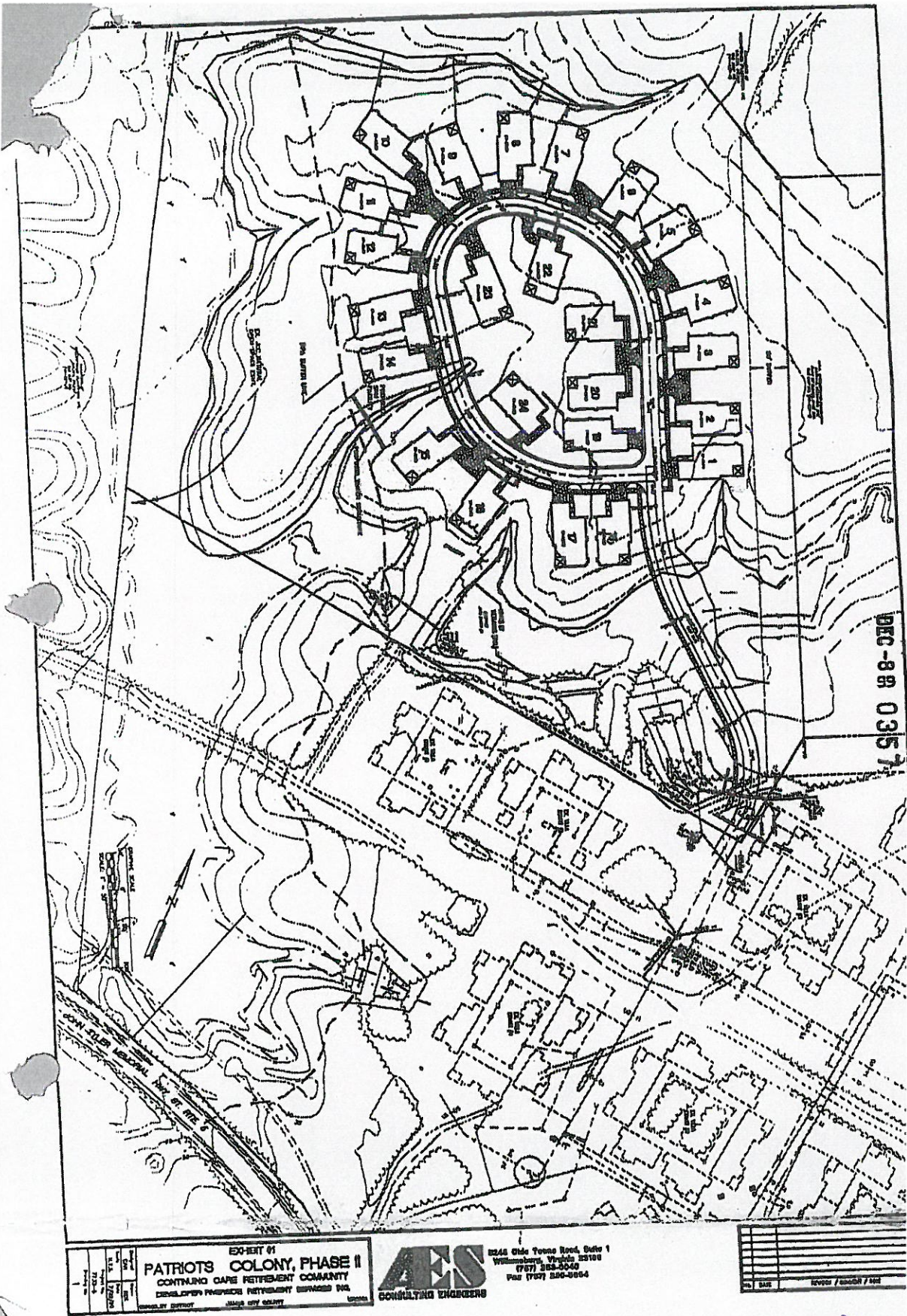
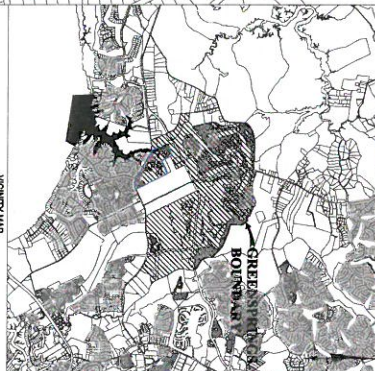


EXHIBIT **B**

Exhibit C
Master Plan
See attached



- ### GENERAL NOTES

[illegible]

Adopted and counts are not proposed to change through this amendment.



JAMESTOWN MAGESTERIAL DISTRICT

JAMES CITY COUNTY

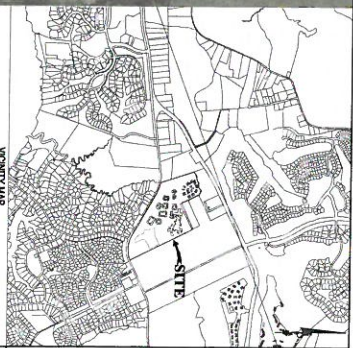
Bowman Consulting Group, Ltd.
3951 Westmore Parkway
Suite 150
Richmond, Virginia 23233

Phone: (804) 616-3240
Fax: (804) 270-2008

www.bowmanconsulting.com

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Bowman
CONSULTING



	MASTER PLAN		Bowman Consulting 3961 Woodside Park Suite 150 Richmond, Virginia 23138
	PATROT'S COLONY		Phone: (804) 671-9329 Fax: (804) 270-0008
	(LAND BAY M-10 OF GREENSPRINGS)		www.bowmanconsulting.com
	JAMESTOWN MAGISTERIAL DISTRICT	JAMES CITY COUNTY	

Bowman
CONSULTING





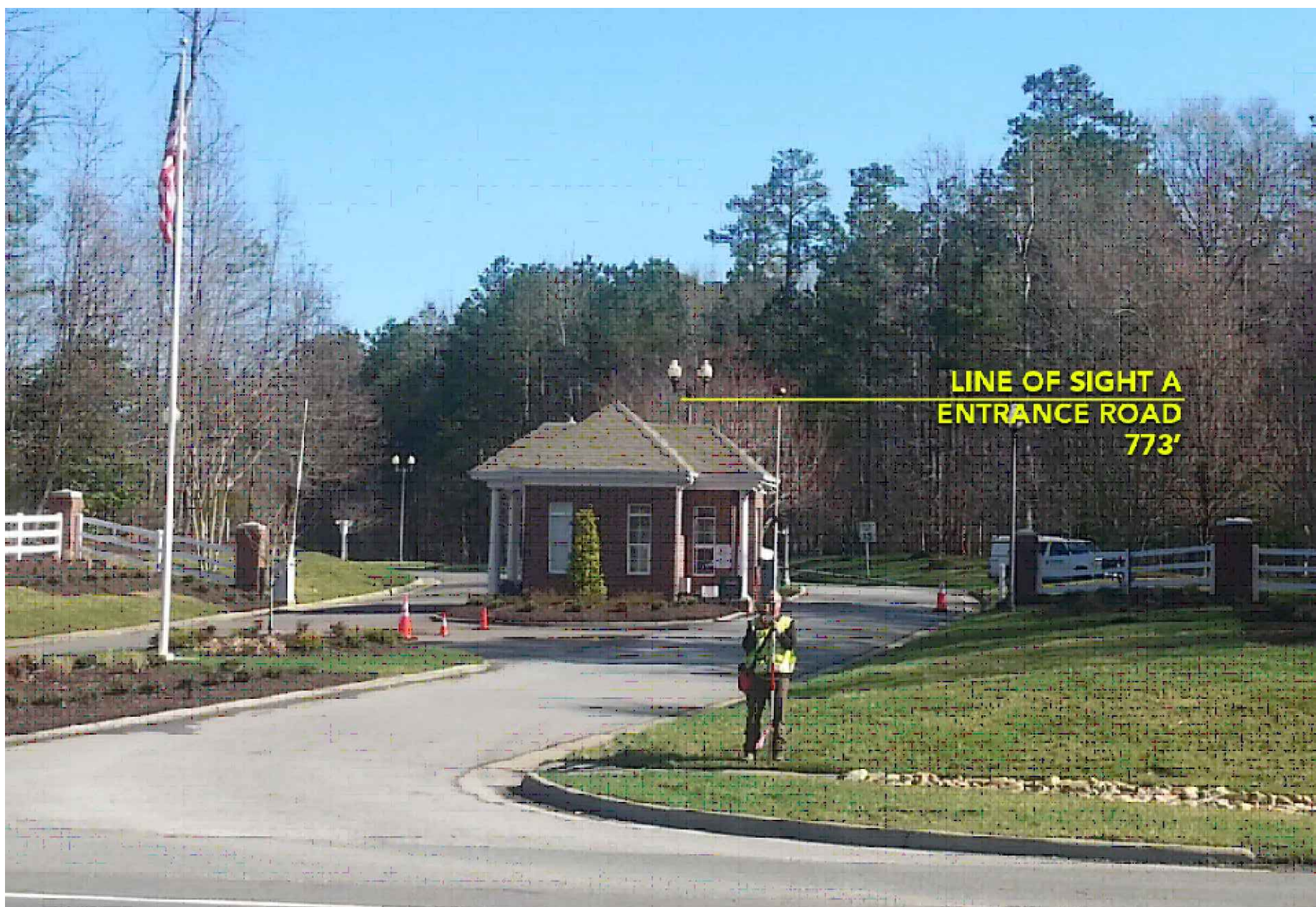
View Corridor A - General View from Greensprings Plantation (approx. 306'). Balloon is visible from this perspective.



View Corridor A - 709' away from proposed structure. Balloon not visible from this perspective.



View Corridor A - General View from Greensprings Plantation (approx. 1,300'). Balloon not visible from this perspective.



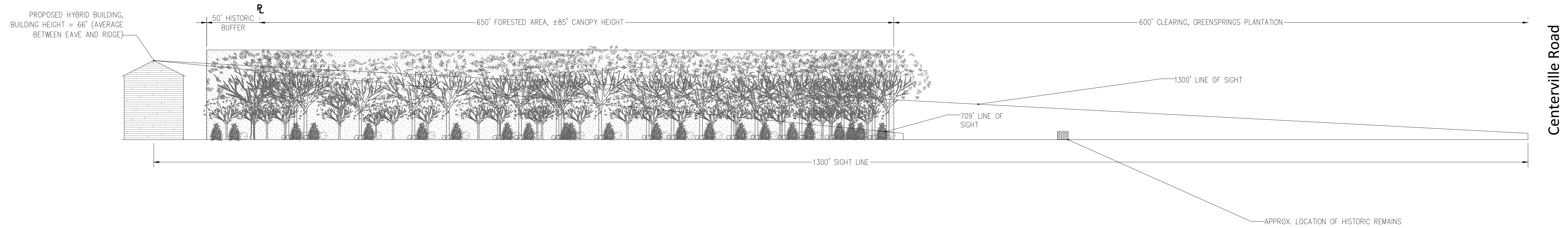
View Corridor B - View from Route 5/Patriot's Colony Entrance



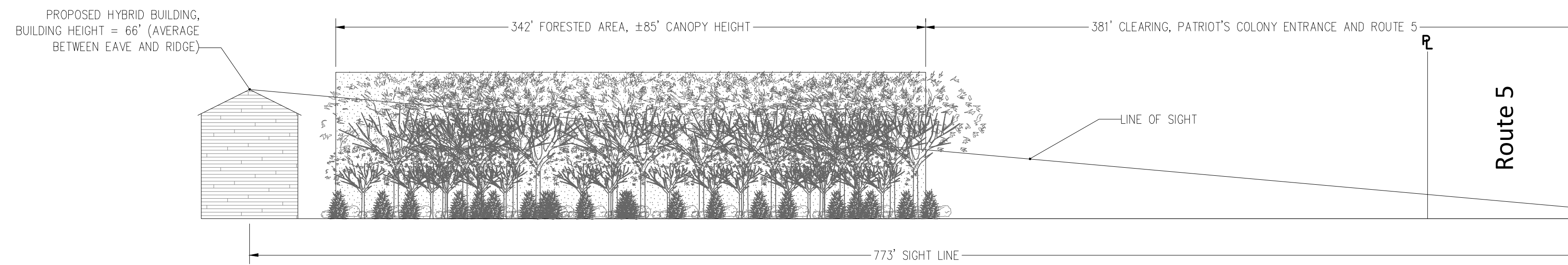
View Corridor C - 500' away from existing structure. Existing roof line is visible.



View Corridor C - 700' away from proposed structure. Existing roof line is not apparent.



Profile: View Corridor A
1" = 50'



Profile: View Corridor B
1" = 50'



MEMORANDUM

TO: Leanne Pollock
FROM: Dexter R. Williams
SUBJECT: Trip Generation For Patriots Colony
DATE: November 7, 2015

Patriot's Colony is a senior living and care facility operated by Riverside Health System. It was originally zoned as part of a Master Plan for Greensprings. Patriot's Colony constitutes Land Bay M-10 of the Greensprings Master Plan.

The Rt. 5 Traffic Study dated March 1992 that you provided included daily trip generation for the entire Greensprings development and not for individual land bays. It cited proposed development (at that time) for Greensprings that included 540 single family units and 913 multi-family units with total daily trip generation of 10,507 vehicles using Trip Generation, 5th Edition (TG5). No breakout for different residential types was not included nor was peak hour trip generation included.

Using TG6 (the oldest Trip Generation version I have), I applied conventional single family ITE Code 210 (540 units) and apartment ITE Code 220 (913 units) daily trip generation equations and calculated a total residential daily trip generation for the 1992 Greensprings development of 10,598 vehicles. This is very close to the total daily trip generation cited in the 1992 study and I think it is safe to conclude that the 1992 trip generation for Greensprings used these two conventional trip generation land uses.

Your research showed that Greensprings Master Plan Land Bay M-10 had 248 multi-family units (conventional apartment trip generation) in the 1992 traffic study. Rezoning in 1993 and 1999 had various descriptions of land uses for Land Bay M-10 but no updated trip generation has been provided for either of those rezonings.

Leanne Pollock
November 7, 2015

The following table shows the current development inventory proposed for rezoning in Patriot's Colony:

TABLE ONE: PATRIOT'S COLONY PROPOSED DEVELOPMENT INVENTORY
AND TRIP GENERATION LAND USE TYPES

PATRIOT'S COLONY MASTER PLAN SEPTEMBER 29, 2015		LAND USE TRIP GENERATION		
Unit Type	Total	Trip Generation Manual, 9th Edition		
Existing Improvements		Land Use	Code	Variable
Independent Living Apartments (Type D)	90	Sr. Adult Attached	252	Unit
Villa Homes (Type B)	68	Sr. Adult Attached	252	Unit
Greensprings Homes (Type A)	24	Sr. Adult Detached	251	Unit
Assisted Living (Type C)	62	Assisted Living	254	Bed
Memory Care - Existing Building	0	Assisted Living	254	Bed
Convalescent Center Skilled /LTC Beds (convert existing to 30 private rooms for rehab)	30	Assisted Living	254	Bed
New Construction				
Hybrid Homes (5 Bldgs@ 12units ea.)	80	Sr. Adult Attached	252	Unit
Small House - LTC Beds (3 - 20 bed neighborhoods) (SNF)	60	Assisted Living	254	Bed
Assisted Living Expansion (Type C)	24	Assisted Living	254	Bed
Small House - Memory Care (3 - 20 bed neighborhood) (SNF)	60	Assisted Living	254	Bed
Maintenance Building (4500 GSF)	4500 SF			
Totals	498			

The following table compares trip generation for Patriot's Colony (Greensprings Land Bay M-10) for the 1992 traffic study and for the proposed development plan using the current Trip Generation Manual 9th Edition:

TABLE TWO: PATRIOT'S COLONY TRIP GENERATION

		LAND USE CODE		WEEKDAY TRIP GENERATION							
VALUE	LAND USE			UNITS	AM PEAK HOUR			PM PEAK HOUR			DAILY
					Enter	Exit	Total	Enter	Exit	Total	
1992 MASTER PLAN 248 CONVENTIONAL UNITS											
eq.-adj. st.	Apartment	220	248	units	25	100	125	100	54	154	1626
PROPOSED DEVELOPMENT PLAN											
rate-adj. st.	Sr. Adult Detached	251	24	units	2	3	5	4	2	6	88
eq.-adj. st.	Sr. Adult Attached	252	238	units	16	31	47	32	27	59	730
rate-adj. st.	Assisted Living	254	236	occ.bed	29	13	42	34	34	68	647
			498	UNITS	47	47	94	70	63	133	1465

The proposed development plan for Patriot's Colony does not increase trip generation for Patriots' Colony relative to the 1992 traffic study peak hour and daily total traffic.



Please make sure to use the accompanying Excel Spreadsheet to calculate the numbers below.

FISCAL IMPACT WORKSHEET AND ASSUMPTIONS

Please complete all *applicable* sections. Please use the provided spreadsheet to perform calculations. If space provided is insufficient, please feel free to include additional pages. If you have any questions please contact the Planning Office at 757-253-6685 or planning@jamestownva.gov

- 1a) PROPOSAL NAME: _____
- 1b) Does this project propose residential units? Yes ☐ No ☐ (if no, skip Sec. 2)
- 1c) Does this project include commercial or industrial uses? Yes ☐ No ☐ (If no, skip Sec. 3)

Fiscal Impact Worksheet Section 2: Residential Developments

- 2a) TOTAL NEW DWELLING UNITS. Please indicate the total number of each type of proposed dwelling unit. Then, *add* the total number of new dwelling units.

Single-Family Detached		Apartment	
Townhome/Condominium/Single-Family		Manufactured Home	
Total Dwelling Units			

Are any units affordable? Yes ☐ No ☐ (If yes, how many?) _____

Residential Expenses – School Expenses

- 2b) TOTAL NEW STUDENTS GENERATED. *Multiply* the number of each type of proposed unit from (2a) its corresponding Student Generation Rate below. Then, *add* the total number of students generated by the proposal.

Unit Type	Number of Proposed Units (from 2a)	Student Generation Rate	Students Generated
Single-Family Detached		0.40	
Townhome/Condo/Attached		0.17	
Apartment		0.31	
Manufactured Home		0.46	
Total			

- 2c) TOTAL SCHOOL EXPENSES. *Multiply* the total number of students generated from (2b) by the Per-Student Total Expenses below.

Total Students Generated	Per-Student Operating Expenses	Per-Student Capital Expenses	Per-Student Total Expenses	Total School Expenses
	\$5920.16	\$2176.06	\$8096.22	\$

Residential Expenses - Non-School Expenses

- 2d) TOTAL POPULATION GENERATED. *Multiply* the number of proposed units from (2a) and multiply by the Average Household Size number below.

Total Units Proposed	Average Household Size	Total Population Generated
	2.45	

- 2e) TOTAL NON-SCHOOL EXPENSES. *Multiply* the population generated from (2d) by the Per-Capita Non-School Expenses below.

Total Population Generated	Per-Capita Non-School Expenses	Total Non-School Expenses
	\$640.98	\$

- 2f) TOTAL RESIDENTIAL EXPENSES. *Add* school expenses from (2c) and non-school expenses (2e) to determine total residential expenses.

Total School Expenses	Non-School Expenses	Total Residential Expenses
\$	\$	\$

Residential Revenues

- 2g) TOTAL REAL ESTATE EXPECTED MARKET VALUE. Write the number of each type of units proposed from (2a). Then *determine the average* expected market value for each type of unit. Then, *multiply* the number of unit proposed by their average expected market value. Finally, *add* the total expected market value of the proposed units.

Unit Type:	Number of Units:	Average Expected Market Value:	Total Expected Market Value:
Single-Family Detached		\$	\$
Townhome/Condo/Multi-family		\$	\$
Total:		N/A	\$

- 2h) TOTAL REAL ESTATE TAXES PAID. *Multiply* the total market value from (2g) by the real estate tax rate below.

Total Market Value	Real Estate Tax Rate	Total Real Estate Taxes Paid
\$.0084	\$

- 2i) TOTAL PERSONAL PROPERTY TAXES PAID. *Multiply* the total real estate taxes paid (2h) by the property tax average below.

Real Estate Tax Paid	Personal Property Tax Average	Personal Property Taxes Paid
\$	0.15	\$

- 2j) TOTAL SALES & MEALS TAXES PAID. *Multiply* the total real estate taxes paid (2h) by the sales and meals tax average below:

Real Estate Tax Paid	Sales and Meals Tax Average	Total Sales & Meals Taxes Paid
\$.09	\$

- 2k) TOTAL CONSERVATION EASEMENT TAXES PAID. If the proposal contains a conservation easement, *multiply* the size of the proposed conservation easement by the conservation easement assessment rate.

Proposed Conservation Easement Size	Assessment Rate	Conservation Easement Taxes Paid
	\$2000/acre (prorated)	\$

- 2l) TOTAL HOA TAXES PAID. If the HOA will own any property that will be rented to non- HOA members, *multiply* the expected assessed value of those rentable facilities by the real estate tax rate below.

HOA Property Type	Total Assessed Value	Real Estate Tax Rate	Total HOA Taxes Paid
		.0084	\$

- 2m) TOTAL RESIDENTIAL REVENUES. *Add* all residential taxes paid to the County from (2h) through (2l).

Total Residential Revenues	\$
----------------------------	----

- 2n) RESIDENTIAL FISCAL IMPACT. Subtract total residential revenues (2m) from total residential expenses (2f).

Total Residential	Total Residential Revenues	Total Residential Fiscal Impact
		\$

Fiscal Impact Analysis Worksheet Section 3: Commercial and Industrial Developments

Commercial and Industrial Expenses

- 3a) TOTAL NEW BUSINESSES. How many new businesses are proposed? _____
(Include all businesses that will rent or lease space at the location as part of the proposal, including probable tenants of an office park or strip mall).

- 3b) TOTAL COMMERCIAL EXPENSES. *Multiply* the total business real estate expected assessment value from (3c) below by the Commercial Expenses Rate below.

Total Expected Assessment Value	Commercial Expense Rate	Total Commercial Expenses
\$1	0.0045	\$

Commercial & Industrial Revenues

- 3c) TOTAL REAL ESTATE EXPECTED ASSESSMENT VALUE. *Estimate* the expected real estate assessment value, at buildout, of all proposed commercial element properties below.

Proposed Business Properties (by use and location)	Expected Assessment Value
Total:	\$

- 3d) TOTAL REAL ESTATE TAXES PAID. *Multiply* the total expected market property value from (3c) by the real estate tax rate below.

Expected Market Value	Real Estate Tax Rate	Real Estate Taxes Paid
	.0084	\$

- 3e) TOTAL BUSINESS PERSONAL PROPERTY TAXES PAID. *Multiply* the total business capitalization for each proposed commercial element by the business personal property tax rate below. Then *add* the total personal property taxes paid.

Proposed Business Name	Total Business Capitalization	Personal Property Tax Rate	Total Business Property Taxes Paid
		0.01	
		0.01	
		0.01	
Total:		N/A	\$

- 3f) TOTAL BUSINESS MACHINERY AND TOOLS TAXES PAID. If any manufacturing is proposed, *multiply* the total business capitalization for each proposed manufacturing element by the business machinery and tools tax rate below. Then, *add* the machinery and tools tax paid.

Proposed Business Name	Total Business Capitalization	Machinery and Tools Tax Rate	Total Business Property Taxes Paid
		0.01	
		0.01	
Total:		N/A	\$

- 3g) **TOTAL SALES TAXES PAID.** *Estimate* the applicable total gross retail sales, prepared meals sales, and hotel/motel room sales for proposal's commercial elements below. Then, *multiply* the projected commercial gross sales by the applicable sales tax rates. Then, *add* the total sales taxes paid.

Tax Type	Projected Gross Sales	Sales Tax Rates	Sales Taxes Paid
Retail Sales		0.01 of Gross Retail Sales	
Prepared Meals		0.04 of Prepared Sales	
Hotel, Motel		0.02 of Gross Sales*	
Total:	N/A	N/A	\$

*Actual Occupancy Tax is 5% of Gross Sales; however, 60% of those funds are targeted to tourism.

- 3h) **TOTAL BUSINESS LICENSES FEES PAID.** Estimate each business element's total gross sales. Multiply each business element's projected gross sales by the Annual Business License rate to determine annual business licenses fee paid.

Proposed Business Name(s)	Business Type* (see exhibit sheet)	Projected Total Gross Sales	Business License Rate	Annual Business License Fees Paid
	Professional Services		0.0058	
	Retail Services		0.0020	
	Contractors		0.0016	
	Wholesalers		0.0005	
	Exempt*		No fee due	
	Other Services		0.0036	
	Total	N/A	N/A	\$

- 3i) **TOTAL COMMERCIAL AND INDUSTRIAL REVENUES.** *Add* the total taxes and fees paid by all of the business elements from (3d) through (3h).

Total Commercial and Industrial Revenues	\$
---	-----------

- 3j) **COMMERCIAL FISCAL IMPACT.** *Subtract* total commercial and industrial revenues (3i) from total commercial and industrial expenses (3b).

Total Commercial	Total Commercial Revenues	Total Commercial Fiscal Impact
		\$

- 3k) **TOTAL PROPOSED FISCAL IMPACT.** *Add* residential fiscal impacts (2n) and commercial fiscal impacts (3j).

Residential Fiscal Impact	Commercial Fiscal Impact	Total Proposed Fiscal Impact
		\$

Fiscal Impact Analysis Worksheet Section 4: Current Land Use

Current Residential Use (If there are no existing residential units, skip to (4g)).

- 4a) TOTAL CURRENT DWELLING UNITS. Please indicate the total number of each type of existing dwelling unit. Then, *add* the total number of existing dwelling units.

Single-Family Detached		Apartment	
Townhome/Condominium/Single-Family Attached		Manufactured Home	
Total Dwelling Units			

Residential Expenses - School Expenses

- 4b) TOTAL CURRENT STUDENTS. *Multiply* the number of existing units from (4a) by its corresponding Student Generation Rate below. Then, *add* the total number of existing students.

Unit Type	Number of Existing Units	Student Generation Rate	Existing Students
Single-Family Detached		0.40	
Townhome/Condo/Attached		0.17	
Apartment		0.31	
Manufactured Home		0.46	
Total		N/A	

- 4c) TOTAL CURRENT SCHOOL EXPENSES. *Multiply* the total number of current students from (4b) by the per-student school cost below.

Number of Existing Students	Per-Student School Cost	Current School Expenses
	\$8096.22	\$

Residential Expenses - Non-School Expenses

- 4d) TOTAL CURRENT POPULATION. *Multiply* the total number of existing units from (4a) by average household size below.

Total Existing Units	Average Household Size	Total Current Population
	2.45	\$

- 4e) TOTAL CURRENT NON-SCHOOL EXPENSES. *Multiply* the current population from (4d) by per-capita non-school expenses below.

Total Current Population	Per-Capita Non-School Expenses	Current Non-School Expenses
	\$640.98	\$

- 4f) TOTAL RESIDENTIAL EXPENSES. *Add* school expenses from (4c) and non-school expenses from (4e).

School Expenses	Non-School Expenses	Residential Expenses
\$	\$	\$

Residential Revenues

- 4g) TOTAL CURRENT ASSESSMENT VALUE. *Search* for each residential property included in the proposal on the Parcel Viewer at <http://property.jccegov.com/parcelviewer/Search.aspx>. *Indicate* each property's total assessment value below. Then, *add* total assessment values.

Property Address and Description	Assessment Value
	\$
	\$
	\$
Total:	\$

- 4h) TOTAL CURRENT REAL ESTATE TAXES PAID. *Multiply* the total assessment value from (4g) by the real estate tax rate below.

Total Assessment Value	Real Estate Tax Rate	Real Estate Taxes Paid
	.0084	\$

- 4i) TOTAL CURRENT PERSONAL PROPERTY TAXES PAID. *Multiply* total real estate taxes paid from (4h) by the personal property tax average below.

Real Estate Tax Paid	Personal Property Tax Average	Personal Property Paid
	0.15	\$

- 4j) TOTAL CURRENT SALES AND MEALS TAXES PAID. *Multiply* the total real estate taxes paid from (4h) by the sales and meals tax average below.

Real Estate Tax Paid	Sales and Meals Tax Average	Average Excise Tax Paid
	.09	\$

- 4k) TOTAL CURRENT RESIDENTIAL REVENUES. *Add* all current residential taxes paid to the County from (4h) through (4j).

Total Current Residential Revenues	\$
---	----

- 4l) CURRENT RESIDENTIAL FISCAL IMPACT. *Subtract* total residential revenues (4k) from total residential expenses (4f).

Total Residential	Total Residential Revenues	Total Residential Fiscal Impact
		\$

- 4m) FINAL RESIDENTIAL FISCAL IMPACT. *Subtract* current residential fiscal impact from (4l) from proposed residential fiscal impact from (2n).

Proposed Residential Impact	Current Residential Impact	Final Residential Fiscal Impact
		\$

Current Commercial Use

Current Commercial Expenses (if there are no current businesses or commercial properties, skip to (5k).

- 5a) TOTAL CURRENT BUSINESSES. How many businesses exist on the proposal properties?
 _____ (Include all businesses that rent or lease space at the location).
- 5b) TOTAL CURRENT COMMERCIAL EXPENSES. *Multiply* the current number of businesses operating on the proposal properties by the per-business expense rate below.

Total Expected Assessment Value	Commercial Expense Rate	Total Commercial Expenses
	0.0045	\$

Current Commercial Revenues

- 5c) TOTAL CURRENT ASSESSMENT VALUE. *Search* for each commercial property included in the proposal on the Parcel Viewer at <http://property.jccegov.com/parcelviewer/Search.aspx>. *Indicate* each property's total assessment value below. Then, *add* total assessment values.

Addresses	Assessment Value	Real Estate Tax Rate	Real Estate Tax Paid
		.0084	
		.0084	
Total:			\$

- 5d) TOTAL CURRENT BUSINESS PERSONAL PROPERTY TAXES PAID. *Multiply* the total business capitalization for each current commercial element by the business personal property tax rate below. Then *add* the total personal property taxes paid.

Current Business	Total Business	Personal Property Tax Rate	Business Property Taxes Paid
		0.01	
		0.01	
		0.01	
Total:		N/A	\$

- 5e) TOTAL CURRENT MACHINERY AND TOOLS TAX PAID. If any manufacturing exists, *multiply* the total capitalization for manufacturing equipment by the business machinery and tools tax rate below.

Current Business	Total Business Capitalization	Personal Property Tax Rate	Machinery and Tools Tax Paid
		0.01	\$

- 5f) TOTAL CURRENT SALES TAXES PAID. *Estimate* the applicable total gross retail sales, prepared meals sales, and hotel/motel sales for existing commercial elements below. Then, *multiply* the projected commercial gross sales by the applicable sales tax rates. Then, *add* the total sales taxes paid.

Activity	Projected Gross Sales	Tax Rate	Sales Taxes Paid
Retail Sales		0.01 of Gross Retail Sales	
Prepared Meals		0.04 of Prepared Sales	
Hotel, Motel		0.02 of Gross Sales*	
Total:	N/A	N/A	\$

*Actual Occupancy Tax is 5% of Gross Sales; however, 60% of those funds are targeted to tourism.

- 5g) TOTAL CURRENT BUSINESS LICENSES FEES PAID. *Estimate* each current business element's total gross sales. Then, *multiply* each business element's projected gross sales by the Annual Business License rate to determine annual business licenses fee paid. Then, *add* the total business license fees paid.

Business Type	Gross Sales	Business License Rate	Annual Business License Fees Paid
Professional Services		\$0.0058	
Retail Sales		\$0.0020	
Contractors		\$0.0016	
Wholesalers		\$0.0005	
Manufacturers		No tax	
Other Services		\$0.0036	
Total:	N/A	N/A	\$

- 5h) TOTAL CURRENT COMMERCIAL REVENUES. *Add* all current commercial revenues paid by existing businesses from (5c) through (5g).

Total Current Commercial Revenues	\$
-----------------------------------	----

- 5i) CURRENT COMMERCIAL FISCAL IMPACT. *Subtract* total commercial revenues (5h) from total residential expenses (5b).

Total Commercial Expenses	Total Commercial Revenues	Total Commercial Fiscal Impact
		\$

- 5j) FINAL COMMERCIAL FISCAL IMPACT. *Subtract* current commercial fiscal impact from (5i) from proposed commercial fiscal impact from (3j).

Proposed Commercial Impact	Current Commercial Impact	Final Commercial Fiscal Impact
		\$

- 5k) FINAL FISCAL IMPACT. *Subtract* the final commercial fiscal impact from (5i) from final residential fiscal impact from (4m).

Final Residential Impact	Final Commercial Impact	Final Fiscal Impact
		\$

Fiscal Impact Worksheet Section 6: Phasing

Residential Phasing

- 6a) *Copy and paste* the residential phasing template from the accompanying Excel sheet to the page below.

Commercial Phasing

- 6b) *Copy and paste* the commercial phasing template from the accompanying Excel sheet to the page below.

Final Phasing Projections

- 6c) *Copy and paste* the final phasing projection from the accompanying Excel sheet to the page below.

Fiscal Impact Worksheet Section 7: Employment

- 7a) *Copy and paste* the employment projections from the accompanying Excel sheet to the page below.

Phasing - Residential Phasing

6a) When will proposed residential units be built?

Total Units Proposed		80					
	Year 1	Year 2	Year 3	Year 4	Year 5	Buildout	
Homes Built	80					80	
Total Res Exp	\$ 89,737.20	\$ 89,737.20	\$ 89,737.20	\$ 89,737.20	\$ 89,737.20		
Per Unit Exp	\$ 1,121.72	\$ 1,121.72	\$ 1,121.72	\$ 1,121.72	\$ 1,121.72	\$	1,121.72
Total Res Exp	\$ 89,737.20	\$ -	\$ -	\$ -	\$ -	\$	89,737.20
Total Res Rev	\$ 211,236.48	\$ 211,236.48	\$ 211,236.48	\$ 211,236.48	\$ 211,236.48		
Per Unit Rev	\$ 2,640.46	\$ 2,640.46	\$ 2,640.46	\$ 2,640.46	\$ 2,640.46	\$	2,640.46
Total Res Rev	\$ 211,236.48	\$ 211,236.48	\$ 211,236.48	\$ 211,236.48	\$ 211,236.48	\$	1,056,182.40
Per Unit Impact	\$ (1,518.74)	\$ (1,518.74)	\$ (1,518.74)	\$ (1,518.74)	\$ (1,518.74)	\$	(1,518.74)
Res Impact	\$ (121,499.28)	\$ (121,499.28)	\$ (121,499.28)	\$ (121,499.28)	\$ (121,499.28)	\$	121,499.28

Phasing - Commercial Phasing

6b) When will proposed commercial units be built?

Total New Businesses		2	
	Year 1	Year 2	Buildout
Bus Built	1	1	2
Bus Exp	\$ 46,725.00	\$ 46,725.00	
Per Bus Exp	\$ 23,362.50	\$ 23,362.50	
Year Bus Exp	\$ 23,362.50	\$ 23,362.50	
Bus Rev	\$ 103,200.00	\$ 103,200.00	
Per Bus Rev	\$ 51,600.00	\$ 51,600.00	
Year Bus Rev	\$ 51,600.00	\$ 51,600.00	
Bus Impact	\$ 28,237.50	\$ 56,475.00	

6c) What is the final phasing projection?

	Year 1	Year 2	Year 3	Year 4	Year 5	Buildout
Res Impact	\$ (121,499.28) \$	(121,499.28) \$	(121,499.28) \$	(121,499.28) \$	(121,499.28) \$	(121,499.28)
Bus Impact	\$ 28,237.50 \$	56,475.00 \$	56,475.00 \$	56,475.00 \$	56,475.00 \$	
Final Impact	\$ (93,261.78) \$	(65,024.28) \$	(65,024.28) \$	(65,024.28) \$	(65,024.28)	

Employment

7a) How many full-time equivalent jobs (FTE) will be generated from the proposal? What will be the average payroll?

	Business	FTE Jobs Generated	Average Payroll
1	PCAW	5	
2	Long term care c	60	\$ 1,726,515.00
3	AL Exp	15	\$ 431,628.75
4			\$ -
5			\$ -
6			\$ -

DEFINITIONS AND ASSUMPTIONS

Apartment – A building used, or intended to be used as the residence of three or more families living independently of each other. Tenants have no equity in the dwelling.

Assessment Value – Assessment value is assumed to be within 1% of market value. Market value drives assessment value.

Buildout – All data and assumptions reflect the fiscal impact of the proposal at buildout.

Commercial Expense Rate – The commercial expense rate uses the proportional valuation method (see below) to determine individual business expenses. Under that method businesses are collectively responsible for contributing 15% of the non-school budget (\$10,391,694).

Dividing this portion of the budget by the total commercial real estate in the County (\$2,060,690,000) gives a commercial expense rate of 0.0045. This rate assumes that the costs of providing County services to a business are directly correlated with that business's property assessment. This assumes more valuable properties have generally more intense uses incurring greater County expenses.

Condominium – A building, or group of buildings, in which units are owned individually and the structure, common areas and common facilities are owned by all the owners on a proportional, undivided basis.

Contractor – Any person, firm or corporation accepting or offering to accept orders or contracts for doing any work on or in any building or structure, any paving, curbing or other work on sidewalks, streets, alleys or highways, any excavation of earth, rock or other materials, any construction of sewers and any installation of interior building components.

Direct Impact – The worksheet only calculates direct financial impacts on the County budget. The worksheet is only one of many development management tools and as such, does not make a determination whether any type of development “should” happen based solely on that proposal's fiscal impact. The tool is not designed to measure non-budget impacts, such as increased traffic or non-budget benefits, such as forwarding the goals of the Comprehensive Plan. Costs incurred by other entities, such as other localities or the state, remain uncouned.

Dwelling – Any structure which is designed for use for residential purposes, except hotels, motels, boardinghouses, lodging houses and tourist cabins.

Exempt – Certain types of business activities or products are exempted from annual County business licenses. These include manufacturers, insurance agencies, apartment complexes and gasoline sales.

Fees & Licenses – All fees collected by the County, including business and professional licenses, planning fees, building permit fees, stormwater fees, environmental inspection fees, septic tank fees, dog licenses and motor vehicle licenses, are deducted from the per-capita and per-business budgetary costs of each department that collects them.

Fiscal Impact Analysis – The County has created a set of standardized data and assumptions to streamline both the creation and review of fiscal impact studies. The County had no itemized list of questions for fiscal impact study creators to answer, resulting in portions of fiscal impact studies with no bearing on the County's budgetary bottom line. The guesswork is removed from the creation of these documents. The data used by fiscal impact study authors also came from myriad sources, often within the County, which were difficult to verify. The fiscal impact worksheet allows consistency across multiple fiscal impact studies.

Fiscal Impact Worksheet – The worksheet helps the applicant present relevant data to the County, using data verified by the County. The worksheet provides consistency across all fiscal impact analyses.

Non-School Expenses – Non-school expenses include all FY10 non-school budget spending. Non-school expenses are calculated using the Proportional Variation method. Using the Proportional Variation method, residents and businesses are assumed to be responsible for differing percentages of the County's non-school spending.

Manufacturing – Assembly of components, pieces, or subassemblies, or the process of converting raw, unfinished materials into different products, substances or purposes.

Market Value – Market value is assumed to be within 1% of assessment value. Market value drives assessment value.

Manufactured Home – A manufactured home is a structure not meeting the specifications or requirements or a manufactured home, designed for transportation after fabrication. The only manufactured homes counted in the Student Generation figure are those in designated manufactured home parks. Manufactured homes on individual lots are indistinguishable from single-family detached dwellings for the purposes of the worksheet.

Phasing – All residential developments are assumed to have an absorption rate of 20% per annum. All commercial development are assumed to have an absorption rate of 20% per annum. The date stamp Year 1 in the phasing template represents 365 days after the Board of Supervisors approval.

Professional Services – Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture,

law, dentistry, medicine, optometry, pharmacy or professional engineering. Professional services shall also include the services of an economist procured by the State Corporation Commission.

Proportional Valuation Impact – Proportional valuation impact assumes that a proposed residential or commercial project's fiscal impact is proportional to the percentage of the total tax base that is either residential or commercial.

James City's proportional valuation is calculated using the County's Real Estate Mapping GIS program. The program calculated an aggregate property assessment value of \$13,763,228,800 for the entire County. The program calculated an aggregate commercial and industrial assessment value of \$2,060,690,000. Dividing the commercial value by the total value shows that commercial and industrial properties compose 15% of the total property tax base and are responsible for 15% of County non-school expenses. This results in residential development being responsible for Schools impacts and 85% of non-school County operations. The proportional valuation method does not factor other assorted residential and commercial taxes, fees and licenses into account. As 15% of the tax base, businesses contribute 15% for all County non-school expenses. As 85% of the tax base, residents contribute 85% for all County non-school expenses.

Furthermore, individual business expenses to the County are calculated using the proportional valuation impact method. (See Commercial Expense Rate)

Per-Business Expense Rate – The per-business expense rate assumes that the County incurs non-school expenses equal to 0.04% of the commercial real estate assessment of any given business.

Per Capita Evaluation Method – This worksheet uses the Per Capita Evaluation method to assign per-capita and per-business costs to non-school expenses. This method assumes that current per-capita and per-business expenditures and service levels are consistent with future per-capita and per-business expenditures and service levels.

Per Capita – Per capita calculations divide each department's spending, minus fees and state contributions, by the current County population. This number excludes institutional residents in detention at correctional facilities and mental institutions. Total population is determined from James City County Planning Division figures.

JCC Population 2010	Dwelling Units 2010
66048*	30221**

*US Census 2010 Population Count

**JCC Codes Compliance Division Housing Unit Count + Apartment Count

Per Student – Per student calculations divide County contributions to WJCC Schools, minus state educational contributions, by the total number of K-12 students living in James City and also

attending WJCC Schools. Total students are determined from Williamsburg-James City County Schools 2009-2010 School Year enrollment reports.

Per Business – Per business calculations divide each departments spending, minus fees and state contributions, by the total number of County businesses. Total businesses are determined by the number of business licenses issued.

Total Number of JCC Businesses				5400*
Percentage	of	Property	Tax	15%**
Assessments				*James City County Commissioner of the Revenue

**Commercial impacts are calculated on a proportional variation process

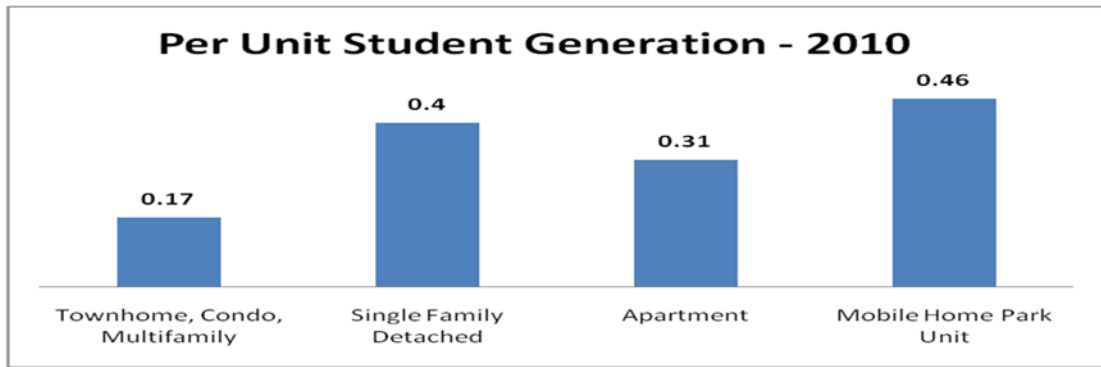
Proffer – Proffers paid for schools can only be applied toward the capital expense portion of per-student school expenses. (See Board of Supervisors' Proffer Policy.)

Retail Services – Display and sale of merchandise at retail or the rendering of personal services, such as food, drugs, clothing, furniture, hardware, appliances, barber and beauty, antiques, and household uses and other uses.

