

**AGENDA**  
**JAMES CITY COUNTY BOARD OF SUPERVISORS**  
**REGULAR MEETING**  
**COUNTY GOVERNMENT CENTER BOARD ROOM**  
**101 MOUNTS BAY ROAD, WILLIAMSBURG, VA 23185**  
**July 8, 2025**  
**5:00 PM**

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**A. CALL TO ORDER**

**B. ROLL CALL**

**C. MOMENT OF SILENCE**

**D. PLEDGE OF ALLEGIANCE**

**E. PUBLIC COMMENT**

**F. CONSENT CALENDAR**

1. Grant Award - \$45,000 - Opioid Abatement Authority - Kinship Navigator Program Expansion

**G. PUBLIC HEARING(S)**

1. ORD-25-0001. Amendments to the Zoning Ordinance Regarding Sexually Oriented Businesses
2. Sale of a Portion of Property Located at 186 Clark Lane
3. Dominion Solar Project Ground Lease Agreement

**H. BOARD CONSIDERATION(S)**

**I. BOARD REQUESTS AND DIRECTIVES**

**J. REPORTS OF THE COUNTY ADMINISTRATOR**

**K. CLOSED SESSION**

1. Discussion of the award of a public contract involving the expenditure of public funds, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Section 2.2-3711(A)(29) of the Code of Virginia, and pertaining to the contract for the joint operation of schools between the County and the City of Williamsburg.
2. Consideration of a personnel matter, the appointment of individuals to County Boards and/or Commissions, pursuant to Section 2.2-3711 (A)(1) of the Code of Virginia
  - a. Appointments - Virginia Peninsula Community College Board
  - b. Appointments - Historical Commission

c. Appointments - Stormwater Program Advisory Committee

3. Certification of Closed Session

**L. ADJOURNMENT**

1. Adjourn until 1 pm on July 22, 2025 for the Business Meeting

## MEMORANDUM

DATE: July 8, 2025

TO: The Board of Supervisors

FROM: Lynette Diaz, Assistant Director of Social Services

SUBJECT: Grant Award - \$45,000 - Opioid Abatement Authority - Kinship Navigator Program Expansion

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James City County Department of Social Services (JCC DSS) has been chosen as an awardee of the Opioid Abatement Authority (OAA) - Kinship Navigator Program Expansion funds in the amount of \$45,000 by the Virginia OAA and the Virginia DSS. These 100% reimbursable funds are being made available to expand the current Fiscal Year (FY) 2025 Kinship Navigator Program grant award through September 30, 2025.

Parental substance abuse disorders are often one of the reasons for removing children from their home; in many cases extended family members (kin) or friends (fictive kin) assume guardianship of these children. Kinship Navigators provide support to kin or fictive kin who are acting as guardians or care providers for these children. The Kinship Navigator Program is a regional program that provides assistance to kinship caregivers who are not involved in the foster care system. The Kinship Navigator directly connects kinship caregivers to services to meet the needs of the children they are raising and to promote effective partnerships among public and private agencies to ensure kinship caregiver families are adequately served throughout the catchment area of James City County, the City of Williamsburg, York County, and the City of Poquoson. During the first two quarters of FY25, this program has served 14 caregivers and 10 children. Seven families have been impacted by opioid or substance use disorder.

The expansion funds will support caregivers and children who have been specifically impacted by substance use disorder by providing direct supports through enrollments into recreation and/or therapeutic activities for the children, and payments for childcare or other respite providers. Funding will also assist families with concrete supports such as household expenses related to the care of the children, including rental assistance/deposits, utilities, transportation, clothing, bedding, and medication/medical care, not included in health coverage.

In addition, the funding will provide the regional Kinship Council the opportunity to host an awareness event during Kinship Care Awareness Month, in partnership with the Historic Triangle Drug Prevention Coalition. The funding also provides support for staff professional development as it relates to the implementation of the Washington State Kinship Navigator model, which is an evidence-based program.

Staff respectfully requests that the Board accept the allocation in the amount of \$45,000.