Single-Family Detached Dwelling – A detached structure arranged or designed to be occupied by one family, the structure only having one dwelling unit.

State Contributions – The state contributes both targeted and unspecified funds to the James City County budget. Funds for specific departments were subtracted from the budget totals of those departments. Unspecified state fund amounts were compiled, then evenly subtracted (7.75% of each department total) across all non-school departments.

Student Generation Rate – The student generation rate the number of students produced by an individual dwelling unit per year. Different domestic units produce students at different rates. Using WJCC enrollment figures, an address was found for WJCC students residing in James City County. Using the James City County Real Estate Division's Property Information map on the James City County website, the number of students from each subdivision was determined. Using the Real Estate Division's Real Estate Parcel Count, the number of improved lots in each neighborhood was determined. Total students from each neighborhood were divided by the total number of units from that neighborhood to determine the average number of students per housing unit. The student generation numbers for 256 subdivisions were determined this way, along with the same method for counting students from apartments and manufactured home parks.



Townhome –In a structure containing three or more dwelling units, a dwelling unit for single-family occupancy, not more than three stories in height, attached by one or more vertical party walls extending to the roof sheathing without passageway openings to one or more additional such dwelling units, each of which is served by an individual exterior entrance or entrances.



FRONT ELEVATION - OPTION 2
PATRIOTS COLONY - HYBRID APARTMENTS
DECEMBER 3, 2015

✓

Attachment 11: Patriot's Colony Balloon Test on January 14, 2016

Green Spring NHL at about 850' off the proposed building near the brick foundation on the park property:



Green Spring NHS at about 454 feet from proposed building:



Green Spring NHL at about 396 feet:



Green Spring NHL at about 208 feet:



Green Spring NHL at about 196 feet – NPS boundary:



Green Spring NHL at NPS boundary – view of existing Patriot's Colony development:



First Colony entrance at Heritage Landing Road:



First Colony entrance at Heritage Landing Road (zoomed in to see balloon):



Attachment 12: Photos of existing 5-story building



Pictures taken approximately 50 feet from 5-story apartment building (about at the property line with Green Spring National Historical Landmark)





Leanne Pollock

From: Connolly, Jonathan <jonathan_connolly@nps.gov>
Sent: Thursday, February 11, 2016 10:53 AM
To: Leanne Pollock
Cc: Carol Tyrer; Kym A Hall; Paul Carson; Steven Williams
Subject: Patriot's Colony Expansion

Leanne,

I have reviewed the material provided, as well as the archeological survey data, and believe that the proposed construction will not adversely affect the view shed and cultural landscape at Historic Green Spring. Based on conversations I have had with Carol Tyrer of Circa CRM, Inc., it is questionable as to whether the site of the proposed construction was shovel-tested. I understand that there is a covenant in place that requires construction to halt in the event of an inadvertent discovery. Due to the unclear nature of archeological survey in this area, I support the use of an inadvertent discovery policy to protect archeological resources, should they be discovered, to allow for their recovery. I would also recommend that ground disturbing activities be monitored by a professional archeologist due to the unclear nature of archeological survey in this area.

If you have any questions, please do not hesitate to contact me.

Thank you for consulting with Colonial National Historical Park and allowing for the opportunity to comment.

Jonathan D. Connolly
Acting Chief of Resources
Colonial National Historical Park
P.O. Box 210
Yorktown, Virginia
Office: (757)898-2429
Cell: (757)846-0482



January 01, 2016

Ms. Leanne Reidenbach
James City Planning Department
Reference: Case #Z-0005-2015, Patriots Colony – Height Limitation Waiver Request

Dear Ms. Reidenbach,

After reviewing the Bowman Consulting plans referenced above, please be aware that I am opposed to the proposed height limitation waiver for any proposed structure at Patriots Colony, 3400 John Tyler Highway (Tax Map # 452010013). Below are the issues with any heights greater than currently allowed by County Code at Patriots Colony:

- 1) It will negatively impact the view from the Green Springs National Historic Landmark property;
- 2) It will negatively impact the character of the Commonwealth's second dedicated scenic Virginia Byway;
- 3) It will negatively impact the Route 5 scenic Community Character Corridor entrance to Williamsburg;
- 4) It will negatively impact the scenic view from the Capitol to Capitol Bikeway;
- 5) It will increase the housing capacity which will increase traffic volume on the already dangerous Route 5 and associated nearby intersections (intersections at Heritage Landing Road, John Rolfe Road, Centerville Road and Greensprings Road).
- 6) It is inconsistent with prevailing development along the entire length of John Tyler Highway.

I have forwarded these comments to the First Colony Homeowners Association, Friends of Greensprings organization, and Mrs. Ruth Larson, Member – Board of Supervisors as I believe they and others have a right to know and will concur that any height limitation waiver should not be granted. Should you have any comments or questions, please feel free to contact me.

Sincerely,

H.L. Phillip Goering, P.E.

From: P. Goering <pgoering@cox.net>

Sent: Tuesday, March 01, 2016 8:13 PM

To: Development Management

Cc: Leanne Pollock; william.holstein@mason.wm.edu; Ruth Larson

Subject: Case Nos. Z-0005-2015/MP-0002-2015/HW-0002-2015 Patriots Colony Expansion

Mr. Paul D. Holt,

My wife and I are opposed to the Height Limitation Waiver, referenced above. We believe that the proposed improvements, including utilities and SWM, will necessitate clearing limits that will expose the top of the proposed buildings to the surrounding area. Views from First Colony, John Tyler Highway (a community entrance corridor), the Virginia Capital Trail, as well as possibly from the Greensprings Plantation will be negatively impacted. We believe the balloon tests are inherently inadequate because they cannot accurately represent the size of the proposed buildings and cannot compensate for the existing vegetation that will ultimately be removed for said improvements.

A second concern raised by the proposed improvements involves the resulting traffic increase. We understand that a study was performed indicating that John Tyler Highway is currently adequate to accommodate the anticipated traffic increase from the proposed development. However, VDOT has recently added warning rumble strips to John Tyler Highway on either side of its intersections with Greensprings Road and Centerville Road to alert drivers to the well-known dangers (including deaths and permanent disabilities) of the misaligned intersections. My wife and I believe that this development should be the catalyst to require the reconstruction of these intersections to meet the current VDOT standards.

Thank you for your consideration of these comments.

Sincerely,

H.L. Phillip Goering, P.E.

ITEM SUMMARY

DATE: 4/12/2016

TO: The Board of Supervisors

FROM: Suzanne R. Mellen, Director of Financial and Management Services

SUBJECT: Ratification of the Form of the Public Offering and Appendix-Lease Revenue Bonds

ATTACHMENTS:

	Description	Type
▣	Ratification of the Approval of Lease Financing to Finance Capital Improvements for Public School Facilities and Approving Finance Documents	Cover Memo
▣	resolution	Resolution
▣	Attachment 1	Exhibit
▣	Attachment 2	Exhibit
▣	Attachment 3	Exhibit
▣	Attachment 5	Exhibit
▣	Attachment 6	Exhibit
▣	Attachment 7	Exhibit

REVIEWERS:

Department	Reviewer	Action	Date
Financial Management	Mellen, Sue	Approved	4/5/2016 - 2:34 PM
Publication Management	Burcham, Nan	Approved	4/5/2016 - 2:43 PM
Legal Review	Kinsman, Adam	Approved	4/5/2016 - 3:17 PM
Board Secretary	Fellows, Teresa	Approved	4/5/2016 - 3:18 PM
Board Secretary	Hill, Bryan	Approved	4/5/2016 - 3:34 PM
Board Secretary	Fellows, Teresa	Approved	4/5/2016 - 3:35 PM

M E M O R A N D U M

DATE: April 12, 2016

TO: The Board of Supervisors

FROM: Suzanne R. Mellen, Director, Financial and Management Services

SUBJECT: Ratification of the Approval of Lease Financing to Finance Capital Improvements for Public School Facilities and Approving Finance Documents

At the March 8, 2016 meeting, the Board of Supervisors approved a resolution authorizing the issuance and sale of bonds for the costs of certain capital improvements for public facilities, including but not limited to the construction, renovation, rehabilitation and equipping of a middle school.

The attached resolution ratifies approval of lease financing to finance capital improvements for public school facilities and approving financing documents.

SRM/nb
ApprvlLeaseFinan-mem

Attachment

RESOLUTION

RATIFICATION OF THE APPROVAL OF LEASE FINANCING TO FINANCE CAPITAL

IMPROVEMENTS FOR PUBLIC SCHOOL FACILITIES

AND APPROVING FINANCE DOCUMENTS

WHEREAS, the Board of Supervisors (the "County Board") of James City County, Virginia (the "County"), has previously approved at its March 8, 2016 meeting, a plan of lease financing (the "Plan of Finance") with the Economic Development Authority of James City County, Virginia (the "Authority"), and the Williamsburg-James City County School Board (the "School Board"), to finance (including reimburse) the costs of certain capital improvements for public school facilities, including (but not limited to) the construction, renovation, rehabilitation and equipping of a middle school (collectively, the "Project"); and

WHEREAS, the County has previously requested and the Authority has agreed to issue its Public Facility Revenue Bonds (James City County School Project), Series 2016 (the "Bonds"), and use the proceeds to: a) reimburse or finance costs of the Project; and b) pay the related costs of issuing the Bonds; and

WHEREAS, the Bonds will be secured in part by payments appropriated from time to time by the County Board and payable to the Authority in accordance with the terms of the Financing Agreement (as defined herein); and

WHEREAS, to improve the marketing of the Bonds at attractive interest rates, Davenport & Company LLC, the County's financial advisor (the "Financial Advisor"), has recommended that the County consider providing additional security for the Bonds by undertaking a lease/lease-back financing arrangement with the Authority and the School Board of the Toano Middle School property (the "Property"); and

WHEREAS, there have been presented to this meeting drafts of the following documents (collectively, the "Documents"), proposed in connection with the issuance and sale of the Bonds:

- a. Agreement of Trust, as supplemented and amended by a First Supplemental Trust Agreement (together, the "Trust Agreement"), each between the Authority and Wilmington Trust, National Association, as trustee (the "Trustee"), pursuant to which the Bonds are to be issued; and
- b. Financing Agreement (the "Financing Agreement"), between the Authority and the County, pursuant to which the Authority will loan the proceeds of the Bonds to the County and the County will undertake, subject to appropriation, to make payments to the Authority in amounts sufficient to pay the principal of and premium, if any, and interest on the Bonds and certain other related costs; and

- c. Preliminary Official Statement of the Authority relating to the public offering of the Bonds (the “Preliminary Official Statement”); and
- d. Notice of Sale (attached as Appendix H to the Preliminary Official Statement) (the “Notice of Sale”); and
- e. Continuing Disclosure Agreement (attached as Appendix F to the Preliminary Official Statement), pursuant to which the County agrees to undertake certain continuing disclosure obligations with respect to the Bonds; and
- f. Deed and Agreement of Ground Lease (the “Ground Lease”), between the Authority, the County and the School Board, conveying to the Authority a leasehold interest in the Property; and
- g. Deed and Agreement of Financing Lease, between the Authority, the County and the School Board (the “Financing Lease”), conveying to the County and the School Board a subleasehold interest in the Property; and
- h. Assignment Agreement (the “Assignment Agreement”), between the Authority and the Trustee, assigning to the Trustee certain rights of the Authority under the Ground Lease and the Financing Lease.

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

- 1. Ratification. The County Board hereby ratifies the Plan of Finance and the Project approved by the County Board at its March 8, 2016 meeting, (the “March Resolution”).
- 2. Execution. The Chairman and the Vice Chairman of the County Board and the County Administrator (which term for purposes of this Resolution includes any Assistant County Administrator), any of whom may act, are hereby authorized and directed to execute the Documents to which the County is a signatory, which shall be in substantially the forms circulated prior to this meeting, which are hereby approved, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the officer signing such Documents, the execution and delivery thereof to constitute conclusive evidence of the officer’s approval of any such completions, omissions, insertions and changes. The County Attorney is hereby authorized to cause the Ground Lease, the Financing Lease, the Assignment Agreement and other documents as are necessary to be recorded in the Clerk’s Office of the Circuit Court of Williamsburg/James City County.
- 3. Sale of Bonds. The County Board approves the following terms of the sale of the Bonds. The Bonds shall be sold by competitive bid in a principal amount to be determined by the County Administrator, in collaboration with the Financial Advisor, and subject to the limitations set forth in the March Resolution. The County Administrator shall also determine the interest rates and maturity schedules of the Bonds, the price to be paid for the Bonds and the redemption provisions of the Bonds, all subject to the limitations set forth in the March Resolution, as well as the dated date, the principal and interest payment dates and the Record Date of the Bonds, all as the County Administrator determines to be in the best interest of the County.

The County Administrator shall receive bids for the Bonds and award the Bonds to the bidder providing the lowest “true” or “Canadian” interest cost, subject to the limitations set forth in the March Resolution. Following the sale of the Bonds, the County Administrator shall file a certificate with the County Board setting forth the final terms of the Bonds. The actions of the County Administrator in selling the Bonds shall be conclusive, and no further action shall be necessary on the part of the County Board.

4. Notice of Sale. The County Administrator, in collaboration with the Financial Advisor, is authorized and directed to take all proper steps to advertise the Bonds for sale substantially in accordance with the form of Notice of Sale, which is hereby approved; provided that the County Administrator, in collaboration with the Financial Advisor, may make such changes in the Notice of Sale not inconsistent with this Resolution as he may consider to be in the best interest of the County.
5. Official Statement. The draft Preliminary Official Statement describing the Bonds, copies of which have been made available prior to this meeting, is hereby approved as the Preliminary Official Statement by which the Bonds will be offered for sale to the public; provided that the County Administrator, in collaboration with the Financial Advisor, may make such completions, omissions, insertions and changes in the Preliminary Official Statement not inconsistent with this Resolution as the County Administrator may consider to be in the best interest of the County. After the Bonds have been sold, the County Administrator, in collaboration with the Financial Advisor, shall make such completions, omissions, insertions and changes in the Preliminary Official Statement not inconsistent with this Resolution as are necessary or desirable to complete it as a final Official Statement. The County shall arrange for the delivery to the purchaser of the Bonds of a reasonable number of printed copies of the final Official Statement, within seven business days after the Bonds have been sold, for delivery to each potential investor requesting a copy of the Official Statement and to each person to whom the purchaser initially sells Bonds.
6. Official Statement Deemed Final. The County Administrator is authorized, on behalf of the County, to deem the Preliminary Official Statement and the Official Statement in final form, each to be final as of its date within the meaning of Rule 15c2-12 (the “Rule”) of the SEC, except for the omission in the Preliminary Official Statement of certain pricing and other information permitted to be omitted pursuant to the Rule. The distribution of the Preliminary Official Statement and the execution and delivery of the Official Statement in final form shall be conclusive evidence that each has been deemed final as of its date by the County, except for the omission in the Preliminary Official Statement of such pricing and other information permitted to be omitted pursuant to the Rule.
7. Preparation and Delivery of Bonds. After the Bonds have been awarded, the officers of the County are authorized and directed to take all proper steps to have the Bonds prepared and executed in accordance with their terms and to deliver the Bonds to the purchaser thereof upon payment therefor.
8. Other Actions. All other acts of the County Administrator and other officers of the County that are in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Bonds are hereby approved and ratified.

9. Effective Date. This Resolution shall take effect immediately.

	_____ Michael J. Hipple Chairman, Board of Supervisors			
ATTEST:		VOTES		
		<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
	MCGLENNON	_____	_____	_____
	LARSON	_____	_____	_____
	ONIZUK	_____	_____	_____
	SADLER	_____	_____	_____
	HIPPLE	_____	_____	_____

Bryan J. Hill
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of April, 2016.

ApprvlLeaseFinan-res

AGREEMENT OF TRUST

between

**ECONOMIC DEVELOPMENT AUTHORITY
OF JAMES CITY COUNTY, VIRGINIA**

and

**WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee**

Dated as of May 1, 2016

**Relating to
Economic Development Authority
of James City County, Virginia
Public Facility Revenue Bonds**

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THIS AGREEMENT OF TRUST dated as of the 1st day of May, 2016, by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “Authority”), and **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association, having a corporate trust office in Richmond, Virginia, as trustee (in such capacity, together with any successor in such capacity, herein called the “Trustee”), provides:

WHEREAS, the Authority is a political subdivision of the Commonwealth of Virginia duly created under the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the “Act”); and

WHEREAS, the Authority is authorized to exercise all the powers set forth in the Act, which include, among other things, the power to make loans to, among others, a county in furtherance of the purposes of the Act, to finance or refinance and lease facilities for use by, among others, a county, to issue its revenue bonds, notes and other obligations from time to time for such purposes and to pledge all or any part of its revenues and receipts derived from payments received by the Authority in connection with its loans or from the leasing by the Authority of such facilities or from any other source, as security for the payment of the principal of and interest on any such obligations; and

WHEREAS, James City County, Virginia, a political subdivision of the Commonwealth of Virginia (the “County”), desires to undertake a program of financing the acquisition, construction and equipping of various public improvement projects that the County determines to undertake from time to time; and

WHEREAS, in furtherance of the purposes of the Act, the County has requested the Authority to undertake one or more Projects (as hereinafter defined), and the Authority has determined to issue from time to time, its public facility revenue bonds and to use the proceeds thereof to finance costs incurred in connection with such Projects for the benefit of the County; and

WHEREAS, contemporaneously with entering into this Agreement, the Authority and the County will enter into a Financing Agreement dated as of the date hereof (the “Financing Agreement”) pursuant to which the Authority has agreed to issue such bonds and the County has agreed to make basic payments, subject to the appropriation by the County Board of Supervisors from time to time of sufficient moneys to pay principal of and premium, if any, and interest on such bonds and related costs; and

WHEREAS, the parties are entering into this Agreement to set forth (a) the conditions for the issuance of such bonds, (b) the rights of the holders of such bonds and (c) the appointment of a trustee for such holders; and

WHEREAS, all acts, conditions and things required by law to happen, exist and be performed precedent to and in connection with the execution of and entering into this Agreement have happened, exist and have been performed in regular and due time and in form and manner as required by law, and the parties hereto are now duly empowered to execute and enter into this Agreement;

NOW, THEREFORE, THIS AGREEMENT FURTHER WITNESSETH:

That, as security for payment of the principal of and premium, if any, and interest on the Bonds (as hereinafter defined) and for the moneys that may be advanced by the Trustee hereunder, the Authority does hereby pledge and assign to the Trustee without recourse and grant a security interest to the Trustee in, the following described property:

A. All right, title and interest of the Authority in and to the Financing Agreement (except for the right of the Authority to receive notices under the Financing Agreement and the payment of fees and expenses pursuant to Section 4.1(d) thereof), the Basic Payments and Additional Payments (each as hereinafter defined) made by the County pursuant thereto, and all other revenues and receipts derived by the Authority from any of the foregoing and the security therefor.

B. The funds, including moneys and investments therein, held by the Trustee pursuant to the terms of this Agreement.

C. All other property of any kind mortgaged, pledged or hypothecated at any time as and for additional security hereunder by the Authority or by anyone on its behalf or with its written consent in favor of the Trustee, which is hereby authorized to receive all such property at any time and to hold and apply it subject to the terms hereof.

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended to be, to the Trustee and its assigns forever.

IN TRUST, however, for the equal and proportionate benefit and security of the holders from time to time of the Bonds issued under and secured by this Agreement, without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the others except as on the terms and conditions hereinafter stated, except that (i) each Series Debt Service Reserve Account (as hereinafter defined) shall secure only the related Series of Bonds and any additional Series issued to refund such original Series if and as provided in the respective Supplemental Agreement of Trust and (ii) any Series of Bonds may have other security pledged only to the payment of such Series of Bonds as set forth in the Supplemental Agreement of Trust (as hereinafter defined) related to such Series of Bonds.

The Authority hereby covenants and agrees with the Trustee and with the respective holders, from time to time, of the Bonds as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 101. Definitions.

The following words as used in this Agreement, the Financing Agreement, and the First Supplemental Agreement of Trust shall have the following meanings unless a different meaning clearly appears from the context:

“Account” shall mean any of the various Accounts created within a Fund under this Agreement.

“Act” shall mean the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended.

“Additional Payments” shall mean such payments made by the County pursuant to Sections 4.1(b), (c) and (d) and 9.3 of the Financing Agreement.

“Agreement” shall mean this Agreement of Trust, as supplemented, amended or modified by one or more Supplemental Agreements of Trust.

“Authorized Authority Representative” shall mean any officer of the Authority.

“Authorized County Representative” shall mean the County Administrator and such other person or persons as may be designated to act on behalf of the County by a certificate executed by the County Administrator and on file with the Trustee.

“Basic Payments” shall have the meaning given such term in the Financing Agreement, which payment shall be made by the County pursuant to Section 4.1(a) of the Financing Agreement.

“Board of Supervisors” shall mean the Board of Supervisors of James City County, Virginia, as the governing body of the County.

“Bond” or **“Bonds”** shall mean any bonds, notes or other obligations, including any notes or other obligations issued in anticipation of bonds, notes, or other obligations as the same shall be issued from time to time pursuant to Article III.

“Bond Counsel” shall mean an attorney or firm of attorneys nationally recognized on the subject of municipal bonds and reasonably acceptable to the Trustee.

“Bond Fund” shall mean the Bond Fund established in Section 601.

“Bond Payment Date” shall mean the date on which any payment of principal of (whether at maturity or mandatory sinking fund redemption) or interest on the Bonds is scheduled to become due and payable.

“Bondholder” or **“holder”** shall mean the registered owner of any Bonds.

“Business Day” shall mean a day on which banking business is transacted, but not including a Saturday, Sunday or legal holiday, or any day on which banking institutions are authorized by law to close in the city in which the Trustee has its designated corporate trust office.

“Code” shall mean the Internal Revenue Code of 1986, as amended, including applicable regulations, rulings and revenue procedures promulgated or applicable thereunder.

“Commonwealth” shall mean the Commonwealth of Virginia.

“Cost” or **“Cost of a Project”** shall mean the Cost of a Project as set forth in Section 502.

“County” shall mean James City County, a political subdivision of the Commonwealth of Virginia.

“Debt Service Reserve Fund” shall mean the Debt Service Reserve Fund established in Section 601.

“Event of Default” shall mean any of the events enumerated in Section 901.

“Financing Agreement” shall mean the Financing Agreement dated as of May 1, 2016, between the Authority and the County, as such Agreement may be supplemented, amended or modified by one or more Supplemental Financing Agreements.

“Fiscal Year” shall mean the twelve-month period beginning on July 1 of one year and ending on June 30 of the following year, or such other twelve-month period as may be selected by the County as its fiscal year.

“Fitch” shall mean Fitch Ratings, New York, New York, or its successors.

“Fund” shall mean the Bond Fund, Debt Service Reserve Fund, Project Fund or any other fund established under this Agreement.

“Government Certificates” shall mean certificates representing proportionate ownership of Government Obligations, which Government Obligations are held by a bank or trust company organized under the laws of the United States of America or any of its states in the capacity of custodian of such certificates.

“Government Obligations” shall mean (a) bonds, notes and other direct obligations of the United States of America, (b) securities unconditionally guaranteed as to the timely payment of principal, if applicable, and interest by the United States of America or (c) bonds, notes and other obligations issued or guaranteed as to the timely payment of principal and interest by the Rural Utilities Service (certificates of beneficial ownership), Federal Housing Administration (debentures), General Services Administration (participation certificates), U.S. Maritime Administration (guaranteed Title XI financing), U.S. Department of Housing and Urban Development (project notes and local authority bonds), provided such obligations are backed by the full faith and credit of the United States of America. Stripped securities are permitted only if stripped by the agency itself. Government Obligations may be held directly by the Trustee or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to Government Obligations.

“Interest Account” shall mean the Interest Account in the Bond Fund established in Section 601.

“Moody’s” shall mean Moody’s Investors Service, New York, New York, or its successors.

“Opinion of Counsel” shall mean an opinion of any attorney or firm of attorneys reasonably acceptable to the Trustee, who may be counsel for the Authority, the County or the Trustee but who shall not be a full-time employee of the Authority, the County or the Trustee.

“Outstanding” shall mean, when used as descriptive of Bonds, that such Bonds have been authorized, issued, authenticated and delivered under this Agreement and have not been canceled or surrendered to the Trustee for cancellation, deemed to have been paid as provided in Article XII, have had other Bonds issued in exchange therefor or had their principal become due and moneys sufficient for their payment deposited with the Trustee as provided in Section 209.

In determining whether holders of a requisite aggregate principal amount of the Outstanding Bonds have concurred in any request, demand, authorization, direction, notice, consent or waiver under this Agreement, words referring to or connoting “principal of” or “principal amount of” Outstanding Bonds shall be deemed also to be references to, to connote and to include the accreted value of Bonds of any Series as of the immediately preceding interest compounding date for such Bonds. Bonds that are owned by the County shall be disregarded and deemed not to be Outstanding for the purpose of any such determination.

“Premium Account” shall mean the Premium Account in the Bond Fund established in Section 601.

“Principal Account” shall mean the Principal Account in the Bond Fund established in Section 601.

“Project” or “Projects” shall mean the Project(s) as that term is defined in the Financing Agreement.

“Project Fund” shall mean the Project Fund established in Section 501.

“Rating Agency” or “Rating Agencies” shall mean Fitch, Moody’s or Standard & Poor’s, or any of them, and their successors. The Authority, at the direction of the County, may appoint any nationally recognized securities rating organization in addition to or as a replacement for Fitch, Moody’s or Standard & Poor’s.

“Reserve Determination Date” shall mean (a) each interest payment date for the Bonds or (b) any other date established in writing by an Authorized County Representative for the valuation of obligations on deposit in a Series Debt Service Reserve Account.

“Series” or “Series of Bonds” shall mean a separate series of Bonds issued under this Agreement and a Supplemental Agreement of Trust.

“Series Debt Service Reserve Account” shall mean any of the Series Debt Service Reserve Accounts in the Debt Service Reserve Fund established in Section 601.

“Series Debt Service Reserve Requirement” for any Series of Bonds shall have the meaning set forth in the Supplemental Agreement of Trust authorizing such Series of Bonds.

“Standard & Poor’s” shall mean Standard & Poor’s Rating Services, a Division of McGraw-Hill Companies, Inc., New York, New York, or its successors.

“Supplemental Agreement of Trust” shall mean any Supplemental Agreement of Trust supplementing, amending or modifying the provisions of this Agreement entered into by the Authority and the Trustee pursuant to Article X.

“Supplemental Financing Agreement” shall mean any Supplemental Financing Agreement supplementing, amending or modifying the provisions of the Financing Agreement entered into by the Authority and the County pursuant to Article X.

“Term Bonds” shall mean any Bonds stated to mature on a specified date and required to be redeemed in part prior to maturity according to a sinking fund schedule.

“Trustee” shall mean Wilmington Trust, National Association, Richmond, Virginia, or its successors serving as such hereunder.

“Virginia Code” shall mean the Code of Virginia of 1950, as amended.

Section 102. Rules of Construction.

Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) Words importing the redemption or calling for redemption of Bonds shall not be deemed to refer to or connote the payment of Bonds at their stated maturity.

(c) Unless otherwise indicated, all references herein to particular Articles or Sections are references to Articles or Sections of this Agreement.

(d) The headings herein and Table of Contents to this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

(e) All references herein to the payment of Bonds are references to payment of principal of and premium, if any, and interest on Bonds.

ARTICLE II

EXECUTION, AUTHENTICATION, REGISTRATION AND FORM OF BONDS

Section 201. Form and Details of Bonds.

Unless otherwise provided in the applicable Supplemental Agreement of Trust, the Bonds shall be designated "Public Facility Revenue Bonds," shall bear an appropriate series designation, shall be issuable only as registered Bonds without coupons, in denominations of \$5,000 and multiples thereof, and shall be appropriately numbered. The form, details and terms of each Series of Bonds and such other matters as the Authority may deem appropriate shall be set forth in the applicable Supplemental Agreement of Trust for such Series of Bonds. Principal of, premium, if any, and interest on the Bonds shall be payable in lawful money of the United States of America.

Section 202. Execution of Bonds.

Unless otherwise provided in the applicable Supplemental Agreement of Trust, the Bonds shall be signed by the manual or facsimile signature of the Chairman or Vice-Chairman of the Authority and its seal shall be affixed thereto or a facsimile thereof printed thereon and attested by the manual or facsimile signature of its Secretary or Assistant Secretary. In case any officer whose signature or a facsimile of whose signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Any Bond may bear the facsimile signature of or may be signed by such persons as at the actual time of the execution thereof shall be the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

Section 203. Authentication of Bonds.

Unless otherwise provided in the applicable Supplemental Agreement of Trust, the Bonds shall bear a certificate of authentication and shall not be valid until the Trustee shall have executed the certificate of authentication and inserted the date of authentication thereon. The Trustee shall authenticate each Bond with the signature of an authorized representative, but it shall not be necessary for the same person to authenticate all of the Bonds or all of the Bonds of any Series. Only such authenticated Bonds shall be entitled to any right or benefit under this Agreement, and such certificate on any Bond issued hereunder shall be conclusive evidence that the Bond has been duly issued and is secured by the provisions hereof.

Section 204. Registration and Transfer of Bonds; Persons Treated as Owners.

(a) All Bonds issued under this Agreement shall be negotiable, subject to the provisions for registration and registration of transfer thereof contained herein or in the Bonds.

(b) The Trustee shall maintain registration books with respect to each Series of Bonds at the offices of the Trustee and shall provide for the registration and registration of transfer of any Bond of such Series under such reasonable regulations as the Trustee may prescribe. The

Trustee shall maintain books for purposes of exchanging and registering Bonds in accordance with the provisions hereof.

(c) Each Bond of a Series shall be registered or registered for transfer only upon the registration books maintained by the Trustee, by the Bondholder thereof in person or by his attorney or legal representative duly authorized in writing, upon presentation and surrender thereof together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered Bondholder or his duly authorized attorney or legal representative. Upon surrender for registration of transfer of any such Bond, the Authority shall cause to be executed and the Trustee shall authenticate and deliver, in the name of the transferee, one or more new Bonds of the same Series, interest rate, maturity, principal amount and date as the surrendered Bond, as fully registered Bonds only.

(d) Unless otherwise provided in the applicable Supplemental Agreement of Trust, the Trustee shall treat the registered holder as the person exclusively entitled to payment of principal, premium, if any, and interest and the exercise of all other rights and powers of the holder on the registration books, except that interest payments shall be made to the person shown as holder on the registration books on the fifteenth day of the month preceding each interest payment date.

Section 205. Exchange of Bonds; Charges for Exchange of Bonds.

Bonds, upon presentation and surrender thereof to the Trustee together with written instructions satisfactory to the Trustee, duly executed by the registered Bondholder or his attorney or legal representative duly authorized in writing, may be exchanged for an equal aggregate principal amount of fully registered Bonds of the same Series and tenor.

Any exchange of Bonds shall be at the expense of the Authority, except that the Trustee may charge the person requesting such exchange the amount of any tax or other governmental charge required to be paid with respect thereto.

Section 206. Temporary Bonds.

Prior to the preparation of Bonds in definitive form, the Authority may issue temporary Bonds in such denominations as the Authority may determine, but otherwise in substantially the same form set forth in the applicable Supplemental Agreement of Trust, with appropriate variations, omissions and insertions. The Authority shall promptly prepare, execute and deliver to the Trustee before the first interest payment date Bonds in definitive form and thereupon, upon surrender of Bonds in temporary form, the Trustee shall authenticate and deliver in exchange therefor Bonds in definitive form of the same maturity and having an equal aggregate principal amount. Until exchanged for Bonds in definitive form, Bonds in temporary form shall be entitled to the lien and benefit of this Agreement.

Section 207. Mutilated, Lost or Destroyed Bonds.

If any Bond has been mutilated, lost or destroyed, the Authority shall cause to be executed, and the Trustee shall authenticate and deliver, a new Bond of like date, number and tenor in exchange and substitution for, and upon the cancellation of, such mutilated Bond or in

lieu of and in substitution for such lost or destroyed Bond; provided, however, that the Authority and the Trustee shall so execute, authenticate and deliver only if the holder has paid the reasonable expenses and charges of the Authority and the Trustee in connection therewith and, in the case of a lost or destroyed Bond, (a) has filed with the Authority and the Trustee evidence satisfactory to them that such Bond was lost or destroyed and of his ownership thereof and (b) has furnished to the Authority and the Trustee indemnity satisfactory to them. If any such Bond has matured, instead of issuing a new Bond the Trustee may pay the same without surrender thereof upon receipt of the evidence and indemnity described above.

Section 208. Cancellation and Disposition of Bonds.

All Bonds that have been surrendered for transfer or exchange pursuant to Sections 204 and 205, paid (whether at maturity, by sinking fund redemption, call for redemption or otherwise), purchased pursuant to Section 602, or delivered by the Authority to the Trustee for cancellation shall not be reissued, and the Trustee shall, unless otherwise directed by the Authority, cremate, shred or otherwise dispose of such Bonds. The Trustee shall deliver to the Authority, upon request, a certificate of any such cremation, shredding or other disposition.

Section 209. Non-Presentation of Bonds.

(a) If any Bond is not presented for payment when the principal thereof becomes due (whether at maturity, by sinking fund redemption, call for redemption or otherwise), all liability of the Authority to the holder thereof for the payment of such Bond shall be completely discharged if moneys sufficient to pay such Bond and the interest due thereon shall be held by the Trustee for the benefit of such holder, and thereupon it shall be the duty of the Trustee to hold such moneys, subject to subsection (b) below, without liability for interest thereon, for the benefit of such holder, who shall thereafter be restricted exclusively to such moneys for any claim of whatever nature on his part under this Agreement or on, or with respect to, such Bond.

(b) Notwithstanding anything in this Agreement to the contrary, any cash, Government Obligations or, if permitted by the laws of the Commonwealth, Government Certificates deposited with the Trustee for the payment of the principal of and premium, if any, and interest on any Series of Bonds remaining unclaimed for more than one year after the principal of all such Series of Bonds has become due and payable shall be paid to the Authority and shall be held by the Authority in a separate account for four years and thereafter in the general fund of the Authority. After such moneys have been paid to the Authority, the holders of such Bonds shall be entitled to look only to the Authority, and all liability of the Trustee with respect to such amounts shall cease.

ARTICLE III

ISSUANCE OF BONDS

Section 301. Purposes of Bonds.

Bonds may be issued (a) to finance or refinance the Cost of a Project, (b) to refund any Bonds or (c) for a combination of such purposes.

Section 302. Parity of Bonds.

Each Series of Bonds shall be issued pursuant to a Supplemental Agreement of Trust and shall be equally and ratably secured under this Agreement, without preference, priority or distinction; provided, however, that (i) any Series of Bonds may have other security pledged to its payment, (ii) moneys in any account or subaccount of the Bond Fund relating to a particular Series of Bonds shall secure only such Bonds, (iii) moneys in any account or subaccount of the Project Fund relating to a particular Series of Bonds shall secure only such Bonds and (iv) moneys in any account or subaccount of the Debt Service Reserve Fund relating to a particular Series of Bonds shall secure only such Bonds and any additional Series issued to refund such Bonds if and as provided in the respective Supplemental Agreement of Trust. In connection with the issuance of each Series of Bonds, the Trustee, at the written direction of an Authorized County Representative, will create additional accounts and subaccounts within any Fund or Account established by this Agreement. Nothing herein shall be construed, however, as (a) requiring that any Bonds bear interest at the same rate or in the same manner as any other Bonds, have the same, or an earlier or later, maturity, or be subject to mandatory, optional or extraordinary redemption prior to maturity on the same basis as any other Bonds, (b) prohibiting the Authority from entering into financial arrangements designed to assure that moneys will be available for the payment of certain Bonds at their maturity or (c) prohibiting the Authority from pledging moneys or assets of the Authority other than those pledged herein for the benefit of certain Bonds.

Section 303. Conditions for Issuing Bonds.

Before the issuance and authentication of any Series of Bonds by the Trustee, there shall be filed with the Trustee the following:

- (a) In the case of the initial Series of Bonds issued under this Agreement only:
 - (1) An original executed counterpart of this Agreement;
 - (2) A certified copy of a resolution or resolutions of the Authority's Board of Directors authorizing the execution and delivery of this Agreement and authorizing the issuance, sale and delivery of such Bonds;
 - (3) An Opinion or Opinions of Counsel to the Authority, subject to customary exceptions and qualifications, substantially to the effect that this Agreement has been duly authorized, executed and delivered to the Trustee and is binding on the Authority; and
 - (4) A certified copy of a resolution of the Board of Supervisors acknowledging and consenting to the execution and delivery of this Agreement.
- (b) An original executed counterpart of a Supplemental Agreement of Trust which (1) shall include: (A) provisions authorizing the issuance, fixing the principal amount and setting forth the details of such Bonds, including their date, the interest rate or rates and the manner in which such Bonds are to bear and pay interest, the principal and interest payment dates of such Bonds, the purposes for which such Bonds are being issued, the manner of numbering such

Bonds, the Series designation, the denominations, the maturity dates and principal maturities, the principal amounts required to be redeemed pursuant to any mandatory redemption provisions or the manner for determining such principal amounts, any provisions for optional or extraordinary redemption before maturity, any provisions regarding a Series Debt Service Reserve Account, and whether the interest on such Bonds shall be excluded from gross income for Federal income tax purposes or shall be subject to Federal income taxation; and (B) provisions for the application of the proceeds of such Bonds; and (2) may include: (A) provisions for credit facilities and for other funds and accounts to be established with respect to such Bonds; (B) provisions necessary or expedient for the issuance of such Bonds bearing interest at a variable rate or other manner of bearing interest, including remarketing provisions, liquidity facility provisions and provisions for establishing the variable rate and converting to a fixed rate; (C) provisions for entering into interest rate swaps, guarantees or other arrangements to limit interest rate risks; and (D) such other provisions as the Authority may deem appropriate.

(c) A certified copy of a resolution or resolutions of the Authority's Board of Directors authorizing the execution and delivery of a Supplemental Agreement of Trust and the Financing Agreement or, in the case of a Series of Bonds other than the initial Series, a Supplemental Financing Agreement, the issuance, sale, award, execution and delivery of such Bonds and, in the case of a Series of Bonds issued to refund any Bonds, calling for redemption or payment of the Bonds to be refunded, fixing any redemption date and authorizing any required notice of redemption in accordance with the provisions of this Agreement.

(d) A certificate signed by the Chairman or Vice Chairman of the Authority and dated the date of such issuance, to the effect that:

(1) Either (A) upon and immediately following such issuance, no Event of Default has occurred which has not been cured or waived, and no event or condition exists which, with the giving of notice or lapse of time or both, would become an Event of Default or (B) if any such event or condition is happening or existing, specifying such event or condition, stating that the Authority will act with due diligence to correct such event or condition after the issuance of such Bonds, and describing in reasonable detail the actions to be taken by the Authority toward such correction; and

(2) All required approvals, limitations, conditions and provisions precedent to the issuance of such Series of Bonds have been obtained, observed, met and satisfied.

(e) An Opinion or Opinions of Counsel, subject to customary exceptions and qualifications, substantially to the effect that the Supplemental Agreement of Trust for such Series of Bonds and the Financing Agreement or, in the case of a Series of Bonds other than the initial Series, a Supplemental Financing Agreement, have been duly authorized, executed and delivered, are binding on the Authority and comply in all respects with the requirements of this Agreement and the Financing Agreement, as applicable.

(f) An opinion of Bond Counsel, subject to customary exceptions and qualifications, substantially to the effect that the issuance of such Bonds has been duly authorized, that such Bonds are valid and binding limited obligations of the Authority, and that the interest on such Bonds is excludable from gross income for Federal income taxation purposes or, if such interest

is not excludable, that the issuance and the intended use of the proceeds of such Bonds will have no adverse effect on the tax-exempt status of the interest on any other Bonds then Outstanding the interest on which was excludable from gross income for Federal income tax purposes when issued.

(g) If such Bonds are issued to pay the Cost of a Project, except in the case of the initial Series of Bonds issued under this Agreement, evidence that upon issuance of such Bonds each Series Debt Service Reserve Account within the Debt Service Reserve Fund will contain the applicable Series Debt Service Reserve Requirement, if any.

(h) If any Bonds are issued to refund any other Bonds, the following:

(1) Irrevocable instructions from the Authority, at the direction of the County, to redeem or pay at maturity all Bonds to be refunded; and

(2) A written determination by an independent certified public accountant or other evidence satisfactory to the Trustee that the proceeds (excluding accrued interest) of such refunding Bonds, together with any other moneys deposited with the Trustee for such purpose and the investment income to be earned on moneys held for the payment or redemption of the Bonds to be refunded, will be sufficient (without further reinvestment) to pay either (A) the principal of and the premium, if any, on the Bonds to be refunded and the interest which will accrue on such Bonds to the respective redemption or maturity dates or (B) the principal of and interest on the refunding Bonds to a date certain, at which time such proceeds, moneys and earnings will be sufficient to pay the principal of and the premium, if any, on the Bonds to be refunded and the interest which will accrue on such Bonds to the respective redemption or maturity dates.

(i) A request and authorization signed by the Chairman or Vice Chairman of the Authority to the Trustee to authenticate and deliver such Bonds to the purchaser upon payment to the Trustee for the account of the Authority of a specified sum plus accrued interest to the date of delivery.

(j) (1) In the case of the initial Series of Bonds, an original executed counterpart of the Financing Agreement, assigned by the Authority to the Trustee, or (2) in the case of a Series of Bonds other than the initial Series, an original executed counterpart of a Supplemental Financing Agreement that shall (A) make such necessary modifications to **Exhibit A** to the Financing Agreement to provide for Basic Payments in amounts sufficient to pay principal of and interest on all Bonds then Outstanding plus such additional Series of Bonds, (B) describe the Project being financed or refinanced by such additional Series of Bonds and (C) make such other modifications as shall be necessary and convenient for the issuance of such additional Series of Bonds.

(k) A certified copy of a resolution of the Board of Supervisors acknowledging and consenting to the execution and delivery of any Supplemental Agreement of Trust entered into in connection with the issuance of any Series of Bonds and authorizing the execution and delivery of the Financing Agreement or, in the case of a Series of Bonds other than the initial Series, a Supplemental Financing Agreement, in connection with the issuance of such Series of Bonds.

(l) An Opinion or Opinions of Counsel to the County, subject to customary exceptions and qualifications, substantially to the effect that the Financing Agreement or, in the case of a Series of Bonds other than the initial Series, a Supplemental Financing Agreement, has been duly authorized, executed and delivered by the Authority and is binding on the County.

Except for the requirements of subsection (d) of this Section (which may be waived in whole or in part by the purchasers of such Bonds by an instrument or concurrent instruments in writing signed by such purchasers), none of the requirements in this Section may be waived without the consent of the holders of not less than a majority in aggregate principal amount of the Outstanding Bonds.

ARTICLE IV

REDEMPTION OF BONDS

Section 401. Redemption Provisions to be Fixed by Supplemental Agreements of Trust.

The Bonds of any Series shall be subject to mandatory, extraordinary or optional redemption prior to maturity on such dates and under such conditions as may be provided in the Supplemental Agreement of Trust authorizing the issuance of such Series of Bonds. The Bonds of any Series to be called for redemption shall be selected as provided in the applicable Supplemental Agreement of Trust. The Trustee shall treat each Bond of a denomination greater than the minimum denomination authorized in the applicable Supplemental Agreement of Trust as representing the number of separate Bonds of such minimum denomination as can be obtained by dividing the Bond's actual principal amount by such minimum denomination.

Section 402. Notice of Redemption.

Unless otherwise provided in the applicable Supplemental Agreement of Trust, the Trustee, upon being satisfied as to the payment of its expenses and upon receiving the notice of redemption from the Authority not less than five days prior to the date the Trustee is required to send the notice of such redemption to the owners of the Bonds, shall, not less than 30 nor more than 60 days prior to the redemption date, (a) send notice of the call for redemption, identifying the Bonds or portions thereof to be redeemed (the "Redemption Notice"), by facsimile, registered or certified mail or overnight express delivery, (i) to the holder of each Bond to be redeemed at his address as it appears on the registration books kept by the Trustee, and (ii) to all organizations registered with the Securities and Exchange Commission as securities depositories and (b) file the Redemption Notice in electronic format with the MSRB through its Electronic Municipal Market Access (EMMA) System pursuant to procedures promulgated by the MSRB.

In preparing and delivering such notice, the Trustee shall take into account, to the extent applicable, the prevailing tax-exempt securities industry standards and any regulatory statement of any federal or state administrative body having jurisdiction over the Authority or the tax-exempt securities industry, including Release No. 34-23856 of the Securities and Exchange Commission or any subsequent amending or superseding release. Failure to give a Redemption Notice specified in (a)(i) above, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Bond with respect to which no such failure or defect has

occurred. Failure to give a Redemption Notice specified in (a)(ii) or (b) above, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Bonds with respect to which the notice specified in (a)(i) above is correctly given. Any notice mailed or provided herein shall conclusively be presumed to have been given whether or not actually received by any Bondholder.

In the case of an optional redemption under any Supplemental Agreement of Trust, the notice may state that (1) it is conditioned upon the deposit of moneys, in an amount equal to the amount necessary to effect the redemption, with the Trustee no later than the redemption date or (2) the Authority, as directed by the County, retains the right to rescind such notice on or prior to the scheduled redemption date (in either case, a “Conditional Redemption”), and such notice and optional redemption shall be of no effect if such moneys are not so deposited or if the notice is rescinded as described herein. Any Conditional Redemption in (2) above may be rescinded at any time prior to the redemption date if the Authority delivers a written direction to the Trustee directing the Trustee to rescind the redemption notice and any funds deposited with the Trustee in connection with such rescinded redemption shall be returned to the County. The Trustee shall give prompt notice of such rescission to the affected Bondholders. Any Bonds subject to Conditional Redemption where redemption has been rescinded shall remain Outstanding, and the rescission shall not constitute an Event of Default. Further, in the case of a Conditional Redemption, the failure of the Authority to make funds available on or before the redemption date shall not constitute an Event of Default, and the Trustee shall give immediate notice to all organizations registered with the Securities and Exchange Commission as securities depositories or the affected Bondholders that the redemption did not occur and that the Bonds called for redemption and not so paid remain outstanding.

Section 403. Bonds Payable on Redemption Date; Interest Ceases to Accrue.

On or before the date fixed for redemption, moneys shall be deposited with the Trustee to pay the principal of and premium, if any, and interest accrued to the redemption date on the Bonds called for redemption. Except as otherwise provided in Section 402 above or any other applicable Section of a related Supplemental Agreement of Trust, upon the happening of the conditions of this Article, the Bonds or portions thereof thus called for redemption shall cease to bear interest from and after the redemption date, shall no longer be entitled to the benefits provided by this Agreement and shall not be deemed to be Outstanding under the provisions of this Agreement.

ARTICLE V

PROJECT FUND

Section 501. Creation of Project Fund; Deposit of Bond Proceeds.

There is hereby established the “James City County Public Facility Revenue Bond Project Fund.” Proceeds of each Series of Bonds shall be deposited in the Project Fund as provided in the Supplemental Agreement of Trust under which each such Series of Bonds is issued. If so directed in a Supplemental Agreement of Trust, there shall be maintained within the Project Fund special accounts as may be provided in such Supplemental Agreement of Trust.

Deposits shall be made to the credit of the Project Fund and any special accounts as provided in such Supplemental Agreement of Trust. All earnings on moneys in each Account and subaccount shall be credited to such Account and subaccount.

The Trustee shall hold the moneys in the Project Fund in trust to be used only to pay the Cost of a Project and as provided in Sections 504 and 606.

Section 502. Cost of a Project.

The Cost of a Project shall include the cost of improvements, the cost of construction or reconstruction, the cost of acquisition of all lands, structures, rights-of-way, franchises, easements and other property rights and interests, the cost of demolishing, removing or relocating any buildings or structures on lands acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all labor, materials, machinery and equipment, financing charges and interest on any Series of Bonds prior to and during construction and for up to one year after completion of construction, the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, and other expenses necessary or incident to determining the feasibility or practicability of constructing a Project, administrative expenses, provisions for working capital, reserves for interest and for extensions, additions and improvements, such other expenses as may be necessary or incidental to the construction of a Project, the financing of such construction, and the placing of a Project in operation, the costs of issuing Bonds and all other costs as are permitted by the Act. Any obligation or expense incurred by the County for studies, surveys, borings, preparation of plans and specifications or other work or materials in connection with the construction of a Project may be regarded as a part of such Cost and reimbursed to the County out of the proceeds of the Bonds issued to finance a Project.

Section 503. Payments from Project Fund.

The Trustee shall use moneys in the Project Fund to pay the Cost of a Project. Before any payment shall be made from the Project Fund, the Trustee shall have been presented with a requisition (substantially in the form attached hereto as Exhibit A) signed by either an Authorized Authority Representative or Authorized County Representative stating (1) the name of the person, firm or corporation to whom such payment is to be made, (2) the amount to be paid, (3) the purpose in reasonable detail for which such payment is to be made and (4) if applicable, from which Account such payment is to be made. A requisition may represent reimbursement of the Authority or the County for the Cost of a Project initially paid by the Authority or the County or may represent payment to the Authority or the County of moneys to be paid in turn by the Authority or the County to third parties for the Cost of a Project.

Upon receipt of each such requisition, the Trustee shall make payment from the Project Fund in accordance with such requisition.

Section 504. Disposition of Balance in Project Fund.

When the Trustee shall have received a certificate, signed by an Authorized County Representative, stating either that all items of the Cost of a Project have been paid or what items of the Cost of a Project have not been paid and for the payment of which moneys should be

reserved in the Project Fund, the balance of any moneys remaining in the Project Fund in excess of the amount to be reserved for payment of unpaid items of the Cost of a Project shall be used, at the written direction of an Authorized County Representative, to pay (a) principal of and interest on the Series of Bonds that provided such proceeds or to purchase Bonds on the open market to the extent approved by Bond Counsel or (b) all or any portion of the Cost of any other Project designated by the County and approved by Bond Counsel.

ARTICLE VI

FUNDS AND ACCOUNTS

Section 601. Creation of Funds and Accounts.

There is hereby established with the Trustee the following funds and accounts:

(a) Bond Fund, in which there are established an Interest Account, a Principal Account and a Premium Account, and a separate subaccount in each such Account with respect to each Series of Bonds issued hereunder; and

(b) Debt Service Reserve Fund, in which there shall be established Series Debt Service Reserve Accounts for each Series of Bonds that has a Series Debt Service Reserve Requirement.

Section 602. Bond Fund.

(a) Installments of all Basic Payments received by the Trustee from the County, together with any other amounts transferred from the Project Fund or the Debt Service Reserve Fund pursuant to the provisions of the Financing Agreement or this Agreement or any other payments transferred to the Authority or its assignee as directed by the County, shall be deposited in the Bond Fund. The Trustee shall deposit each installment (i) to the subaccount established for each Series of Bonds in the Interest Account an amount equal to the interest due and payable on the next Bond Payment Date for such Bonds, and (ii) to the subaccount established for each Series of Bonds in the Principal Account an amount equal to the principal due and payable on the next Bond Payment Date for such Bonds, whether at maturity or mandatory, extraordinary or optional redemption. The Trustee shall deposit in the subaccount established for each Series of Bonds in the Premium Account any moneys received by the Trustee from the County to pay any premium due in connection with redeeming such Bonds pursuant to any optional or extraordinary redemption exercised by the Authority, at the direction of the County. The Trustee shall use such moneys to pay the applicable premium due on such Bonds in accordance with the redemption provisions for such Bonds.

Notwithstanding anything in this Agreement to the contrary, at any time the Trustee is required to make transfers pursuant to subsections (i) and (ii) in the preceding paragraph, and there are insufficient moneys to make all required transfers pursuant to such subsections, the Trustee shall make the transfers ratably from the moneys available.

(b) The Trustee shall withdraw from the respective subaccounts within the Interest Account and the Principal Account, on each Bond Payment Date, amounts equal to the amounts

of interest and principal, if any, due with respect to the Bonds on such Bond Payment Date, and shall cause the same to be applied to the payment of interest and principal, respectively, if any, due on such Bond Payment Date. If such Bond Payment Date is not a Business Day, such payment shall be made on the next succeeding Business Day with the same effect as if made on the day such payment was due and no additional interest shall accrue thereon. In the event there are insufficient moneys in the Interest Account or the Principal Account on any Bond Payment Date to pay interest and principal, if any, due on such Bond Payment Date, the Trustee shall transfer any excess amounts on deposit in the Interest Account or the Principal Account, as applicable, to the other Account in which there are insufficient moneys, and then if a deficiency remains, in accordance with Section 603, transfer moneys on such Bond Payment Date in the amount of such remaining deficiency from the respective Series Debt Service Reserve Account, if any, first to the applicable subaccount within the Interest Account and then to the applicable subaccount within the Principal Account, and shall cause the same to be applied to the payment of interest and principal, if any, due on such Bond Payment Date.

(c) Any moneys in the Bond Fund transferred from the Project Fund pursuant to Section 504 of this Agreement shall be deposited to the Account or subaccount as directed in writing by an Authorized County Representative and credited against the next Basic Payment required to be paid by the County and shall be used, together with other available amounts, to pay interest and principal, if any, due on the next Bond Payment Date or Dates.

(d) The Trustee shall provide for redemption of any Term Bonds from amounts upon deposit in the Bond Fund in accordance with the schedules set forth in the Supplemental Agreement of Trust for such Bonds; provided, however, that on or before the 70th day next preceding any such sinking fund payment date, the Authority may:

(1) deliver to the Trustee for cancellation Term Bonds required to be redeemed on such sinking fund payment date in any aggregate principal amount desired; or

(2) instruct the Trustee to apply a credit against the Authority's next sinking fund redemption obligation for any such Term Bonds that previously have been redeemed (other than through the operation of the sinking fund) and canceled but not theretofore applied as a credit against any sinking fund redemption obligation.

Upon the occurrence of any of the events described in subsections (1) or (2) of this subsection (d), the Trustee shall credit against the Authority's sinking fund redemption obligation on the next sinking fund payment date the amount of such Term Bonds so delivered or previously redeemed. Any principal amount of such Term Bonds in excess of the principal amount required to be redeemed on such sinking fund payment date shall be similarly credited in such order as may be determined by the Authority against future payments to the Principal Account and shall similarly reduce the principal amount of the Term Bonds of the applicable Series to be redeemed on the applicable sinking fund payment date.

(e) In the event the amount on deposit in the Interest Account on any Bond Payment Date shall exceed the amount required to pay interest on the Bonds on such Bond Payment Date, the Trustee shall transfer such excess, first to the Principal Account to the extent of any

deficiency therein and then, if the amount on deposit in any Series Debt Service Reserve Account is less than the applicable Series Debt Service Reserve Requirement, to such Series Debt Service Reserve Account, and otherwise retain any remaining excess in the Interest Account or transfer such excess to the Principal Account to be credited against subsequent required deposits thereto.

(f) In the event the amount on deposit in the Principal Account on any Bond Payment Date shall exceed the amount required on such date to pay Bonds at maturity or to redeem Term Bonds pursuant to mandatory sinking fund requirements, the Trustee shall transfer such excess, first to the Interest Account to the extent of any deficiency therein and then, if the amount on deposit in any Series Debt Service Reserve Account is less than the applicable Series Debt Service Reserve Requirement, to such Series Debt Service Reserve Account to the extent of such deficiency, and otherwise retain such excess in the Principal Account or transfer such excess to the Interest Account to be credited against subsequent required deposits thereto.

Section 603. Debt Service Reserve Fund.

(a) The Trustee shall use moneys in the Series Debt Service Reserve Accounts, if any, within the Debt Service Reserve Fund to make transfers to the Bond Fund to the extent necessary to pay when due the principal of (whether at maturity or by mandatory sinking fund redemption) and interest on the applicable Series of Bonds if the amounts on deposit therein are insufficient therefor. Moneys in each Series Debt Service Reserve Account shall be pledged only to the Series of Bonds for which each was established and to any additional Series issued to refund such Bonds, if and as provided in the related Supplemental Agreement of Trust, and shall not be used for any other Series of Bonds.

(b) On or within five days after each Reserve Determination Date, the Trustee shall determine if the balance on deposit in each Series Debt Service Reserve Account was, as of the Reserve Determination Date, at least equal to the applicable Series Debt Service Reserve Requirement. In making such determination, any obligations in the Series Debt Service Reserve Account shall be valued in accordance with Section 704.

(c) In the event the amount on deposit in any Series Debt Service Reserve Account is less than the applicable Series Debt Service Reserve Requirement, the Trustee shall notify and request the County to make an Additional Payment in an amount equal to the amount of such deficiency to the Trustee as provided in Section 4.1(b) of the Financing Agreement.

(d) In the event the amount on deposit in a Series Debt Service Reserve Account exceeds the applicable Series Debt Service Reserve Requirement, the Trustee shall transfer such excess to the Bond Fund to be deposited, as directed in writing by an Authorized County Representative, in the applicable subaccounts of the Interest Account or the Principal Account to the extent amounts in such subaccounts are less than the amounts required to be paid on the applicable Series of Bonds on the next Bond Payment Date, and otherwise transfer any remaining excess to the County; provided, however, that if an Authorized County Representative calls for a Reserve Determination Date in connection with the refunding or defeasance of a Series of Bonds, then the Trustee is authorized to take such refunding or defeasance into account in valuing the Series Debt Service Reserve Account securing such Series of Bonds and is further

authorized to apply the amount of any surplus arising from such valuation to reduce the amount of the refunding bonds and/or to provide for the defeasance of the Series of Bonds in such manner as the Authorized County Representative may direct in writing.

(e) In lieu of or in addition to cash or investments, at any time the County may cause to be deposited to the credit of any Series Debt Service Reserve Account any form of credit facility, in the amount of all or a portion of the Series Debt Service Reserve Requirement, irrevocably payable to the Trustee as beneficiary for the holders of the respective Series of Bonds, provided that the Trustee has received evidence satisfactory to it that

(1) the provider of the credit facility has a credit rating in one of the two highest credit rating categories (without regard to any rating refinement or gradation by numerical modifier or otherwise) by two Rating Agencies,

(2) the obligation of the County to pay the fees of and to reimburse the provider of the credit facility is subordinate to its obligation to pay principal of and interest on the respective Series of Bonds,

(3) the term of the credit facility is at least 24 months,

(4) the only condition to a drawing under the credit facility is insufficient amounts in the applicable Funds and Accounts held by the Trustee with respect to such Series of Bonds when needed to pay principal of and interest on such Series or the expiration of the credit facility and

(5) the provider of the credit facility shall notify the County and the Trustee at least 24 months prior to the expiration of the credit facility.

If (A) the County receives such expiration notice and the provider of such credit facility does not extend its expiration date, (B) the County receives notice of the termination of the credit facility or (C) the provider of such credit facility no longer has a credit rating in the two highest credit rating categories by two Rating Agencies, the County shall (i) provide a substitute credit facility that meets the requirements set forth in the foregoing sentences, (ii) deposit the Series Debt Service Reserve Requirement to the respective Series Debt Service Reserve Account (a) in equal monthly installments over the next succeeding 12 months in the case of receipt of an expiration notice, (b) prior to the termination date in the case of receipt of a termination notice, or (c) immediately in the case of such reduction in credit rating or (iii) instruct the Trustee to draw on such credit facility in the amount of the Series Debt Service Reserve Requirement (x) 12 months prior to expiration of the credit facility in the case of receipt of an expiration notice, (y) prior to the termination date in the case of receipt of a termination notice or (z) immediately in the case of such reduction in credit rating and deposit the proceeds of such drawing to the Series Debt Service Reserve Account.

(f) If a disbursement is made pursuant to any credit facility, the County shall either (1) reinstate the maximum limits of such credit facility or (2) deposit to the credit of the applicable Series Debt Service Reserve Account moneys in the amount of the disbursement made under such credit facility from moneys transferred by the County as an Additional Payment

in an amount equal to the amount of such deficiency as provided in Section 4.1(b) of the Financing Agreement.

(g) Amounts, if any, released from any Series Debt Service Reserve Account upon deposit to the credit of such Account of a credit facility pursuant to the preceding paragraph shall, upon designation by an Authorized County Representative, accompanied by an opinion of Bond Counsel that such use will not adversely affect the exclusion from gross income of interest on the respective Series of Bonds if the interest on such Bonds was excludable from gross income at the time of their issuance, be transferred (1) to the subaccount within the Principal Account with respect to such Series of Bonds and used to pay principal of or to redeem such Bonds or (2) to the Project Fund, and used for payment of Costs of a Project with respect to such Series.

Section 604. Other Funds and Accounts.

The Authority may establish in each Supplemental Agreement of Trust such other Funds, Accounts within Funds and subaccounts within Accounts as the Authority may determine to be desirable.

Section 605. Pledge of Certain Funds and Accounts.

Moneys in the Bond Fund, the Project Fund and the Debt Service Reserve Fund shall be trust funds and are hereby pledged (except as provided in the next sentence hereof) equally and ratably to the payment of the principal of and interest on all Bonds, subject only to the right of the Authority to make application thereof, or to direct the Trustee to make application thereof, to other purposes as provided herein. The lien and trust hereby created are for the benefit of the Bondholders and for their additional security until all the Bonds have been paid; provided, however, that the moneys in each Series Debt Service Reserve Account shall secure only the applicable Series of Bonds which provided such moneys and any additional Series issued to refund such Bonds if and as provided in the related Supplemental Agreement of Trust; moneys in any account or subaccount of the Bond Fund relating to a particular Series of Bonds shall secure only such Bonds; and moneys in any account or subaccount of the Project Fund relating to a particular Series of Bonds shall secure only such Bonds.

Section 606. Disposition of Balances in Funds after Payment of Bonds.

After the principal of and premium, if any, and interest on all of the Bonds, any amounts required to be paid pursuant to the terms of this Agreement, any Supplemental Agreement of Trust or the Financing Agreement, and all expenses and charges herein required have been paid or provision therefor has been made, the Trustee shall pay to the County any balance remaining in any Fund then held by it.

ARTICLE VII

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 701. Security for Deposits.

All moneys held in the Funds and Accounts created by this Agreement that are on deposit with any bank shall be continuously secured in the manner required by the Virginia Security for Public Deposits Act (Chapter 44, Title 2.2 of the Virginia Code) or any successor provision of law.

Section 702. Investment of Moneys.

Any moneys held in the Funds and Accounts shall be invested and reinvested by the Trustee, as directed in writing by an Authorized County Representative, in Investment Obligations, subject to the limitations stated herein. The term "Investment Obligations" shall mean any of the obligations or securities that are at the time legal investments for public funds under the Investment of Public Funds Act (Chapter 45, Title 2.2 of the Virginia Code), the Government Non-Arbitrage Investment Act (Chapter 47, Title 2.2 of the Virginia Code), or any successor provisions of law applicable to such investments.

Moneys held in the following Funds and Accounts shall be invested in obligations described in this Section of the following maturities:

- (1) Project Fund - not later than the dates on which such moneys will be needed to pay Costs of a Project as projected in writing by an Authorized County Representative;
- (2) Bond Fund - not later than the dates on which such moneys will be needed to pay principal of or interest on the applicable Series of Bonds; and
- (3) Series Debt Service Reserve Accounts within the Debt Service Reserve Fund - not later than the earlier of ten years from the date of acquisition of the investment or the final maturity of the applicable Series of Bonds.

For purposes of this Section, investments shall be considered as maturing on the date on which they are redeemable without penalty at the option of the holder or the date on which the County or the Trustee may require their repurchase pursuant to a repurchase agreement.

Whenever a payment or transfer of moneys between Funds or Accounts is permitted or required, such payment or transfer may be made in whole or in part by transfer of one or more investment obligations at a value determined in accordance with Section 704, provided that the Investment Obligations transferred are permitted investments for the Fund or Account receiving such Investment Obligations.

Unless otherwise provided in this Agreement, earnings on Investment Obligations shall accrue to, and losses on Investment Obligations shall be charged to, the Fund or Account in which such Investment Obligations are on deposit, or, at the written direction of an Authorized

County Representative, any such earnings shall be transferred to and deposited in the Project Fund.

Section 703. Investment of Surplus Moneys.

The County shall direct the Trustee in writing to provide for the investment of all moneys in any Fund or Account held by it not immediately necessary for the purposes of such Fund or Account so that all idle moneys may be invested for the benefit of the Bondholders.

Section 704. Valuation of Investments.

In computing the amount in any Fund or Account created by this Agreement, except for the Debt Service Reserve Fund, obligations purchased as an investment of moneys therein shall be valued at cost or fair market value thereof, whichever is lower, plus accrued interest. Investments in the Debt Service Reserve Fund shall be valued at least semiannually at the fair market value thereof, plus accrued interest. Such valuations for each such Fund or Account, other than the Debt Service Reserve Fund, shall be made by the party holding each such Fund or Account at least annually not later than the end of each Fiscal Year and at such other times as an Authorized County Representative may direct.

Section 705. Investments Through Trustee's Bond Department.

The Trustee may make investments permitted by Section 702 through its own bond department or the bond department of any affiliate.

Section 706. Investments by Trustee.

The Trustee shall not be liable for any losses, fees, taxes or other charges resulting from investments, reinvestments or liquidation of investments made by it pursuant to the provisions of Section 702.

Section 707. Investments in Bonds by Trustee.

The bank or trust company acting as Trustee and its directors, officers, employees or agents may in good faith buy, sell, own, hold and deal in the Bonds and may join in any action which any Bondholder may be entitled to take with like effect as if such bank or trust company were not the Trustee. To the extent permitted by law, such bank or trust company may also receive tenders and purchase in good faith Bonds from itself, including any department, affiliate or subsidiary, with like effect as if it were not the Trustee.

ARTICLE VIII

PARTICULAR COVENANTS

Section 801. Payment of Bonds; Limited Obligations.

The Authority shall promptly pay or cause to be paid when due the principal of (whether at maturity, call for redemption or otherwise) and premium, if any, and interest on the Bonds at

the places, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof; provided, however, that such obligations are not general obligations of the Authority but are limited obligations payable solely from the revenues and receipts derived from the County under the Financing Agreement, except to the extent payable from the proceeds of Bonds, the income, if any, derived from the investment thereof, certain reserves and income from investments pursuant to this Agreement, revenues and receipts and other amounts derived from any other security pledged pursuant to a Supplemental Agreement of Trust, which revenues and other moneys are hereby specifically pledged to such purposes in the manner and to the extent provided herein. The Bonds, the premium, if any, and the interest thereon shall not be deemed to create or constitute an indebtedness or a pledge of the faith and credit of the Commonwealth or of any county, town or other 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 the revenues and receipts pledged and assigned 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, is pledged to the payment of the principal of or premium, if any, or interest on the Bonds or other costs incident thereto. The Authority has no taxing power.

Section 802. Authority Covenants, Representations and Warranties.

(a) The Authority represents and warrants to the Trustee that each representation made by the Authority in Section 2.1 of the Financing Agreement is true and correct as of the date of delivery of this Agreement. Each such representation and warranty is incorporated herein by reference as if fully set forth herein and shall inure to and be for the benefit of the Trustee.

(b) The Authority covenants to faithfully observe and perform all of its covenants, conditions and agreements contained in this Agreement and to promptly pay the principal of and premium, if any, and interest on the Bonds at the places, on the dates, and in the manner specified in this Agreement and the Bonds; provided, however, that such obligations are limited obligations of the Authority, payable solely from the revenues and receipts derived from the County under the Financing Agreement, except to the extent payable from the proceeds of Bonds, the income, if any, derived from the investment thereof, certain reserves and income from investments pursuant to this Agreement, revenues and receipts and other amounts derived from any other security pledged pursuant to a Supplemental Agreement of Trust, which revenues and other moneys are hereby specifically pledged to such purposes in the manner and to the extent provided herein. The Bonds, the premium, if any, and the interest thereon shall not be deemed to constitute a debt or pledge of the full faith and credit of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the County.

(c) The Authority agrees that all payments under the Financing Agreement (other than payments of Additional Payments that do not consist of amounts necessary to restore the amount in any Series Debt Service Reserve Account to the Series Debt Service Reserve Requirement) shall inure to the benefit of the Bondholders. The Authority further covenants that it shall not make or consent to any change or modification of the Financing Agreement that would reduce the Basic Payments, fees or charges of the County thereunder, extend the time for payment of Basic Payments provided therein, nor permit any change that would reduce the

required payments under the Financing Agreement to the Authority available for payment of the Bonds, except as provided herein and in the Financing Agreement.

(d) The Authority covenants that it shall not suffer, permit or take any action or fail to take any action that may result in the termination or cancellation of the Financing Agreement by the County. The Authority also covenants that it shall fulfill its obligations and shall use its best efforts to assure that the County performs its duties and obligations under the Financing Agreement, and that it shall not agree to any abatement, reduction, abrogation, waiver, diminution or other modification of the obligation of the County to make any Basic Payments and to meet any of its obligations under the Financing Agreement, except as provided in this Agreement. The Authority further covenants that it shall promptly notify the Trustee of any actual or alleged event of default under the Financing Agreement of which it has notice and shall notify the Trustee upon or before the proposed effective date of any proposed termination or cancellation of the Financing Agreement.

(e) The Authority covenants that the Trustee, subject to the provisions of the Financing Agreement and this Agreement reserving certain rights to the Authority and respecting actions by the Trustee in its name or in the name of the Authority, may enforce for and on behalf of the Bondholders all rights of the Authority and all obligations of the County under and pursuant to the Financing Agreement providing for the delivery and receipt of Basic Payments whether or not the Authority is in default under this Agreement.

(f) The Authority covenants to execute, acknowledge and deliver any indentures supplemental hereto and other acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging and assigning to the Trustee of all the rights and funds assigned by this Agreement to secure the payment of the principal of and premium, if any, and interest on the Bonds. The Authority covenants to fully cooperate with the Trustee and the Bondholders in protecting the rights and security of the Bondholders.

(g) The Authority shall not (a) take any action or use the proceeds of any Bonds (including failure to spend the same with due diligence) or take any other action, which would cause any Bonds (the interest on which was excludable from gross income for Federal income tax purposes at the time of their issuance) to be “arbitrage bonds” within the meaning of Section 148 of the Code, or (b) barring unforeseen circumstances, approve the use of the proceeds from the sale of any Bonds (the interest on which was excludable from gross income for Federal income tax purposes at the time of their issuance) otherwise than in accordance with the Authority’s “non-arbitrage” certificate given immediately prior to the issuance of such Bonds.

(h) The Authority covenants not to permit the proceeds of any Bonds (the interest on which was excludable from gross income for Federal income tax purposes at the time of their issuance) to be used in any manner that would result in (a) 10% or more of such proceeds or the facilities financed with such proceeds being used in a trade or business carried on by any person other than a governmental unit, as provided in Section 141(b) of the Code, provided that no more than 5% of such proceeds may be used in a trade or business unrelated or disproportionate to the Authority’s use of the Project financed by such Bonds, (b) 5% or more of such proceeds being used with respect to any “output facility” (other than a facility for the furnishing of water), within the meaning of Section 141(b)(4) of the Code, or (c) 5% or more of such proceeds being

used directly or indirectly to make or finance loans to any persons other than a governmental unit, as provided in Section 141(c) of the Code; provided, however, that if the Authority receives an opinion of Bond Counsel that any such covenants need not be complied with to prevent the interest on such Bonds from being includable in the gross income for Federal income tax purposes under existing law, the Authority need not comply with such covenants.

(i) The Authority shall not use any Project, or any portion thereof, for any use that would adversely affect the exclusion of interest from gross income for Federal income tax purposes on any Bonds (the interest on which was excludable from gross income at the time of their issuance). Without limiting the generality of the foregoing, the Authority covenants to either (i) take actions to prevent any such use that would cause such Bonds to be “private activity bonds,” (ii) redeem any Bond whose tax status would be adversely affected by such use prior to commencement of the proposed use or (iii) take remedial action under the Code which would allow such use to be undertaken without an adverse effect on the tax status of Bonds (the interest on which was excludable from gross income at the time of their issuance).

(j) The Authority shall maintain, preserve and keep all Projects, or cause the Projects to be maintained, preserved and kept, in good condition. The Authority shall not abandon any Project, shall pay all of the expenses of maintenance of all Projects and any and all taxes, assessments and utility charges payable with respect to any Projects.

Section 803. Notices of Non-Payment, Reserve Deficit, Non-Appropriation.

In the event of (a) a delinquency in the payment of any Basic Payment when due pursuant to the Financing Agreement, (b) a deficit in a Series Debt Service Reserve Account or (c) the receipt of a notice of non-appropriation from the County by the date established in the Financing Agreement for receipt of such notice, the Trustee shall, within 10 days following the date upon which such delinquent Basic Payment was due, such deficit was determined, or such notice was received, as applicable, immediately give notice thereof to the County. The failure to give such notice shall not affect the obligation of the County to pay any such Basic Payment or amount necessary to restore a Series Debt Service Reserve Requirement.

Section 804. No Obligation to Bondholders for Basic Payment.

The Authority shall have no obligation or liability to the Trustee or the Bondholders with respect to the payment of the Basic Payment by the County when due or with respect to the performance by the County of any other covenant made by it in the Financing Agreement.

Section 805. Trustee Covenants.

The Trustee covenants to deposit, invest and apply amounts received under this Agreement, including the Basic Payment, in accordance with the provisions hereof.

Section 806. Further Assurances.

The parties hereto shall make, execute and deliver any and all such further documents, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement and for the better assuring and confirming unto

the Trustee and the Bondholders of their rights and benefits provided in this Agreement and the Financing Agreement.

ARTICLE IX

DEFAULTS AND REMEDIES

Section 901. Events of Default.

Each of the following events shall be an Event of Default:

- (a) Default in the due and punctual payment of the principal of or premium, if any, on any Bond (whether at maturity, call for redemption or otherwise);
- (b) Default in the due and punctual payment of the interest on any Bond;
- (c) An “Event of Default” under the Financing Agreement; and
- (d) Failure of the Authority to observe and perform any of its other covenants, conditions or agreements under this Agreement or in the Bonds for a period of 30 days after written notice either from the Trustee or holders of not less than 25% in aggregate principal amount of Bonds then Outstanding (unless, if such notice is received from the Trustee, the Trustee should agree in writing to an extension of such time prior to its expiration), specifying such failure and requesting that it be remedied, or in the case of any such default that is capable of being cured but cannot with due diligence be cured within such 30-day period, failure of the Authority to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence.

Section 902. Notice to Bondholders of Certain Default.

If the Trustee is required to draw moneys from a Series Debt Service Reserve Account to pay principal or interest on the related Series of Bonds and the County fails to make any subsequent deposit required by Section 4.1(b) of the Financing Agreement, then the Trustee shall send a notice to the Bondholders notifying them of such draw.

Section 903. Remedies; Rights of Bondholders.

Upon the occurrence and continuation of an Event of Default, the Trustee may (and if requested by the holders of not less than 25% in aggregate principal amount of Bonds then Outstanding and if indemnified to its satisfaction in accordance with prevailing industry standards shall) proceed to protect and enforce the Bondholders’ rights by mandamus or other suit, action or proceeding at law or in equity, including an action for specific performance of any covenant or agreement herein contained; provided, however, that the Trustee shall have no right or authority to declare the entire unpaid principal of Bonds then due and payable.

No remedy conferred by this Agreement upon or reserved to the Trustee or Bondholders is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and

shall be in addition to any other remedy given to the Trustee or Bondholders hereunder or now or hereafter existing at law, in equity or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by the Trustee or Bondholders shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

Section 904. Right of Bondholders to Direct Proceedings.

Anything in this Agreement to the contrary notwithstanding, the holders of a majority in aggregate principal amount of Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Agreement or any other proceedings hereunder; provided, however, that such direction shall not be otherwise than in accordance with the provisions of law and of this Agreement.

Section 905. Application of Moneys.

All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys, the expenses, liabilities and advances incurred or made by the Trustee and its fees and the expenses of the Authority in carrying out this Agreement, be deposited in the Bond Fund and applied as follows and for no other purpose:

(a) Unless the principal of all the Bonds shall have become due, all moneys shall be applied:

First - To the payment to the persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds; and

Second - To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, on any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Agreement), in the order of their due dates, with interest on such Bonds at the respective rates specified therein from the respective dates upon which they become due and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then first to the payment of such interest, ratably, according to the amount of such interest due on such date, and then to

the payment of such principal and premium, if any, ratably, according to the amount of such principal due on such date, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

(b) If the principal of all the Bonds shall have become due, all such moneys shall be applied to the payment of the principal and interest then due and unpaid on the Bonds, including, to the extent permitted by law, interest on overdue installments of interest, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any bond over any other bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Bond Payment Date unless it shall deem another date more suitable) on which such application is to be made and on such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date.

Whenever the principal of and premium, if any, and interest on all Bonds have been paid under the provisions of this Section, all payments required by the terms of any Supplemental Agreement of Trust have been paid and all expenses and charges of the Trustee have been paid, any balance remaining in the several Funds created by this Agreement shall be paid to the County as provided in Section 606.

Section 906. Remedies Vested in Trustee.

All rights of action (including the right to file proof of claims) under this Agreement or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto and any such suit or proceeding instituted by the Trustee may be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Bondholder, and any recovery of judgment shall be for the equal benefit of the holders of all Bonds then Outstanding.

Section 907. Limitation on Suits.

Except to enforce the rights given under Section 903, no Bondholder shall have any right to institute any action, suit or proceeding at law or in equity for the enforcement of this Agreement or for the execution of any trust thereof or any other remedy hereunder, unless (a) a default has occurred and is continuing of which the Trustee has been notified as provided in Section 1101(h), or of which by such Section it is deemed to have notice, (b) such default has become an Event of Default and the holders of 25% in aggregate principal amount of Bonds then

Outstanding have made written request to the Trustee and offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, (c) such requesting Bondholders have offered to the Trustee indemnity as provided in Section 1101(k), (d) the Trustee has thereafter failed or refused to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its, his or their own name or names, (e) no direction inconsistent with such written request has been given to the Trustee by the holders of a majority in aggregate principal amount of Bonds then Outstanding and (f) notice of such action, suit or proceeding is given to the Trustee; it being understood and intended that no one or more holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice this Agreement by its or their action or to enforce any rights hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted and maintained in the manner herein provided and for the equal benefit of the holders of all Bonds then Outstanding. The notification, request and offer of indemnity set forth above, at the option of the Trustee, shall be conditions precedent to the execution of the powers and trusts of this Agreement and to any action or cause of action for the enforcement of this Agreement or for any other remedy hereunder.

Section 908. Termination of Proceedings.

In case the Trustee shall have proceeded to enforce any right under this Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then and in every such case the Authority, the County and the Trustee shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 909. Waivers of Events of Default.

The Trustee may in its discretion waive any Event of Default hereunder or any action taken pursuant to any Event of Default, and shall do so on the request of the holders of (a) a majority in aggregate principal amount of Bonds then Outstanding in respect of which default in the payment of principal and/or premium, if any, and/or interest exists or (b) a majority in aggregate principal amount of Bonds then Outstanding in the case of any other default; provided, however, that there shall not be waived without the consent of the holders of all Bonds then Outstanding (A) any Event of Default in the payment of the principal of any Outstanding Bonds (whether at maturity or by sinking fund redemption) or (B) any default in the payment when due of the interest on any such Bonds unless, prior to such waiver or rescission,

(1) there shall have been paid or provided for all arrears of interest with interest, to the extent permitted by law, at the rate borne by the Bonds on overdue installments of interest, all arrears of principal and premium, if any, and all expenses of the Trustee in connection with such default and

(2) in case of any such waiver or rescission or in the case of any discontinuance, abandonment or adverse determination of any proceeding taken by the Trustee on account of any such default, the County, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder respectively; and

No such waiver or rescission shall extend to any subsequent or other default or impair any right consequent thereon.

Section 910. Unconditional Right to Receive Principal, Premium and Interest.

Nothing in this Agreement shall, however, affect or impair the right of the Trustee or any Bondholder to enforce, by action at law, payment of the principal of or premium, if any, or interest on any Bond at and after the maturity thereof, or on the date fixed for redemption, or the obligation of the Authority to pay the principal of and premium, if any, and interest on each of the Bonds issued hereunder to the respective holders thereof at the time and place, from the source and in the manner herein and in the Bonds expressed.

ARTICLE X

**SUPPLEMENTAL AGREEMENTS OF TRUST;
SUPPLEMENTAL FINANCING AGREEMENTS**

Section 1001. Supplemental Agreements of Trust Not Requiring Consent of Bondholders.

The Authority and the Trustee may, without the consent of, or notice to, any of the Bondholders, enter into Supplemental Agreements of Trust as shall not be inconsistent with the intent of the terms and provisions hereof for any one or more of the following purposes:

(a) To cure any ambiguity, formal defect or omission in this Agreement or a Supplemental Agreement of Trust;

(b) To grant to or confer upon the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred on the Bondholders;

(c) To modify, amend or supplement this Agreement in such manner as required to permit the qualification hereof and thereof under the Trust Indenture Act of 1939, as amended, or any similar Federal statute hereafter in effect or any state securities (Blue Sky) law, and, if they so determine, to add to this Agreement such other terms, conditions and provisions as may be required by said Trust Indenture Act of 1939, as amended, or similar Federal statute or state securities law;

(d) To add to the covenants and agreements of the Authority in this Agreement other covenants and agreements to be observed by the Authority;

(e) To modify, amend or supplement this Agreement in such manner as required to permit the Authority to comply with the provisions of the Code relating to the rebate to the United States of America of earnings derived from the investment of the proceeds of Bonds, provided that such modification, amendment or supplement does not materially adversely affect the holders of all Bonds then Outstanding;

(f) To modify, amend or supplement this Agreement in such manner as may be required by a Rating Agency to maintain its rating on the Bonds, provided that such

modification, amendment or supplement does not in the opinion of the Trustee materially adversely affect the holders of all Bonds then Outstanding;

(g) To authorize the issuance of and to secure one or more Series of Bonds pursuant to Article III; and

(h) To modify, amend or supplement this Agreement in any manner that the Trustee concludes (which conclusion may be based upon an Opinion of Counsel) is not materially adverse to the holders of all Bonds then Outstanding.

Section 1002. Supplemental Agreements of Trust Requiring Consent of Bondholders.

Exclusive of Supplemental Agreements of Trust authorized by Section 1001 and subject to the terms and provisions contained in this Section, the holders of not less than a majority in aggregate principal amount of Bonds then Outstanding shall have the right from time to time, notwithstanding anything in this Agreement to the contrary, to consent to the execution by the Authority and the Trustee of such other agreements or agreements supplemental hereto as shall be deemed necessary or desirable by the Authority for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Agreement and any Supplemental Agreements of Trust; provided, however, that if, in the opinion of the Trustee, any agreement supplemental hereto, modifying, altering, amending, adding to or rescinding any of the terms or provisions shall affect only one Series of Bonds, then only the consent and approval of a majority in aggregate principal amount of Bonds then outstanding of such particular Series shall be required for such supplemental agreement; provided, further, that nothing in this Agreement shall permit, or be construed as permitting, (a) an extension of the maturity of the principal of or the interest on any Bond, (b) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, (c) a reduction in the aggregate principal amount of Bonds required for consent to such Supplemental Agreements of Trust, (d) a reduction in the principal amount of or premium, if any, on any Bond or the rate of interest thereon or (e) an extension of time or a reduction in amount of any payment required by any sinking fund that may be applicable to any Bond, without the consent of the holders of all Bonds then Outstanding.

If at any time the Authority shall request the Trustee to enter into any such Supplemental Agreement of Trust, the Trustee shall cause notice of the proposed execution of such Supplemental Agreement of Trust to be sent by registered or certified mail to the registered holder of each Bond at his address as it appears on the registration books. Such notice shall be prepared by the Authority and shall briefly set forth the nature of the proposed Supplemental Agreement of Trust and shall state that a copy thereof is on file at the designated corporate trust office of the Trustee for inspection by all Bondholders. If, within 90 days or such longer period as shall be prescribed by the Authority following the giving of such notice, the holders of not less than a majority in aggregate principal amount of all Bonds (or the applicable Series of Bonds) then Outstanding, or in the case of (a) through (e) above, the holders of all Bonds then Outstanding, shall have consented to and approved the execution thereof as herein provided, no holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation hereof, or in any manner to question the propriety thereof, or to enjoin or restrain the Trustee or the Authority from executing such Supplemental Agreement of Trust or

from taking any action pursuant to the provisions thereof. Upon the execution of any such Supplemental Agreement of Trust as in this Section permitted and provided, this Agreement shall be and be deemed to be modified and amended in accordance therewith.

Section 1003. Supplemental Financing Agreements Not Requiring Consent of Bondholders.

The Authority and the Trustee shall, without the consent of or notice to the Bondholders, consent to any amendment, change or modification of the Financing Agreement as may be required:

- (a) By the provisions of the Financing Agreement or this Agreement;
- (b) For the purpose of curing any ambiguity or formal defect or omission therein;
- (c) To subject to this Agreement additional revenues, properties or collateral;
- (d) In connection with the issuance of one or more Series of Bonds pursuant to Article III, other than the initial Series, an original executed counterpart of a Supplemental Financing Agreement that shall (1) make such necessary modifications to **Exhibit A** to the Financing Agreement to provide for Basic Payments in amounts sufficient to pay principal of and interest on all Bonds then Outstanding plus such additional Series of Bonds, (2) describe the Project being financed by such additional Series of Bonds and (3) make such other modifications as shall be necessary and convenient for the issuance of such additional Series of Bonds; and
- (e) In connection with any other amendment, change or modification that the Trustee concludes (which may be based upon an Opinion of Counsel) is not materially adverse to the holders of all Bonds then Outstanding, the Authority and the Trustee shall, without the consent of or notice to the Bondholders, consent to any such amendment, change or modification made in connection with any modification or amendment of, or supplement to, this Agreement pursuant to Sections 1001(c) and 1001(h).

Section 1004. Supplemental Financing Agreements Requiring Consent of Bondholders.

Except for amendments, changes or modifications as provided in Section 1003, neither the Authority nor the Trustee shall consent to any amendment, change or modification of the Financing Agreement without the written approval or consent of the holders of a majority in aggregate principal amount of Bonds then Outstanding given and procured as provided in Section 1002; provided, however, that if, in the opinion of the Trustee, any agreement supplemental hereto, modifying, altering, amending, adding to or rescinding any of the terms or provisions shall affect only one Series of Bonds, then only the consent and approval of a majority in aggregate principal amount of Bonds then outstanding of such particular Series shall be required for such supplemental agreement. If at any time the Authority and the County shall request the consent of the Trustee to any such proposed amendment, change or modification, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change or modification to be given in the same manner as provided by Section 1002 with respect to Supplemental Agreements of Trust. Such notice shall be prepared by the Authority or the County and shall briefly set forth the nature of such proposed amendment, change or modification and shall state that a copy of the instrument embodying the

same is on file at the designated corporate trust office of the Trustee for inspection by all Bondholders.

Section 1005. Limitation on Amendments.

No amendment, change or modification may decrease the obligation of the County under the Financing Agreement to pay amounts sufficient to pay principal of and premium, if any, and interest on the Bonds as the same become due.

Section 1006. Amendment by Unanimous Consent.

Notwithstanding any other provision of this Agreement, the Authority and the Trustee may enter into any Supplemental Agreement of Trust and may consent to a Supplemental Financing Agreement upon receipt of the consent of the holders of all Bonds then Outstanding.