LD/md  
GA-OpAbAuth-KNPE-mem

Attachment

## RESOLUTION

### GRANT AWARD - \$45,000 - OPIOID ABATEMENT AUTHORITY -

#### KINSHIP NAVIGATOR PROGRAM EXPANSION

WHEREAS, James City County Department of Social Services (JCC DSS) has been chosen as an awardee of the Opioid Abatement Authority (OAA) - Kinship Navigator Program Expansion funds in the amount of \$45,000 by the Virginia OAA and the Virginia DSS; and

WHEREAS, these one-time 100% reimbursable funds are being made available to enhance Kinship Navigator programs to expand the current Fiscal Year 2025 Kinship Navigator Program grant award through September 30, 2025, to support caregivers and children who have been specifically impacted by substance use disorder, provide support for community awareness events, and support for staff professional development.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the acceptance of the grant award and the following appropriation amendment to the Virginia Public Assistance Fund.

#### Revenue:

|                       |                 |
|-----------------------|-----------------|
| From the Commonwealth | <u>\$45,000</u> |
|-----------------------|-----------------|

#### Expenditure:

|                                       |                 |
|---------------------------------------|-----------------|
| Administration - Staff and Operations | <u>\$45,000</u> |
|---------------------------------------|-----------------|

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James O. Icenhour, Jr.  
Chair, Board of Supervisors

ATTEST:

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Teresa J. Saeed  
Deputy Clerk to the Board

HIPPLE  
NULL  
LARSON  
MCGLENNON  
ICENHOUR

#### VOTES

| <u>AYE</u> | <u>NAY</u> | <u>ABSTAIN</u> | <u>ABSENT</u> |
|------------|------------|----------------|---------------|
| _____      | _____      | _____          | _____         |
| _____      | _____      | _____          | _____         |
| _____      | _____      | _____          | _____         |
| _____      | _____      | _____          | _____         |

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of July, 2025.

GA-OpAbAuth-KNPE-res



## MEMORANDUM

DATE: July 8, 2025

TO: The Board of Supervisors

FROM: Christy H. Parrish, Zoning Administrator

SUBJECT: ORD-25-0001. Amendments to the Zoning Ordinance Regarding Sexually Oriented Businesses

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At its meeting on February 25, 2025, the Board of Supervisors adopted an Initiating Resolution to consider possible amendments to the James City County Zoning Ordinance (the “Ordinance”) to define sexually oriented businesses and to require that sexually oriented businesses obtain a Special Use Permit (“SUP”) in certain districts (Attachment No. 1).

Section 15.2-2280 of the Code of Virginia allows localities to regulate, restrict, permit, and prohibit the use of land, buildings, structures, and other premises. The United States Supreme Court recognizes that adult entertainment has some First Amendment protection as expressive conduct. Localities can generally regulate these types of businesses under their zoning laws as long as the regulations serve a substantial government interest. However, an outright prohibition of sexually oriented businesses would likely fail a legal challenge.

A neighboring locality recently adopted amendments to its Zoning Ordinance to define and address adult business uses (Attachment No. 2). During the process, the neighboring locality collected an inventory of adult-themed businesses in the Tidewater area (Attachment No. 3). These uses include adult entertainment venues, lingerie and adult novelties stores, adult bookstores, and adult video stores.

Currently, sexually oriented businesses (“SBs”) are not identified or defined in the Ordinance. However, the sale of adult-themed books, videos, and other novelties could be classified under the existing retail use. General retail sales are permitted by-right in the R-4, Residential Planned Community; LB, Limited Business; B-1, General Business; M-1, Limited Business/Industrial; PUD, Planned Unit Development; MU, Mixed Use; and EO, Economic Opportunity Districts. Other general uses listed in the Ordinance that could be argued to permit a SB include indoor centers of amusement (arcades, dance clubs) and indoor theaters.