Section 1007. Opinion of Counsel Required.

The Trustee shall not enter into a Supplemental Agreement of Trust or consent to a Supplemental Financing Agreement unless there shall have been filed with the Trustee and the Authority an Opinion of Counsel that such Supplemental Agreement of Trust or such Supplemental Financing Agreement is authorized or permitted by this Agreement and complies with its terms and that on execution it will be valid and binding on the party or parties executing it in accordance with its terms, which Opinion of Counsel, to the extent appropriate, may rely on the Trustee's determination that such amendment, change or modification is described in Section 1001(h) or 1003(e), as if applicable, and an opinion of Bond Counsel stating that such Supplemental Agreement of Trust or Supplemental Financing Agreement will not have an adverse effect on the exemption of interest from gross income for Federal income tax purposes on the Bonds then Outstanding, the interest on which was exempt from gross income on the date of their issuance.

Section 1008. Consent of the County.

Notwithstanding any other provision of this Agreement of Trust, a Supplemental Agreement of Trust or a Supplemental Financing Agreement that affects any rights of, or imposes any costs on, the County shall not become effective until the County shall have consented to the execution and delivery of such Supplemental Agreement of Trust or such Supplemental Financing Agreement.

ARTICLE XI

THE TRUSTEE

Section 1101. Acceptance of Trusts and Obligations.

The Trustee hereby accepts the trusts and obligations imposed upon it by this Agreement and agrees to perform such trusts and obligations, but only upon and subject to the following express terms and conditions and no implied covenants or obligations shall be read into this Agreement against the Trustee:

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Agreement and as a corporate trustee ordinarily would perform such duties under a corporate indenture. Upon the occurrence and continuation of an Event of Default (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Agreement and use the same degree of care and skill in their exercise as a prudent man ordinarily would exercise and use under the circumstances in the conduct of his own affairs. The Trustee agrees to undertake such obligations set forth in Section 9.4 of the Financing Agreement that specifically require action of the Trustee as if such obligation were fully set forth in this Agreement.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to act upon the opinion or advice of its counsel concerning all matters of trust hereof and the duties hereunder, and may in all cases pay reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trust hereof. The Trustee may act on an Opinion of Counsel and shall not be responsible for any loss or damage resulting from any action or nonaction by it taken or omitted to be taken in good faith and in reliance on such Opinion of Counsel.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except in respect to the certificate of the Trustee endorsed on the Bonds) or for the recording, re-recording, filing or re-filing of any financing or continuation statement or any other document or instrument, or for the validity of the execution by the Authority of this Agreement or for any supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, and the Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, conditions or agreements on the part of the Authority or the County under the Financing Agreement except as hereinafter set forth. The Trustee shall not be responsible or liable for any loss, fee, tax or other charge suffered or incurred in connection with any investment of moneys made by it in accordance with Section 702 or Section 703.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The bank or trust company acting as Trustee and its directors, officers, employees or agents may in good faith buy, sell, own, hold and deal in the Bonds and may join in any action which any bondholder may be entitled to take with like effect as if such bank or trust company were not the Trustee. To the extent permitted by law, such bank or trust company may also receive tenders and purchase in good faith Bonds from itself, including any department, affiliate or subsidiary, with like effect as if it were not the Trustee.

(e) The Trustee shall be protected in acting on any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Agreement on the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the

holders of any Bond shall be conclusive and binding upon all future holders of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely on a certificate signed (1) on behalf of the Authority by its Chairman or Vice-Chairman and attested by its Secretary under its seal, or such other person or persons as may be designated for such purposes by resolution of the Authority, or (2) on behalf of the County, by its County Administrator or by such person or persons as may be designated for such purposes by the County Administrator or the Board of Supervisors, as sufficient evidence of the facts therein contained, and prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section, or of which by said subsection it is deemed to have notice, may also accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Clerk of the Board of Supervisors or of the Secretary of the Authority under its seal to the effect that a resolution in the form therein set forth has been adopted by the Board of Supervisors or the Authority, as the case may be, as conclusive evidence that such resolution has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Agreement shall not be construed as a duty, and the Trustee shall not be answerable for other than its gross negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder or under the Financing Agreement, except failure by the Authority or the County to cause to be made any of the payments to the Trustee required to be made by Article VI or failure by the County to cause any payments to be made to the Trustee or failure by the Authority or the County to file with the Trustee any document required by this Agreement to be so filed, unless the Trustee shall be notified of such default by the Authority or the County or by the holders of not less than 25% in aggregate principal amount of Bonds then Outstanding.

(i) The Trustee shall not be required to give any bond or surety with respect to the execution of its rights and obligations hereunder.

(j) Notwithstanding any other provision of this Agreement, the Trustee shall have the right, but shall not be required, to demand, as a condition of any action by the Trustee in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Agreement, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that required by the terms hereof.

(k) Before taking any action under this Agreement the Trustee may require that indemnity satisfactory to it be furnished to it for the reimbursement of all expenses to which it may be put and to protect it against all liability by reason of any action so taken, except liability which is adjudicated to have resulted from its gross negligence or willful misconduct.

(l) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust in the manner and for the purposes for which they were received but need not be segregated from other moneys except to the extent required by this Agreement or law. The Trustee shall not be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

Section 1102. Fees, Charges and Expenses of Trustee.

Absent a specific agreement as to the payment of the Trustee's fees, charges and expenses, the Trustee shall be entitled to payment of and reimbursement by the County, as provided in the Financing Agreement for reasonable fees for its services and all expenses reasonably incurred by it hereunder, including the reasonable fees and disbursements of its counsel; provided that the trust estate shall not be liable for costs or expenses of the Trustee other than reasonable costs and expenses and shall not be liable for "overhead expenses" except as such expenses may be included as a component of the Trustee's stated annual fees. Upon an Event of Default, but only upon an Event of Default, the Trustee shall have a first lien with right of payment prior to payment on account of principal of, or premium, if any, and interest on any Bond upon the trust estate created by this Agreement for the foregoing fees, charges and expenses incurred by the Trustee.

Section 1103. Intervention by Trustee.

In any judicial proceeding to which the County is a party and which in the opinion of the Trustee has a substantial bearing on the interests of the Bondholders, the Trustee may intervene on behalf of Bondholders and, subject to Section 1101(k), shall do so if requested by the holders of not less than 25% in aggregate principal amount of Bonds then Outstanding.

Section 1104. Merger or Consolidation of Trustee.

Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall be and become successor Trustee hereunder and vested with all the trusts, powers, discretion, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 1105. Resignation by Trustee.

The Trustee may at any time resign from the trusts hereby created by giving not less than 30 days' notice to the Authority, the County, and each holder of Bonds then Outstanding. Such resignation shall take effect upon the appointment of a successor or temporary Trustee by the Bondholders, the County or a court of competent jurisdiction. If a successor is not appointed by the Bondholders or the County within such 30-day period, the Trustee may petition a court of competent jurisdiction for the appointment of a successor Trustee.

Section 1106. Removal of Trustee.

The Trustee may be removed at any time (a) by an instrument or concurrent instruments in writing delivered to the Trustee and the Authority and signed by the holders of a majority in aggregate principal amount of Bonds then Outstanding or (b) by the County by notice in writing given by an Authorized County Representative to the Trustee not less than 60 days before the removal date; provided, however, that the County shall have no right to remove the Trustee during any time when an Event of Default has occurred or is continuing or when an event has occurred and is continuing or condition exists that with the giving of notice or the passage of time, or both, would be an Event of Default. The removed Trustee shall return to the County the amount of the Trustee's annual fee allocable to the portion of the current year remaining after the removal date. Notwithstanding the foregoing, nothing contained in this Agreement shall relieve the Authority of its obligation to pay the Trustee's fees and expenses incurred to the date of such removal. Such removal shall take effect upon the appointment of a successor Trustee or the earlier appointment of a temporary Trustee by the Bondholders, the County or a court of competent jurisdiction.

Section 1107. Appointment of Successor Trustee by Bondholders; Temporary Trustee.

In case the Trustee hereunder shall resign, be removed, be dissolved, be in course of dissolution or liquidation or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers or of a receiver appointed by a court, a successor may be appointed by the holders of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing signed by such holders; provided, however, that in case of such vacancy the County, by an instrument signed by an Authorized County Representative, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by the Bondholders in the manner provided above; and any such temporary Trustee so appointed by the County shall immediately and without further act be superseded by the Trustee so appointed by such Bondholders. Every such Trustee appointed pursuant to this section shall be, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms, (a) a bank or trust company within or without the Commonwealth of Virginia, in good standing and having a combined capital, surplus and undivided profits of not less than \$50,000,000 or (b) a subsidiary trust company under the Trust Subsidiary Act, Article 3.1, Chapter 2, Title 6.1, of the Virginia Code, or any successor provision of law, whose parent Virginia bank or bank holding company has undertaken to be responsible for the acts of such subsidiary trust company pursuant to the provisions of Section 6.1-32.7(a) of the Trust Subsidiary Act, or any successor provision of law, and whose combined capital, surplus and undivided profits, together with that of its parent Virginia bank or bank holding company, as the case may be, is not less than \$50,000,000.

Section 1108. Concerning any Successor Trustee.

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Authority an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed of conveyance, shall become fully vested with all the properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the request of the Authority and upon

payment of amounts due it hereunder, execute and deliver an instrument transferring to such successor Trustee all the properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the Authority be required by any successor Trustee for more fully and certainly vesting in such successor the properties, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority.

Section 1109. Trustee Protected in Relying on Agreements, Etc.

The resolutions, opinions, certificates and other instruments provided for in this Agreement may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for the release of property and the withdrawal of cash hereunder or the taking of any other action by the Trustee as provided hereunder.

Section 1110. Successor Trustee as Paying Agent, Registrar and Custodian of Funds.

In the event of a change in the office of Trustee, the predecessor Trustee which has resigned or been removed shall cease to be paying agent and registrar for the Bonds and custodian of the funds created hereunder, and the successor Trustee shall become such paying agent and custodian.

ARTICLE XII

DISCHARGE OF AGREEMENT

Section 1201. Discharge of Liens and Pledges; Bonds No Longer Deemed to Be Outstanding Hereunder.

The obligations of the Authority under this Agreement and the liens, pledges, charges, trusts, covenants and agreements of the Authority herein made or provided for, shall be fully discharged and satisfied as to any Bond and such Bond shall no longer be deemed to be Outstanding hereunder:

(a) when such Bond shall have been cancelled, or shall have been surrendered for cancellation and is subject to cancellation; or shall have been purchased by the Authority from moneys in the Bond Fund;

(b) as to any Bond not cancelled or so purchased or so surrendered for cancellation and subject to cancellation, when (1) payment of the principal and the applicable premium of such Bond, plus interest on such principal to the due date thereof (whether such due date be by reason of maturity or upon redemption or prepayment or otherwise) shall have been made or caused to be made in accordance with the terms thereof, or (2) payment of the principal and the applicable premium of such Bond, plus interest on such principal to the due date thereof (whether such due date be by reason of maturity or upon redemption or prepayment or otherwise) shall have been provided by irrevocably depositing with the Trustee, in trust, and

irrevocably appropriating and setting aside exclusively for such payment (i) moneys sufficient to make such payment or (ii) noncallable Government Obligations maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment, or (iii) a combination of both such moneys and noncallable Government Obligations, and (iv) payment of all necessary and proper fees, costs, and expenses of the Trustee satisfactory to the Trustee shall have been made in connection with the Bonds and the administration of this Agreement. For purposes of this Section, Government Obligations shall not include securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940.

(c) Notwithstanding the foregoing, in the case of a Bond which by its terms may be redeemed or otherwise prepaid prior to the stated maturity thereof, and which the Authority elects to redeem or prepay, no deposit under clause (2) of subparagraph (b) above shall constitute such payment, discharge and satisfaction as aforesaid until such Bond shall have been irrevocably called or designated for redemption or prepayment and proper notice of such redemption or prepayment shall have been previously mailed in accordance with Section 402 of this Agreement, or irrevocable provision shall have been made for the giving of such notice; provided that nothing in this Article shall require or be deemed to require the Authority to elect to redeem or prepay any such Bond.

(d) In the event the Authority elects to redeem or prepay any such Bond, nothing in this Article shall require or be deemed to require the redemption or prepayment as of any particular date or dates.

(e) Notwithstanding any provision of any other Article of this Agreement which may be contrary to the provisions of this Article, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Article for the payment of Bonds (including interest and premium, if any, thereof) shall be applied to and used solely for the payment of the particular Bonds (including interest and premium thereof) with respect to which such moneys and Government Obligations have been so set aside in trust.

(f) In the event that all of the Bonds secured by this Agreement are paid or deemed paid in accordance with the terms of this Agreement, then the right and interest of the Trustee in and to the trust estate and all covenants, agreements and other obligations of the Authority or the County to the registered holders of the Bonds will cease and be discharged and satisfied. In the event the Bonds of any maturity are paid or deemed to be paid in accordance with the terms of this Agreement, then such Bonds will cease to be entitled to any lien, benefit or security under this Agreement (other than the right to receive payment) and all covenants, agreements and other obligations of the Authority or the County to the registered holders of such Bonds will cease and be discharged and satisfied.

ARTICLE XIII

MISCELLANEOUS

Section 1301. Consents, etc., of Bondholders.

Any consent, request, direction, approval, objection or other instrument (collectively, a “Consent”) required by this Agreement to be executed by the Bondholders may be in any number of concurrent writings of similar tenor and may be executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of a Consent or of the writing appointing any such agent shall be sufficient for any of the purposes of this Agreement and shall be conclusive in favor of the Authority with regard to any action taken under the Consent if the fact and date of the execution by any person of any such writing is proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

Section 1302. Limitation of Rights.

With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Agreement or the Bonds is intended or shall be construed to give to any person other than the parties hereto and the holders of the Bonds any legal or equitable right, remedy or claim under or in respect to this Agreement or any covenants, conditions and agreements herein contained since this Agreement and all of the covenants, conditions and agreements hereof are intended to be and is for the sole and exclusive benefit of the parties hereto and the holders of the Bonds as herein provided.

Section 1303. Limitation of Liability of Authority, Etc.

No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any present or future member of the Authority or officer, director, employee, agent or advisor of the Authority in his individual capacity, and neither the members of the Authority nor any officer or director 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. No member of the Authority or officer, director, employee, agent or advisor of the Authority shall incur any personal liability with respect to any other action taken by him pursuant to this Agreement or the Act, provided such director, officer, employee, agent or advisor acts in good faith. The Authority shall not be liable under any circumstances for the actions or omissions of the County under the Financing Agreement.

Section 1304. Severability.

If any provision of this Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof and this Agreement shall be construed and enforced as if such illegal provision had not been contained herein.

Section 1305. Notices.

Unless otherwise provided herein, all demands, notices, approvals, consents, requests, opinions and other communications hereunder shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class registered or certified mail, postage prepaid, addressed (a) if to the Authority, at 101-D Mounts Bay Road, Williamsburg, Virginia 23185 (Attention: Chairman); (b) if to the County, at 101-E Mounts Bay Road, P.O. Box 8784, Williamsburg, Virginia 23187-8784 (Attention: County Administrator); or (c) if to the Trustee, at _____. The Authority, the County and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinions or other communications shall be sent or persons to whose attention the same shall be directed.

Section 1306. Successors and Assigns.

This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 1307. Applicable Law.

This Agreement shall be governed by the applicable laws of the Commonwealth of Virginia.

Section 1308. Counterparts.

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

IN WITNESS WHEREOF, the Authority and the Trustee have caused this Agreement to be executed in their respective corporate names as of the date first above written.

**ECONOMIC DEVELOPMENT AUTHORITY
OF JAMES CITY COUNTY, VIRGINIA**

By _____
Chairman

**WILMINGTON TRUST, NATIONAL
ASSOCIATION,**
as Trustee

By _____
Title _____

Acknowledged and Consented To:

**BOARD OF SUPERVISORS OF
JAMES CITY COUNTY, VIRGINIA,
on behalf of JAMES CITY COUNTY,
VIRGINIA**

By: _____
County Administrator

[Signature Page to Agreement of Trust]

FIRST SUPPLEMENTAL AGREEMENT OF TRUST

between

**ECONOMIC DEVELOPMENT AUTHORITY
OF JAMES CITY COUNTY, VIRGINIA**

and

**WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee**

Dated as of May 1, 2016

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THIS FIRST SUPPLEMENTAL AGREEMENT OF TRUST dated as of the 1st day of May, 2016, by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “Authority”), and **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association, having a corporate trust office in Richmond, Virginia, as trustee (in such capacity, together with any successor in such capacity, herein called the “Trustee”), provides:

WHEREAS, the Authority and the Trustee have entered into an Agreement of Trust dated as of May 1, 2016 (the “Master Agreement of Trust”), pursuant to which the Authority has agreed to issue from time to time public facility revenue bonds or notes and use the proceeds thereof to finance costs incurred in connection with certain Projects (as hereinafter defined) for the benefit of James City County, Virginia (the “County”); and

WHEREAS, within the limitations of and in compliance with the Master Agreement of Trust, the County has requested the Authority to issue an initial series of public facility revenue bonds in the aggregate principal amount of \$_____ (the “Series 2016 Bonds”) to finance the costs of the Series 2016 Project (as hereinafter defined); and

WHEREAS, the Authority has agreed to issue the Series 2016 Bonds, secured by a pledge of the revenues and receipts derived from a Financing Agreement dated as of May 1, 2016 (the “Financing Agreement”), between the Authority and the County, and the County has agreed, subject to the appropriation by the County Board of Supervisors from time to time of sufficient amounts for such purposes, to make basic payments that will be sufficient to pay the principal of and premium, if any, and interest on such the Series 2016 Bonds as the same shall become due; and

WHEREAS, the Authority has determined to secure the Series 2016 Bonds in addition by an assignment of the Authority’s rights under (a) a Deed and Agreement of Ground Lease dated as of May 1, 2016, between the County and the Authority and (b) a Deed and Agreement of Financing Lease dated as of May 1, 2016, between the Authority and the County (except the rights to receive payment of the fees and expenses of the Authority, to receive indemnification and to receive notices), to the Trustee for the benefit of the Series 2016 Bondholders, all pursuant to the terms of an Assignment Agreement dated as of May 1, 2016, between the Authority and the Trustee.

WHEREAS, the Authority has taken all necessary action to make the Series 2016 Bonds, when authenticated by the Trustee and issued by the Authority, valid and binding limited obligations of the Authority and to constitute this First Supplemental Agreement a valid and binding agreement authorizing and providing for the details of the Series 2016 Bonds;

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

FIRST SUPPLEMENTAL AGREEMENT

Section 1.101 Authorization of First Supplemental Agreement.

This First Supplemental Agreement is authorized and executed by the Authority and delivered to the Trustee pursuant to and in accordance with Articles III and X of the Master Agreement of Trust. All terms, covenants, conditions and agreements of the Master Agreement of Trust shall apply with full force and effect to the Series 2016 Bonds and to the holders thereof, except as otherwise provided in this First Supplemental Agreement.

Section 1.102 Definitions.

Except as otherwise defined in this First Supplemental Agreement, words defined in the Master Agreement of Trust are used in this First Supplemental Agreement with the meanings assigned to them in the Master Agreement of Trust. In addition, the following words shall have the following meanings unless a different meaning clearly appears from the context:

“First Supplemental Agreement” shall mean this First Supplemental Agreement of Trust between the Authority and the Trustee, which supplements and amends the Master Agreement of Trust.

“Letter of Representations” shall mean the Blanket Letter of Representations dated _____, from the Authority to the Securities Depository and any amendments thereto or successor agreements between the Authority and any successor Securities Depository with respect to the Series 2016 Bonds. Notwithstanding any provision of the Master Agreement of Trust, including Article X regarding amendments, the Trustee may enter into any such amendment or successor agreement without the consent of Bondholders.

“Securities Depository” shall mean The Depository Trust Company, a corporation organized and existing under the laws of the State of New York, and any other securities depository for the Series 2016 Bonds appointed pursuant to Section 1.204, and their successors.

“Series 2016 Bonds” shall mean the Authority’s \$_____ Public Facility Revenue Bonds (James City County School Project), Series 2016, authorized to be issued pursuant to this First Supplemental Agreement.

[“Series 2016 Debt Service Reserve Account” shall mean the Series 2016 Debt Service Reserve Account established in Section 1.502 of this First Supplemental Agreement.]

[“Series 2016 Debt Service Reserve Requirement” for the Series 2016 Bonds shall be an amount equal to \$_____, which is the least of (a) the maximum principal and interest due on the Series 2016 Bonds in the current or any future Fiscal Year, (b) 10% of the original stated principal amount of the Series 2016 Bonds (or 10% of the issue price of the Series 2016 Bonds if required by the Code) or (c) 125% of the average annual principal and interest due on the Series 2016 Bonds in the current and each future Fiscal Year.]

“Series 2016 Project” shall have the meaning set forth in the Financing Agreement.

“Series 2016 Project Account” shall mean the Series 2016 Project Account established in Section 1.501 of this First Supplemental Agreement.

Section 1.103 Rules of Construction.

The following rules shall apply to the construction of this First Supplemental Agreement unless the context otherwise requires:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) Words importing the redemption or calling for redemption of Series 2016 Bonds shall not be deemed to refer to or connote the payment of Series 2016 Bonds at their stated maturity.

(c) Unless otherwise indicated, all references herein to particular Articles or Sections are references to Articles or Sections of this First Supplemental Agreement.

(d) The headings herein and Table of Contents to this First Supplemental Agreement herein are solely for convenience of reference and shall not constitute a part of this First Supplemental Agreement nor shall they affect its meaning, construction or effect.

(e) All references herein to payment of Series 2016 Bonds are references to payment of principal of and premium, if any, and interest on the Series 2016 Bonds.

ARTICLE II

AUTHORIZATION, DETAILS AND FORM OF SERIES 2016 BONDS

Section 1.201 Authorization of Series 2016 Bonds and Series 2016 Project.

There are hereby authorized to be issued the Series 2016 Bonds in an aggregate principal amount of \$_____ to (a) finance the Cost of the Series 2016 Project, (b) [fund the Series 2016 Debt Service Reserve Requirement] and (c) finance costs incident to issuing the Series 2016 Bonds, in accordance with Article IV hereof.

Section 1.202 Details of Series 2016 Bonds.

(a) The 2016 Bonds shall be designated “Public Facility Revenue Bonds, Series 2016,” shall be dated May __, 2016, shall be issuable only as fully registered bonds in denominations of \$5,000 and integral multiples thereof and shall be numbered R-1 upward. The 2016 Bonds shall bear interest at rates, payable semiannually on each _____ and _____, beginning _____, _____, and shall mature in installments on _____ in years and amounts, as follows:

Year	Amount	Rate	Year	Amount	Rate
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(b) Each Series 2016 Bond shall bear interest (a) from its date, if such Series 2016 Bond is authenticated prior to the first interest payment date, or (b) otherwise from the interest payment date that is, or immediately precedes, the date on which such Series 2016 Bond is authenticated; provided, however, that if at the time of authentication of any Series 2016 Bond payment of interest is in default, such Series 2016 Bond shall bear interest from the date to which interest has been paid. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months.

(c) Principal of the Series 2016 Bonds shall be payable to the registered holder(s) upon the surrender of Series 2016 Bonds at the designated corporate trust office of the Trustee in Richmond, Virginia. Interest on the Series 2016 Bonds shall be payable by check or draft mailed to the registered owners at their addresses as they appear on the registration books kept by the Trustee on the first day of the month in which each interest payment date occurs; provided, however, if the Series 2016 Bonds are registered in the name of a Securities Depository or its nominee as registered holder or at the option of a registered holder(s) of at least \$1,000,000 of Series 2016 Bonds, payment shall be made by wire transfer pursuant to the wire instructions received by the Trustee from such registered holder(s). Principal and interest shall be payable in lawful money of the United States of America.

Section 1.203 Form of Series 2016 Bonds.

The Series 2016 Bonds shall be in substantially the form set forth in **Exhibit A**, with such appropriate variations, omissions and insertions as are permitted or required by the Master Agreement of Trust and this First Supplemental Agreement.

Section 1.204 Securities Depository Provisions.

Initially, one certificate for each maturity of the Series 2016 Bonds will be issued and registered to the Securities Depository, or its nominee. The Authority shall enter into a Letter of Representations relating to a book-entry system to be maintained by the Securities Depository with respect to the Series 2016 Bonds.

In the event that (a) the Securities Depository determines not to continue to act as a securities depository for the Series 2016 Bonds by giving notice to the Trustee and the Authority discharging its responsibilities hereunder or (b) the Authority, at the direction of the County, determines (1) that beneficial owners of Series 2016 Bonds shall be able to obtain certificated Series 2016 Bonds or (2) to select a new Securities Depository, then the Trustee shall, at the

direction of the Authority, attempt to locate another qualified securities depository to serve as Securities Depository or authenticate and deliver certificated Series 2016 Bonds to the beneficial owners or to the Securities Depository participants on behalf of beneficial owners substantially in the form provided for in **Exhibit A**; provided, however, that such form shall provide for interest on the Series 2016 Bonds to be payable (i) from May __, 2016, if it is authenticated prior to __ __, 20__, or (ii) otherwise from the __ __ or __ __ that is, or immediately precedes, the date on which it is authenticated (unless payment of interest thereon is in default, in which case interest on such Series 2016 Bonds shall be payable from the date to which interest has been paid). In delivering certificated Series 2016 Bonds, the Trustee shall be entitled to rely conclusively on the records of the Securities Depository as to the beneficial owners or the records of the Securities Depository participants acting on behalf of beneficial owners. Such certificated Series 2016 Bonds will be registrable, transferable and exchangeable as set forth in Sections 204 and 205 of the Master Agreement of Trust.

So long as there is a Securities Depository for the Series 2016 Bonds (A) it or its nominee shall be the registered holder(s) of the Series 2016 Bonds, (B) notwithstanding anything to the contrary in this Agreement, determinations of persons entitled to payment of principal and interest, transfers of ownership and exchanges and receipt of notices shall be the responsibility of the Securities Depository and shall be effected pursuant to rules and procedures established by such Securities Depository, (C) the Authority and the Trustee shall not be responsible or liable for maintaining, supervising or reviewing the records maintained by the Securities Depository, its participants or persons acting through such participants, (D) references in this Agreement to registered holder(s) of the Series 2016 Bonds shall mean such Securities Depository or its nominee and shall not mean the beneficial owners of the Series 2016 Bonds and (E) in the event of any inconsistency between the provisions of this Agreement, other than those set forth in this paragraph and the preceding paragraph, and the provisions of the Letter of Representations such provisions of the Letter of Representations shall control.

Section 1.205 Delivery of Series 2016 Bonds.

The Trustee shall authenticate and deliver the Series 2016 Bonds when there have been filed with or delivered to it all items required by Section 303 of the Master Agreement of Trust.

ARTICLE III

REDEMPTION OF SERIES 2016 BONDS

Section 1.301 Redemption Date and Price.

The Series 2016 Bonds may not be called for redemption by the Authority except as follows:

(a) Optional Redemption. The Series 2016 Bonds maturing on or after __ __, 20__, may be redeemed by the Authority, at the direction of the County, on or after __ __, 20__, in whole or in part (in increments of \$5,000) at any time at a redemption price of 100% of the principal amount, or portion thereof, of Series 2016 Bonds to be redeemed plus interest accrued to the date fixed for redemption.

(b) Mandatory Redemption. The Series 2016 Bonds maturing on ____ __, 20__, are required to be redeemed prior to maturity in part upon payment of 100% of the principal amount thereof plus interest accrued to the redemption date on ____ __ in years and amounts, as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
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Section 1.302 Selection of Series 2016 Bonds for Redemption.

If less than all of the Series 2016 Bonds are called for optional redemption, the maturities of the Series 2016 Bonds to be redeemed shall be selected by the County. If less than all of the Series 2016 Bonds of a maturity are called for redemption, the Series 2016 Bonds to be redeemed shall be selected by the Securities Depository or any successor securities depository pursuant to its rules and procedures or, if the book-entry system is discontinued, shall be selected by the Trustee by lot in such manner as the Trustee in its discretion may determine. The portion of any Series 2016 Bond to be redeemed shall be in the principal amount of \$5,000 or some multiple thereof. In selecting Series 2016 Bonds for redemption, each Series 2016 Bond shall be considered as representing that number of Series 2016 Bonds which is obtained by dividing the principal amount of such Series 2016 Bond by \$5,000. If a portion of a Series 2016 Bond shall be called for redemption, a new Series 2016 Bond in principal amount equal to the unredeemed portion thereof shall be issued to the registered owner upon the surrender thereof.

Section 1.303 Notice of Redemption.

Notice of redemption of Series 2016 Bonds shall be given in the manner set forth in Section 402 of the Master Agreement of Trust.

ARTICLE IV

APPLICATION OF PROCEEDS OF SERIES 2016 BONDS

Section 1.401 Application of Proceeds of Series 2016 Bonds.

The proceeds of the Series 2016 Bonds (\$_____) shall be paid to the Trustee and applied as follows:

(a) \$_____ shall be deposited in the Series 2016 Project Account in the Project Fund; and

(b) [\$_____, representing the Series 2016 Debt Service Reserve Requirement, shall be deposited in the Series 2016 Debt Service Reserve Account in the Debt Service Reserve Fund.]

ARTICLE V

ESTABLISHMENT OF ACCOUNTS

Section 1.501 Series 2016 Project Account.

There shall be established within the Project Fund a special account entitled “Series 2016 Project Account.” The portion of the proceeds of the Series 2016 Bonds specified in Section 1.401(b) shall be deposited in the Series 2016 Project Account. Money in the Series 2016 Project Account shall be used in accordance with the provisions of Section 503 of the Master Agreement of Trust.

Section 1.502 Series 2016 Debt Service Reserve Account.

[There shall be established within the Debt Service Reserve Fund a special account entitled “Series 2016 Debt Service Reserve Account.” The portion of the proceeds of the Series 2016 Bonds specified in Section 1.401(c) shall be deposited in the Series 2016 Debt Service Reserve Account. Money in the Series 2016 Debt Service Reserve Account shall be used in accordance with the provisions of Section 603 of the Master Agreement of Trust.]

ARTICLE VI

SECURITY FOR SERIES 2016 BONDS

Section 1.601 Security for Series 2016 Bonds.

(a) The Series 2016 Bonds shall be equally and ratably secured under the Master Agreement of Trust with any other series issued pursuant to Article III of the Master Agreement of Trust, without preference, priority or distinction of any Bonds over any other Bonds, except as provided in the Master Agreement of Trust.

(b) The Series 2016 Bonds shall be further secured by an assignment of the Authority’s rights under (a) a Deed and Agreement of Ground Lease dated as of May 1, 2016, between the County and the Authority and (b) a Deed and Agreement of Financing Lease dated as of May 1, 2016, between the Authority and the County (except the rights to receive payment of the fees and expenses of the Authority, to receive indemnification and to receive notices), to the Trustee for the benefit of the Series 2016 Bondholders, all pursuant to the terms of an Assignment Agreement dated as of May 1, 2016, between the Authority and the Trustee.

(c) Any payments of Basic Rent received by the Trustee pursuant to the terms of the Assignment Agreement shall be deposited to the Bond Fund as a credit against principal of and interest due on the Series 2016 Bonds and any additional Series secured by the Authority’s rights under the Assignment Agreement. [Any payments of Additional Rent received by the Trustee in connection with Section 4.2(b) of the Lease Agreement shall be deposited to the Series 2016 Debt Service Reserve Account and such other Series Debt Service Reserve Account (securing a Series further secured by the Authority’s rights under the Assignment Agreement) as a credit against any deficiencies in such Account(s).]

ARTICLE VII

MISCELLANEOUS

Section 1.701 Limitations on Use of Proceeds.

The Authority intends that interest on the Series 2016 Bonds shall be excluded from gross income for Federal income tax purposes. The Authority covenants with the holders of the Series 2016 Bonds not to take any action that would adversely affect, and to take all action within its power necessary to maintain, the exclusion of interest on all Series 2016 Bonds from gross income for Federal income taxation purposes.

Section 1.702 Limitation of Rights.

With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this First Supplemental Agreement or the Series 2016 Bonds is intended or shall be construed to give to any person other than the parties hereto and the holders of Series 2016 Bonds any legal or equitable right, remedy or claim under or in respect to this First Supplemental Agreement or any covenants, conditions and agreements herein contained since this First Supplemental Agreement and all of the covenants, conditions and agreements hereof are intended to be and are for the sole and exclusive benefit of the parties hereto and the holders of Bonds as herein provided.

Section 1.703 Severability.

If any provision of this First Supplemental Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof and this First Supplemental Agreement shall be construed and enforced as if such illegal provision had not been contained herein.

Section 1.704 Successors and Assigns.

This First Supplemental Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 1.705 Applicable Law.

This First Supplemental Agreement shall be governed by the applicable laws of the Commonwealth of Virginia.

Section 1.706 Counterparts.

This First Supplemental Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Authority and the Trustee have caused this First Supplemental Agreement to be executed in their respective corporate names as of the date first above written.

**ECONOMIC DEVELOPMENT AUTHORITY
OF JAMES CITY COUNTY, VIRGINIA**

By _____
Chairman

**WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee**

By _____
Title _____

Acknowledged and Consented To:

**BOARD OF SUPERVISORS OF
JAMES CITY COUNTY, VIRGINIA,
on behalf of JAMES CITY COUNTY,
VIRGINIA**

By: _____
County Administrator

EXHIBIT A

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the issuer or its agent for registration of transfer, exchange, or payment, and any certificate is registered in the name of Cede & Co., or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

REGISTERED

REGISTERED

R-1

\$ _____

UNITED STATES OF AMERICA

COMMONWEALTH OF VIRGINIA

**ECONOMIC DEVELOPMENT AUTHORITY
OF JAMES CITY COUNTY, VIRGINIA**

**Public Facility Revenue Bond
(James City County School Project),
Series 2016**

INTEREST RATE	MATURITY DATE	DATED DATE	CUSIP
_____%	_____, ____	_____, 2016	_____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: _____ DOLLARS

The Economic Development Authority of James City County, Virginia, a political subdivision of the Commonwealth of Virginia (the "Authority"), for value received, hereby promises to pay upon surrender hereof at the designated corporate trust office of SunTrust Bank, Richmond, Virginia, as trustee, or its successor in trust (the "Trustee"), under the Agreement of Trust (as hereinafter defined) solely from the source and as hereinafter provided, to the registered owner hereof, or registered assigns or legal representative, the principal sum stated above on the maturity date stated above, subject to prior redemption as hereinafter provided, and to pay, solely from such source, interest hereon on each _____ and _____, beginning _____, 20____, at the annual rate stated above, calculated on the basis of a 360-day year of twelve 30-day months. Interest is payable (a) from _____, 20____, if this bond is authenticated prior to _____, 20____, or (b) otherwise from the _____ or _____ that is, or immediately precedes, the date on which this bond is authenticated (unless payment of interest hereon is in default, in which case this bond shall bear interest from the date to which interest has been paid). Interest is payable by check or draft mailed to the registered owner hereof at its address as it appears on the 1st day of the month in which an interest payment date occurs on registration books kept by the Trustee;

provided, however, that at the option of a registered owner of at least \$1,000,000 of Bonds (as hereinafter defined), payment will be made by wire transfer pursuant to the most recent wire instructions received by the Trustee from such registered owner. If such interest payment date is not a Business Day (as defined in the Agreement of Trust), such payment shall be made on the next succeeding Business Day with the same effect as if made on the day such payment was due and no interest shall accrue hereon. Principal and interest are payable in lawful money of the United States of America.

Notwithstanding any other provision hereof, this bond is subject to book-entry form maintained by The Depository Trust Company ("DTC"), and the payment of principal and interest, the providing of notices and other matters shall be made as described in the Authority's Letter of Representations to DTC.

This bond is one of an issue of \$_____ Public Facility Revenue Bonds (James City County School Project), Series 2016 (the "2016 Bonds"), authorized and issued pursuant to the Virginia Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended. The 2016 Bonds are issued under and secured by an Agreement of Trust dated as of May 1, 2016, between the Authority and the Trustee, as supplemented by a First Supplemental Agreement of Trust dated as of May 1, 2016 (collectively, the "Agreement of Trust"). The Agreement of Trust assigns to the Trustee, as security for the 2016 Bonds, (a) the revenues and receipts derived from a Financing Agreement dated as of May 1, 2016 (the "Financing Agreement"), between the Authority and James City County, Virginia (the "County"), and (b) the Authority's rights under the Financing Agreement (except for the Authority's rights under the Financing Agreement to the payment of certain fees and expenses and the rights to notices). The Series 2016 Bonds are also secured by an assignment of the Authority's rights under (i) a Deed and Agreement of Ground Lease dated as of May 1, 2016, between the County and the Authority and (ii) a Deed and Agreement of Financing Lease dated as of May 1, 2016, between the Authority and the County (except the rights to receive payment of the fees and expenses of the Authority, to receive indemnification and to receive notices), to the Trustee for the benefit of the Series 2016 Bondholders, all pursuant to the terms of an Assignment Agreement dated as of May 1, 2016, between the Authority and the Trustee.

Reference is hereby made to the Agreement of Trust for a description of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Authority and the Trustee, the rights of the holders of the 2016 Bonds and the terms upon which the 2016 Bonds are issued and secured. Additional bonds secured by a pledge of revenues and receipts derived from the County under the Financing Agreement on a parity with the 2016 Bonds may be issued under the terms and conditions set forth in the Agreement of Trust. Terms not otherwise defined herein shall have the meaning assigned such terms in the Agreement of Trust.

The 2016 Bonds are issued to finance (a) costs of certain capital improvements for public school facilities, including (but not limited to) the construction, renovation, rehabilitation and equipping of a middle school, [(b) a deposit to the Series 2016 Debt Service Reserve Account] and (c) costs incurred in issuing the 2016 Bonds. Under the Financing Agreement and the Lease Agreement, the County has agreed to make payments that will be sufficient to pay the principal of and interest on the 2016 Bonds as the same shall become due in accordance with their terms

and the provisions and the terms of the Agreement of Trust; provided, however, that the obligation of the County to make such payments constitutes a current expense of the County that is subject to appropriation by the County Board of Supervisors from time to time of sufficient monies for such purposes. The obligation of the County to make payments under the Financing Agreement or the Lease Agreement does not constitute a debt of the County within the meaning of any constitutional or statutory limitation nor a liability of or a lien or charge upon funds or property of the County beyond any fiscal year for which the County has appropriated moneys to make such payments.

THE 2016 BONDS AND THE PREMIUM, IF ANY, AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE AUTHORITY PAYABLE SOLELY FROM REVENUES AND RECEIPTS DERIVED FROM THE COUNTY RECEIVED BY THE AUTHORITY UNDER THE FINANCING AGREEMENT AND THE LEASE AGREEMENT, AND FROM CERTAIN FUNDS, AND THE INVESTMENT INCOME THEREON, HELD UNDER THE AGREEMENT OF TRUST, WHICH REVENUES, RECEIPTS AND FUNDS HAVE BEEN PLEDGED AND ASSIGNED TO SECURE PAYMENT THEREOF. THE 2016 BONDS AND INTEREST THEREON SHALL NOT BE DEEMED TO CONSTITUTE A GENERAL OBLIGATION DEBT OR A 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 2016 BONDS OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE REVENUES AND RECEIPTS PLEDGED AND ASSIGNED 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, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON THE 2016 BONDS OR OTHER COSTS INCIDENT THERETO. THE AUTHORITY HAS NO TAXING POWER.

No covenant, condition or agreement contained herein shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Authority in his individual capacity, and neither the Chairman of the Authority nor any officer thereof executing this bond shall be liable personally on the 2016 Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

The 2016 Bonds may not be called for redemption by the Authority except as provided herein and in the Agreement of Trust.

Optional Redemption. The 2016 Bonds maturing on or before ____, 20__, will not be subject to optional redemption before their respective maturity dates. The 2016 Bonds maturing on or after ____, 20__, may be redeemed prior to their respective maturities on or after ____, 20__, at the option of the Authority, at the direction of the County, in whole or in part at any time at a redemption price of 100% of the principal amount, or portion thereof, of Bonds to be redeemed plus interest accrued to the date fixed for redemption.

The 2016 Bonds maturing on _____, 20____, are required to be redeemed prior to maturity in part upon payment of 100% of the principal amount thereof plus interest accrued to the redemption date on _____ in years and amounts, as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
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If less than all the 2016 Bonds are called for redemption, they shall be redeemed from maturities in such order as determined by the County. If less than all of the 2016 Bonds of any maturity are called for redemption, the 2016 Bonds to be redeemed shall be selected by DTC or any successor securities depository pursuant to its rules and procedures or, if the book-entry system is discontinued, shall be selected by the Trustee by lot in such manner as the Trustee in its discretion may determine. The portion of any 2016 Bond to be redeemed shall be in the principal amount of \$5,000 or some integral multiple thereof. In selecting 2016 Bonds for redemption, each 2016 Bond shall be considered as representing that number of 2016 Bonds which is obtained by dividing the principal amount of such Bond by \$5,000.

If any of the 2016 Bonds or portions thereof are called for redemption, the Trustee shall send notice of the call for redemption, identifying the 2016 Bonds or portions thereof to be redeemed, not less than 30 nor more than 60 days prior to the redemption date, by facsimile, registered or certified mail or overnight express delivery, to the registered owner of the 2016 Bonds. Such notice may state that (1) it is conditioned upon the deposit of moneys, in an amount equal to the amount necessary to effect the redemption, with the Trustee no later than the redemption date or (2) the Authority retains the right to rescind such notice on or prior to the scheduled redemption date, and such notice and optional redemption shall be of no effect if such moneys are not so deposited or if the notice is rescinded. Provided funds for their redemption are on deposit at the place of payment on the redemption date, all Bonds or portions thereof so called for redemption shall cease to bear interest on such date, shall no longer be secured by the Agreement of Trust and shall not be deemed to be Outstanding under the provisions of the Agreement of Trust. If a portion of this bond shall be called for redemption, a new bond in principal amount equal to the unredeemed portion hereof will be issued to DTC or its nominee upon surrender hereof, or if the book-entry system is discontinued, to the registered owners of the 2016 Bonds.

The registered owner of this bond shall have no right to enforce the provisions of the Agreement of Trust or to institute action to enforce the covenants therein or to take any action with respect to any Event of Default under the Agreement of Trust or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Agreement of Trust. Modifications or alterations of the Agreement of Trust or the Financing Agreement, or of any supplement thereto, may be made only to the extent and in the circumstances permitted by the Agreement of Trust.

The 2016 Bonds are issuable as registered bonds in the denomination of \$5,000 and integral multiples thereof. Upon surrender for transfer or exchange of this bond at the designated

corporate trust office of the Trustee in Richmond, Virginia, together with an assignment duly executed by the registered owner or its duly authorized attorney or legal representative in such form as shall be satisfactory to the Trustee, the Authority shall execute, and the Trustee shall authenticate and deliver in exchange, a new bond or bonds in the manner and subject to the limitations and conditions provided in the Agreement of Trust, having an equal aggregate principal amount, in authorized denominations, of the same series, form and maturity, bearing interest at the same rate and registered in the name or names as requested by the then registered owner hereof or its duly authorized attorney or legal representative. Any such exchange shall be at the expense of the Authority, except that the Trustee may charge the person requesting such exchange the amount of any tax or other governmental charge required to be paid with respect thereto.

The Trustee shall treat the registered owner as the person exclusively entitled to payment of principal and interest and the exercise of all other rights and powers of the owner, except that interest payments shall be made to the person shown as holder on the first day of the month in which each interest payment date occurs.

All acts, conditions and things required to happen, exist or be performed precedent to and in the issuance of this bond have happened, exist and have been performed.

This bond shall not become obligatory for any purpose or be entitled to any security or benefit under the Agreement of Trust or be valid until the Trustee shall have executed the Certificate of Authentication appearing hereon and inserted the date of authentication hereon.