Uses listed in each Zoning District are either permitted by-right or permitted by an SUP. The SUP process allows the Planning Commission and the Board of Supervisors to consider whether a proposed establishment will adversely affect the health, safety, or welfare of persons residing or working on the premises or in the neighborhood; will impair the character of the district or adjacent districts; will be incompatible with the Comprehensive Plan of James City County; will likely reduce or impair the value of buildings or property in surrounding areas; and whether such establishment or use will be in substantial accordance with the general purpose and objectives of the Ordinance.

Staff presented materials to the Policy Committee at its April 24, 2025, meeting. After discussion and the review of the commercial districts’ statement of intent, the Policy Committee voted unanimously to recommend the following proposed changes to the Planning Commission:

- Add a new definition for a Sexually Oriented Business and related terms to Section 24-2, Definitions.
- Amend the existing “retail stores and shop” definition to exclude sexually oriented businesses within Section 24-2, Definitions.
- Add Sexually Oriented Business as a specially permitted use in the LB, Limited Business; B-1, General Business; and M-1, Limited Business/Industrial Districts.

Staff presented the proposed Ordinance at the June 4, 2025, meeting of the Planning Commission. The Planning Commission recommended approval of the Ordinance to the Board of Supervisors by a vote of 7-0.

**Recommendation**

Staff recommends that the Board of Supervisors approve the attached Ordinance.

CHP/md

ORD25-1\_ZOASOBUS-mem

**Attachments:**

1. Ordinance
2. Initiating Resolution
3. York County Zoning Ordinance Amendment
4. Inventory of Adult-themed Businesses in the Tidewater Area
5. Zoning Maps

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 24-2, DEFINITIONS; AND BY AMENDING ARTICLE V, DISTRICTS, BY AMENDING DIVISION 9, LIMITED BUSINESS DISTRICT, LB, SECTION 24-368, USE LIST; DIVISION 10, GENERAL BUSINESS DISTRICT, B-1, SECTION 24-390, USE LIST; AND DIVISION 11, LIMITED BUSINESS/INDUSTRIAL DISTRICT, M-1, SECTION 24-411, USE LIST.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Article I, In General, Section 24-2, Definitions; and by amending Article V, Districts, by amending Division 9, Limited Business District, LB, Section 24-368, Use list; Division 10, General Business District, B-1, Section 24-390, Use list; and Division 11, Limited Business/Industrial District, M-1, Section 24-411, Use list.

**ARTICLE I. IN GENERAL**

**Sec. 24-2. Definitions.**

Retail stores and shops. Buildings for display and sale of merchandise at retail or for the rendering of personal services such as the following which will serve as illustration: Drug store, newsstand, food store, candy shop, milk dispensary, dry goods and notions store, antique shop and gift shop, hardware store, household appliance store, furniture store, florist, optician, music and radio store, tailor shop, barber shop and beauty shop. For purposes of this definition, the following uses are excluded: coal, wood and lumber yards, sexually oriented businesses, vape/smoke shop, and vape/smoke lounge.

Sexually oriented business. Any premises which the public patronizes or to which members are invited or admitted, and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, when such adult entertainment is held, conducted, operated or maintained for a profit, directly or indirectly. A sexually oriented business further includes, without being limited to, any adult store, adult entertainment studio, or any premises that are used as such, whether advertised or represented as an adult entertainment studio, adult-oriented motion picture theatre, exotic dance studio, or any other term of like or similar import; and other activities and land uses which the zoning administrator determines to be materially similar to the activities listed above. The following additional definitions are to be included when determining a sexually oriented business:

Adult store. A commercial establishment which regularly excludes all persons under the age of eighteen (18) from the premises, or a section thereof, because of the sexually explicit nature of the items sold, rented or displayed therein, or which, as one of its principal purposes, offers for sale or rental for any form of consideration adult media or adult novelty items as defined below. For these purposes, to constitute a principal business purpose, an adult store must have at least twenty-five percent (25%) or more of its floor space dedicated to or have twenty-five percent (25%) or more of its stock-in-trade consist of, the sale or rental of any adult media or adult novelty items. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental adult media or adult novelty items and still be categorized as an adult store.