IN WITNESS WHEREOF, the Economic Development Authority of James City County, Virginia, has caused this bond to be signed by its Chairman, its seal to be imprinted hereon and attested by its Secretary, and this bond to be dated the Dated Date.

**ECONOMIC DEVELOPMENT AUTHORITY
OF JAMES CITY COUNTY, VIRGINIA**

(SEAL)

By _____
Chairman

Attest:

Secretary

CERTIFICATE OF AUTHENTICATION

Date Authenticated: _____

This bond is one of the 2016 Bonds described in the within mentioned Agreement of Trust.

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By _____
Authorized Representative

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sell(s), assign(s) and transfer(s) unto

(please print or typewrite name and address, including zip code, of Transferee)

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF TRANSFEREE

- .
- .
- .
- .
- .
- .

the within Bond and all rights thereunder, hereby irrevocably constituting and appointing

_____, Attorney, to transfer said Bond on the books kept for the registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed

NOTICE: Signature(s) must be guaranteed by an Eligible Guarantor Institution such as a Commercial Bank, Trust Company, Securities Broker/Dealer, Credit Union, or Savings Association who is a member of a medallion program approved by The Securities Transfer Association, Inc.

(Signature of Registered Owner

NOTICE: The signature above must correspond with the name of the registered owner as it appears on the front of this bond in every particular, without alteration or enlargement or any change whatsoever.

FINANCING AGREEMENT

between

**ECONOMIC DEVELOPMENT AUTHORITY
OF JAMES CITY COUNTY, VIRGINIA**

and

**BOARD OF SUPERVISORS OF
JAMES CITY COUNTY, VIRGINIA
on behalf of
JAMES CITY COUNTY, VIRGINIA**

Dated as of May 1, 2016

**NOTE: THIS FINANCING AGREEMENT HAS BEEN ASSIGNED TO, AND IS
SUBJECT TO A SECURITY INTEREST IN FAVOR OF,
WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE
UNDER AN AGREEMENT OF TRUST DATED AS OF MAY 1, 2016,
WITH THE ECONOMIC DEVELOPMENT AUTHORITY OF JAMES
CITY COUNTY, VIRGINIA, AS AMENDED OR SUPPLEMENTED
FROM TIME TO TIME. INFORMATION CONCERNING SUCH
SECURITY INTEREST MAY BE OBTAINED FROM THE TRUSTEE
AT _____, _____.**

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THIS **FINANCING AGREEMENT** dated as of the 1st day of May, 2016, by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “Authority”), and the **BOARD OF SUPERVISORS OF JAMES CITY COUNTY, VIRGINIA**, on behalf of **JAMES CITY COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “County”), provides:

WITNESSETH:

WHEREAS, the Authority is a political subdivision of the Commonwealth of Virginia duly created under the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the “Act”); and

WHEREAS, the Authority is authorized to exercise all the powers set forth in the Act, which include, among other things, the power to make loans to, among others, a county in furtherance of the purposes of the Act, to finance or refinance and lease facilities for use by, among others, a county, to issue its revenue bonds, notes and other obligations from time to time for such purposes and to pledge all or any part of its revenues and receipts derived from payments received by the Authority in connection with its loans or from the leasing by the Authority of such facilities or from any other source, as security for the payment of the principal of and interest on any such obligations; and

WHEREAS, the County desires to undertake a program of financing the acquisition, construction and equipping of various public improvement projects that the County determines to undertake from time to time; and

WHEREAS, in furtherance of the purposes of the Act, the County has requested the Authority to undertake one or more Projects (as hereinafter defined), and the Authority has determined to issue from time to time pursuant to the terms of an Agreement of Trust dated as of May 1, 2016 (the “Master Agreement of Trust”), between the Authority and Wilmington Trust, National Association, as trustee (the “Trustee”), as supplemented from time to time, its public facility revenue bonds and to use the proceeds thereof to finance costs incurred in connection with the Projects for the benefit of the County; and

WHEREAS, all acts, conditions and things required by law to happen, exist and be performed precedent to and in connection with the execution of and entering into this Financing Agreement have happened, exist and have been performed in regular and due time and in form and manner as required by law, and the parties hereto are now duly empowered to execute and enter into this Financing Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained and other valuable consideration, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1 Definitions.

Unless otherwise defined in this Financing Agreement, all words used herein shall have the meanings assigned to such terms in the Master Agreement of Trust. The following words as used in this Financing Agreement shall have the following meanings unless a different meaning clearly appears from the context:

“Account” shall mean any of the various Accounts created within a Fund under this Financing Agreement.

“Act” shall mean the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended.

“Additional Payment(s)” shall mean such payment or payments made by the County pursuant to Section 4.1(b), (c) and (d), Section 7.6 and Section 9.3.

“Agreement of Trust” shall mean the Master Agreement of Trust and the First Supplemental Agreement of Trust.

“Annual Budget” shall mean the budget by that name referred to in Section 4.4.

“Basic Agreements” shall mean the Agreement of Trust and this Financing Agreement.

“Basic Payment(s)” shall mean the payments made by the County under this Financing Agreement in accordance with the schedule attached as **Exhibit A** hereto, which such payments correspond in amount to the payments of principal and interest due on all Outstanding Bonds, and which payments include payments pursuant to agreements with providers of credit enhancement or liquidity support with respect to such Bonds, to reimburse such providers for debt service payments made, and to pay credit enhancement or liquidity support fees with respect to such Bonds, scheduled to come due within a specified Fiscal Year.

“Event of Default” shall mean the events enumerated in Section 7.1.

“Financing Agreement” shall mean this Financing Agreement, as such Financing Agreement may be supplemented, amended or modified by one or more Supplemental Financing Agreements.

“First Supplemental Agreement of Trust” shall mean the First Supplemental Agreement of Trust dated as of May 1, 2016, between the Authority and the Trustee supplementing the Master Agreement of Trust.

“Master Agreement of Trust” shall mean the Agreement of Trust dated as of May 1, 2016, between the Authority and the Trustee, as it may be supplemented and amended.

“Project” or “Projects” shall mean, individually or collectively, the Series 2016 Project and any other project undertaken by the Authority, with the County’s consent, from time to time and identified in a Supplemental Financing Agreement, including without limitation, the financing or refinancing of the acquisition, construction, improvement or equipping of infrastructure, public facilities and other improvements and facilities permitted to be undertaken pursuant to the provisions of the Act, including any extensions, additions, replacements, equipment and appurtenances to or for the benefit of such public facilities.

“Series 2016 Bonds” shall mean the Authority’s \$_____ Public Facility Revenue Bonds (James City County School Project), Series 2016, authorized to be issued pursuant to the First Supplemental Agreement of Trust.

“Series 2016 Project” shall mean the costs of certain capital improvements for public school facilities, including (but not limited to) the construction, renovation, rehabilitation and equipping of a middle school.

“Series 2016 Arbitrage Rebate Fund” shall mean the fund established in Section 9.1.

“Supplemental Financing Agreement” shall mean any Supplemental Financing Agreement supplementing, amending or modifying the provisions of this Financing Agreement entered into by the Authority and the County pursuant to Article X of the Master Agreement of Trust.

Section 1.2 Rules of Construction.

The following rules shall apply to the construction of this Financing Agreement unless the context otherwise requires:

- (a) Words importing the singular number shall include the plural number and vice versa.
- (b) Words importing the redemption or calling for redemption of Bonds shall not be deemed to refer to or connote the payment of Bonds at their stated maturity.
- (c) Unless otherwise indicated, all references herein to particular Articles or Sections are references to Articles or Sections of this Financing Agreement.
- (d) The headings herein and Table of Contents to this Financing Agreement herein are solely for convenience of reference and shall not constitute a part of this Financing Agreement nor shall they affect its meaning, construction or effect.
- (e) All references herein to payment of Bonds are references to payment of principal of and premium, if any, and interest on the Bonds.

ARTICLE II

REPRESENTATIONS

Section 2.1 Representations by Authority.

The Authority makes the following representations:

(a) The Authority is a political subdivision of the Commonwealth of Virginia duly created under the Act;

(b) Pursuant to the Act, the Authority has full power and authority to enter into the Basic Agreements and to perform the transactions contemplated thereby and to carry out its obligations thereunder and by proper action has duly authorized, executed and delivered such Basic Agreements;

(c) The execution, delivery and compliance by the Authority with the terms and conditions of the Basic Agreements will not conflict with or constitute or result in a default under or violation of, (1) any existing law, rule or regulation applicable to the Authority, or (2) any trust agreement, mortgage, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or other restriction of any kind to which the Authority or any of its assets is subject;

(d) No further approval, consent or withholding of objection on the part of any regulatory body or any official, Federal, state or local, is required in connection with the execution or delivery of or compliance by the Authority with the terms and conditions of the Basic Agreements, except that no representation is made as to the applicability of any Federal or state securities laws; and

(e) There is no litigation at law or in equity or any proceeding before any governmental agency involving the Authority pending or, to the knowledge of the Authority, threatened against the Authority with respect to (1) the creation and existence of the Authority, (2) its authority to execute and deliver the Basic Agreements, (3) the validity or enforceability of the Basic Agreements or the Authority's performance of its obligations thereunder, (4) the title of any officer of the Authority executing the Basic Agreements, or (5) the ability of the Authority to issue and sell its bonds.

Section 2.2 Representations by County.

The County makes the following representations:

(a) The County is a political subdivision of the Commonwealth of Virginia;

(b) The County has full power and authority to enter into the Basic Agreements to which it is a party and to perform the transactions contemplated thereby and to carry out its obligations thereunder and by proper action has duly authorized, executed and delivered such Basic Agreements;

(c) The County is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money and is not in default under any instrument under or subject to which any indebtedness for borrowed money has been incurred, and no event has occurred and is continuing that with the lapse of time or the giving of notice, or both, would constitute or result in an event of default thereunder;

(d) The County is not in default under or in violation of, and the execution, delivery and compliance by the County with the terms and conditions of the Basic Agreements to which it is a party will not conflict with or constitute or result in a default under or violation of, (1) any existing law, rule or regulation applicable to the County or (2) any trust agreement, mortgage, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or restriction of any kind to which the County or any of its assets is subject, and no event has occurred and is continuing that with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation;

(e) No further approval, consent or withholding of objection on the part of any regulatory body or any official, Federal, state or local, is required in connection with the execution or delivery of or compliance by the County with the terms and conditions of the Basic Agreements to which it is a party; and

(f) There is no litigation at law or in equity or any proceeding before any governmental agency involving the County pending or, to the knowledge of the County, threatened against the County with respect to (1) the authority of the County to execute and deliver the Basic Agreements to which it is a party, (2) the validity or enforceability of such Basic Agreements or the County's performance of its obligations thereunder, (3) the title of any officer of the County executing such Basic Agreements, or (4) the ability of the County to undertake the Series 2016 Project.

ARTICLE III

AGREEMENT TO ISSUE BONDS

Section 3.1 Agreement to Issue Bonds.

The Authority hereby agrees, contemporaneously with the execution and delivery hereof, to proceed with the issuance and sale of the Series 2016 Bonds, bearing interest, maturing and having the other terms and provisions set forth in the First Supplemental Agreement of Trust. The proceeds of the Series 2016 Bonds will be used to (a) finance the costs of the Series 2016 Project and (b) pay the costs of issuing the Series 2016 Bonds. Subject to the limitation of Section 4.4, the County agrees to make all Basic Payments and Additional Payments when and as the same shall become due and payable in amounts sufficient to pay the principal of and premium, if any, and interest on the Series 2016 Bonds and other related payments required hereunder or under the Agreement of Trust.

Section 3.2 Agreement to Issue Bonds to Finance Additional Projects.

In order to finance the Costs of Projects for the County in addition to the Series 2016 Project, the Authority agrees that it shall, from time to time, issue additional Series of Bonds for

such purposes. Such additional Series of Bonds shall be issued, from time to time under the terms of the Agreement of Trust, solely to finance Projects approved by the County. The obligation of the Authority to issue additional Series of Bonds shall be conditioned upon compliance with the provisions of Section 303 of the Master Agreement of Trust.

Section 3.3 Limitation of Authority's Liability.

Anything contained in this Financing Agreement to the contrary notwithstanding, any obligation the Authority may incur in connection with the issuance of a Series of Bonds, including the Series 2016 Bonds, for the payment of money shall not be deemed to constitute a debt or general obligation of the Authority within any constitutional or statutory limitations, but shall be payable solely from the revenues and receipts derived by it pursuant to this Financing Agreement and from other moneys and security specifically pledged pursuant to the terms of the Agreement of Trust.

Section 3.4 Compliance with Agreement of Trust.

If the County is not in default under this Financing Agreement, the Authority, at the request of the County, shall take (a), if the Bonds are then redeemable under the Agreement of Trust, all steps that may be necessary to effect redemption thereunder and (b) any other action required by the Agreement of Trust. By its execution of this Financing Agreement, the County acknowledges its approval of all the terms and conditions set forth in the Agreement of Trust.

ARTICLE IV

PAYMENT OBLIGATIONS

Section 4.1 Amounts Payable.

(a) Subject to the limitation of Section 4.4, the County shall pay to the Authority or its assignee the Basic Payments specified in **Exhibit A**, as such **Exhibit A** may be amended from time to time to reflect the issuance of additional Series of Bonds under the Agreement of Trust, on or before the due dates set forth in **Exhibit A**. The Basic Payments shall be payable without notice or demand at the designated corporate trust office of the Trustee in Richmond, Virginia. The County shall receive a credit against its obligation to make the next succeeding Basic Payment due under this Financing Agreement in an amount equal to any amounts on deposit in the Bond Fund and any interest income derived from the investment thereof held by the Trustee in the Bond Fund, provided that such amounts have not been applied previously as a credit with respect to any Basic Payment and will be available to make the corresponding payments on the Bonds then Outstanding.

(b) Subject to the limitation of Section 4.4, in the event of a deficiency in a Series Debt Service Reserve Account, the County agrees to make Additional Payments to the Trustee not later than 45 days before the next succeeding interest payment date set forth in **Exhibit A** the amount of such deficiency.

(c) Subject to the limitation of Section 4.4 and subject to the terms of a more specific agreement as to compensation entered into by the County and the Trustee, the County agrees to

make Additional Payments to pay to the Trustee until payment in full of all Bonds then Outstanding its reasonable fees for services rendered and for expenses reasonably incurred by the Trustee under the Agreement of Trust, and for any cost or expense necessary to cancel and discharge the Agreement of Trust upon payment of all Bonds then Outstanding.

(d) Subject to the limitation of Section 4.4, the County agrees to make Additional Payments to pay (1) any expenses incurred by the Authority in connection with its obligations under this Financing Agreement and (2) all other amounts which the County agrees to pay under the terms of this Financing Agreement, but not including Basic Payments.

Section 4.2 Payments Assigned.

The Authority and the County acknowledge and agree that all Basic Payments and Additional Payments (except the right of the Authority to the payment of fees, costs and expenses and the right to receive notices as provided in this Financing Agreement and in the Agreement of Trust) are assigned to the Trustee by the terms of the Agreement of Trust. The County consents to such assignment and agrees to pay to the Trustee all amounts payable by the County that are so assigned.

Section 4.3 Obligation Unconditional.

Except as otherwise provided in this Financing Agreement, including the limitation in Section 4.4, the obligations of the County to make all Basic Payments and to observe all other covenants, conditions and agreements under the Basic Agreements shall be absolute and unconditional, irrespective of any right of setoff, recoupment or counterclaim the County may otherwise have against the Authority, and the County shall not suspend or discontinue any such Basic Payment or fail to observe and perform any of its covenants, conditions and agreements under the Basic Agreements.

Section 4.4 Appropriations of Basic Payments and Additional Payments.

While recognizing that it is not empowered to make any binding commitment to make Basic Payments and Additional Payments beyond the current Fiscal Year, the Board of Supervisors in authorizing the execution of this Financing Agreement has stated its intent to make appropriations from time to time sufficient to make the Basic Payments and Additional Payments when due.

Notwithstanding anything in this Financing Agreement to the contrary, the County's obligations to pay the cost of performing its obligations under this Financing Agreement and the Agreement of Trust, including its obligations to pay all Basic Payments and Additional Payments, shall be subject to and dependent upon appropriations being made from time to time by the Board of Supervisors in sufficient amounts for such purposes; provided, however, that the County Administrator or other officer charged with the responsibility for preparing the County's Annual Budget shall include in the proposed budget for each Fiscal Year as a single appropriation the amount of all Basic Payments and estimated Additional Payments coming due during such Fiscal Year.

Throughout the term of this Financing Agreement, the County Administrator or other officer charged with the responsibility for preparing the County's Annual Budget shall deliver to the Trustee and the Authority within 10 days after its adoption, but not later than 10 days after the beginning of each Fiscal Year, a copy of the County's adopted Annual Budget that includes an approval of funds sufficient to pay, or be credited to the Basic Payments and estimated Additional Payments coming due for the relevant Fiscal Year.

If any adopted Annual Budget does not include an approval of funds sufficient to pay both Basic Payments and estimated Additional Payments coming due for the relevant Fiscal Year, the Board of Supervisors shall take a roll call vote immediately after adoption of such Annual Budget acknowledging the impact of its failure to approve such funds. In addition, the County Administrator or appropriate officer shall deliver to the Trustee and the Authority within 10 days after the beginning of each Fiscal Year, a certificate stating whether an amount equal to, or credited to the payment of, the Basic Payments and estimated Additional Payments which will come due during such Fiscal Year has been appropriated by a resolution adopted by the Board of Supervisors. If, by 15 days after the beginning of the Fiscal Year, the Board of Supervisors has not appropriated funds for the payment of both Basic Payments and estimated Additional Payments coming due for the then current Fiscal Year, the County Administrator or other officer charged with the responsibility for preparing the County's Annual Budget shall give written notice to the Board of Supervisors of the consequences of such failure to appropriate and request the Board of Supervisors to consider a supplemental appropriation for such purposes.

ARTICLE V

PREPAYMENT AND REDEMPTION

Section 5.1 Prepayment and Redemption.

The County shall have the option to prepay any Basic Payments at the times and in the amounts as necessary to enable the Authority to exercise its option to cause the related Series of Bonds to be redeemed as set forth in such Bonds. Such prepayments of Basic Payments shall be made at the times and in the amounts as necessary to accomplish the optional redemption of the related Series of Bonds as set forth in such Bonds. Upon the exercise of such option, the County shall also pay as Additional Payments, the amounts necessary to pay the premium, if any, due on such Bonds on the date or dates of their redemption.

The County shall direct the Authority to send to the Trustee notice of any redemption of such Series at least five days prior to the latest date that notice of redemption may be given pursuant to Section 402 of the Master Agreement of Trust, such notice to the Trustee to specify the redemption date, the principal amount of such Series to be redeemed, the maturities of such Series to be redeemed, the premium, if any, and the section of the Agreement of Trust pursuant to which such redemption is to be made.

ARTICLE VI

PARTICULAR COVENANTS

Section 6.1 Limitation of Liability of Members, Commissioners, etc. of Authority and County.

No covenant, agreement or obligation contained in this Financing Agreement shall be deemed to be a covenant, agreement or obligation of any present or future member, officer, commissioner, employee or agent of the Authority in his individual capacity, and neither the members of the Authority nor any officer thereof executing any Series of Bonds shall be liable personally on such Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. No member, commissioner, officer, employee or agent of the Authority shall incur any personal liability with respect to any other action taken by him pursuant to this Financing Agreement or the Act or any of the transactions contemplated thereby provided that he acts in good faith.

No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any present or future board member, officer, employee or agent of the County in his individual capacity, and no board member, officer, employee or agent of the County shall incur any personal liability with respect to any Series of Bonds or action taken by him pursuant to this Financing Agreement, provided that such board member, officer, employee or agent acts in good faith.

Section 6.2 Use of Proceeds.

The County shall not (a) take any action or use the proceeds of any Bonds (including failure to spend the same with due diligence) or take any other action, which would cause any Bonds (the interest on which was excludable from gross income for Federal income tax purposes at the time of their issuance) to be “arbitrage bonds” within the meaning of Section 148 of the Code, or (b) barring unforeseen circumstances, approve the use of the proceeds from the sale of any Bonds (the interest on which was excludable from gross income for Federal income tax purposes at the time of their issuance) otherwise than in accordance with the Authority’s “non-arbitrage” certificate given immediately prior to the issuance of such Bonds.

Section 6.3 Private Activity Covenants.

The County covenants not to permit the proceeds of any Bonds (the interest on which was excludable from gross income for Federal income tax purposes at the time of their issuance) to be used in any manner that would result in (a) 10% or more of such proceeds or the facilities financed with such proceeds being used in a trade or business carried on by any person other than a governmental unit, as provided in Section 141(b) of the Code, provided that no more than 5% of such proceeds may be used in a trade or business unrelated or disproportionate to the County’s use of the Project financed by such Bonds, (b) 5% or more of such proceeds being used with respect to any “output facility” (other than a facility for the furnishing of water), within the meaning of Section 141(b)(4) of the Code, or (c) 5% or more of such proceeds being used directly or indirectly to make or finance loans to any persons other than a governmental unit, as

provided in Section 141(c) of the Code; provided, however, that if the County receives an opinion of Bond Counsel that any such covenants need not be complied with to prevent the interest on such Bonds from being includable in the gross income for Federal income tax purposes under existing law, the County need not comply with such covenants.

Section 6.4 Preservation of Tax-Exempt Status of Interest.

The County shall not use any Project, or any portion thereof, for any use that would adversely affect the exclusion of interest from gross income for Federal income tax purposes on any Bonds the interest on which was excludable from gross income at the time of their issuance. Without limiting the generality of the foregoing, the County covenants to either (a) take actions to prevent any such use that would cause such Bonds to be “private activity bonds,” (b) redeem any Bond whose tax status would be adversely affected by such use prior to commencement of the proposed use or (c) take remedial action under the Code which would allow such use to be undertaken without an adverse effect on the tax status of Bonds the interest on which was excludable from gross income at the time of their issuance.

Section 6.5 Maintenance of Existence of Authority.

Except for the assignment of its rights under this Financing Agreement to the Trustee pursuant to the Agreement of Trust, the Authority agrees that it will not assign, transfer or convey its interest in this Financing Agreement or any of the revenues to be derived therefrom. The Authority further agrees that, until the Bonds have been paid in full, the Authority will not (a) dissolve or otherwise dispose of all or substantially all of its assets, (b) consolidate with or merge into any authority, corporation, association or other body, (c) permit any other authority, corporation, association or other body to consolidate with or merge into it, (d) act jointly with any other authority, corporation, association or other body (other than the County and the Trustee) with respect to the transactions contemplated by this Financing Agreement and the Agreement of Trust, or (e) take any action or refrain from taking any action which would (i) permit any of the foregoing to be required by operation of law or (ii) which would permit it, or require it by operation of law, to avoid its obligations under this Financing Agreement or the Agreement of Trust or any other agreement contemplated hereby; provided, however, that nothing contained in this Section shall prevent the consolidation of the Authority with, or the merger of the Authority into, or the transfer of the interest of the Authority in this Financing Agreement as an entirety to, any public corporation whose property and income are not subject to taxation and which has the corporate authority to carry out the transactions contemplated by this Financing Agreement and the Agreement of Trust, but only on the condition that (A) reasonable prior notice of such consolidation, merger or transfer is given to the County and the Trustee, and (B) upon any such consolidation, merger or transfer, the obligation of the Authority to make due and punctual payment of the principal of and redemption premium, if any, and interest on the Bonds according to their tenor and to perform and observe all of the agreements and conditions of this Financing Agreement and the Agreement of Trust shall be expressly assumed in writing by the corporation resulting from such consolidation or surviving such merger or to which the interest of the Authority in this Financing Agreement shall be transferred as an entirety.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default.

(a) Each of the following events shall be an Event of Default:

(1) Failure of the County to pay when due any payment due under Section 4.1(a) or 4.1(b) and continuation of such failure for a period of five days; or

(2) Failure of the County to pay when due any other payment due under this Financing Agreement, other than payments (except any payment of any redemption premium due on Bonds) under Sections 4.1(a) and (b), or to observe and perform any covenant, condition or agreement on its part to be observed or performed, which failure shall continue for a period of 30 days after notice is given, or in the case of any such default that cannot with due diligence be cured within such 30 day period but can be cured within the succeeding 60 days, failure of the County to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence.

(b) The provisions of the foregoing subparagraph (a)(2) are subject to the limitation that if by reason of force majeure the County is unable in whole or in part to perform any of its covenants, conditions or agreements hereunder, the County shall not be deemed in default during the continuance of such inability. The term “force majeure” as used herein shall include without limitation acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States of America or the Commonwealth of Virginia or any political subdivision thereof or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; restraint of government and people; or civil disturbances. The County shall remedy with all reasonable dispatch the cause or causes preventing the County from carrying out its covenants, conditions and agreements, provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the County, and the County shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of any opposing party when such course is in the judgment of the County not in its best interests.

(c) Notwithstanding anything contained in this Section to the contrary, (1) failure by the County to pay when due any payment required to be made under this Financing Agreement or (2) failure by the County to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Financing Agreement, either of which results from failure of the County Board of Supervisors to appropriate moneys for such purposes, as described in Section 4.4, shall not constitute an Event of Default.

Section 7.2 Remedies.

Whenever any Event of Default shall have happened and is continuing, the Authority may take whatever action at law or in equity, other than to declare the entire unpaid principal balance of Basic Payments to be immediately due and payable, may appear necessary or

desirable to collect the Basic Payments and Additional Payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the County under this Financing Agreement. Any amounts received by the Authority pursuant to the foregoing provisions shall be applied first to costs, then to any unpaid interest and then to repayment of principal, and upon payment in full of all amounts due such excess shall be deposited in the Bond Fund and credited to the next Basic Payment to the extent such Payments have not been paid in full. This provision shall survive termination of this Financing Agreement.

Section 7.3 Reinstatement after Event of Default.

Notwithstanding the exercise by the Authority of any remedy granted by Section 7.2, if all overdue Basic Payments, together with any interest thereon, and all Additional Payments shall have been made, then the County's default under this Financing Agreement shall be waived without further action by the Authority. Upon such payment and waiver, this Financing Agreement shall be fully reinstated and all Basic Payments will be due and payable in accordance with the previously determined schedule.

Section 7.4 No Remedy Exclusive.

No remedy conferred by this Financing Agreement upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof or acquiescence therein, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 7.5 No Additional Waiver Implied by One Waiver.

Failure by the Authority at any time to require performance by the County of any provision hereof shall in no way affect the Authority's right hereunder to enforce the same, nor shall any waiver by the Authority of any breach of any provision hereof be held to be a waiver of any succeeding breach of any such provision, or as a waiver of the provision itself.

Section 7.6 Attorneys' Fees and Other Expenses.

Subject to the limitation in Section 4.4, the County shall pay on demand to the Authority and the Trustee the reasonable fees and expenses of attorneys and other reasonable expenses incurred by either of them in the collection of appropriated, but unpaid, Basic Payments or Additional Payments, or the enforcement of any other obligation of the County, or its agents, upon an Event of Default.

ARTICLE VIII

AGREEMENT OF TRUST; AMENDMENTS; ASSIGNMENT

Section 8.1 Agreement of Trust; Covenants.

(a) Contemporaneously with the execution of this Financing Agreement, the Authority has entered into the Agreement of Trust with the Trustee. The County shall not be obligated to take any notice of any sale, assignment, reassignment, pledge, mortgage, transfer or other disposition of any interest in this Financing Agreement by the Authority, unless such sale, assignment, reassignment, pledge, mortgage, transfer or other disposition is undertaken in accordance with the Agreement of Trust, and the County shall have received a duplicate original counterpart of the document by which the assignment, reassignment, pledge, mortgage, transfer or other disposition is made, disclosing the name and address of the person or entity receiving such interest; provided, however, that if such assignment, reassignment, pledge, mortgage, transfer or other disposition is made to a bank or trust company as trustee or paying agent or escrow agent for the Authority's bonds, it shall thereafter be sufficient that a copy of the trust instrument or agency agreement shall have been deposited with the County until the County shall have been advised that such trust instrument or agency agreement is no longer in effect.

(b) Subject to Section 4.4, the County covenants to take whatever action may be necessary for the Authority to comply with the Authority's covenants under the Agreement of Trust including, without limitation, to supply all information required to be stated on Internal Revenue Service Forms 8038-G and 8038-T, or any successors to such forms.

(c) The County agrees, for the benefit of the holders of the Bonds, to do and perform all acts and things contemplated in the Agreement of Trust to be done or performed by it. The Authority agrees that it shall not execute or permit any amendment or supplement to the Agreement of Trust which affects any right, power or authority of the County under this Financing Agreement or requires a revision of this Financing Agreement without the prior written consent of the County.

Section 8.2 Amendments.

This Financing Agreement shall not be supplemented, amended or modified prior to the payment of all Outstanding Bonds except in accordance with Article X of the Master Agreement of Trust.

Section 8.3 Assignment.

Simultaneously with the execution of this Financing Agreement, the Authority has entered into the Master Agreement of Trust by which the Authority has assigned all of its rights in and to this Financing Agreement (except its rights to receive payment of its fees and expenses, to receive notices and to give consents) to the Trustee for the benefit of the holders of the Bonds. The County (a) consents to such assignment, (b) agrees to execute and deliver such further acknowledgments, agreements and other instruments as may be reasonably requested by the Authority or the Trustee to effect such assignment, (c) agrees to make all payments due to the Authority under this Financing Agreement directly to the Trustee (except the Authority's rights

to receive payment of its fees and expenses, to receive notices and to give consents), subject to Section 4.4, and (d) agrees to comply fully with the terms of such assignment so long as such assignment is not inconsistent with the provisions hereof. All references in this Financing Agreement to the Authority shall include the Trustee for the benefit of the Bondholders and their successors and assigns, whether or not specific reference is otherwise made to the Trustee, unless the context requires otherwise.

ARTICLE IX

ARBITRAGE REBATE FUND

Section 9.1 Arbitrage Rebate Fund.

There is hereby established the “James City County, Virginia, Series 2016 Public Facility Revenue Bond Arbitrage Rebate Fund” to be held by the County. Subject to the limitation in Section 4.4, the County shall deposit moneys in the Series 2016 Arbitrage Rebate Fund from time to time, if and as necessary, to provide for payment of the rebate obligations due under the Code with respect to the Series 2016 Bonds (the “Rebate Amount”). The County may establish separate accounts in the Series 2016 Arbitrage Rebate Fund for such payments.

Section 9.2 Rebate Requirement.

The County covenants that (i) all actions with respect to the Series 2016 Bonds required by Section 148(f) of the Code shall be taken, (ii) it shall at its sole expense (from legally available funds) make the rebate determinations required under the Code with respect to the Series 2016 Bonds and deposit in the Series 2016 Arbitrage Rebate Fund such amounts as are shown to be due by such calculations.

If requested by the Trustee or the Authority, the County shall provide a statement signed by an Authorized County Representative to the effect that the County is then in compliance with its covenants contained in clauses (i) and (ii) of this section, together with supporting calculations, or furnish an opinion of Bond Counsel to the effect that no further action by the County is required for such compliance with respect to the Series 2016 Bonds. Notwithstanding the foregoing, the County shall take such steps and provide such information to the Authority as may be required by the Authority for it to meet any requirements (relating to rebate or otherwise) required by the Code, the Internal Revenue Service, or any other Federal or state government agency.

Section 9.3 Payment of Rebate Amount.

(a) Unless the County has determined that it meets an exception to the payment of arbitrage rebate, the County agrees to have prepared at its expense, not later than 30 days after each fifth anniversary of the date of issuance of the Series 2016 Bonds, a certificate (a “Rebate Amount Certificate”) by independent certified public accountants of recognized standing, setting forth the “Rebate Amount” determined to be due to the United States of America as of such fifth anniversary date under the Treasury Regulations with respect to the Series 2016 Bonds and the computation thereof, and the County shall pay from legally available funds to the United States

of America on behalf of the Authority an amount equal to not less than 90% of the Rebate Amount set forth in such Rebate Amount Certificate.

(b) Not later than 45 days after final payment or redemption of the Series 2016 Bonds, the County agrees to pay, from legally available funds, to the United States of America on behalf of the Authority the amount, if any, by which 100% of the Rebate Amount set forth in such Rebate Amount Certificate exceeds the aggregate of all payments theretofore made pursuant to subsection (a).

(c) The Authority covenants that, if so requested by the County, it shall execute any form required to be signed by an issuer of tax-exempt bonds in connection with the payment of any Rebate Amount (including Internal Revenue Service Form 8038-T) based on information supplied to the Authority by the County. The County shall supply all information required to be stated on such form and shall prepare such form. Except for the execution and delivery of such form upon timely presentation by the County, the Authority shall have no responsibility for such form or the information stated thereon.

(d) The Trustee and the Authority shall be fully protected in acting on any Rebate Amount determination made by the County at any time pursuant to this Section or contained in any Rebate Amount Certificate and shall not be liable or responsible in any manner to any person for so acting, notwithstanding any error in any such determination.

Section 9.4 Reports by Trustee.

The Trustee shall provide the County within 30 days after each _____ and within 30 days after the final payment of the Series 2016 Bonds with standard account transaction statements showing information with respect to earnings of amounts held under the First Supplemental Agreement of Trust. The Trustee shall not be responsible for the accuracy of any Rebate Amount Certificate or for monitoring the payment of any Rebate Amount.

Section 9.5 Disposition of Balance in Series 2016 Arbitrage Rebate Fund.

After each payment required in Section 9.3 is made and any additional amount necessary to pay the full rebate obligation is retained, the remaining amount in the Series 2016 Arbitrage Rebate Fund shall be retained by the County and used for any lawful purpose.

ARTICLE X

MISCELLANEOUS

Section 10.1 Notices.

Unless otherwise provided herein, all demands, notices, approvals, consents, requests, opinions and other communications hereunder shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class registered or certified mail, postage prepaid, addressed (a) if to the County, at 101-D Mounts Bay Road, P.O. Box 8784, Williamsburg, Virginia 23187-8784 (Attention: County Administrator), (b) if to the Authority, at 101-D Mounts Bay Road, Williamsburg, Virginia 23185 (Attention: Chairman) and (c) if to

the Trustee, _____. The County, the Authority and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinions or other communications shall be sent or persons to whose attention the same shall be directed.

Section 10.2 Severability.

If any provision of this Financing Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

Section 10.3 Amounts Remaining Under Agreement of Trust.

Any amount with respect to the Bonds remaining in any fund or account created under the Agreement of Trust shall, after payment of all amounts due from the County pursuant to the Basic Agreements, belong to and be paid to the County.

Section 10.4 Limited Liability of County.

Notwithstanding any provision of the Basic Agreements to the contrary, the obligations of the County under the Basic Agreements are not general obligations of the County, but are limited obligations payable solely from payments of Basic Payments and Additional Payments. No officer, official, employee or agent of the County shall be personally liable on the County's obligations hereunder. The Authority shall not be liable under any circumstances for the actions of the County, as agent for the Authority, or for any actions of the County under the Basic Agreements. The Authority shall not be liable under any circumstances for the actions of the Trustee under the Basic Agreements.

Section 10.5 Successors and Assigns.

This Financing Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 10.6 Counterparts.

This Financing Agreement may be executed in any number of counterparts, each of which shall be an original, all of which together shall constitute but one and the same instrument.

Section 10.7 Entire Agreement.

The Basic Agreements express the entire understanding and all agreements between the parties and may not be modified except in writing signed by the parties.

Section 10.8 Governing Law.

This Financing Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the parties have caused this Financing Agreement to be duly executed and effective as of the first day of May, 2016, by their duly authorized representatives.

**ECONOMIC DEVELOPMENT AUTHORITY
OF JAMES CITY COUNTY, VIRGINIA**

By: _____
Chairman

**BOARD OF SUPERVISORS OF
JAMES CITY COUNTY, VIRGINIA,
on behalf of JAMES CITY COUNTY,
VIRGINIA**

By: _____
County Administrator

Approved as to form:

By: _____
County Attorney

Seen and agreed to:

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By _____

Its _____

RECEIPT

Receipt of the foregoing original counterpart of the Financing Agreement dated as of May 1, 2016, between the Economic Development Authority of James City County, Virginia, and James City County, Virginia, is hereby acknowledged.

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By _____

Its _____

EXHIBIT A**SCHEDULE OF BASIC PAYMENTS**

Date	Principal Component	Interest Component	Total Payment
<hr/>			

This document has been prepared by
and, after recording, please return to:

Christopher G. Kulp
Hunton & Williams LLP
951 East Byrd Street
Richmond, Virginia 23219

Tax Parcel Numbers: _____

RECORDER'S NOTE: THE ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA, AND JAMES CITY COUNTY, VIRGINIA, ARE EXEMPT FROM RECORDATION TAXES PURSUANT TO SECTION 58.1-811(E) OF THE CODE OF VIRGINIA OF 1950, AS AMENDED, AND CLERK'S FEES PURSUANT TO SECTION 17.1-266 OF THE CODE OF VIRGINIA OF 1950, AS AMENDED.

DEED AND AGREEMENT OF GROUND LEASE

THIS DEED AND AGREEMENT OF GROUND LEASE dated as of May 1, 2016 (the "Effective Date"), by and between the **SCHOOL BOARD OF JAMES CITY COUNTY, VIRGINIA**, as lessor and grantor for indexing purposes (the "School Board"), and, [by operation of Section 15.2-1800.1 of the Code of Virginia of 1950, as amended,] the **BOARD OF SUPERVISORS OF JAMES CITY COUNTY, VIRGINIA** (the "County Board"), on behalf of **JAMES CITY COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "County"), as lessor and a grantor for indexing purposes, and the **ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "Authority"), as lessee and a grantee for indexing purposes, provides:

WITNESSETH:

WHEREAS, the Authority and Wilmington Trust, National Association (the "Trustee") have entered into an Agreement of Trust dated as of May 1, 2016, as supplemented by a First Supplemental Agreement of Trust dated as of May 1, 2016, between the Authority and the Trustee (collectively, the "Agreement of Trust"), to provide the terms for the issuance of the Authority's Series 2016 Bonds (as defined in the Agreement of Trust) to provide funds to finance certain capital improvements for public school facilities, including (but not limited to) the construction, renovation, rehabilitation and equipping of a middle school (collectively, the "Project"); and

WHEREAS, pursuant to the terms of a Financing Agreement, the Authority has loaned the proceeds of the series 2016 Bonds to the County and the County has agreed to repay such loan by making Basic Payments (as defined in the Financing Agreement), subject to appropriation by the County Board from time to time of sufficient moneys for such purpose; and

WHEREAS, the Authority desires to acquire a leasehold interest in certain land located in James City County, Virginia, as more fully described in Exhibit A (such land and all

improvements now or hereafter existing thereon, the "Premises"), as additional security for the payment of the Series 2016 Bonds; and

WHEREAS, the County and the School Board desire to lease the Premises to the Authority and the County and the School Board will then sublease the Premises from the Authority pursuant to the Financing Lease;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained and other valuable consideration, the parties hereto covenant and agree as follows:

Section 1. Lease of Property. The County and the School Board hereby demise and lease to the Authority, and the Authority hereby leases from the County and the School Board, the Premises.

Section 2. Term. The term of this Ground Lease shall commence on the Effective Date and shall expire on _____, unless such term is terminated earlier as hereinafter provided.

Section 3. Rental. The Authority shall pay to the School Board, on the Effective Date, the sum of \$10.00 from the proceeds of the Series 2016 Bonds (receipt of which is hereby acknowledged by the School Board), such sum representing the full amount of rent to be paid for the term of this Ground Lease.

Section 4. Purpose. The Authority shall use the Premises solely for the purpose of leasing the Premises to the County and the School Board pursuant to the Financing Lease, as well as for such purposes as may be incidental thereto; provided, however, that if any default by the County or the School Board occurs under the Financing Lease and such default is not cured within any applicable notice and cure period, then the Authority shall be entitled to use the Premises for any lawful use.

Section 5. Title to Property. The School Board represents and warrants that it is the owner in fee simple of the Premises as it exists on the date hereof. The Authority acknowledges and agrees that the School Board shall at all times retain fee simple title to the Premises and at no time shall fee simple title reside in the Authority.

Section 6. Assignment and Sublease. The Authority may assign its rights under this Ground Lease or sublet the Premises without the consent of the County and the School Board only (a) in connection with any entering into, and assignment of its rights under, the Financing Lease or (b) if the Financing Lease is terminated because either an Event of Default or an Event of Non-Appropriation (within the meaning each term is assigned in the Financing Lease) has occurred and is continuing.

Section 7. Fees and Expenses. The County shall pay from legally available funds all reasonable expenses of the Authority arising out of the transactions contemplated by the Financing Lease and this Ground Lease.

Section 8. Termination. (a) Upon the earlier of (i) the payment of all outstanding Basic Rent and Additional Rent (as each term is defined and as provided for in the Financing

Lease) and (ii) the expiration of the term hereof, the leasehold estate of the Authority hereunder shall terminate. The Authority agrees upon such termination to surrender the Premises to the County or the School Board, as appropriate, and, upon the request of the County or the School Board, as appropriate, to execute appropriate instruments evidencing such termination.

(b) The County and the School Board shall not have the right to exclude the Authority from the Premises or take possession of the Premises (other than pursuant to the Financing Lease) or to terminate this Ground Lease prior to the expiration of its term upon any default by the Authority of its obligations hereunder. However, in the event of a default by the Authority hereunder, the County and the School Board may maintain an action for specific performance.

Section 9. Quiet Enjoyment. Subject to the provisions of this Ground Lease, the Authority at all times during the term of this Ground Lease shall peaceably and quietly have, hold and enjoy the entire leasehold estate created hereunder.

Section 10. Amendments to Release Property. In the event that the School Board, in consultation with the County, elects to prepay Basic Rent from the Net Proceeds (as defined in the Financing Lease) received from (a) any insurance recovery obtained pursuant to Section 5.1 of the Financing Lease, or (b) any condemnation, eminent domain, or loss of title award obtained pursuant to Section 5.2 of the Financing Lease, Exhibit A hereto may be amended, at the option of the School Board in consultation with the County, to release any portion of the Premises from the terms of this Ground Lease so long as the removal of such portion of the Premises leaves the Premises with a market value, as determined by a licensed real estate appraiser mutually acceptable to the Authority, the County and the School Board, at least equal to the principal amount of the Series 2016 Bonds then outstanding (as defined in the Financing Lease).

Section 11. Regular Amendments. No modification, waiver, amendment, discharge or change of this Ground Lease shall be valid unless the same is in writing and consented to by the Authority, the County, the School Board and the Trustee.

Section 12. Notices. All notices to be given under this Ground Lease shall be in writing and shall be deemed to have been given when delivered in person or when mailed by first class registered or certified mail, postage prepaid, addressed (a) if to the County, at 101-E Mounts Bay Road, P.O. Box 8784, Williamsburg, Virginia 23187-8784 (Attention: County Administrator); (b) if to the School Board, at _____; (c) if to the Authority, at 101-D Mounts Bay Road, Williamsburg, Virginia 23185 (Attention: Chairman); and [(d) if to the Trustee, at _____.]. The County, the School Board and the Authority may, by notice given hereunder, designate any future or different addresses to which subsequent demands, notices, approvals, consents, requests, opinions or other communications shall be sent or persons to whose attention the same shall be directed.

Section 13. Severability. If any provision of this Ground Lease shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

Section 14. Liability of Authority. Notwithstanding any provision of this Ground Lease to the contrary, the obligations of the Authority under this Ground Lease are not general obligations of the Authority, but are limited obligations payable solely from proceeds of the Series 2016 Bonds. No director or officer of the Authority shall be personally liable on any of the Authority's obligations hereunder.

Section 15. Successors and Assigns. This Ground Lease shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 16. Counterparts. This Ground Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same Ground Lease.

Section 17. Governing Law. This Ground Lease shall be governed by the laws of the Commonwealth of Virginia.