Adult media. Adult media includes, but is not limited to, books, magazines, periodicals, or other printed matter; photographs, films, motion pictures, videos in any format including digital format; computer programs; or other visual representations which are distinguished or characterized by the exhibition or display of specified sexual activities or specified anatomical areas as defined below.

Adult novelty items. Instruments, devices, or paraphernalia which are designed or marketed for use in connection with specified sexual activities. Adult novelty items do not include instruments, devices, or paraphernalia that also constitute contraception.

Adult entertainment. Live performance, display, dancing, or other live entertainment of any type where the entertainment is characterized by an emphasis on specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons; or the showing of films, motion pictures, videotapes, slides, photographs, VHS, CD-ROMs, DVD-ROMs, streaming video, or other media that are characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Specified anatomical areas. Less than completely and opaquely covered human genitals, pubic region, buttock, or female breast below a point immediately above the top of the areola; or human male genitals in a discernibly erect state, even if completely and opaquely covered.

Specified sexual activities. Human genitals in a state of sexual stimulation or arousal; sexual intercourse or sodomy; or fondling or other erotic touching of human genitals, pubic region, buttock or breast, including masturbation.

#### **Division 9. Limited Business District, LB**

##### **Sec. 24-368. Use list.**

Reference section 24-11 for special use permit requirements for certain commercial uses and exemptions.

In the Limited Business District, LB, all buildings or structures to be erected or land to be used shall be for one or more of the following uses:

| Use Category    | Use List                          | Permitted Uses | Specially Permitted Uses |
|-----------------|-----------------------------------|----------------|--------------------------|
| Commercial Uses | <u>Sexually oriented business</u> |                | <u>SUP</u>               |

#### **Division 10. General Business District, B-1**

##### **Sec. 24-390. Use list.**

Reference section 24-11 for special use permit requirements for certain commercial uses and exemptions. In the General Business District, B-1, structures to be erected or land to be used, shall be for one or more of the following uses:

| Use Category    | Use List                          | Permitted Uses | Specially Permitted Uses |
|-----------------|-----------------------------------|----------------|--------------------------|
| Commercial Uses | <u>Sexually oriented business</u> |                | <u>SUP</u>               |

**Division 11. Limited Business/Industrial District, M-1**

**Sec. 24-411. Use list.**

Reference section 24-11 for special use permit requirements for certain commercial uses and exemptions.

In the Limited Business/Industrial District, M-1, buildings to be erected or land to be used shall be for one or more of the following or similar uses:

| Use Category    | Use List                          | Permitted<br>Uses | Specially<br>Permitted<br>Uses |
|-----------------|-----------------------------------|-------------------|--------------------------------|
| Commercial Uses | <u>Sexually oriented business</u> |                   | <u>SUP</u>                     |

\_\_\_\_\_  
James O. Icenhour, Jr.  
Chair, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Teresa J. Saeed  
Deputy Clerk to the Board

HIPPLE  
NULL  
LARSON  
MCGLENNON  
ICENHOUR

VOTES

| <u>AYE</u> | <u>NAY</u> | <u>ABSTAIN</u> | <u>ABSENT</u> |
|------------|------------|----------------|---------------|
| _____      | _____      | _____          | _____         |
| _____      | _____      | _____          | _____         |
| _____      | _____      | _____          | _____         |
| _____      | _____      | _____          | _____         |
| _____      | _____      | _____          | _____         |

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of July,  
2025.

ORD25-1\_ZOASOBUS-ord

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE I, IN GENERAL, SECTION 24-2, DEFINITIONS; AND BY AMENDING ARTICLE V, DISTRICTS, BY AMENDING DIVISION 9, LIMITED BUSINESS DISTRICT, LB, SECTION 24-368, USE LIST; DIVISION 10, GENERAL BUSINESS DISTRICT, B-1, SECTION 24-390, USE LIST; AND DIVISION 11, LIMITED BUSINESS/INDUSTRIAL DISTRICT, M-1, SECTION 24-411, USE LIST.

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**ARTICLE I. IN GENERAL**

**Sec. 24-2. Definitions.**

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Adult entertainment. Live performance, display, dancing, or other live entertainment of any type where the entertainment is characterized by an emphasis on specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons; or the showing of films, motion pictures, videotapes, slides, photographs, VHS, CD-ROMs, DVD-ROMs, streaming video, or other media that are characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Specified anatomical areas. Less than completely and opaquely covered human genitals, pubic region, buttock, or female breast below a point immediately above the top of the areola; or human male genitals in a discernibly erect state, even if completely and opaquely covered.

Specified sexual activities. Human genitals in a state of sexual stimulation or arousal; sexual intercourse or sodomy; or fondling or other erotic touching of human genitals, pubic region, buttock or breast, including masturbation.

#### **Division 9. Limited Business District, LB**

##### **Sec. 24-368. Use list.**

Reference section 24-11 for special use permit requirements for certain commercial uses and exemptions.

In the Limited Business District, LB, all buildings or structures to be erected or land to be used shall be for one or more of the following uses:

| Use Category    | Use List                   | Permitted Uses | Specially Permitted Uses |
|-----------------|----------------------------|----------------|--------------------------|
| Commercial Uses | Sexually oriented business |                | SUP                      |

#### **Division 10. General Business District, B-1**

##### **Sec. 24-390. Use list.**

Reference section 24-11 for special use permit requirements for certain commercial uses and exemptions. In the General Business District, B-1, structures to be erected or land to be used, shall be for one or more of the following uses:

| Use Category    | Use List                   | Permitted Uses | Specially Permitted Uses |
|-----------------|----------------------------|----------------|--------------------------|
| Commercial Uses | Sexually oriented business |                | SUP                      |

**Division 11. Limited Business/Industrial District, M-1**

**Sec. 24-411. Use list.**

Reference section 24-11 for special use permit requirements for certain commercial uses and exemptions.

In the Limited Business/Industrial District, M-1, buildings to be erected or land to be used shall be for one or more of the following or similar uses:

| Use Category    | Use List                   | Permitted<br>Uses | Specially<br>Permitted<br>Uses |
|-----------------|----------------------------|-------------------|--------------------------------|
| Commercial Uses | Sexually oriented business |                   | SUP                            |

ORD25-1\_ZOASOBUS-ord-final



## RESOLUTION

### INITIATION OF CONSIDERATION OF AMENDMENTS TO THE ZONING ORDINANCE

### TO DEFINE SEXUALLY ORIENTED BUSINESSES AND TO LIST THEM AS

### REQUIRING A SPECIAL USE PERMIT

WHEREAS, the Code of Virginia § 15.2-2286 and County Code Section 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, the Board is of the opinion that the public necessity, general welfare, and 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 initiate amendment of the James City County Code, Chapter 24, Zoning, to consider possible amendments to define sexually oriented business and to require a sexually oriented business to obtain a Special Use Permit in certain districts. The Planning Commission shall hold at least one public hearing on the consideration of amendments to said Zoning Ordinances and shall forward its recommendation to the Board of Supervisors in accordance with the law.

  
James O. Icenhour, Jr.  
Chair, Board of Supervisors

ATTEST:

  
Teresa J. Saeed  
Deputy Clerk to the Board

HIPPLE  
NULL  
LARSON  
MCGLENNON  
ICENHOUR

VOTES

| <u>AYE</u>                          | <u>NAY</u>               | <u>ABSTAIN</u>           | <u>ABSENT</u>            |
|-------------------------------------|--------------------------|--------------------------|--------------------------|
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Adopted by the Board of Supervisors of James City County, Virginia, this 25th day of February, 2025.