Section 18. No Merger. The reversionary and leasehold estates in and to the Premises created by this Ground Lease shall not merge but shall always remain separate and distinct, notwithstanding the union of such estates by purchase or otherwise in the Authority, the County, the School Board, any lessee or any third party, unless the person holding both of such estates shall expressly elect in writing for them to merge.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have caused this Ground Lease to be duly executed and effective as of the date first written above, by their duly authorized representatives.

**BOARD OF SUPERVISORS OF JAMES CITY
COUNTY, VIRGINIA, on behalf of
JAMES CITY COUNTY, VIRGINIA**

By _____
County Administrator

COMMONWEALTH OF VIRGINIA)
_____)

The undersigned Notary Public, in and for the jurisdiction aforesaid, hereby certifies that the individual, whose name is signed to the foregoing as the County Administrator of James City County, Virginia, appeared before me and personally acknowledged the same in my jurisdiction aforesaid. Such person is personally known to me or has presented satisfactory evidence of identification.

My commission expires: _____

My Registration Number is: _____

Notary Public

[Signature Page to Deed and Agreement of Ground Lease]

**ECONOMIC DEVELOPMENT AUTHORITY
OF JAMES CITY COUNTY, VIRGINIA**

By _____
Chairman

COMMONWEALTH OF VIRGINIA)
_____)

The undersigned Notary Public, in and for the jurisdiction aforesaid, hereby certifies that the individual, whose name is signed to the foregoing as the Chairman of the Economic Development Authority of James City County, Virginia, appeared before me and personally acknowledged the same in my jurisdiction aforesaid. Such person is personally known to me or has presented satisfactory evidence of identification.

My commission expires: _____

My Registration Number is: _____

Notary Public

Description of the Premises

[Insert property description for Toano Middle School property]

RECORDER'S NOTE: THE ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA, AND JAMES CITY COUNTY, VIRGINIA, ARE EXEMPT FROM RECORDATION TAXES PURSUANT TO SECTION 58.1-811(E) OF THE CODE OF VIRGINIA OF 1950, AS AMENDED, AND CLERK'S FEES PURSUANT TO SECTION 17.1-266 OF THE CODE OF VIRGINIA OF 1950, AS AMENDED.

DEED AND AGREEMENT OF FINANCING LEASE

between

**ECONOMIC DEVELOPMENT AUTHORITY OF
JAMES CITY COUNTY, VIRGINIA,**

as Grantor,

and

**BOARD OF SUPERVISORS OF JAMES CITY COUNTY, VIRGINIA,
on behalf of JAMES CITY COUNTY, VIRGINIA,**

and

**SCHOOL BOARD OF
JAMES CITY COUNTY, VIRGINIA**

as Grantees

Dated as of May 1, 2016

**Relating to
Economic Development Authority of James City County, Virginia
Public Facility Revenue Bonds
(James City County School Project)
Series 2016**

ALL RENTALS PAYABLE UNDER THIS LEASE HAVE BEEN ABSOLUTELY ASSIGNED TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF WILMINGTON TRUST, NATIONAL ASSOCIATION, TRUSTEE, UNDER AN ASSIGNMENT AGREEMENT WITH THE AUTHORITY DATED AS OF MAY 1, 2016, AS AMENDED OR SUPPLEMENTED FROM TIME TO TIME. INFORMATION CONCERNING SUCH ASSIGNMENT AND SECURITY INTEREST MAY BE OBTAINED FROM THE TRUSTEE IN RICHMOND, VIRGINIA.

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Exhibit A - Schedule of Basic Rent Payments

THIS **DEED AND AGREEMENT OF FINANCING LEASE**, dated as of May 1, 2016, by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "Authority"), as lessor and, for indexing purposes, grantor, and the **SCHOOL BOARD OF JAMES CITY COUNTY, VIRGINIA**, as lessee and, for indexing purposes, grantee (the "School Board"), and the **BOARD OF SUPERVISORS OF JAMES CITY COUNTY, VIRGINIA**, on behalf of **JAMES CITY COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "County"), as lessee and, for indexing purposes, grantee;

W I T N E S S E T H:

WHEREAS, the Authority is a political subdivision of the Commonwealth of Virginia duly created under the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the "Act"); and

WHEREAS, the Authority is authorized to exercise all the powers set forth in the Act, which include, among other things, the power to make loans to, among others, a county in furtherance of the purposes of the Act, to finance or refinance and lease facilities for use by a county, to issue its revenue bonds, notes and other obligations from time to time for such purposes and to pledge all or any part of its revenues and receipts derived from payments received by the Authority in connection with its loans or from the leasing by the Authority of such facilities or from any other sources, as security the payment of principal of and interest on any such obligations; and

WHEREAS, pursuant to a Deed and Agreement of Ground Lease dated as of the date hereof (the "Ground Lease"), the Authority is acquiring contemporaneously with the execution hereof a leasehold interest in certain land located in James City County, Virginia, as more fully described in Exhibit A to the Ground Lease (including any improvements now or hereafter existing thereon, the "Property"); and

WHEREAS, the Authority has agreed to issue its Public Facility Revenue Bonds (James City County School Project), Series 2016 (the "Series 2016 Bonds"), and to loan the proceeds thereof to the County pursuant to the terms of a Financing Agreement dated as of May 1, 2016, between the Authority and the County (the "Financing Agreement"), to be applied by the County to finance (including reimburse) the costs of certain capital improvements for public school facilities, including (but not limited to) the construction, renovation, rehabilitation and equipping of a middle school (collectively, the "Project"); and

WHEREAS, pursuant to the terms of the Financing Agreement, the County has agreed to repay such loan by making Basic Payments (as defined in the Financing Agreement), subject to appropriation by the Board from time to time of sufficient moneys for such purpose; and

WHEREAS, in consideration of such loan and as additional security for the Series 2016 Bonds, the County and the School Board have agreed to lease the Property from the Authority pursuant to the terms of this Financing Lease and the County has agreed to make rental payments therefor, subject to appropriation by the Board from time to time of sufficient moneys for such purpose; and

WHEREAS, the Authority has agreed to apply the amounts received from the County under the Financing Agreement in respect of the Series 2016 Bonds as a credit against the rental payments due hereunder;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained and other valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions.

Unless otherwise defined in this Financing Lease, all terms used herein shall have the meanings assigned to such terms in the Financing Agreement and the Agreement of Trust. The following words as used in this Financing Lease shall have the following meanings unless the context otherwise requires.

“Additional Rent” shall mean (a) reasonable fees for services rendered and for expenses reasonably incurred by the Trustee, including the reasonable fees of its attorneys, under the Agreement of Trust with respect to the Series 2016 Bonds and any additional Series secured by this Financing Lease, (b) any fees or charges for the arbitrage rebate calculations, (c) any amounts necessary to make, when due, any required arbitrage rebate payment with respect to the Series 2016 Bonds and any additional Series secured by this Financing Lease, (d) with respect to any Series secured by this Financing Lease, any amounts necessary to restore the balance in any related Series Debt Service Reserve Account to the respective Series Debt Service Reserve Requirement, if any, (d) the reasonable fees and expenses of the Trustee and all other amounts which the County assumes or agrees to pay, including any cost or expense necessary to cancel and discharge the Agreement of Trust upon payment of the Series 2016 Bonds and any additional Series secured by this Financing Lease, (f) reasonable costs and expenses directly related to the Property, the Series 2016 Bonds or any additional Series secured by this Financing Lease, (g) reasonable costs and expenses, including premiums, for any credit facility provider, (h) a reasonable share of the fees and expenses of the Authority, including the reasonable fees of its counsel and the cost of any audit of the funds of the Authority, (i) any expenses incurred by the Authority in connection with its obligations under [Section 4.12], and (j) all other amounts which the County agrees to pay under the terms of this Financing Lease, but not including Basic Rent.

“Agreement of Trust” shall mean the Agreement of Trust dated as of May 1, 2016, between the Authority and the Trustee and any and all supplements and amendments thereto, including, but not limited to, the First Supplemental Agreement of Trust dated as of May 1, 2016, between the Authority and the Trustee.

“Assignment Agreement” shall mean the Assignment Agreement dated as of May 1, 2016, between the Authority and the Trustee, as such Agreement may be supplemented, amended or modified from time to time.

“Authority” shall mean the Economic Development Authority of James City County, Virginia, a political subdivision of the Commonwealth of Virginia, its successors and assigns.

“Basic Agreements” shall mean collectively, the Agreement of Trust, the Financing Agreement, the Ground Lease, this Financing Lease and the Assignment Agreement.

“Basic Rent” shall mean the payments payable by the County pursuant to Section 4.2(a) in the amounts and at the times set forth in Exhibit A.

“Board of Supervisors” shall mean the Board of Supervisors of James City County, Virginia, as the governing body of the County.

“Event of Default” shall mean any of the events enumerated in Section 6.1

“Financing Agreement” shall mean the Financing Agreement dated as of May 1, 2016, between the Authority and the County and any and all supplements and amendments thereto.

“Financing Lease” shall mean this Financing Lease and any and all supplements, amendments and modifications hereto.

“Lease Term” shall mean the duration of the leasehold estate created in the Property, as provided in Section 4.1.

“Net Proceeds” shall mean the gross proceeds from any insurance recovery, or condemnation, eminent domain or loss of title award in connection with the Property less payments for attorneys’ fees, fees and expenses of the Trustee and other expenses incurred in the collection of such gross proceeds.

“Payment of Basic Rent” shall mean payment in full of all Basic Rent due and to become due under this Agreement.

“Permitted Encumbrances” shall mean, as of any particular time as to the Property, (a) liens for taxes and special assessments not then delinquent, (b) liens for taxes and assessments which are delinquent but the validity of which is being contested in good faith and with respect to which the County shall have set aside adequate reserves, unless thereby any of the Property or the interest of the County therein may be in danger of being lost or forfeited, (c) the Ground Lease and any security interests or other liens created thereby, (d) this Financing Lease and any security interests or other liens created hereby, (e) mechanics’ and materialmen’s liens incident to construction or maintenance now or hereafter filed of record which are being contested in good faith and have not proceeded to judgment, provided that the County shall have set aside adequate reserves with respect thereto, (f) restrictions, mineral rights, easements, rights of way, exceptions or reservations for the purpose of utilities (including but not limited to water and gas pipelines, sanitary and storm sewers, telephone lines, telegraph lines, power lines, substations and other facilities and equipment used in connection with such utilities), roads, streets, alleys, highways, railroads, dikes, canals, laterals, ditches, and other like purposes, or for the joint or common use of real property, in each case which do not materially impair the use of the Property for the purposes for which it is or may reasonably be expected to be held, (g) such defects, irregularities, encumbrances, easements, rights of way and clouds on title as normally exist with respect to property owned or leased by the County or the School Board for essential governmental purposes and similar in character to the Property and as will not, in the opinion of the County Attorney, impair the use of the Property affected thereby for the purpose for which it

is or may reasonably be expected to be held by the County or the School Board, and (h) present or future zoning laws and ordinances.

“Property” shall mean the real property and any and all improvements now or hereafter existing thereon (but exclusive of any equipment, furnishings or other personal property located in or on the Property), as further described in Exhibit A to the Ground Lease, as such Exhibit may be amended.

“Series 2016 Bonds” shall mean the Authority’s \$_____ Public Facility Revenue Bonds (James City County School Project), Series 2016, issued pursuant to Article III of the Master Agreement of Trust.

“Trustee” shall mean Wilmington Trust, National Association, Richmond, Virginia, as successor trustee under the Agreement of Trust, and any further successor trustee thereunder.

Section 1.2 Rules of Construction.

The following rules shall apply to the construction of this Financing Lease unless the context otherwise requires:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) Words importing the redemption or calling for redemption of Bonds shall not be deemed to refer to or connote the payment of Bonds at their stated maturity.

(c) Unless otherwise indicated, all references herein to particular Articles or Sections are references to Articles or Sections of this Financing Lease.

(d) The headings and Table of Contents herein are solely for convenience of reference and shall not constitute a part of this Financing Lease nor shall they affect its meaning, construction or effect.

(e) All references herein to payment of Bonds are references to payment of principal of and premium, if any, and interest on the Bonds.

ARTICLE II

REPRESENTATIONS

Section 2.1 Representations by Authority.

The Authority makes the following representations:

(a) The Authority is a political subdivision of the Commonwealth of Virginia duly created under the Act;

(b) The undertaking by the Authority to lease the Property to the County and the School Board has been authorized, as required by the Act, by the affirmative vote of a majority

of the members of the Authority present at a meeting at which a quorum was present and acting throughout;

(c) Pursuant to the Act, the Authority has full power and authority to enter into the Basic Agreements and to perform the transactions contemplated thereby and to carry out its obligations thereunder and by proper action has duly authorized, executed and delivered such Basic Agreements and has issued the Series 2016 Bonds;

(d) The execution, delivery and compliance by the Authority with the terms and conditions of the Basic Agreements will not conflict with or constitute or result in a default under or violation of, (i) any existing law, rule or regulation applicable to the Authority, or (ii) any indenture, mortgage, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or other restriction of any kind to which the Authority or any of its assets is subject;

(e) No further approval, consent or withholding of objection on the part of any regulatory body or any official, Federal, state or local, is required in connection with the execution or delivery of or compliance by the Authority with the terms and conditions of the Basic Agreements, except that no representation is made as to the applicability of any Federal or state securities laws;

(f) There is no litigation at law or in equity or any proceeding before any governmental agency involving the Authority pending or, to the knowledge of the Authority, threatened against the Authority with respect to (i) the creation and existence of the Authority, (ii) its authority to execute and deliver the Basic Agreements or the Series 2016 Bonds, (iii) the validity or enforceability of the Basic Agreements or the Authority's performance of its obligations thereunder, (iv) the title of any officer of the Authority executing the Basic Agreements or the Series 2016 Bonds, or (v) its power to lease the Property to the County; and

(g) The Authority is the owner of a leasehold estate in the Property granted by the Ground Lease.

Section 2.2 Representations by County.

The County makes the following representations:

(a) The County is a political subdivision of the Commonwealth of Virginia;

(b) The lease of the Property to the County pursuant to this Financing Lease will provide the County school facilities, so that the County may serve functions which are essential to its proper, efficient and economic operations of the County and to the health and welfare of its residents;

(c) The County has full power and authority to enter into the Basic Agreements to which it is a party and to perform the transactions contemplated thereby and to carry out its obligations thereunder and by proper action has duly authorized, executed and delivered such Basic Agreements;

(d) The County is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money and is not in default under any instrument under or subject to which any indebtedness for borrowed money has been incurred, and no event has occurred and is continuing that with the lapse of time or the giving of notice, or both, would constitute or result in an event of default thereunder;

(e) The County is not in default under or in violation of, and the execution, delivery and compliance by the County with the terms and conditions of the Basic Agreements to which it is a party will not conflict with or constitute or result in a default under or violation of (i) any existing law, rule or regulation applicable to the County, or (ii) any indenture, mortgage, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or restriction of any kind to which the County or any of its assets is subject, and no event has occurred and is continuing that with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation;

(f) No further approval, consent or withholding of objection on the part of any regulatory body or any official, Federal, state or local, is required in connection with the execution or delivery of or compliance by the County with the terms and conditions of the Basic Agreements to which it is a party;

(g) There is no litigation at law or in equity or any proceeding before any governmental agency involving the County pending or, to the knowledge of the County, threatened against the County with respect to (i) the authority of the County to execute and deliver the Basic Agreements to which it is a party, (ii) the validity or enforceability of such Basic Agreements or the County's performance of its obligations thereunder, (iii) the title of any officer of the County executing such Basic Agreements, or (iv) its power to lease the Property from the Authority;

(h) Until termination of this Financing Lease, the County intends to use the Property, or to cause it to be used, as school facilities or as such other facilities for use by a county as are permissible under the Act and the Code of Virginia of 1950, as amended. The County will not use or occupy the Property or permit it to be used or occupied (i) contrary to any law or regulation in effect now or in the future (and without regard to any change of government policy), or (ii) in any manner which will (A) cause structural injury to any part of the Property (the County shall make structural and other changes to the Property at its sole cost and expense and without regard to the cost), (B) cause the value or the usefulness of the Property to diminish (ordinary wear and tear excepted), (C) constitute a public or private nuisance or (D) result in waste to the Property; nor will it do or permit anything to be done on or about the Property that will affect, impair or contravene any policies of insurance that may be carried on the Property or with respect to its use.

Section 2.3 Representations by School Board.

The School Board makes the following representations as the basis for its undertakings hereunder:

(a) The School Board is a body corporate and a political subdivision of the Commonwealth of Virginia.

(b) The School Board has full power and authority to enter into the Basic Agreements to which it is a party, to perform the transactions contemplated thereby and to carry out its obligations thereunder. By proper action, the School Board has duly authorized, executed and delivered such Basic Agreements.

(c) The School Board is not in default under or in violation of, and the execution, delivery and compliance by the School Board with the terms and conditions of the Basic Agreements to which it is a party will not conflict with or constitute or result in a default under or violation of, (i) any existing law, rule or regulation applicable to the School Board or (ii) any indenture, mortgage, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or restriction of any kind to which the School Board or any of its assets is subject, and no event has occurred and is continuing that with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

(d) The School Board has obtained all consents, approvals, authorizations and orders of any governmental or regulatory authority that are required to be obtained by the School Board as a condition precedent to the execution or delivery of or performance by the School Board of its obligations under the Basic Agreements to which it is a party.

(e) There is no litigation at law or in equity or any proceeding before any governmental agency involving the School Board pending or, to its knowledge, threatened against the School Board that would affect (i) its authority to execute and deliver the Basic Agreements to which it is a party, (ii) the validity or enforceability of such instruments or the performance of its obligations thereunder, (iii) the title of any officer of the School Board executing such instruments, (iv) the power to lease the Property from the Authority and to undertake the Project or (v) the financial condition of the School Board in any material respect.

(f) Until termination of this Agreement, the School Board will not use or occupy the Property or permit it to be used or occupied other than as an “authority facility” within the meaning of the Act.

(g) There has been no material adverse change in the condition, financial or otherwise, of the School Board since June 30, 2015, from that set forth in the audited financial statements of the County for the Fiscal Year ended June 30, 2015.

ARTICLE III

LEASE OF PROPERTY

Section 3.1 Lease of Property.

The Authority demises and leases to the County and the School Board and the County and the School Board lease from the Authority the Property, for the term set forth in Section 4.1, for the Basic Rent and Additional Rent provided for in Section 4.2 and in accordance with the terms of this Financing Lease. The Authority hereby agrees to perform the obligations imposed upon it as lessee under the Ground Lease. Subject to the provisions of Articles VI and VIII, the County and the School Board shall be entitled to the possession of the Property during the term of this Financing Lease.

THE AUTHORITY MAKES NO REPRESENTATION OR WARRANTY THAT THE COUNTY WILL HAVE QUIET AND PEACEFUL POSSESSION OF THE PROPERTY, except that the Property is free from encumbrances done, made or knowingly suffered by the Authority or anyone claiming by, through or under it. The County and the School Board recognize that since the leasing of the Property is being undertaken at the County's request, THE AUTHORITY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION OR WORKMANSHIP OF ANY PART OF THE PROPERTY OR ITS SUITABILITY FOR THE COUNTY'S AND SCHOOL BOARD'S PURPOSES OR NEEDS.

ARTICLE IV

LEASE TERM; PAYMENT OF RENTAL; MAINTENANCE; INSURANCE AND TAXES

Section 4.1 Lease Term.

The Lease Term shall commence on the date of execution hereof and, unless sooner terminated in accordance with the provisions hereof, shall terminate at midnight on _____, ____; provided, however, that if all payments required by this Financing Lease have not been made on such date, the Lease Term shall terminate when all such payments shall have been made.

Section 4.2 Rental Payments.

(a) Subject to Section 4.3, the County shall pay Basic Rent to the Authority on each _____ and _____ in the years and in the amounts set forth on Exhibit A attached hereto, as it may be amended from time to time.

(b) Subject to the limitation of Section 4.3, in the event of a deficiency in any other Series Debt Service Reserve Account with respect to an additional Series secured by this Financing Lease, the County agrees to pay as Additional Rent to the Trustee not later than 45 days before the next succeeding interest payment date set forth in Exhibit A the amount of such deficiency. [There shall be no Series Debt Service Reserve Account established for the Series 2016 Bonds.]

(c) Subject to the limitation of Section 4.3 and subject to the terms of a more specific agreement as to compensation entered into by the County and the Trustee, the County agrees to pay as Additional Rent to the Trustee until payment in full of the Series 2016 Bonds and any additional Series secured by this Financing Lease then Outstanding its reasonable fees for services rendered and for expenses reasonably incurred by the Trustee under the Agreement of Trust.

(d) Subject to the limitation of Section 4.3, the County agrees to pay as Additional Rent (i) any expenses incurred by the Authority in connection with its obligations under this Financing Lease and (ii) all other amounts which the County agrees to pay under the terms of this Financing Lease, but not including payments of Basic Rent.

(e) The obligations of the County to make the payments of Basic Rent and Additional Rent and to perform and observe the other agreements contained herein shall be absolute and unconditional, except as provided in subsection (f) below and in Section 4.3.

(f) Notwithstanding anything herein to the contrary, to the extent that the County pays in full each installment of Basic Payment and Additional Payment when due under the terms of the Financing Agreement, the amount of such payment shall be credited in full against the corresponding obligation of the County hereunder to pay any installment of Basic Rent and Additional Rent.

Section 4.3 Appropriations of Basic Rent and Additional Rent; Declaration of Essentiality.

The County reasonably believes that funds sufficient to make all payments of Basic Rent and Additional Rent during the term of this Financing Lease can be obtained. While recognizing that it is not empowered to make any binding commitment to make payments of Basic Rent and Additional Rent beyond the current Fiscal Year, the Board of Supervisors in authorizing the execution of this Financing Lease has stated its intent to make appropriations sufficient to make the payments of Basic Rent and Additional Rent.

Notwithstanding anything in this Financing Lease to the contrary, the County's obligations to pay the cost of performing its obligations under this Financing Lease, including its obligations to pay all Basic Rent and Additional Rent, shall be subject to and dependent upon appropriations being made from time to time by the Board of Supervisors in sufficient amounts for such purposes; provided, however, that the County Administrator or other officer charged with the responsibility for preparing the County's Annual Budget shall include in the proposed budget for each Fiscal Year as a single appropriation the amount of all Basic Rent and estimated Additional Rent coming due during such Fiscal Year (taking into account without duplication appropriations made to pay Basic Payments and Additional Payments due under the Financing Agreement during the same Fiscal Year).

For each Fiscal Year of the Lease Term, the County Administrator or other officer charged with the responsibility for preparing the County's Annual Budget shall deliver to the Trustee and the Authority within 10 days after its adoption, but not later than 10 days after the beginning of each Fiscal Year, a copy of the County's adopted Annual Budget that includes an approval of funds sufficient to pay, or be credited to the payment of, both Basic Rent and estimated Additional Rent coming due for the relevant Fiscal Year.

If any adopted Annual Budget does not include an approval of funds sufficient to pay, or be credited to the payment of, both Basic Rent and estimated Additional Rent coming due for the relevant Fiscal Year, the Board of Supervisors shall take a roll call vote immediately after adoption of such Annual Budget acknowledging the impact of its failure to approve such funds. In addition, the County Administrator or appropriate officer shall deliver to the Trustee and the Authority within 10 days after the beginning of each Fiscal Year, a certificate stating whether an amount equal to, or credited to the payment of, the Basic Rent and estimated Additional Rent which will come due during such Fiscal Year has been appropriated by a resolution adopted by the Board of Supervisors. If, by 15 days after the beginning of the Fiscal Year, the Board of Supervisors has not appropriated funds for the payment of both Basic Rent and estimated

Additional Rent for the then current Fiscal Year, the County Administrator or other officer charged with the responsibility for preparing the County's Annual Budget and appropriation resolution shall give written notice to the Board of Supervisors to consider a supplemental appropriation for such purposes.

Section 4.4 Insurance.

Subject to Section 4.3, the County and the School Board, as applicable, shall continuously maintain throughout the Lease Term public liability, fire and extended coverage insurance with respect to the Property as may be required from time to time to insure against such risks as are customarily insured against by public bodies for facilities and equipment similar in size, function and character to the Property, including, without limitation, insurance against loss of or damage to the Property, or any part thereof, in an amount equal to at least the full replacement cost of the Property, or any part thereof, paying when due all premiums with respect thereto; provided, however, that the County or the School Board may self insure as to any or all of such coverage and such self insurance will satisfy the requirements of this Section. If the County or the School Board self insures, the County or the School Board, as appropriate, shall cause to be filed annually with the Trustee a certificate of its risk manager or insurance consultant as to the adequacy of reserves for such self insurance.

Section 4.5 Maintenance.

Subject to Sections 4.3, 5.1 and 5.2, the County and the School Board shall maintain, preserve and keep the Property in compliance with all legal requirements and in good repair and operating condition (normal wear and tear excepted) and from time to time shall make all necessary repairs, replacements and renewals.

Section 4.6 Inspection of Property.

The Authority, the Trustee and their duly authorized representatives and agents shall have such reasonable rights of access to the Property (subject to prior written or telephonic notice to the County and the School Board) as may be necessary to determine whether the County and the School Board are in compliance with the requirements of the Basic Agreements, but neither the Authority nor the Trustee shall have any duty to monitor the County's or the School Board's compliance.

Section 4.7 Net Lease.

This Financing Lease shall be deemed and construed to be a net lease, and during the Lease Term, the County shall pay Basic Rent and Additional Rent, free of all deductions, diminutions and set-offs, and without abatement for casualty, loss of title, condemnation or any other reason whatsoever except that (a) Basic Rent shall decrease as a consequent of each prepayment of Basic Rent in accordance with Sections 4.3, 5.1(b)(2) and 5.2(b)(2) and (b) payments of Basic Rent on each _____ and _____ may be reduced by the amount then on deposit in the Bond Fund.

Section 4.8 Liens on Property.

Except as provided in the Basic Agreements, the County shall not create, incur or grant any mortgage, pledge, security interest, lien or encumbrance other than Permitted Encumbrances on or with respect to the Property and shall not dispose of any interest in the Property unless it delivers to the Authority a certificate of the County, signed by the County Administrator, stating:

(a) that the proceeds from the disposition will be (i) applied to the purchase of additional real property to become part of the Property or (ii) deposited with the Trustee in the Bond Fund and applied to the payment or redemption of the Series 2016 Bonds and any additional Series secured by this Financing Lease; and

(b) that the disposition, together with any substitution of additional real property becoming part of the Property, will not adversely affect the usefulness of the Property or any part of it or its intended purpose or deprive the County of any real property needed for access to or operation of the Property.

Upon receipt of the above, so long as the County is not in default under this Financing Lease, the Authority will release from this Financing Lease and convey to the County that portion of the Property to be disposed of but only after any real property that is to be substituted for it has been conveyed to the Authority and been subjected to this Financing Lease.

Section 4.9 Installation of County's Own Furnishings and Equipment.

The County may from time to time, in its discretion and at its own expense, install furnishings and equipment at the Property. All furnishings and equipment so installed by the County shall remain the property of the County in which neither the Authority nor the Trustee shall have any interest and may be modified or removed at any time while the County is not in default under this Financing Lease. Nothing contained in this Section shall prevent the County from purchasing furnishings and equipment and creating purchase money security interests therein pursuant to the Uniform Commercial Code of Virginia as security for the unpaid portion of the purchase price thereof. The County shall pay as due the purchase price of and all costs and expenses with respect to the acquisition and installation of any furnishings and equipment installed by it pursuant to this Section.

Section 4.10 Prepayment of Basic Rent.

To the extent that the County prepays any amounts due under the Financing Agreement with respect to the Series 2016 Bonds and any additional Series secured by this Financing Lease, the amount of such prepayments shall also be credited against the corresponding amount of Basic Rent due under this Financing Lease.

Section 4.11 Release and Transfer of Property; Termination of Financing Lease.

Within 30 days after the payment or prepayment in full by the County of Basic Rent and any Additional Rent, the Authority shall execute and deliver to the County or file such instruments as may be reasonably necessary and proper to terminate the Authority's interest in the Property pursuant to Section 8(a) of the Ground Lease and to terminate this Financing Lease.

Any reasonable expenses incurred by the Authority in effecting such transfers, conveyances, releases and assignments shall constitute Additional Rent.

Section 4.12 Preservation of Tax Exempt Status of Interest on Bonds.

The County and the School Board shall not sublease the Property, or any portion thereof, or assign any of its rights under this Financing Lease, to any entity other than the Commonwealth of Virginia, a city, a county or a town, or any agency thereof, without an opinion of Bond Counsel that such sublease or assignment would not adversely affect the exclusion of interest on the Series 2016 Bonds (or any additional Series secured by this Financing Lease) from gross income for Federal income tax purposes. The County shall send notice to the Trustee and the Authority of any sublease of the Property or any portion thereof, or any assignment of any of the County's rights under this Financing Lease, within 30 days of entering into such sublease or assignment.

ARTICLE V

DAMAGE, DESTRUCTION OR CONDEMNATION

Section 5.1 Damage or Destruction.

(a) The School Board shall notify the County, the Trustee and the Authority immediately in the case of damage to or destruction from fire or other casualty of the Property or any portion thereof during the Lease Term in an amount that the School Board determines in good faith will cost more than \$250,000 to repair, reconstruct and restore. If the School Board determines in good faith that such cost will not exceed \$250,000, the School Board shall retain, subject to Section 4.4, the Net Proceeds received with respect to such damage or destruction and apply such Net Proceeds to the repair, reconstruction and restoration of such portion of the Property so damaged or destroyed to substantially the same condition as had existed prior to the event causing such damage or destruction. If such Net Proceeds are not sufficient to pay in full the cost of such repair, reconstruction and restoration, the County shall, subject to Section 4.3, pay so much thereof as is in excess of such Net Proceeds.

(b) If the Property or any portion thereof is damaged or destroyed by fire or other casualty during the Lease Term and the School Board, in consultation with the County, determines in good faith that the cost to repair, reconstruct and restore the Property to the same condition as had existed prior to such damage or destruction will exceed \$250,000, then the County shall, upon the following conditions and within 90 days after the date such damage or destruction occurs, pay all Net Proceeds to the Trustee for deposit in the Project Fund (subject to any required transfers to the Arbitrage Rebate Fund) and elect one of the following two options by giving notice of such election to the Trustee and the Authority, and the Trustee shall disburse such Net Proceeds in accordance with the option so elected:

(1) Option A - Repair, Reconstruction and Restoration. The County and the School Board may elect to repair, reconstruct and restore the Property. Upon the County and the School Board's election of this Option A, the School Board shall proceed to cause the Property to be repaired, reconstructed and restored to substantially the same condition as had existed prior to the event causing such damage or destruction, with such

alterations and additions as the School Board, after consultation with the County, may determine to be necessary or desirable and as will not impair the capacity or character of the Property for the purposes for which it had been or was intended to be used prior to such damage or destruction. The County shall direct the Trustee to create a special account in the Project Fund and deposit such Net Proceeds therein. So long as the County and the School Board are not in default under this Financing Lease, the County may direct the Trustee upon receipt of a request made in accordance with Section 503 of the Agreement of Trust, to apply, in the manner and upon the conditions set forth in such Section 503, so much as may be necessary of such Net Proceeds to payment of the cost of such repair, reconstruction and restoration, either on completion thereof or as the work progresses. If such Net Proceeds are not sufficient to pay in full the cost of such repair, reconstruction and restoration, the County shall pay to the Trustee, subject to Section 4.3, within 90 days of receipt of such Net Proceeds, so much of the cost thereof as may be in excess of such Net Proceeds to the Trustee for deposit to the special account in the Project Fund. The County shall not be entitled by reason of the payment of such excess cost to any (A) interest in the Property that it did not possess prior to such payment, (B) reimbursement from the Authority or the Trustee, or (C) abatement or diminution of Basic Rent or Additional Rent.

(2) Option B - Prepayment. The County and the School Board may elect to have such Net Proceeds applied to the prepayment of all or any portion of the Basic Payments due under the Financing Agreement, plus interest accrued to the date of prepayment, to be used by the Trustee (upon receiving such Net Proceeds, to the extent and in the manner provided in the Agreement of Trust and to the extent of such Net Proceeds) to redeem the Series 2016 Bonds and any additional Series secured by this Financing Lease.

Section 5.2 Condemnation and Loss of Title.

(a) In the case of a taking of all or any part of the Property or any right therein under the exercise of the power of eminent domain or any loss of all or any part of the Property because of loss of title thereto, or the commencement of any proceedings or negotiations which might result in such a taking or loss, the party upon whom notice of such taking is served or whom such proceedings or negotiations are commenced or who learns of a loss of title shall give prompt notice to the other and to the Trustee. Each such notice shall describe generally the nature and extent of such condemnation, taking, loss, proceedings or negotiations. All obligations of the County and the School Board under this Financing Lease (except the County's obligations to pay Basic Rent when due) shall terminate as to the Property or portion thereof as to which there is a loss of title or which is condemned or taken when such loss of title is finally adjudicated or when title thereto vests in the party condemning or taking the same, as the case may be (hereinafter referred to as the "termination date").

(b) In the event of any such loss of title, condemnation or taking, the County and the School Board, as applicable, shall, upon the following conditions and within 90 days after the termination date therefor, pay all Net Proceeds to the Trustee for deposit in a special account in the Project Fund and elect one of the following two options by giving notice of such election to the Trustee and the Authority:

(1) Option A - Repairs, Reconstruction and Restoration. The County and the School Board may elect to have the Net Proceeds as to such loss of title, condemnation or taking used to repair, restore or reconstruct the portion of the Property as to which there has been a loss of title, condemnation or taking to substantially its condition prior to such loss of title, condemnation or taking. Upon election of this Option A, the County shall direct the Trustee to create a special account in the Project Fund and deposit such Net Proceeds therein. So long as the County and the School Board are not in default under this Financing Lease, the County may direct the Trustee, upon receipt of a request made in accordance with Section 503 of the Agreement of Trust, to apply, in the manner and upon the conditions set forth in such Section 503, so much as may be necessary of the Net Proceeds received by it on account of such loss of title, condemnation or taking to payment of such repair, reconstruction or restoration of the Property, either on completion thereof or as the work progresses. If such Net Proceeds are not sufficient to pay in full the cost of such repair, reconstruction or restoration, the County shall pay to the Trustee, subject to Section 4.3, within 90 days of receipt of such Net Proceeds, so much of the cost thereof as may be in excess of such Net Proceeds for deposit into such special account in the Project Fund. The County shall not be entitled by reason of the payment of such excess cost to any (A) interest in the Property that it did not possess prior to such payment, (B) reimbursement from the Authority or the Trustee, or (C) abatement or diminution of the Basic Rent or Additional Rent.

(2) Option B - Prepayment of Basic Rent. The County and the School Board may elect to have the Net Proceeds payable as to any such loss of title, condemnation or taking applied to the prepayment of all or any portion of the Basic Payments due under the Financing Agreement, plus interest accrued to the date of prepayment, to be used by the Trustee (upon receiving such Net Proceeds, to the extent and in the manner provided in the Agreement of Trust and to the extent of such Net Proceeds) to redeem the Series 2016 Bonds and any additional Series secured by this Financing Lease.

(c) The Authority shall, at the expense of the County, cooperate fully with the County and the School Board in the contest of any prospective or pending condemnation proceedings or in any contest over title with respect to the Property or any portion thereof and shall, to the extent it may lawfully do so, permit the County to litigate, at the expense of the County, in any such proceeding in the name and behalf of the Authority. In no event shall the Authority voluntarily settle, or consent to the settlement of, any prospective or pending condemnation proceedings, or proceedings as to title with respect to the Property or any portion thereof without the consent of the County and the School Board.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

Section 6.1 Events of Default.

(a) Subject to the provisions of Section 6.1(c), the following shall be “events of default” under this Financing Lease, and the terms “event of default” or “default” shall mean, whenever they are used in this Financing Lease, any one or more of the following events:

(1) Failure of the County to pay when due any payment due under Section 4.2(a) or 4.2(b) and continuation of such failure for a period of five days; or

(2) Failure of the County to pay when due any payment due under this Financing Lease, other than payments under Section 4.2(a) and (b), or to observe and perform any covenant, condition or agreement on its part to be observed or performed, which failure shall continue for a period of 30 days after notice is given, or in the case of any such default that cannot with due diligence be cured within such 30-day period but can be cured within the succeeding 60 days, failure of the County to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence.

(b) The provisions of the foregoing subparagraph (a)(2) are subject to the limitation that if by reason of force majeure the County and the School Board, as applicable, are unable in whole or in part to perform any of their covenants, conditions or agreements hereunder other than those set forth in Sections 4.2, 4.3, 4.4, 4.6 and 4.8, the County and the School Board shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall include without limitation acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States of America or the Commonwealth of Virginia or any political subdivision thereof or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; restraint of government and people; or civil disturbances. The County and the School Board, as applicable, shall remedy with all reasonable dispatch the cause or causes preventing the County and the School Board, as applicable, from carrying out their covenants, conditions and agreements, provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the County and the School Board, as applicable, and the County and the School Board, as applicable, shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of any opposing party when such course is in the judgment of the County or the School Board, as applicable, not in its best interests.

(c) Notwithstanding anything contained in this Section to the contrary, (i) failure by the County to pay when due any payment required to be made under this Financing Lease or (ii) failure by the County to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Financing Lease, either of which results from failure of the County to appropriate moneys for such purposes, as described in Section 4.3, shall not constitute an event of default. Upon any such failure to appropriate, the provisions of Article VII shall be applicable.

Section 6.2 Remedies.

Whenever any event of default shall have happened and is continuing, the Authority may take any one or more of the following remedial steps, without further demand or notice: (a) reenter and take possession of all or any portion of the Property, with or without terminating this Financing Lease, exclude the County and the School Board from possession, and lease or sublease the County and the School Board's leasehold estate in all or any portion of the Property for the account of the County, holding the County liable for all Basic Rent and Additional Rent due up to the effective date of such lease or sublease and for the difference between the rent and

other amounts paid by the lessee or sublessee pursuant to such lease or sublease and the Basic Rent and other amounts payable by the County hereunder; or (b) take whatever action at law or in equity may appear necessary or desirable to collect the Basic Rent and the Additional Rent then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the County and the School Board under this Financing Lease. In any of such cases, all rights and interests created or then existing in favor of the County and the School Board as against the Authority hereunder shall cease and terminate, and the right to the possession of the Property and all other rights acquired by the County and the School Board hereunder shall revert to and revest in the Authority without any act of re-entry, or any other act of the Authority to be performed and without any right of the County and the School Board of return, reclamation or compensation for moneys paid under this Financing Lease as absolutely, fully and perfectly as if this Financing Lease and such payments had never been made; and in case of such default all payments theretofore made on this Financing Lease are to be retained by and belong to the Authority as the agreed and reasonable rent of the Property up to the time of such default. Any amounts received by the Authority pursuant to the foregoing provisions shall be applied first to costs, then to any unpaid interest and then to repayment of principal, and upon payment in full of all amounts due such excess shall be deposited in the Bond Fund and credited to the next Payment of Basic Rent to the extent Basic Rent has not been paid in full. This provision shall survive termination of this Financing Lease.

Section 6.3 Reinstatement after Event of Default.

Notwithstanding the exercise by the Authority of any remedy granted by Section 6.2, unless the Authority or its assignee shall have sold its leasehold estate in all or any portion of the Property or shall have entered into an agreement providing for the reletting of the Property for at least one year, if the balance of Basic Rent shall not have been accelerated pursuant to Section 6.2(a) and all overdue Basic Rent, together with any interest thereon, and all Additional Rent shall have been paid, then the County's default under this Financing Lease shall be waived without further action by the Authority. Upon such payment and waiver, this Financing Lease shall be fully reinstated and all Basic Rent payments will be due and payable in accordance with Exhibit A, and the County and the School Board shall be restored to the use, occupancy and possession of the Property; provided, however, if all or any portion of the Property has been relet for less than one year, the County and the School Board shall not be restored to the use, occupancy and possession thereof until the end of such lease.

Section 6.4 No Remedy Exclusive.

No remedy conferred by this Financing Lease upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof or acquiescence therein, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 6.5 No Additional Waiver Implied by One Waiver.

Failure by the Authority at any time to require performance by the County or the School Board, as applicable, of any provision hereof shall in no way affect the Authority's right hereunder to enforce the same, nor shall any waiver by the Authority of any breach of any provision hereof be held to be a waiver of any succeeding breach of any such provision, or as a waiver of the provision itself.

Section 6.6 Attorneys' Fees and Other Expenses.

Subject to Section 4.3 the County shall on demand pay to the Authority and the Trustee the reasonable fees of attorneys and other reasonable expenses incurred by either of them in the collection of appropriated, but unpaid, Basic Rent or Additional Rent, or the enforcement of any other obligation of the County, or its agents, upon an Event of Default or any event which, with the passage of time or the giving of notice, may become an Event of Default.

ARTICLE VII

TERMINATION OF LEASE

Section 7.1 Right To Terminate in the Event of Non-Appropriation.

If by June 10 of any year, the Board of Supervisors has failed to adopt a resolution appropriating moneys sufficient for the payment of Basic Rent and estimated Additional Rent (taking into account without duplication the corresponding Basic Payments and estimated Additional Payments due under the Financing Agreement) for the following Fiscal Year, the County Administrator shall give notice to the Authority and the Trustee of such failure to appropriate within five business days thereafter, and if no such appropriation has been made by July 15 of the then current year, the County and the Authority each shall have the right to terminate this Financing Lease by giving notice of the exercise of its rights pursuant to this Section to the other party, the School Board and the Trustee.

Section 7.2 Rights upon Termination in the Event of Non-Appropriation.

Upon termination of this Financing Lease in accordance with Section 7.1, the County and the School Board shall immediately surrender possession of the Property. In the event the County and the School Board do not so deliver possession, the County shall be liable, but only from legally available funds, for payment of a pro-rata portion of the Basic Rent payments and Additional Rent attributable to the number of days during which the County and the School Board fail to so deliver possession.

Section 7.3 Reinstatement after Termination in the Event of Non-Appropriation.

Notwithstanding any termination of this Financing Lease in accordance with Section 7.1, this Financing Lease shall be fully reinstated, and the County and the School Board shall be restored to the use, occupancy and possession of the Property provided that the conditions set forth in Section 6.3 are satisfied.

Section 7.4 Termination in Certain Other Events.

Upon prepayment in full of all Basic Payments and Additional Payments (which shall be credited against the corresponding payments of Basic Rent and Additional Rent due under this Financing Lease) in accordance with Sections 4.10, 5.1(b)(2) or 5.2(b)(2), this Financing Lease shall terminate in accordance with the provisions of Section 4.11.

ARTICLE VIII

AGREEMENT OF TRUST; ASSIGNMENT; AND AMENDMENTS

Section 8.1 Agreement of Trust; Covenants.

(a) The County shall not be obligated to take any notice of any sale, assignment, reassignment, pledge, mortgage, transfer or other disposition of any interest in this Financing Lease or the Property by the Authority, unless such sale, assignment, reassignment, pledge, mortgage, transfer or other disposition is undertaken in accordance with the Agreement of Trust and the County shall have received a duplicate original counterpart of the document by which the assignment, reassignment, pledge, mortgage, transfer or other disposition is made, disclosing the name and address of the person or entity receiving such interest; provided, however, that if such assignment, reassignment, pledge, mortgage, transfer or other disposition is made to a bank or trust company as trustee or paying agent or escrow agent for holders of the Series 2016 Bonds or any additional Series secured by this Financing Lease, it shall thereafter be sufficient that a copy of the trust instrument or agency agreement shall have been deposited with the County until the County shall have been advised that such trust instrument or agency agreement is no longer in effect. During the Lease Term the County shall keep a complete and accurate record of all such assignments in form necessary to comply with Section 149(a) of the Code.