InitAmdZO-SOBus-res

BOARD OF SUPERVISORS  
COUNTY OF YORK  
YORKTOWN, VIRGINIA

Ordinance

At a regular meeting of the York County Board of Supervisors held in the Board Room, York Hall, Yorktown, Virginia, on the 21st day of January, 2025:

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| <u>Present</u>                    | <u>Vote</u> |
|-----------------------------------|-------------|
| Sheila S. Noll, Chairman          | Yea         |
| Douglas R. Holroyd, Vice Chairman | Yea         |
| M. Wayne Drewry                   | Yea         |
| G. Stephen Roane, Jr.             | Yea         |
| Thomas G. Shepperd, Jr.           | Yea         |

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On motion of Mr. Holroyd, which carried 5:0, the following ordinance was adopted:

AN ORDINANCE TO APPROVE AMENDMENTS TO VARIOUS  
SECTIONS OF THE YORK COUNTY ZONING ORDINANCE,  
CHAPTER 24.1, YORK COUNTY CODE, TO INCORPORATE  
PROVISIONS CONCERNING SEXUALLY ORIENTED BUSINESSES

WHEREAS, pursuant to Section 24.1-113(a)(2) of the York County Zoning Ordinance, amendments to the Zoning Ordinance may be initiated by the York County Planning Commission whenever the public necessity, convenience, general welfare, or good zoning practice so requires; and

WHEREAS, the Planning Commission determined that in accordance with good zoning practice, it is necessary to amend portions of the Zoning Ordinance to establish definitions, an entry in the table of land uses, and standards for sexually oriented businesses; and

WHEREAS, said amendments have been considered by the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission recommends approval of these amendments; and

WHEREAS, the York County Board of Supervisors has conducted a duly advertised public hearing on this amendments; and

WHEREAS, the Board has carefully considered the public comments and Planning Commission recommendation with respect to these amendments.

NOW, THEREFORE BE IT RESOLVED by the York County Board of Supervisors this the 21st day of January, 2025, that it does hereby approve Application No. ZT-201-24 to amend Sections 24.1-104, 24.1-284, and 24.1-306, and establish Section 24.1-470.2, of the York County Zoning Ordinance, to read and provide as follows:

**Sec. 24.1-104. - Definitions.**

*Sexually-oriented business.* Any premises which the public patronizes or to which members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, when such adult entertainment is held, conducted, operated or maintained for a profit, directly or indirectly. A sexually-oriented business further includes, without being limited to, any adult store and adult entertainment studios or any premises that are physically arranged and used as such, whether advertised or represented as an adult entertainment studio, adult-oriented motion picture theatre, exotic dance studio, or any other term of like or similar import.

- *Adult store.* A commercial establishment which regularly excludes all persons under the age of eighteen (18) from the premises, or a section thereof, because of the sexually explicit nature of the items sold, rented or displayed therein, or which, as one of its principal purposes, offers for sale or rental for any form of consideration adult media or adult novelty items as defined in this section. For these purposes, to constitute a principal business purpose, an adult store must have at least twenty-five percent (25%) or more of its floor space dedicated to, or have twenty-five percent (25%) or more of its stock-in-trade consist of, the sale or rental of any adult media material or adult novelty items. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental adult media material or adult novelty items and still be categorized as an adult store.
- *Adult media.* Media material including, but not limited to, books, magazines, periodicals or other printed matter; photographs, films, motion pictures, videos in any format including digital formats; computer programs, or other visual representations which are distinguished or characterized by the exhibition or display of specified sexual activities or specified anatomical areas as defined in this section.
- *Adult novelty items.* Instruments, devices, or paraphernalia which are designed or marketed for use in connection with specified sexual activities. Adult novelty items does not include instruments, devices or paraphernalia that also constitute contraception.

- *Adult entertainment.* Live performance, display, dancing, or other live entertainment of any type where the entertainment is characterized by an emphasis on specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons; or the showing of films, motion pictures, videotapes, slides, photographs, VHS, CD-ROMs, DVD-ROMs, streaming video, or other media that are characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.
- *Specified anatomical areas.* Less than completely and opaquely covered human genitals, pubic region, buttock, or female breast below a point immediately above the top of the areola; or human male genitals in a discernibly turgid state, even if completely and opaquely covered
- *Specified sexual activities.* Human genitals in a state of sexual stimulation or arousal; sexual intercourse or sodomy; or fondling or other erotic touching of human genitals, pubic region, buttock or female breast, including masturbation.