(b) Subject to Section 4.3, the County covenants to take whatever action may be necessary for the Authority to comply with the Authority's covenants under the Agreement of Trust including, without limitation, (i) to cause any necessary financing statements relating to the Basic Rent payments to be executed and filed in all appropriate offices from time to time and will cause the financing statements and instruments of further assurance to be recorded and filed in such manner and in such places as are required by law in order to preserve and protect the rights and security of the holders of the Series 2016 Bonds, and (ii) to supply all information required to be stated on Internal Revenue Service Forms 8038-G and 8038-T, or any successors to such forms.

Section 8.2 Assignment; References to Authority.

Simultaneously with the execution of this Financing Lease, the Authority has entered into the Assignment Agreement by which the Authority assigns all of its rights in and to this Financing Lease (except its rights to receive payment of its fees and expenses and to receive notices) to the Trustee for the benefit of the holders of the Series 2016 Bonds and any additional Series secured by this Financing Lease. The County hereby (a) consents to such assignment, (b) agrees to execute and deliver such further acknowledgments, agreements and other instruments as may be reasonably requested by the Authority or the Trustee to effect such assignment, (c) agrees to make all payments due to the Authority under this Financing Lease

directly to the Trustee (except the Authority's rights to receive payment of its fees and expenses, to receive notices and to give consents), subject to Section 4.3, and (d) agrees to fully comply with the terms of such assignment so long as such assignment is not inconsistent with the provisions hereof. All references in this Financing Lease to the Authority shall include the Trustee for the benefit of the holders of the Series 2016 Bonds and any additional Series secured by this Financing Lease, and their successors and assigns, whether or not specific reference is otherwise made to the Trustee, unless the context requires otherwise.

Section 8.3 Amendments.

This Financing Lease may be amended without the consent of the holders of the Series 2016 Bonds and any additional Series secured by this Financing Lease and with the consent of the Trustee, for purposes of (a) curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision contained in this Financing Lease, or in regard to matters or questions arising under this Financing Lease, as the County, with the consent of the Trustee, may deem necessary or desirable and not inconsistent with this Financing Lease and the Agreement of Trust, and which shall not materially adversely affect the interest of the holders of the Series 2016 Bonds or any additional Series secured by this Financing Lease, (b) for purposes of issuing additional Series of Bonds or (c) for purposes of substituting collateral pursuant to Section 4.8. An amendment relating to an additional Series of Bonds may include, without limitation, a description of additional property to be leased hereby and an amended schedule of Basic Rent to reflect principal and interest payments on such additional Series. The Authority shall have the right to consent to any such amendment that affects in any material respect its rights or obligations under this Financing Lease or the Trust Agreement. This Financing Lease may be amended with the consent of the holders of a majority in aggregate principal amount of the Series 2016 Bonds and any additional Series of Bonds secured by this Financing Lease then Outstanding; provided, however, that no amendment to this Financing Lease shall operate to reduce or delay any Basic Rent payment to be made hereunder, except as may be provided under this Financing Lease, without the unanimous consent of all holders of Series 2016 Bonds and any additional Series secured by this Financing Lease and of the Authority.

Section 8.4 No Merger.

The reversionary and leasehold estates in and to the Property created by this Financing Lease shall not merge but shall always remain separate and distinct, notwithstanding the union of such estates by purchase or otherwise in the Authority, the Trustee, the County, the School Board any lessee or any third party, unless the person holding both of such estates shall expressly elect in writing for them to merge.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Notices.

Unless otherwise provided herein, all demands, notices, approvals, consents, requests, opinions and other communications hereunder shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class registered or certified mail, postage

prepaid, addressed (a) if to the County, at 101-E Mounts Bay Road, P.O. Box 8784, Williamsburg, Virginia 23187-8784 (Attention: County Administrator); (b) if to the School Board, at _____ (Attention: Superintendent); (c) if to the Authority, at 101-D Mounts Bay Road, Williamsburg, Virginia 23185 (Attention: Chairman); and (d) if to the Trustee, at _____. The County, the School Board, the Authority and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinions or other communications shall be sent or persons to whose attention the same shall be directed.

Section 9.2 Severability.

If any provision of this Financing Lease shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

Section 9.3 Liability of Authority.

Notwithstanding any provision of any Series of Bonds or the Basic Agreements to the contrary, the obligations of the Authority under any Series of Bonds and the Basic Agreements are not general obligations of the Authority, but are limited obligations payable solely from revenues and receipts derived from the County under the Financing Agreement or this Financing Lease. No director or officer of the Authority shall be personally liable on the Authority's obligations hereunder. The Authority shall not be liable under any circumstances for the actions of the County, as agent for the Authority, or for any actions or omissions of the County or the School Board under the Basic Agreements. In any instance in which the County is or may act as agent for the Authority hereunder, the County shall at all times comply with any applicable laws, rules or regulations pertaining to any such actions, and it is expressly understood and agreed that the County shall have no authority to create or incur any liability or obligation of the Authority except to the extent limited to the Property and the revenues derived therefrom.

Section 9.4 Characterization.

For purposes of federal bankruptcy law, this Financing Lease is intended to be a "financing lease," and not a "true lease," entered into for the purpose of facilitating the financing of the Project pursuant to the Act through the issuance of the Series 2016 Bonds in accordance with the Agreement of Trust.

Section 9.5 Successors and Assigns.

This Financing Lease shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 9.6 Counterparts.

This Financing Lease may be executed in any number of counterparts, each of which shall be an original, all of which together shall constitute but one and the same instrument; except that to the extent, if any, that this Financing Lease shall constitute personal property under the Uniform Commercial Code of Virginia, no security interest in this Financing Lease may be created or perfected through the transfer or possession of any counterpart of this Financing Lease

other than its original counterpart, which shall be the counterpart containing the receipt therefor executed by the Trustee following the signatures to this Financing Lease.

Section 9.7 Entire Agreement.

The Basic Agreements express the entire understanding and all agreements between the parties and may not be modified except in writing signed by the parties.

Section 9.8 Governing Law.

This Financing Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Financing Lease to be duly executed and effective as of the 1st day of May, 2016, by their duly authorized representatives.

**BOARD OF SUPERVISORS OF JAMES CITY
COUNTY, VIRGINIA, on behalf of
JAMES CITY COUNTY, VIRGINIA**

By _____
County Administrator

Approved as to form:

By _____
County Attorney

COMMONWEALTH OF VIRGINIA)
_____)

The undersigned Notary Public, in and for the jurisdiction aforesaid, hereby certifies that the individual, whose name is signed to the foregoing as the County Administrator of James City County, Virginia, appeared before me and personally acknowledged the same in my jurisdiction aforesaid. Such person is personally known to me or has presented satisfactory evidence of identification.

GIVEN under my hand and seal this ____ day of May, 2016.

Notary Public # _____

My commission expires: _____

IN WITNESS WHEREOF, the parties have caused this Financing Lease to be duly executed and effective as of the 1st day of May, 2016, by their duly authorized representatives.

**SCHOOL BOARD OF JAMES CITY COUNTY,
VIRGINIA**

By _____
Superintendent

COMMONWEALTH OF VIRGINIA)
_____)

The undersigned Notary Public, in and for the jurisdiction aforesaid, hereby certifies that the individual, whose name is signed to the foregoing as the Superintendent of the School Board of James City County, Virginia, appeared before me and personally acknowledged the same in my jurisdiction aforesaid. Such person is personally known to me or has presented satisfactory evidence of identification.

GIVEN under my hand and seal this _____ day of May, 2016.

Notary Public # _____

My commission expires: _____

**ECONOMIC DEVELOPMENT AUTHORITY
OF JAMES CITY COUNTY, VIRGINIA**

By _____
Chairman

COMMONWEALTH OF VIRGINIA)
_____)

The undersigned Notary Public, in and for the jurisdiction aforesaid, hereby certifies that the individual, whose name is signed to the foregoing as the Chairman of the Economic Development Authority of James City County, Virginia, appeared before me and personally acknowledged the same in my jurisdiction aforesaid. Such person is personally known to me or has presented satisfactory evidence of identification.

GIVEN under my hand and seal this _____ day of May, 2016.

Notary Public # _____

My commission expires: _____

RECEIPT

Receipt of the foregoing original counterpart of this Financing Lease dated as of May 1, 2016, between the Economic Development Authority of James City County, Virginia, and the Board of Supervisors of James City County, Virginia, on behalf of James City County, Virginia, is acknowledged.

**WILMINGTON TRUST, NATIONAL
ASSOCIATION**, as Trustee

By _____
Vice President

EXHIBIT A

SCHEDULE OF BASIC RENT PAYMENTS

Bond Payment Date *	Principal Component	Interest Component	Total
------------------------------------	--------------------------------	-------------------------------	--------------

* Payments by the County will be made on each ____ and ____ preceding each Bond Payment Date.

(This conveyance is exempt from recordation taxes pursuant to Section 58.1-810 of the Code of Virginia of 1950, as amended.)

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT, dated as of May 1, 2016, by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "Assignor"), as grantor for indexing purposes, and **WILMINGTON TRUST, NATIONAL ASSOCIATION** (as trustee), a national banking association having a corporate trust office in Richmond, Virginia (the "Assignee"), as grantee for indexing purposes;

WITNESSETH:

WHEREAS, the Assignor and the Assignee have entered into an Agreement of Trust dated as of May 1, 2016, as supplemented by a First Supplemental Agreement of Trust dated as of May 1, 2016 (collectively, the "Agreement of Trust"), which provides for the issuance of \$_____ Public Facility Revenue Bonds (James City County School Project), Series 2016 (the "Series 2016 Bonds"), payable from certain Basic Payments and Additional Payments received from James City County, Virginia (the "County"), pursuant to a Financing Agreement dated as of May 1, 2016 (the "Financing Agreement"), between the Assignor and the County;

WHEREAS, the Assignor and the County have entered into a Ground Lease dated as of May 1, 2016 (the "Ground Lease"), and a Financing Lease Agreement dated as of May 1, 2016 (the "Financing Lease"), which provides for the County to lease certain Property (as defined in the Financing Lease) to the Assignor and for the Assignor to lease the Property back to the County, in return for which the County has agreed to make payments of Basic Rent and Additional Rent (each as defined in the Financing Lease) to the Assignor; and

WHEREAS, the Financing Lease provides that, to the extent the County pays in full with respect to the Series 2016 Bonds each Basic Payment and Additional Payment when due under the terms of the Financing Agreement, the amount of such payment shall be credited in full against the obligation of the County to pay the comparable installments of Basic Rent and Additional Rent;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained and other valuable consideration, the receipt of which is acknowledged, the Assignor assigns, transfers and delivers to the Assignee all of its rights and property under the Ground Lease and the Financing Lease (except the rights of the Authority to receive payment of its fees and expenses and to receive notices), as such agreement may be amended from time to time pursuant to its terms, including, without limitation, its rights to (a) receive payments of Basic Rent, (b) receive payments of Additional Rent payable under Section 4.2(b) of the Financing Lease, and (c) exercise remedies of the Assignor upon nonappropriation of Basic Rent and Additional Rent or default by the County under the Financing Lease, provided that such assignment is without recourse as to the failure of the County to make payments (due to financial inability or otherwise) or of the County to perform any of its responsibilities or duties under the

Ground Lease, the Financing Lease or any other documentation pertaining to the issuance of the Series 2016 Bonds.

The rights and property described above secure the payment of the principal of and premium, if any, and interest on the Series 2016 Bonds in accordance with the provisions of the Agreement of Trust.

All moneys received by the Assignee pursuant to this Agreement shall be applied to the Series 2016 Bonds as set forth in the Agreement of Trust.

The Assignor irrevocably constitutes and appoints the Assignee, or any present or future officer or agent of the Assignee, or the successors or assigns of the Assignee, as its lawful attorney, with full power of substitution and resubstitution, in the name of the Assignor or otherwise, to collect and to sue in any court for payments due from the County under the Financing Lease, to withdraw or settle any claims, suits or proceedings pertaining to or arising out of the Financing Lease upon any terms, all without notice to or consent of the Assignor, and to take possession of and to endorse in the name of the Assignor any instrument for the payment of money received on account of the payments due from the County under the Financing Lease.

The Assignee accepts such assignment as stated herein for the pro rata benefit of the holders of the Series 2016 Bonds, subject to the provisions of the Agreement of Trust.

The Assignor authorizes and directs the County, or its successors and assigns, to pay to the Assignee, or its successors and assigns, all payments of Basic Rent and Additional Rent (only the portion due under Section 4.2(b) of the Financing Lease) due or to become due under the Financing Lease from and after the date of this Agreement by forwarding such payments to the Assignee at the following address:

Wilmington Trust, National Association, as Trustee

_____, _____
Attention: _____

The Assignor covenants that, notwithstanding this Agreement, it will perform all of the Assignor's duties and obligations under the Ground Lease, the Financing Lease, including its obligation to provide possession of the Property to the County pursuant to Section 3.1 of the Financing Lease and its obligation to transfer, convey and assign its interest in the Property to the County pursuant to Section 4.11 of the Financing Lease.

The Assignor delivers to the Assignee the original recorded Financing Lease, and the Assignee shall at all reasonable times have full access to the books and records of the Assignor relating to the Financing Lease and payments due from the County thereunder and to make extracts from such books and records.

The Assignor will make, execute and deliver any papers, instruments and documents that may be reasonably required by the Assignee, or its successors or assigns, to effectuate the purpose intended by this Agreement.

Notwithstanding any provision of the Series 2016 Bonds or the Basic Agreements (as defined in the Financing Agreement) to the contrary, the obligations of the Assignor under the Series 2016 Bonds and the Basic Agreements are not general obligations of the Assignor, but are limited obligations payable solely from payments received from the County under the Financing Agreement and the Financing Lease. No director or officer of the Assignor shall be personally liable on the Assignor's obligations under the Basic Agreements. The Assignor shall not be liable under any circumstances for the actions or omissions of the County, as agent for the Assignor, for any actions or omissions of the County under the Basic Agreements.

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Virginia.

The Basic Agreements express the entire understanding and all agreements between all the parties and may not be modified except in writing signed by the parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Agreement to be executed as of the first day of May, 2016, by their duly authorized representatives.

**ECONOMIC DEVELOPMENT AUTHORITY
OF JAMES CITY COUNTY, VIRGINIA**

By _____
Chairman

COMMONWEALTH OF VIRGINIA)
)

)

The foregoing instrument was acknowledged before me in _____, Virginia, this ____ day of May, 2016, by _____, _____, Economic Development Authority of James City County, Virginia.

My commission expires: _____

My Registration Number is: _____

Notary Public

By _____
Vice President

5

NOTICE OF ASSIGNMENT

The undersigned acknowledges receipt of notice of the assignment by the Assignor of its rights in the Financing Lease to the Assignee as set forth in the foregoing Agreement and hereby evidences its consent to such assignment.

JAMES CITY COUNTY, VIRGINIA

By: _____
County Administrator

ITEM SUMMARY

DATE: 4/12/2016

TO: The Board of Supervisors

FROM: Roberta Sulouff, Planner

SUBJECT: Initiation of Consideration of Amendments to the Zoning Ordinance for
Manufacture of Food and Food Products in the Planned Unit Development
District

ATTACHMENTS:

	Description	Type
▣	Staff memo	Cover Memo
▣	Initiating Resolution	Resolution
▣	OED letter of support	Backup Material
▣	EDA letter of support	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	3/25/2016 - 3:56 PM
Development Management	Purse, Jason	Approved	3/25/2016 - 4:27 PM
Publication Management	Burcham, Nan	Approved	3/25/2016 - 4:34 PM
Legal Review	Kinsman, Adam	Approved	3/25/2016 - 4:40 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 4:50 PM
Board Secretary	Hill, Bryan	Approved	3/25/2016 - 5:13 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 5:17 PM

MEMORANDUM

DATE: April 12, 2016

TO: The Board of Supervisors

FROM: Roberta Sulouff, Planner

SUBJECT: Initiation of Consideration of Amendments to the Zoning Ordinance for Manufacture of Food and Food Products in the Planned Unit Development District

As indicated in its statement of intent, the purpose of the Planned Unit Development (PUD) District is to promote the efficient use of land, allow flexible application of development controls and allow various densities and land uses, all of which are done in accordance with a master plan. Master Plans in PUD districts typically include residential areas and commercial or industrial areas, which occur in spatially distinct areas. For example, the largest PUD in the County is in Stonehouse, which includes a distinct commerce center area. This master planning approach allows for some industrial use within the PUD development, but the commercial/industrial use list is more limited than in the M-1, Limited Business/Industrial or the M-2, General Industrial districts, in acknowledgment of the fact that residential portions of the PUD may be nearby.

In conjunction with the County's Office of Economic Development (see attachment numbers two and three), the Planning Division has identified that it may be beneficial for economic development purposes to add an additional use to the PUD district. Specifically, over the past few years, staff has received a number of inquiries from companies interested in the manufacture of food or food products. Currently, the PUD district lists four by-right industrial uses in Section 24-493 Use list, including: "processing, assembly and manufacture of light industrial products or components, with all storage, processing, assembly and manufacture conducted in a fully enclosed building, with no dust, noise, odor or other objectionable effect" and "wholesale and warehousing, with storage in a fully enclosed building." It has been determined that the uses currently listed in the PUD would not encompass manufacture of food or food products. In acknowledgement of the particular circumstances of the PUD district, possible amendments could be considered, including the following:

- Adding as a permitted use "manufacture, compounding, processing or packaging of beverages or food and food products, but not slaughter of animals, where all activities are conducted in a fully enclosed building, with no dust, noise, odor or other objectionable effect."
- Adding as a specially permitted use "manufacture, compounding, processing or packaging of beverages or food and food products, but not slaughter of animals."

In order to more fully consider this approach, staff recommends the Board of Supervisors adopt the attached resolution to formally initiate consideration of such amendments to the Zoning ordinance and refer this matter to the Planning Commission's Policy Committee.

RS/nb
ZOAmD-PUD-mem

Attachment:

1. Initiating Resolution
2. Letter of Support from the James City County Office of Economic Development, dated March 21, 2016
3. Letter of Support from the James City County Economic Development Authority, dated March 21, 2016

RESOLUTION

INITIATION OF CONSIDERATION OF AMENDMENTS TO THE ZONING ORDINANCE

FOR MANUFACTURE OF FOOD AND FOOD PRODUCTS IN THE

PLANNED UNIT DEVELOPMENT DISTRICT

WHEREAS, the Virginia Code § 15.2-2286 and County Code § 24-13 permit the Board of Supervisors of James City County, Virginia (the “Board”) to, by resolution, initiate amendments to the regulations of the Zoning ordinance that the Board finds to be prudent; and

WHEREAS, amendments to the Zoning ordinance are necessary in order to permit manufacture of beverages or food and food products in the Planned Unit Development district; and

WHEREAS, the Board is of the opinion that the public necessity, convenience, general welfare or good zoning practice warrant the consideration of amendments to the Zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby, by resolution, initiate staff review of Section 24-2, Section 24-493 and Article II, Division I of the Zoning ordinance of the James City County Code in regards to including a use or uses allowing manufacture of food and food products. The Planning Commission shall hold at least one public hearing on the consideration of amendment of said ordinance and shall forward its recommendation thereon to the Board of Supervisors in accordance with the law.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Bryan J. Hill
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
LARSON	_____	_____	_____
ONIZUK	_____	_____	_____
SADLER	_____	_____	_____
HIPPLE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of April, 2016.

ZOAmD-PUD-res



Economic Development
101-D Mounts Bay Road
PO Box 8784
Williamsburg, VA 23187
P: 757-253-6607

yesjamescitycountyva.com

March 21, 2016

Paul Holt, Director of Planning
James City County
101-A Mounts Bay Road
Williamsburg, VA 23185

According to the Virginia Economic Development Partnership, the Food Processing Industry is one of Virginia's largest manufacturing sectors and is included as one of the Partnership's Key Industries. Locally, during the past 18 months, James City County has seen an increase in interest from companies tied to the food processing industry. Additionally, there are a number of existing businesses within James City County that are also a part of this industry segment. Based upon past and current indications, this appears to be a growing industry segment.

While the manufacture and processing of food is included in both the M1 and M2 zoning classifications (with an SUP), this use is currently not permitted in PUD-C. PUD-C does allow for the processing, assembly and manufacture of light industrial products, by-right, provided that it is conducted in a "fully enclosed building with no dust, noise, odor or other objectionable effect."

With the increased interest in this industry segment and understanding that PUD-C covers one of the few remaining business centers in the County (Stonehouse Commerce Park), OED has been working with Development Management to have food processing added as a permitted use in PUD-C. The new proposal would allow food processing to be included as a by-right use, subject to the same provisions as manufacturing. Additionally, an SUP would be added to allow both those food-related and industrial uses not meeting the current requirements, the opportunity to locate in PUD-C through mitigation.

During their March 10th meeting, the EDA voted in support of this proposed Zoning Ordinance change and I would like to add the support of the Office of Economic Development.

Sincerely,

Russell Seymour, Director
James City County Economic Development



Economic Development Authority
101-D Mounts Bay Road
PO Box 8784
Williamsburg, VA 23187
P: 757-253-6607

yesjamescitycountyva.com

March 21, 2016

Mr. Paul Holt
Planning Director
James City County
101-A Mounts Bay Road
Williamsburg, Virginia 23185

Dear Mr. Holt,

As Chairman of the Economic Development Authority, I am aware of the collaboration between the Planning Division and the Office of Economic Development on many matters. In recent years I am especially aware of research and assistance provided by planning staff when prospects have been identified and are visiting potential sites in the County.

There has been much interest in the County from companies tied to the food processing industry. In the last 2-3 years, the EDA and County staff have worked with nearly a dozen different food-related companies looking to establish operations in the Williamsburg area, giving serious consideration to James City County. Some of these projects are still active, with a final decision not yet made. Others have selected sites outside the County or outside Virginia. Each circumstance brings unique factors, but the EDA and OED staff make every effort to identify compatible potential employers for the County and compatible sites for those employers in the County.

These recent prospects have highlighted the fact that food processing, or "manufacture, compounding, processing or packaging of food and food products, but not the slaughter of animals" is specially permitted in M1 and M2, not permitted by-right in any zoning district in the County, and not permitted at all in PUD-C. Given the potential for growth in this sector, the EDA supports staff efforts to better accommodate food processing and food-related operations.

I thank you for your on-going discussions with OED staff to consider the issue from multiple perspectives and identify a solution. On behalf of the Economic Development Authority, I fully support your efforts.

Sincerely,

Thomas G. Tingle, Chairman
James City County Economic Development Authority

ITEM SUMMARY

DATE: 4/12/2016

TO: The Board of Supervisors

FROM: Roberta Sulouff, Planner

SUBJECT: Initiation of Consideration of Amendments to the Zoning Ordinance to Allow Mobile Food Vending Vehicles (Food Trucks) in the M-1, Limited Business/Industrial District, the M-2, General Industrial District and the PUD-C Planned Unit Development-Commercial District

ATTACHMENTS:

	Description	Type
▣	Memorandum for the Initiation of Consideration of Amendments to the Zoning Ordinance to Allow Mobile Food Vending Vehicles (Food Trucks) In Certain Districts	Cover Memo
▣	Initiating Resolution	Resolution

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	3/25/2016 - 11:11 AM
Development Management	Purse, Jason	Approved	3/25/2016 - 11:25 AM
Publication Management	Boles, Amy	Approved	3/25/2016 - 11:26 AM
Legal Review	Kinsman, Adam	Approved	3/25/2016 - 2:53 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 3:25 PM
Board Secretary	Hill, Bryan	Approved	3/25/2016 - 4:30 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 4:50 PM

MEMORANDUM

DATE: April 12, 2016

TO: The Board of Supervisors

FROM: Roberta Sulouff, Planner

SUBJECT: Initiation of Consideration of Amendments to the Zoning Ordinance to Allow Mobile Food Vending Vehicles (Food Trucks) in the M-1, Limited Business/Industrial District, the M-2, General Industrial District and the Planned Unit Development-Commercial District

On February 9, 2016, the Board of Supervisors asked staff and the Planning Commission to research the issue of food trucks and to initiate a discussion and consideration of the issue, specifically considering what may be the best fit for James City County. In recent years staff has received a number of inquiries from companies interested in operating mobile food vending vehicles (food trucks) within the parking lots of businesses in the County's industrial parks. Mobile food vending vehicles could provide additional on-site meal options for workers in these areas. It may be beneficial for economic development purposes to add an additional use to the M-1, Limited Business/Industrial, the Planned Unit Development-Commercial (PUD-C) and the M-2, General Industrial districts.

Currently, mobile food vending vehicles are not listed as a permitted or specially permitted use in any of the districts. Staff anticipates that amendments to allow this use in M-1, M-2 and PUD-C could entail:

- Amendment of Section 24-2 Definitions, to add a definition of mobile food vending vehicles.
- Amendment of Section 24-411 Use list in M-1, Section 24-436 Use list in M-2 and Section 24-493 Use list in PUC-C to include mobile food vending vehicles in the list of permitted uses in these districts.
- Amendment of Article II, Division 1, Special regulations, to add a section that sets standards for mobile food vending vehicles. Examples of the types of standards used in other localities include: documentation of a County business license and health permit from the Virginia Department of Health; documentation of property owner consent to locate; operation only during the hours the business/industrial establishment is operating; lighting, signage, noise, removal of trash, disposal of greywater/fats and operation outside of the public right-of-way.

Please note it is not intended that this amendment limit the ability of mobile food vending vehicles to operate in conjunction with a special event, such as a festival or concert, where food vending is currently, and would continue to be, allowed as accessory and incidental to the event.

In order to more fully consider this approach, staff recommends that the Board of Supervisors adopt the attached resolution to formally initiate consideration of such amendments to the Zoning ordinance and refers this matter to the Planning Commission's Policy Committee.

RS/nb
ZOAmD-FTrucks-mem

Attachment:

1. Initiating Resolution

RESOLUTION

INITIATION OF CONSIDERATION OF AMENDMENTS TO THE ZONING ORDINANCE TO
ALLOW MOBILE FOOD VENDING VEHICLES (FOOD TRUCKS) IN THE M-1, LIMITED
BUSINESS/INDUSTRIAL DISTRICT, THE M-2, GENERAL INDUSTRIAL DISTRICT AND THE
PLANNED UNIT DEVELOPMENT-COMMERICAL DISTRICT

WHEREAS, the Virginia Code § 15.2-2286 and County Code § 24-13 permit the Board of Supervisors of James City County, Virginia (the "Board") to, by resolution, initiate amendments to the regulations of the Zoning ordinance that the Board finds to be prudent; and

WHEREAS, amendments to the Zoning ordinance are necessary in order to permit operation of mobile food vending vehicles (food trucks) in the M-1, Limited Business/Industrial district, the M-2, General Industrial district and the Planned Unit Development-Commercial district; and

WHEREAS, the Board is of the opinion that the public necessity, convenience, general welfare or good zoning practice warrant the consideration of amendments to the Zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby, by resolution, initiate staff review of Section 24-2, Section 24-411, Section 24-436, Section 24-493 and Article II, Division 1 of the Zoning ordinance of the James City County Code in regards to including provisions for operation of mobile food vending vehicles. The Planning Commission shall hold at least one public hearing on the consideration of amendment of said ordinance and shall forward its recommendation thereon to the Board of Supervisors in accordance with the law.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Bryan J. Hill
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	_____	_____	_____
LARSON	_____	_____	_____
ONIZUK	_____	_____	_____
SADLER	_____	_____	_____
HIPPLE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of April, 2016.

ZOAmD-FTrucks-res

ITEM SUMMARY

DATE: 4/12/2016

TO: The Board of Supervisors

FROM: Savannah Pietrowski

SUBJECT: Z-0001-2016, The Promenade at John Tyler Proffer Amendment

ATTACHMENTS:

	Description	Type
▣	Memorandum	Cover Memo
▣	Resolution	Resolution
▣	Location Map	Backup Material
▣	Unapproved Minutes from the March 2, 2016 meeting of the Planning Commission	Backup Material
▣	Narrative Accompanying Proffer Amendment Application	Backup Material
▣	Adopted Proffers Dated October 15, 2014	Backup Material
▣	Proffers Dated February 24, 2016	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	3/25/2016 - 3:40 PM
Development Management	Purse, Jason	Approved	3/25/2016 - 3:48 PM
Publication Management	Burcham, Nan	Approved	3/25/2016 - 4:29 PM
Legal Review	Kinsman, Adam	Approved	3/25/2016 - 4:31 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 4:50 PM
Board Secretary	Hill, Bryan	Approved	3/25/2016 - 5:10 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 5:10 PM

MEMORANDUM

DATE: April 12, 2016
TO: The Board of Supervisors
FROM: Savannah Pietrowski, Planner I
SUBJECT: Case No. Z-0001-2016. The Promenade at John Tyler Proffer Amendment

On December 9, 2014, the Board of Supervisors rezoned approximately 24.54 acres of land located in the southeast corner of the Williamsburg Crossing Shopping Center, adjacent to the Winston Terrace subdivision, from B-1, General Business, to MU, Mixed Use, with proffers.

The Promenade at John Tyler was approved for construction of up to 204 dwelling units and commercial space. The development will consist of up to 11 ten-plex buildings, 40 duplex buildings and 14 live-above units to be located above the commercial space.

Mr. Gary Werner, of Franciscus Homes, has submitted a request to amend Condition No. 2 of the adopted Proffers, dated October 15, 2014, made by University Square Associates. During the course of site plan review, staff and the developer realized the proffer language was, in certain respects, inconsistent with the requirements of the Housing Opportunities Policy, adopted by the Board of Supervisors on November 27, 2012. The proposed proffer amendment would align the Proffers with the Housing Opportunities Policy by removing the full narrative of the existing proffers and simply providing that the units shall be provided consistent with the Housing Opportunities Policy as adopted by the Board of Supervisors. There is no proposed change in the number of affordable/workforce units that will be provided and no other proposed changes to the adopted proffers or master plan.

Section 15.2-2302 of the Code of Virginia (1950), as amended, allows the Board of Supervisors to waive the requirements for a public hearing where such amendments do not affect conditions of use or density. This application does not affect conditions of use or density. As such, the County Attorney's office consulted the Board of Supervisors and the Board voiced no objection to the applicant's request to consider amending these proffers as a consideration item.

At its March 2, 2016 meeting, the Planning Commission recommended approval of this Proffer Amendment by a vote of 7-0. There have been no proposed changes to the application since the Planning Commission meeting.

Staff Recommendation:

Staff finds that the requested Proffer amendment would not negatively impact the development and that new language will ensure consistency with the Board policy on affordable housing. Staff, therefore recommends that the Board of Supervisors recommend approval of the proposed Proffer amendment to the Board of Supervisors.

SP/nb
Z-01-16PromenadeAmd-mem

Attachments:

1. Resolution
2. Location Map
3. Unapproved Minutes from the March 2, 2016, meeting of the Planning Commission
4. Narrative accompanying proffer amendment application
5. Adopted Proffers dated October 15, 2014
6. Proffers dated February 24, 2016

RESOLUTION

CASE NO. Z-0001-2016. THE PROMENADE AT JOHN TYLER PROFFER AMENDMENT

- WHEREAS, Mr. Gary Werner of Franciscus Homes, Inc. as applied for a change in zoning for +/-24.54 acres owned by University Square Associates from MU, Mixed Use with proffers to MU, Mixed Use with amended proffers; and
- WHEREAS, the properties subject to the application are located at 5294, 5299, 5303, 5307, 5311 and 5304 John Tyler Highway and can be further identified as James City County Real Estate Tax Map Parcel Nos. 4812200020, 4812200025, 4812200026, 4812200027, 4812200028 and 4812200029, respectively (together, the "Property"); and
- WHEREAS, on December 9, 2014, the Board of Supervisors approved Case No. Z-0003-2014/MP-0003-2014, which rezoned the Property from B-1, General Business to MU, Mixed Use, with proffers (the "Existing Proffers"); and
- WHEREAS, Case No. Z-0001-2016 proposes to amend Condition No. 2 of the Existing Proffers, which does not affect the use or density of the Property and retain all other proffers contained in the Existing Proffers; and
- WHEREAS, in accordance with Section 24-20 of the County Code and § 15.2-2302 of the Code of Virginia, which allow for waiver of public hearings for amendments of proffer conditions that do not affect use or density, the Planning Commission and Board of Supervisors have considered Case No. Z-0001-2016; and
- WHEREAS, the Planning Commission of James City County, following its consideration on March 2, 2016, recommended approval of Case No. Z-0001-2016, by a vote of 7 to 0; and
- WHEREAS, the Board of Supervisors of James City County, Virginia, finds Case No. Z-0001-2016 to be required by public necessity, convenience, general welfare and good zoning practice.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. Z-0001-2016 as described herein and accepts the amended voluntary proffers.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

Bryan J. Hill
Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MC GLENNON	_____	_____	_____
LARSON	_____	_____	_____
ONIZUK	_____	_____	_____
SADLER	_____	_____	_____
HIPPLE	_____	_____	_____

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of April, 2016.

Z-01-16PromenadeAmd-res

JCC-Z-0001-2016, The Promenade At John Tyler Proffer Amendment



Unapproved Minutes of the March 2, 2016 Planning Commission Meeting

Case No. Z-0001-2016, Promenade Proffer Amendment

Ms. Savannah Pietrowski, Planner I, stated that Mr. Gary Werner of Franciscus Homes has submitted a request to amend Condition No. 2 of the adopted Proffers for the Promenade at John Tyler Highway. Ms. Pietrowski stated that the development consists of up to 204 dwelling units and commercial space. Ms. Pietrowski stated that during the course of site plan review, staff and the developer realized the proffer language was, in certain respects, inconsistent with the requirements of the Housing Opportunities Policy. Ms. Pietrowski stated that the proposed proffer amendment would align the Proffers with the Housing Opportunities Policy by removing the full narrative of the existing proffers and simply providing that the units shall be provided in accordance with the Housing Opportunities Policy. Ms. Pietrowski noted that there is no proposed change in the number of affordable/workforce units that will be provided and no other proposed changes to the adopted proffers or master plan.

Ms. Pietrowski stated that staff finds that the proposed amendment would not negatively impact the development and would ensure consistency with the Board's policy on affordable housing. Ms. Pietrowski stated that staff recommends that the Planning Commission recommend approval of the proffer amendment to the Board of Supervisors.

Ms. Bledsoe opened the floor for questions from the Commission.

Mr. Richardson inquired whether the percentages have changed.

Ms. Pietrowski responded that the percentages have not changed.

Mr. Richardson inquired whether the price point would continue to adjust each year.

Ms. Pietrowski responded that the price point would still be updated every year.

Mr. Wright requested clarification on whether the Housing Opportunities policy was revised every year.

Ms. Pietrowski stated that each year the Office of Housing & Community Development reviews the price points that are set for affordable housing units to ensure that they are on par with the current economy.

Mr. Wright inquired whether the percentages of units allocated to those price points would change.

Ms. Pietrowski stated that the percentage of units that should be allocated to those price points does not change.

Ms. Bledsoe clarified that the reason for the amendment was to simplify the process by amending how the proffer language relates to the Housing Opportunities Policy.

Mr. Richardson requested that Mr. Vernon Geddy provide background on the genesis of the proffer amendment.

Mr. Vernon Geddy, Geddy, Harris, Franck & Hickman, stated 100% of the units were proffered at affordable housing price points. Mr. Geddy stated that while reviewing the project during site plan

development, it was found that certain proffer language was inconsistent with the Housing Opportunities Policy and it was necessary to bring the language into conformity with the Board's policy.

Mr. Richardson moved to recommend approval of the proffer amendment.

On a roll call vote the Commission voted to recommend approval of Z-0001-2016, Promenade Proffer Amendment (7-0).

NARRATIVE TO PROFFER AMENDMENT APPLICATION

The applicant, Franciscus Homes, Inc. is applying to amend and restate Condition 2 of the Proffers dated October 15, 2014 made by University Square Associates. Following the rezoning approval, the applicant held extensive meetings with the Planning Department and the Department of Housing and Community Development regarding the implementation of Condition 2 of the Proffers and the County's Housing Opportunities Policy. During the course of these meetings, all the parties realized that the language of Condition 2 was in certain respects inconsistent with the requirements of the Housing Opportunities Policy as properly applied in this case. For example, the language of Condition 2 requires the use of a soft second deed of trust in the sale of a unit. Since all units in the Promenade are proffered to be sold at prices consistent with the Housing Opportunities Policy there is no difference or subsidy between the market price of a unit and the proffered price to be secured by a soft second deed of trust so it is impossible to comply with this requirement. The Applicant, the Planning Department and the Department of Housing and Community Development all agree that it is appropriate to amend Condition 2 of the proffers to simply provide that all of the units will be provided for sale or rent in the percentages specified in accordance with the Housing Opportunities Policy. This is the approach taken by the County itself in its proffers at the Wellington development. The applicant was and remains committed to providing quality housing at the Promenade at prices and on terms consistent with the Housing Opportunities Policy.

Tax Parcels: 4812200020, 4812200025, 4812200026, 4812200027, 4812200028 and 4812200029

Prepared By: Vernon M. Geddy, III, Esquire (VSB No: 21902)
Geddy, Harris, Franck & Hickman
1177 Jamestown Road
Williamsburg, VA 2318

PROFFERS

THESE PROFFERS are made this 15th day of October, 2014 by UNIVERSITY SQUARE ASSOCIATES, a Virginia general partnership(together with its successors in title and assigns, the "Owner").

RECITALS

A. Owner is the owner of six parcels of land located in James City County, Virginia, being Tax Parcel No's.4812200020, 4812200025, 4812200026, 4812200027, 4812200028 and 4812200029, containing approximately 24.54 acres, more or less, and being more particularly described on Schedule A hereto (the "Property").

B. Franciscus Homes has contracted to purchase Tax Parcels 4812200020 and 4812200029 of the Property contingent upon approval of the requested rezoning. Upon taking title to that portion of the Property, Franciscus Homes shall be an "Owner" as defined herein.

C. The Property is designated Mixed Use on the County's Comprehensive Plan Land Use Map and is now zoned B-1 and is subject to the approved special use permit Master Plan for Williamsburg Crossing Shopping Center. Owner has applied to rezone the Property from B-1 to MU, Mixed Use, with proffers.

C. Owner has submitted to the County a master plan entitled "The Promenade at John Tyler" prepared by Clark Nexsen dated October 6, 2014 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

D. Owners desire to offer to the County certain conditions on the development of the Property not generally applicable to land zoned MU in the form of the following Proffers.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

CONDITIONS

1. Cash Contributions. (a) A one-time contribution shall be made to the County of \$5,556.67 for each single family attached dwelling unit constructed on the Property, subject to paragraph (f) below. Such contributions shall be used by the County for school uses.

(b) A one-time contribution shall be made to the County of \$61.00 for each dwelling unit constructed on the Property, subject to paragraph (f) below. Such contributions shall be used by the County for library uses.

(c) A one-time contribution shall be made to the County of \$71.00 for each dwelling unit constructed on the Property, subject to paragraph (f) below. Such contributions shall be used by the County for fire/EMS uses.

(d) A one-time contribution shall be made to the County of \$324.63 for each dwelling unit constructed on the Property, subject to paragraph (f) below. Such contributions shall be used by the County for parks and recreational purposes.

(e) A one-time contribution shall be made to the James City Service Authority of \$1,030.00 for each dwelling unit constructed on the Property, subject to paragraph (f) below. Such contributions shall be used by the County for water system uses.

(f) The cash contributions proffered in paragraphs (a) through (e) above shall be reduced in accordance with Section 3 of the County's Housing Opportunities Policy as shown in the table in Proffer 2 below.

(g) Such per unit contributions shall be paid to the County after completion of the final inspection and prior to the time of the issuance of any certificate of occupancy for the unit in question.

(h) The per unit contribution amounts shall consist of the amounts set forth in paragraphs (a) through (e) plus any adjustments included in the Marshall and Swift Building Costs Index, Section 98, Comparative Cost Multipliers, Regional City Averages (the "Index") from 2014 to the year a payment is made if payments are made after on or after January 1, 2015, subject to reduction as provided in paragraph (f). The per unit contribution amount shall be adjusted once a year with the January supplement of the Index of the payment year. In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in the preceding paragraphs of this Section. In the event that the Index is not available, a reliable government or other independent publication evaluating information heretofore used in determining the Index (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the per unit contribution to approximate the rate of annual inflation in the County.

2. Housing Opportunities. All of the dwelling units permitted on the Property shall be offered for sale or made available for rent at prices that are targeted at households earning 30% to 120% of the Area Median Income ("AMI") as provided below:

Table 1 – 190 units on Parcels 4812200020 and 4812200029

Units targeted to (percent of	Percent of dwelling units	Number of units	Percentage cash proffer	2014 Price ranges per
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AMI)	required		reduction	Housing Opportunities Policy Guide*
30% to 60%	16%	30	100%	\$99,436 to \$173,376
Over 60% to 80%	64%	120	60%	\$173,377 to \$242,386
Over 80% to 120%	20%	40	30%	\$242,387 to \$380,407

Table 2 – 14 units on Parcels 4812200025, 4812200026, 4812200027 and 4812200028

Units targeted to (percent of AMI)	Percent of dwelling units required	Number of units	Percentage cash proffer reduction	2014 Price ranges per Housing Opportunities Policy Guide*
30% to 60%	16%	2	100%	\$99,436 to \$173,376
Over 60% to 80%	64%	9	60%	\$173,377 to \$242,386
Over 80% to 120%	20%	3	30%	\$242,387 to \$380,407

* Per the Housing Opportunities Policy Guide price ranges are set annually by the County's Office of Housing and Community Development based on the definitions in the Policy.

The forgoing affordable/workforce dwelling units shall be provided consistent with the criteria established by the Housing Opportunities Policy and Housing Opportunities Policy Guide adopted by the Board of Supervisors on November 27, 2012 and in effect as of the date of approval of the requested rezoning to provide affordable and workforce housing opportunities at different price ranges to achieve the greater housing diversity goal of the 2009 Comprehensive Plan; provided, however, that if the County amends the Housing Opportunities Policy as in effect as of the date of approval of the requested rezoning to increase the targeted income ranges or otherwise make the Policy otherwise less burdensome on the Owner, the Owner shall only be required to comply with the amended Policy. With respect to affordable and workforce rental units provided pursuant to this proffer, if any, Owner shall submit an annual report for each year of the required 30 year term to the County Director of Planning on or before January 30 of the current year identifying the location of the units and the rental rates charged demonstrating such rates are within the specified affordable and workforce housing income range. With respect to affordable/workforce rental units, at the time such units are provided in accordance with this Proffer a notice in form approved by the County Attorney shall be recorded in the County land records providing notice that the units are subject to the County's Housing Opportunities Policy adopted by the Board of Supervisors on November 27, 2012 and in effect as of the date of approval of the requested rezoning. If an affordable/workforce rental unit is subsequently sold in accordance with the sale requirements of this proffer, the notice will be released from the unit sold. With respect to for sale affordable and workforce units provided pursuant to this proffer, a soft second mortgage meeting the requirements of the Housing Opportunities Policy or other instrument approved in advance by the County Attorney shall be executed by the initial purchaser thereof and recorded against the unit to assure the unit continues to meet the

requirements of the Housing Opportunities Policy and a copy of the settlement statement for the sale shall be provided to the Director of Planning. In addition, each deed to an affordable or workforce for sale unit shall include a right of first refusal in favor of the County in the event a subsequent owner desires to sell the unit. All affordable or workforce units provided pursuant to this Proffer shall be rented or sold to persons whose incomes fall within the qualifying income ranges used to determine the prices/rental rates under the Housing Opportunities Policy.

3. Archaeology. A Phase I Archaeological Study for the Property shall be submitted to the Director of Planning for review and approval prior to issuance of a land disturbing permit. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase II study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study areas. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' *Guidelines for Preparing Archaeological Resource Management Reports* and the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation*, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's

Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the Property and the clearing, grading or construction activities thereon. This proffer shall be interpreted in accordance with the County's Archaeological Policy adopted by the County on September 22, 1998.

4. Nutrient Management Plan. The Owner shall be responsible for contacting an agent of the Virginia Cooperative Extension Office ("VCEO") or, if a VCEO agent is unavailable, a Virginia Certified Nutrient Management Planner to conduct soil tests and to develop, based upon the results of the soil tests, customized nutrient management plans (the "Plans") for the Property. The Plan shall be submitted to the County's Engineering and Resource Protection Director for his review and approval prior to the issuance of the 50th certificate of occupancy for buildings on the Property by the County. The property owners association for the Property shall be responsible for ensuring that any nutrients applied to common areas owned or controlled by the association within the Property are applied in accordance with the Plan.

5. Water Conservation. The Owner shall be responsible for developing water conservation standards for the Property to be submitted to and approved by the James City Service Authority ("JCSA"). The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of drought resistant native and other adopted low water use landscaping materials and warm season turf on lots in areas with appropriate growing conditions for such turf and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. The standards shall be approved by the JCSA prior to final subdivision or site plan approval.

6. Road Repair and Dedication. Prior to issuance of the first certificate of occupancy for a dwelling unit on the Property, (i) either the deficiencies listed in the punch list dated September

15 made by the Virginia Department of Transportation (“VDOT”) for Kingsway and “Road A” shall have been corrected and inspected by VDOT such that the roads are eligible for acceptance into the Commonwealth’s secondary road system or the work necessary to correct such deficiencies shall have been bonded in form satisfactory to the County Attorney and (ii) the plat necessary to dedicate the right of way for such roads for public use shall have prepared and submitted to the County, with all required property owner signatures.

7. Architectural Guidelines. Prior to final approval of a site plan for development of the Property, Owner shall prepare and submit design guidelines to the Director of Planning for review and approval setting forth design and architectural standards for the development of the Property generally consistent with the typical architectural elevations included in the Community Impact Statement submitted with the Application for Rezoning and addressing items such as architectural features, color scheme, roof lines, building materials, streetscape improvements and landscaping (the “Guidelines”) and requiring architectural consistency between the residential and commercial buildings developed on the Property. Once approved, the Guidelines may not be amended without the approval of the Director of Planning. All building plans and building elevations shall be generally consistent with the Guidelines. Prior to the issuance of final site plan approval for each building on the Property, architectural plans for such building shall be submitted to the Director of Planning for his review for general consistency with the Guidelines. The Director of Planning shall review and either approve or provide written comments settings forth changes necessary to obtain approval within 30 days of the date of submission of the plans in question. All buildings shall be constructed in accordance with the approved plans. In the case of plans that will be used on more than one building, Director of Planning approval need only be obtained for the initial building permit.

8. Community Character Corridor Buffer. The Community Character Corridor buffer along Route 199 shall have an average width of at least 50 feet. A landscaping plan for this buffer shall be shown as part of the initial building site plan, or shall be submitted as a separate plan concurrent with the initial building site plan. The buffers shall contain enhanced landscaping in accordance with the County's Enhanced Landscaping Policy as adopted April 9, 2013 and shall be consistent with the narrative description and conceptual cross-section of the buffer submitted with the Application for Rezoning. The landscaping shown on the approved landscape plan(s) shall be installed or its installation during the next appropriate growing season bonded in form approved by the County Attorney prior to issuance of a certificate of occupancy for the initial building on the Property, unless other arrangements are approved by the Planning Director, or his designee, in writing.

9. Condominium Owners Association. There shall be organized a condominium owner's association or associations (the "Association") as required by the Virginia Condominium Act (the "Act") in accordance with Virginia law in which all residential condominium unit owners in the Property, by virtue of their property ownership, shall be members.

10. Private Streets. Any and all streets on the Property may be private. Pursuant to Section 24-528 of the Zoning Ordinance, private streets within the Property shall be maintained by the Association. The condominium instruments shall require the Association to create, fund and maintain a reserve for capital components, including private roads, in amounts determined in accordance with the Act and conduct capital reserve studies and adjust such reserves in accordance with the Act.

11. Community Spaces. The clubhouse and pool, two welcome parks, pocket park and community park shown on the Master Plan shall be installed prior to the County being obligated

to issue certificates of occupancy for more than 48 residential units on the Property. The Public Square shown on the Master Plan shall be installed prior to the County being obligated to issue certificates of occupancy for the first building in the area designated on the Master Plan as M (EGC).

12. Bus Pull-Off/Shelter. Prior to final development plan approval for development of the Property, Owner shall have consulted with Williamsburg Area Transit Authority (“WATA”) regarding the need for a bus pull-off area and a bus shelter on the Property. If the Williamsburg Area Transit Authority determines there is a need for a bus pull-off area and a bus shelter on the Property, such bus pull-off area and bus stop shelter shall be shown on the development plans for the Property in a location approved by Owner and WATA. Such bus pull-off area and bus stop shelter shall be installed prior to the County being obligated to issue certificates of occupancy for more than 48 residential units on the Property.

13. Severability. In the event that any clause, sentence, paragraph, section or subsection of these Proffers shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States, or if the application thereof to any owner of any portion of the Property or to any government agency is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof, or the specific application thereof directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or provision hereof.

14. Successors and Assigns. These Proffers shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors and/or assigns.

WITNESS the following signature.

UNIVERSITY SQUARE ASSOCIATES

By: 

Title: Partner

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

The foregoing instrument was acknowledged before me this 15 day of October, 2014, by Frank R. Spadea as Partner of UNIVERSITY SQUARE ASSOCIATES, a Virginia general partnership, on behalf of the partnership.


NOTARY PUBLIC

HEIDI MARIE MACEMORE
NOTARY PUBLIC
REGISTRATION # 7562623
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
APRIL 30, 2017

My commission expires: April 30, 2017
Registration No.: 7562623

Schedule A

Property Description

Those certain parcels or lots of land located in James City County, Virginia shown and set out as (i) "New Parcel 25," "New Parcel 26," "New Parcel 27," "New Parcel 28," and "New Parcel 29" on the plat entitled "PLAT OF RESUBDIVISION AND LOT LINE EXTINGUISHMENT SHOWING NEW PARCELS 2, 24-29, WILLIAMSBURG CROSSING" made by AES Consulting Engineers dated November 2, 1999 which plat is recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City in James City Plat Book 75 at page 92 and (ii) "Residual Parcel 20" on the plat entitled "RESUBDIVISION OF PARCEL 20, WILLIAMSBURG CROSSING" made by Langley and McDonald, P.C. and dated July 30, 1997, which plat is recorded in the aforesaid Clerk's Office in James City Plat Book 67 at page 37.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 6-2-2013
at 8:51 AM/PM. The taxes imposed by Virginia Code
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.
STATE TAX LOCAL TAX ADDITIONAL TAX
\$ _____ \$ _____ \$ _____
TESTE: BETSY B. WOOLRIDGE, CLERK
BY: Betsy B. Woolridge Clerk



OFFICIAL RECEIPT
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT COURT
5201 MONTICELLO AVE SUITE 6
WILLIAMSBURG, VA 23188
757-564-2242

DEED RECEIPT

DATE: 06/02/15 TIME: 08:51:39 ACCOUNT: 830CLR150010679 RECEIPT: 15000017864
CASHIER: AES REG: WD19 TYPE: OTHER PAYMENT: FULL PAYMENT
INSTRUMENT : 150010679 BOOK: PAGE: RECORDED: 06/02/15 AT 08:51
GRANTOR: UNIVERSITY SQUARE ASSOCIATES EX: N LOC: CO
GRANTEE: UNIVERSITY SQUARE ASSOCIATES EX: N PCT: 100%
AND ADDRESS : N/A N/A, XX. 00000
RECEIVED OF : UNIVERSITY SQUARE ASSOCIATES DATE OF DEED: 10/15/14
: \$.00
DESCRIPTION 1: SIX PARCELS JAMES CITY COUNTY PAGES: 0 OP: 0
2: NAMES: 0
CONSIDERATION: .00 A/VAL: .00 MAP:
PIN:
000 ** ZERO PAYMENT ** .00
TENDERED : .00
AMOUNT PAID: .00
CHANGE AMT : .00

CLERK OF COURT: BETSY B. WOOLRIDGE

PAYOR'S COPY
RECEIPT COPY 1 OF 2

Tax Parcels: 4812200020, 4812200025, 4812200026, 4812200027, 4812200028 and 4812200029

Prepared By: Vernon M. Geddy, III, Esquire (VSB No: 21902)
Geddy, Harris, Franck & Hickman
1177 Jamestown Road
Williamsburg, VA 2318

Return to: James City County Attorney's Office
101-C Mounts Bay Road
Williamsburg, Virginia 23185

FIRST AMENDMENT TO PROFFERS

This First Amendment to Proffers is made this 21th day of February, 2016 by UNIVERSITY SQUARE ASSOCIATES, a Virginia general partnership (together with its successors in title and assigns, the "Owner"), to be indexed as "Grantor." James City County, Virginia shall be indexed as "Grantee."

RECITALS

A. Owner is the owner of certain real property (the "Property") in James City County, Virginia now zoned MU – Mixed Use, and subject to Proffers dated October 15, 2014, which Proffers are recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City as Instrument No. 150010679 (the "Existing Proffers"). The Property is more particularly described in the Existing Proffers.

B. Owner desires to amend and restate Condition 2 of the Existing Proffers as set forth below. All capitalized terms used herein not otherwise defined shall have the definition set forth in the Existing Proffers.

AMENDMENTS TO CONDITIONS

1. Condition 2 of the Existing Proffers is hereby deleted and replaced in its entirety with the following;

2. Housing Opportunities. All of the dwelling units permitted on the Property shall be offered for sale or made available for rent at prices determined in accordance with the Housing Opportunities Policy and Housing Opportunities Policy Guide adopted by the Board of Supervisors on November 27, 2012 as provided below for units offered for sale:

Table 1 – 190 units on Parcels 4812200020 and 4812200029

Tier	Percent of dwelling units required	Number of units
30% - 60%	16%	30
61% - 80%	64%	120
81% - 120%	20%	40

Table 2 – 14 units on Parcels 4812200025, 4812200026, 4812200027 and 4812200028

Tier	Percent of dwelling units required	Number of units
30% - 60%	16%	2
61% - 80%	64%	9
81% - 120%	20%	3

The forgoing affordable/workforce dwelling units shall be provided consistent with the criteria established by the Housing Opportunities Policy adopted by the Board of Supervisors on November 27, 2012 and in effect as of the date of approval of the requested rezoning to provide affordable and workforce housing opportunities at different price ranges to achieve the greater housing diversity goal of the 2035 Comprehensive Plan; provided, however, that if the County amends the Housing Opportunities Policy as in effect as of the date of approval of the requested rezoning to increase the targeted income ranges or otherwise make the Policy otherwise less

burdensome on the Owner, the Owner shall only be required to comply with the amended Policy.

2. Except as specifically amended herein, the Existing Proffers remain unchanged and in full force and effect.

[remainder of page intentionally left blank – signatures appear on following page]

WITNESS the following signature.

UNIVERSITY SQUARE ASSOCIATES

By: 

Title: PARTNER

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

The foregoing instrument was acknowledged before me this 24 day of February, 2016, by Frank R. Spoden as Partner of UNIVERSITY SQUARE ASSOCIATES, a Virginia general partnership, on behalf of the partnership.



NOTARY PUBLIC

My commission expires: April 30, 2017
Registration No.: 7562623

HEIDI MARIE MACEMORE
NOTARY PUBLIC
REGISTRATION # 7562623
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
APRIL 30, 2017

AGENDA ITEM NO. I.5.**ITEM SUMMARY**

DATE: 4/12/2016

TO: The Board of Supervisors

FROM: Jose-Ricardo L. Ribeiro, Planner II

SUBJECT: Case No. Z-0002-2016. The Village at Candle Station Proffer Amendment

ATTACHMENTS:

	Description	Type
▣	Memorandum	Staff Report
▣	Resolution	Resolution
▣	Location Map	Exhibit
▣	Minutes	Minutes
▣	Narrative	Exhibit
▣	Adopted Proffer	Exhibit
▣	Proffer Amendment - Signed	Exhibit

REVIEWERS:

Department	Reviewer	Action	Date
Planning	Holt, Paul	Approved	3/25/2016 - 3:08 PM
Development Management	Purse, Jason	Approved	3/25/2016 - 3:48 PM
Publication Management	Burcham, Nan	Approved	3/25/2016 - 4:31 PM
Legal Review	Kinsman, Adam	Approved	3/25/2016 - 4:31 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 4:50 PM
Board Secretary	Hill, Bryan	Approved	3/25/2016 - 5:13 PM
Board Secretary	Fellows, Teresa	Approved	3/25/2016 - 5:17 PM

MEMORANDUM

DATE: April 12, 2016

TO: The Board of Supervisors

FROM: Jose Ribeiro, Senior Planner, II

SUBJECT: Case No. Z-0002-2016. The Village at Candle Station Proffer Amendment

On June 9, 2015, the Board of Supervisors rezoned approximately 65 acres of land adjacent to the Candle Factory commercial complex, CVS and Food Lion stores, from MU, Mixed Use and M-1, Limited Business/Industrial, to PUD, Planned Unit Development, with proffers. The Village at Candle Station was approved for construction for up to 208 dwelling units and self storage units. The development will consist of 66 single-family homes and 142 townhomes.

Mr. Tim Trant, of Kaufman and Canoles has submitted a request to amend Condition No. 4 of the adopted Proffers, dated April 17, 2015 and prepared by Kaufman and Canoles. During the course of site plan review, staff and the developer realized the proffer language was, in certain respects, inconsistent with the requirements of the Housing Opportunities Policy, adopted by the Board of Supervisors on November 27, 2012. The proposed proffer amendment would align the Proffers with the Housing Opportunities Policy by removing the full narrative of the existing proffers and simply providing that the units shall be consistent with the Housing Opportunities Policy as adopted by the Board of Supervisors. There is no proposed change in the number of affordable/workforce units that will be provided and no other proposed changes to the adopted proffers or master plan.

Section 15.2-2302 of the Code of Virginia (1950), as amended, allows the Board of Supervisors to waive the requirement for a public hearing where such amendments do not affect conditions of use or density. This application does not affect conditions of use or density. As such, the County Attorney's office consulted the Board of Supervisors and the Board voiced no objection to the applicant's request to consider amending these proffers as a consideration item.

At its March 2, 2016 meeting, the Planning Commission recommended approval of this Proffer amendment by a vote of 7-0. There have been no proposed changes to the application since the Planning Commission meeting.

Staff Recommendation

Staff finds that the requested Proffer amendment would not negatively impact the development and that new language will ensure consistency with the Board policy on affordable housing. Staff, therefore recommends that the Board of Supervisors recommend approval of the proposed Proffer amendment to the Board of Supervisors.

JR/nb
Z-02-16CndleStnAmd-mem

Attachments:

1. Resolution
2. Location Map
3. Unapproved Minutes from the March 2, 2016, meeting of the Planning Commission
4. Narrative accompanying proffer amendment application
5. Adopted Proffers dated April 17, 2015 (abridged)
6. Proffers dated February 5, 2016

RESOLUTION

CASE NO. Z-0002-2016. THE VILLAGE AT CANDLE STATION PROFFER AMENDMENT

WHEREAS, Mr. Timothy Trant of Kaufman and Canoles has applied for a change in zoning for +/-64.45 acres owned by Candle Development, LLC, Candle Factory Building LLC, NVR, Inc, Poplar Creek, LLC, and John and Judith Barnett, from PUD, Planned Unit Development with proffers to PUD, Planned Unit Development with amended proffers; and

WHEREAS, the properties subject to the application can be further identified as James City County Real Estate Tax Map Parcel Nos.:

2321100001D, 2321100001E, 2321100003A, 2321100003B, 2321100002, 2321100003, 2321100001, 2321100004, 2321100005, 2321100006, 2321100007, 2321100008, 2321100009, 2321100023, 2321100024, 2321100025, 2321100026, 2321100027, 2321100028, 2321100030, 2321100058, 2321100059, 2321100060, 2321100061, 2321100062, 2321100063, 2321100064, 2321100065, 2321100066, 2321100067, 2321100068, 2321100069, 2321100070, 2321100071, 2321100072, 2321100073, 2321100074, 2321100075, 2321100076, 2321100077, 2321100124, 2321100125, 2321100126, 2321100127, 2321100128, 2321100129, 2321100130, 2321100131, 2321100132, 2321100133, 2321100134, 2321100135, 2321100136, 2321100137, 2321100138, 2321100139, 2321100140, 2321100141, 2321100142, 2321100143, 2321100144, 2321100145, 2321100146, 2321100147, 2321100148, 2321100149, 2321100150, 2321100151, 2321100029, 2321100034, 2321100035, 2321100036, 2321100037, 2321100041, 2321100043, 2321100045 (together, the "Property"); and

WHEREAS, on June 23, 2015, the Board of Supervisors approved Case No. Z-0008-2014/MP-0004-2014, which rezoned the Property from MU, Mixed Use with proffers, and M-1, Limited Business/Industrial, to PUD, Planned Unit Development with proffers (the "Existing Proffers"); and

WHEREAS, Case No. Z-0002-2016 proposed to amend Condition No. 4, Housing Opportunities, from the existing proffers, which does not affect the use or density of the Property, and retain all other proffers contained in the Existing Proffers; and

WHEREAS, in accordance with Section 24-20 of the County Code and § 15.2-2302 of the Code of Virginia, which allow for waiver of public hearings for amendment of conditions that do not affect use or density, the Planning Commission and Board of Supervisors have considered Case No. Z-0002-2016; and

WHEREAS, the Planning Commission of James City County, Virginia, following its consideration on March 2, 2016, recommended approval of Case No. Z-0002-2016, by a vote of 7 to 0; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds Case No. Z-0002-2016 to be required by public necessity, convenience, general welfare and good zoning practice.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Case No. Z-0002-2016 as described herein and accept the amended voluntary proffers.

Michael J. Hipple
Chairman, Board of Supervisors

ATTEST:

VOTES

AYE NAY ABSTAIN

MCGLENNON

LARSON

ONIZUK

SADLER

HIPPLE

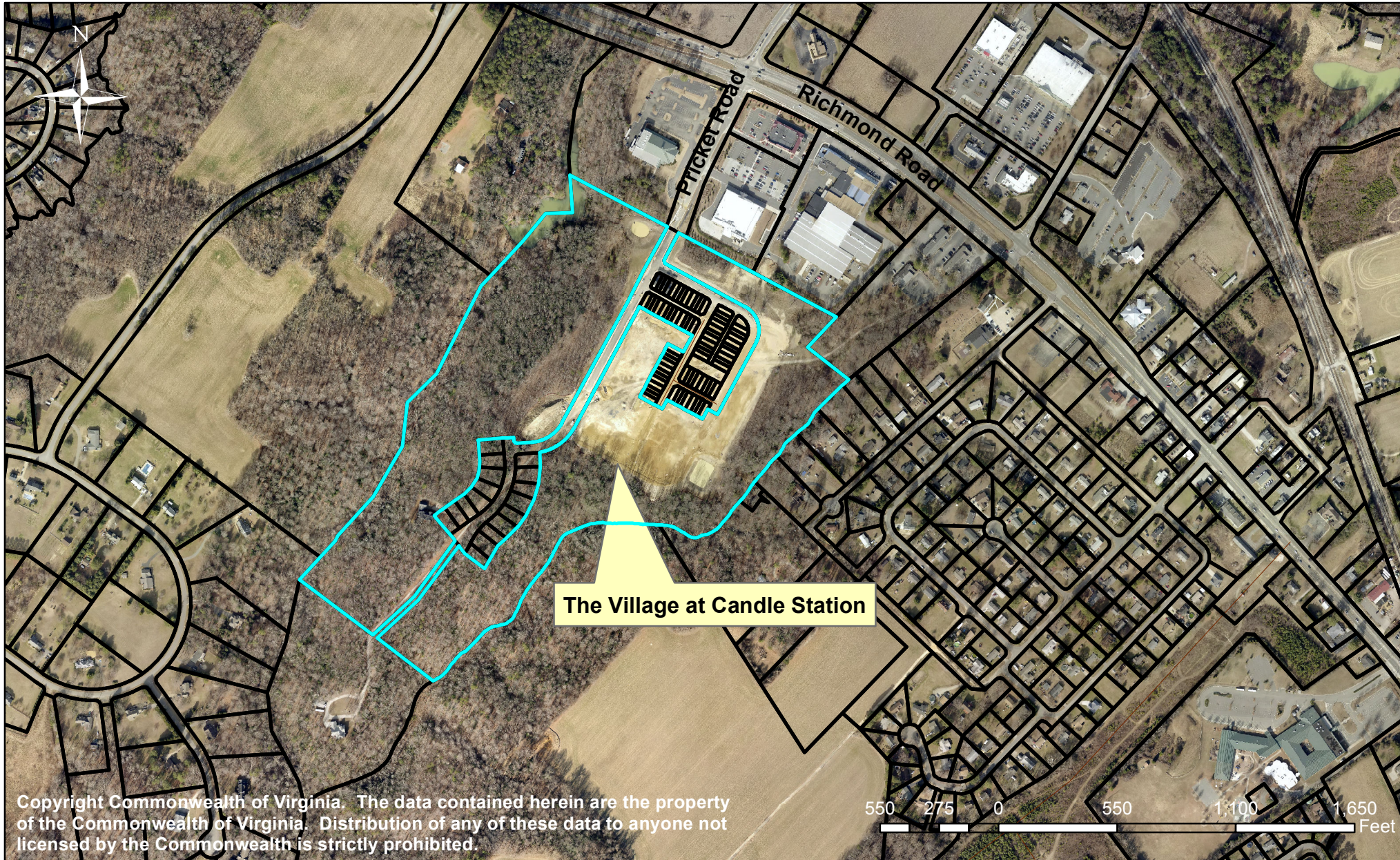
Bryan J. Hill
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of April, 2016.

Z-02-16CndleStnAmd-res

JCC-Z-0002-2016

The Village at Candle Station



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550 275 0 550 1,100 1,650 Feet

Unapproved Minutes of the March 2, 2016 Planning Commission Meeting

Case No. Z-0002-2016, The Village at Candle Station Proffer Amendment

Mr. José Ribeiro, Senior Planner II, stated that Tim Trant, of Kaufman and Canoles has submitted a request to amend Proffer No. 4 of the adopted Proffers for the Village at Candle Station. Mr. Ribeiro stated that the Village at Candle Station was approved for construction for up to 208 dwelling units and self-storage units. Mr. Ribeiro stated that during the course of site plan review, staff and the developer realized the proffer language was, in certain respects, inconsistent with the requirements of the Housing Opportunities Policy. Mr. Ribeiro stated that the proposed proffer amendment would align the Proffers with the Housing Opportunities Policy by removing the full narrative of the existing proffers and simply providing that the units shall be provided consistent with the Housing Opportunities Policy as adopted by the Board of Supervisors. Mr. Ribeiro stated that there will be no change in the number of affordable/workforce units that will be provided and no other proposed changes to the adopted proffers or master plan.

Mr. Ribeiro stated that staff finds that the proposed amendment would not negatively impact the development and would ensure consistency with the Board's policy on affordable housing. Mr. Ribeiro stated that staff recommends that the Planning Commission recommend approval of the proffer amendment to the Board of Supervisors.

Ms. Bledsoe requested confirmation that this amendment is identical to the previous case.

Mr. Ribeiro confirmed.

Mr. Richardson inquired whether the language in the proffers was too specific and the amendment would allow for more flexibility to conform with the Housing Opportunities Policy.

Mr. Ribeiro confirmed that the proffer language was much more specific than the Board's policy.

Mr. Wright moved to recommend approval of the proffer amendment.

On a roll call vote the Commission voted to recommend approval of Z-0002-2016, The Village at Candle Station Proffer Amendment (7-0).

Narrative to Proffer
Amendment Application

The applicant, Candle Development, LLC is applying to amend and restate Condition 4 of the Proffers dated April 27, 2015 made by Candle Development, LLC. Following the rezoning approval, the applicant and its home builder partner have had extensive discussions with the Planning Department and the Department of Housing and Community Development regarding the implementation of Condition 4 of the Proffers and the County's Housing Opportunities Policy. During the course of these discussions, all the parties realized that the language of Condition 4 was complicating compliance with the requirements of the Housing Opportunities Policy as properly applied in this case. For example, the language of Condition 4 requires the use of a soft second deed of trust in the sale of a unit. Since most of the homes (and all of those being marketed for workforce housing) have a market price consistent with the Housing Opportunities Policy there is no difference or subsidy between the market price of a unit and the offering price to be secured by a soft second deed of trust so it is impossible to comply with this requirement. The applicant, the Planning Department and the Department of Housing and Community Development all agree that it is appropriate to amend Condition 4 of the proffers to simply provide that all of the units will be provided for sale or rent in the percentages specified in accordance with the Housing Opportunities Policy. This is the approach taken by the County itself in its proffers at the Wellington development. The Applicant was and remains committed to providing quality housing at The Village at Candle Station at prices and on terms consistent with the Housing Opportunities Policy.

(a) The Owner shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority ("JCSA") and for, subsequently, enforcing such standards. The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of drought resistant native and other adopted low water use landscaping materials and warm season turf on lots and common areas in areas with appropriate growing conditions for such turf and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. The standards shall be submitted to JCSA for review and approval for consistency with this Proffer prior to final approval by the County of the first site plan for development of any portion of the Property.

(b) In the design phase, Owner shall take into consideration the design of stormwater systems that can be used to collect stormwater for outdoor water use for the entire development. If the Owner desires to have outdoor watering of common areas on the Property it shall provide water for irrigation utilizing surface water collection from the surface water ponds or other rainwater collection devices and shall not use JCSA water or well water for irrigation purposes, except as provided below. This requirement prohibiting the use of well water may be waived or modified by the General Manager of JCSA if the Owner demonstrates to the JCSA General Manager that there is insufficient water for irrigation in the surface water impoundments, and the Owner may apply for a waiver for a shallow (less than 100 feet) well to supplement the surface water impoundments.

4. **Housing Opportunities.** Development of the Property shall be done in a manner

consistent with the criteria established by the Housing Opportunities Policy adopted by the Board of Supervisors on November 27, 2012 and in effect as of the date of approval of the requested rezoning (the "HOP") to provide affordable and workforce housing opportunities at different price ranges to achieve the greater housing diversity goal of the 2009 Comprehensive Plan; provided, however, that affordable and workforce Dwelling Units provided may be located anywhere within the Property in areas designated for residential development. With respect to affordable and workforce Dwelling Units provided pursuant to this proffer, a soft second mortgage meeting the requirements of the HOP or other instrument approved in advance by the County Attorney shall be executed by the initial purchaser thereof and recorded against the Dwelling Unit to assure the Dwelling Unit continues to meet the requirements of the HOP. In addition, each deed to an affordable or workforce for sale Dwelling Unit shall include a right of first refusal in favor of the County in the event a subsequent owner desires to sell the Dwelling Unit. All affordable or workforce Dwelling Units provided pursuant to this Proffer shall be sold to persons whose incomes fall within the qualifying income ranges used to determine the prices under the HOP.

5. Cash Contributions for Community Impacts.

(a) A contribution of \$19,505.34 for each single-family detached Dwelling Unit and of \$5,550.16 for each single-family attached Dwelling Unit constructed on the Property shall be made to the County for the mitigation of impacts on County schools.

(b) A contribution of \$1,099 for each Dwelling Unit constructed on the Property shall be made to the County for the mitigation of impacts on emergency services, off-site road improvements, future water needs, library uses, and public use sites.

THE VILLAGE AT CANDLE STATION

PROFFER AMENDMENT

THIS PROFFER AMENDMENT is made this ____ day of March, 2016 by CANDLE DEVELOPMENT, LLC, a Virginia limited liability company (together with its successors in title and assigns, the "Candle"), CANDLE FACTORY BUILDING, LLC, a Virginia limited liability company ("CFB"), POPLAR CREEK, LLC, a Virginia limited liability company ("PC"), NVR, INC., a Virginia corporation, doing business as Ryan Homes ("NVR"), and JOHN B. BARNETT, JR. and JUDITH BARNETT, individually and as Trustees of the John B. Barnett Jr. and Judith L. Barnett Living Trust dated June 2, 2011 (the "Barnetts") (Candle, CFB, PC, NVR, and the Barnetts, collectively, referred to herein as "Owners").

RECITALS

A. Candle is the developer of that certain project commonly known as the Village at Candle Station and located in the Norge area of James City County (the "Project").

B. Owners are the owners of the remaining undeveloped portions of the Project.

B. The Project is zoned Planned Unit Development with proffers, which proffers are dated April 27, 2015, and are recorded in the Circuit Court Clerk's Office for James City County, Virginia as Instrument Number 150013720 (the "Proffers").

C. Owners desire to amend and restate Section 4 of the Proffers as more particularly set forth below.

NOW, THEREFORE, pursuant to Section 15.2-2302 of the Code of Virginia, 1950, as amended (the "Virginia Code"), and the County's Zoning Ordinance, Owners agrees that it shall meet and comply with the Proffers, as amended and restated below, in developing the Property.

AMENDED AND RESTATED CONDITION

Section 4 of the Proffers is hereby amended and restated to read as follows:

4. **Housing Opportunities.** Development of the Property shall be done in a manner consistent with the criteria established by the Housing Opportunities Policy adopted by the Board of Supervisors on November 27, 2012 to provide affordable and workforce housing opportunities at different price ranges to achieve the greater housing diversity goal described in the Comprehensive Plan; provided, however, that if the County amends the Housing Opportunities Policy as in effect as of the date of approval of the requested rezoning to increase the targeted income ranges or otherwise make the Policy less burdensome on Owners, the Owners shall only be required to comply with the Policy as so amended.

[Signatures to appear on following pages]

[Signature Page to Proffer Amendment]

WITNESS the following signatures.

CANDLE DEVELOPMENT, LLC

By: [Signature]
Pete Henderson, Manager

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF York, to-wit:

The foregoing instrument was acknowledged this 28th day of March, 2016,
by Pete Henderson as manager of Candle Development, LLC.

[Signature]
NOTARY PUBLIC

My commission expires: 10/31/16
Registration No.: 183594



[Signature Page to Proffer Amendment]

CANDLE FACTORY BUILDING, LLC

By: [Signature]
Pete Henderson, Manager

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF York, to-wit:

The foregoing instrument was acknowledged this 28th day of March, 2016,
by Pete Henderson as manager of Candle Factory Building, LLC.

[Signature]
NOTARY PUBLIC

My commission expires: 10/31/16
Registration No.: 183594



[Signature Page to Proffer Amendment]

POPLAR CREEK, LLC

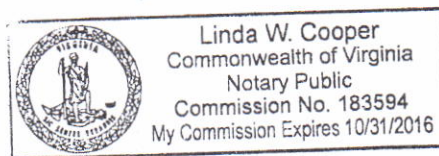
By: [Signature]
Pete Henderson, Manager

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF York, to-wit:

The foregoing instrument was acknowledged this 28th day of March, 2016,
by Pete Henderson as manager of Poplar Creek, LLC.

[Signature]
NOTARY PUBLIC

My commission expires: 10/31/16
Registration No.: 183594



[Signature Page to Proffer Amendment]

NVR, INC.

By: _____

Name: _____

Title: _____

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF James City, to-wit:

The foregoing instrument was acknowledged this 25 day of March,
by Jeff Ambrose as Vice President of NVR, Inc.

Kelly Lynn Wroten

NOTARY PUBLIC

My commission expires: 5/31/19.

Registration No.: 7149229.

Kelly Lynn Wroten
NOTARY PUBLIC 7149229
Commonwealth of Virginia
My Commission Expires May 31, 2019

[Signature Page to Proffer Amendment]

John B. Barnett Jr.

John B. Barnett, Jr.

John B. Barnett Jr.

John B. Barnett, Jr., Trustee

Judith Barnett

Judith Barnett

Judith Barnett, Trustee

Judith Barnett, Trustee

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF York, to-wit:

The foregoing instrument was acknowledged this 29th day of March, 2014,
John B. Barnett, Jr. and Judith Barnett, individually and as trustees of the John B. Barnett, Jr. and
Judith L. Barnett Living Trust dated June 2, 2011.

Linda W. Cooper

NOTARY PUBLIC

My commission expires: 10/31/16

Registration No.: 183594



Linda W. Cooper
Commonwealth of Virginia
Notary Public
Commission No. 183594
My Commission Expires 10/31/2016

EXHIBIT A
Property Description

Parcel D1

All that certain piece, parcel or lot of land situate in James City County, Virginia, set out and described as Parcel D1 as shown on a certain plat entitled "PLAT OF SUBDIVISION ON THE PROPERTY OWNED BY JOHN B. BARNETT JR., POWHATAN DISTRICT, JAMES CITY COUNTY, VIRGINIA" dated April 6, 2006 and made by AES Consulting Engineers of Williamsburg, Virginia, recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia as Instrument No.

and

Parcel E

All that certain piece, parcel or lot of land situate in James City County, Virginia, set out and described as Parcel E as shown on a certain plat entitled "PLAT OF SUBDIVISION & PROPERTY LINE EXTINGUISHMENT BETWEEN THE PROPERTIES OWNED BY JOHN B. BARNETT JR., CHICKASAW, L.L.C. AND BARNETT DEVELOPMENT COMPANY, INC., POWHATAN DISTRICT, JAMES CITY COUNTY, VIRGINIA" dated April 4, 2006 and made by AES Consulting Engineers of Williamsburg, Virginia, recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia as Instrument No. 060013607.

Including, all those certain lots, pieces, or parcels of land lying and being in the County of James City, Virginia, and known and designated as:

Lot Numbers 34 - 57 and the private right-of-ways shown on that certain plat entitled "PLAT OF SUBDIVISION & BOUNDARY LINE EXTINGUISHMENT VILLAGE AT CANDLE STATION PHASE 1, LOTS 34 - 57", made by AES Consulting Engineers, Williamsburg, Virginia, and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia, on September 10, 2014 as Instrument Number 140014744.

Lot Numbers 58 - 77 and 123-151 and the private right-of-ways shown on that certain plat entitled "PLAT OF SUBDIVISION VILLAGE AT CANDLE STATION PHASE 1A, LOTS 58-77 & LOTS 124-151", made by AES Consulting Engineers, Williamsburg, Virginia, and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia, on September 29, 2015 as Instrument Number 150018649.

Lot Numbers 1-9 and 23-30 shown on that certain plat entitled "PLAT OF SUBDIVISION AND BOUNDARY LINE ADJUSTMENT VILLAGE AT CANDLE STATION PHASE 2, LOTS 1-9 & LOTS 23-30", made by AES

Consulting Engineers, Williamsburg, Virginia, and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia, on November 12, 2015 as Instrument Number 150021481.

And

A portion of Parcel A, County Tax Parcel #2321100001A, containing a total of approximately 1.764 acres:

ALL THAT CERTAIN PORTION OF PARCEL "A", TAX MAP PARCEL #(23-2)(11-1A), SITUATE, LYING AND BEING IN THE POWHATAN DISTRICT OF THE COUNTY OF JAMES CITY, VIRGINIA, CONTAINING A TOTAL OF 76,820 SQUARE FEET± OR 1.764± ACRES MORE OR LESS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF RICHMOND ROAD, U. S. ROUTE #60; A CORNER OF PARCEL "B", NOW OR FORMERLY OWNED BY CROSSWALK COMMUNITY CHURCH, INC., TAX MAP PARCEL #(23-2)(11-1B); THENCE IN A EASTERLY DIRECTION AND ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF RICHMOND ROAD, U. S. ROUTE #60, S70°01'07"E, 573.20' TO A POINT; THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 2824.79' AND AN ARC LENGTH OF 14.83' TO A POINT; THIS BEING THE TRUE POINT OF BEGINNING (P.O.B.) AND THE NORTHWESTERN CORNER OF PARCEL "A" OF THE PROPERTY DESCRIBED HEREON.

THENCE FROM SAID TRUE POINT OF BEGINNING, SAID POINT BEING ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF RICHMOND ROAD, U. S. ROUTE #60, A CORNER TO PARCEL "A" OF THE PROPERTY DESCRIBED HEREON AND PARCEL "E" OF THE LANDS NOW OR FORMERLY OWNED BY CANDLE DEVELOPMENT, LLC; THENCE CONTINUING ALONG THE RIGHT-OF-WAY LINE OF RICHMOND ROAD, U. S. ROUTE #60, ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 2824.79' AND AN ARC LENGTH OF 25.14' TO A POINT; A CORNER TO PARCEL "A" OF THE PROPERTY DESCRIBED HEREON AND PARCEL "D" OF THE LANDS NOW OR FORMERLY OWNED BY CANDLE DEVELOPMENT, LLC; THENCE LEAVING SAID CORNER AND RIGHT-OF-WAY LINE OF RICHMOND ROAD, U. S. ROUTE #60, S26° 33'06"W, 399.43' TO A POINT; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 583.96' AND AN ARC LENGTH OF 71.64' TO A POINT; THENCE S19° 31'22"W, 247.60' TO A POINT, THENCE S36° 52'20"W, 2358.01' TO A POINT; THENCE N51° 43'03"E, 25.01' TO A POINT; THENCE N36° 52'20"E, 2353.58' TO A POINT; THENCE N19° 31'22"E, 243.78' TO A POINT; THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 608.96' AND AN ARC LENGTH OF 74.71' TO A POINT; THENCE N26° 33'06"E, 396.79' TO THE AFORESAID TRUE POINT OF BEGINNING;

THAT PORTION OF PARCEL "A" AND THE PROPERTY DESCRIBED HEREON IS MORE PARTICULARLY SHOWN ON THAT CERTAIN PLAT ENTITLED, "PLAT OF SUBDIVISION & PROPERTY LINE EXTINGUISHMENT BETWEEN THE PROPERTIES OF JOHN B. BARNETT, JR., CHICKASAW, L.L.C. AND BARNETT DEVELOPMENT COMPANY, INC.", DATED APRIL 4, 2006, REVISED MAY 5, 2006 AND DULY RECORDED AT THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE COUNTY OF JAMES CITY, VIRGINIA AS INSTRUMENT #060013607.

And

That certain portion of James City County Tax Parcel 2321100001C to be made a part of Tax Parcel 2321100001D via boundary line adjustment as more particularly shown on the Master Plan.

And

That certain portion of James City County Tax Parcel 2321100002D to be made a part of Tax Parcel 2321100001D via boundary line adjustment as more particularly shown on the Master Plan.

LESS AND EXCEPT FROM ALL OF THE ABOVE, Lots 38-40, 42, 44, and 46-57 shown on that certain plat entitled "PLAT OF SUBDIVISION & BOUNDARY LINE EXTINGUISHMENT VILLAGE AT CANDLE STATION PHASE 1, LOTS 34 - 57", made by AES Consulting Engineers, Williamsburg, Virginia, and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia, on September 10, 2014 as Instrument Number 140014744.

ITEM SUMMARY

DATE: 4/12/2016

TO: The Board of Supervisors

FROM: Bryan J. Hill, County Administrator

SUBJECT: County Administrator's Report

ATTACHMENTS:

	Description	Type
▣	CA Report	Cover Memo

REVIEWERS:

Department	Reviewer	Action	Date
Board Secretary	Fellows, Teresa	Approved	3/29/2016 - 9:10 AM

M E M O R A N D U M

DATE: April 12, 2016

TO: The Board of Supervisors

FROM: Bryan J. Hill, County Administrator

SUBJECT: County Administrator's Report

The following is a summary of activities that took place March 16, 2016 through April 5, 2016:

March 17, 2016 (Thursday)

- Attended Hampton Roads Planning District Commission, Hampton Roads Transportation Planning Organization and Hampton Roads Transportation Accountability Commission meetings
- Met with Paul Holt, Planning Director
- Met with Sue Mellen, FMS Director

March 18, 2016 (Friday)

- Met with Brett Lewis, Video Specialist
- Visited James City Service Authority
- Met with Brad Rinehimer, Police Chief
- Budget meeting with FMS staff
- Met with Doug Powell, JCSA Manager
- Met with Phil Tahey, SPAG member
- Attended and chaperoned Toano Middle School Dance

March 21, 2016 (Monday)

- Attended Historic Triangle Collaborative meeting
- Attended Williamsburg Winery's Business Plan meeting
- Attended a reception for Carl Lum, Busch Gardens Park President
- Attended Planning Commission meeting

March 22, 2016 (Tuesday)

- Attended Agenda meeting
- Met with David Cromwell, Busch Gardens Park President
- Met with Paul Holt, Planning Director and Sue Mellen, FMS Director
- Met with Neil Morgan, County Administrator of York County and Marvin Collins, Williamsburg City Manager
- Attended Board of Supervisors work session
- Attended Board of Supervisors meeting

County Administrator's Report

April 12, 2016

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March 23, 2016 (Wednesday)

- Met with John Horne, General Services Director
- Attended Scratch Bakery ribbon cutting ceremony
- Met with Latara Branch, Civic Engagement Coordinator, Jody Puckett, Communications Director, Sue Mellen, FMS Director, Tara Woodruff, Accounting Director and Stephanie Lahr, Senior Budget and Accounting Specialist

March 24, 2016 (Thursday)

- Visited Matoaka Elementary School student, Hailey Diggs

March 25, 2016 (Friday)

- Attended Coffee with County Administrator, staff event
- Met with Russell Seymour, ED Director
- Met with Jason Purse, Zoning Administrator

March 28, 2016 (Monday)

- Met with Ryan Ashe, Fire Chief
- Met with Sue Mellen, FMS Director
- Met with Angie Gilliam, HR Director

March 29, 2016 (Tuesday)

- Attended James City County Rotary Club, speaking engagement
- Met with supervisor Kevin Onizuk and Jody Puckett, Communications Director; strategic open house discussion
- Met with Russell Seymour, ED Director
- Met with Chris Johnson, Principal Planner
- Attended, Community, Leadership, Service Government Day meeting; speaking engagement
- Attended Child Abuse Prevention candlelight vigil
- Attended casual evening of conversations with Mitchell Reiss

March 30, 2016 (Wednesday)

- Met with supervisor John McGlennon; budget meeting overview
- Attended James City County Strategic Planning public open houses

March 31, 2016 (Thursday)

- Attended Hampton Roads Military and Federal Facilities Alliance with Supervisor Sue Sadler
- Met with Rebecca Vinroot, Community Services Director, Jason Purse, Assistant County Administrator and Paul Holt, Planning Director
- Met with Latara Branch, Civic Engagement Coordinator, Jody Puckett, Communications Director, Renee Dallman, Communications Specialist, Sue Mellen, FMS Director, Tara Woodruff, Accounting Director and Stephanie Lahr, Senior Budget and Accounting Specialist

County Administrator's Report

April 12, 2016

Page 3

April 1, 2016 (Friday)

- Met with Brad Rinehimer, Police Chief
- Attended new employee orientation
- Attended pre-agenda
- Conference call with Chamber, City of Williamsburg and York County; cycling tour

April 2, 2016 (Saturday)

- Attended Reinternment Ceremony for the 17th-century settler at Governor's Land

April 5, 2016 (Tuesday)

- Met with Jody Puckett, Communications Director, Sue Mellen, FMS Director and Stephanie Lahr, Senior Budget and Accounting Specialist
- Conference call; JCSA
- Met with Rossie Carroll, VDOT Williamsburg Residency Administrator

BJH/nb

CARreport041216-mem

ITEM SUMMARY

DATE: 4/12/2016

TO: The Board of Supervisors

FROM: Teresa J. Fellows, Administrative Coordinator

SUBJECT: Adjourn until 9 am on April 22, 2016 for the Joint Meeting with the City and WJCC Schools at the Stryker Building

REVIEWERS:

Department	Reviewer	Action	Date
Board Secretary	Fellows, Teresa	Approved	3/29/2016 - 9:08 AM