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#### **Sec. 24.1-284. – Prohibited home occupations**

The following uses shall not be permitted as an on premises accessory home occupations:

(m) Sexually-oriented business

(n) Other activities and land uses which the zoning administrator determines to be materially similar to the activities listed above.

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#### **Sec. 24.1-306. - Table of land uses.**

| P=PERMITTED<br>USE<br>S=PERMITTED BY<br>SPECIAL USE<br>PERMIT USES | RESIDENTIAL DISTRICTS                     |    |     |     |     |    |         | COMMERCIAL AND<br>INDUSTRIAL DISTRICTS |    |    |         |    |        |        |
|--------------------------------------------------------------------|-------------------------------------------|----|-----|-----|-----|----|---------|----------------------------------------|----|----|---------|----|--------|--------|
|                                                                    | RC                                        | RR | R33 | R20 | R13 | R7 | R<br>MF | NB                                     | LB | GB | WC<br>I | EO | I<br>L | I<br>G |
| USES                                                               | CATEGORY 11—BUSINESS/PROFESSIONAL SERVICE |    |     |     |     |    |         |                                        |    |    |         |    |        |        |
| 6.<br><br>Sexually-oriented<br>business                            |                                           |    |     |     |     |    |         |                                        |    | S  |         | S  |        |        |

\*\*\*

**Sec. 24.1-470.2 - Standards for sexually-oriented businesses**

- (a) The business shall be located at least one-thousand feet (1,000') from the property line of any pre-existing: pre-school, child care center, or nursery school; public, parochial or private school (K thru 12), college or university; and at least five-hundred feet (500') from any residential zoning district or planned development zoning district, or the property line of any pre-existing: residential dwelling; nursing home, senior housing facility, or similar institution; place of worship or convent/monastery; a public or semi-public park or recreation facility; hotel, motel or timeshare resort; any other sexually-oriented business.

For the purpose of the subsection above, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually-oriented business is conducted, to the nearest property line of the other specified use or zoning district.

- (b) Adult media and adult novelty items shall not be visible from any point outside the establishment.
- (c) An overall signage plan, including rendered drawings, shall be submitted for the proposed establishment.
- (d) Any sexually-oriented business shall not begin service to the public or any outside activity before 7:00 a.m. Hours of operation for any business providing adult entertainment shall not extend after 2:00 a.m. Hours of operation for any adult store shall not extend after 11:00 p.m.
- (e) Any vending machine that contains adult media or adult novelty items shall only be located within the interior of a permitted adult store.
- (f) All sexually-oriented businesses shall only admit persons eighteen (18) years of age or older.

A Copy Teste:

---

Heather L. Schott, MMC  
Deputy Clerk



# INVENTORY OF EXISTING USES

| ADDRESS                         | LOCATION       | CATEGORY                              | ZONING                            | Whole store or percentage? | LOCATION CHARACTER                                                    | Performance standards for adult uses? |
|---------------------------------|----------------|---------------------------------------|-----------------------------------|----------------------------|-----------------------------------------------------------------------|---------------------------------------|
| 809 Old Oyster Point Road       | Newport News   | adult Videos/adult Novelties          | C1 (retail commercial)            | Percentage                 | Shopping Center, commercial adjacent to residential                   | Yes                                   |
| 987 J Clyde Morris Blvd         | Newport News   | Adult Novelties (adult use/nightclub) | C1 (retail commercial)            | Whole store                | Standalone, adjacent to residential, hotel, and commercial            | Yes                                   |
| 12825 Jefferson Avenue          | Newport News   | Adult Novelties (specialty shop)      | C1 (retail commercial)            | Whole store                | Standalone, commercial, substantial buffer between use and commercial | Yes                                   |
| 14412 Warwick Blvd              | Newport News   | Lingerie w/novelties                  | C2 (general commercial)           | Percentage                 | standalone, commercial                                                | Yes                                   |
| 12300 Jefferson Ave, #810       | Newport News   | Clothing w/ adult novelties           |                                   | Percentage                 | Mall store                                                            | Yes                                   |
| 5746 churchland Blvd            | Portsmouth     | Adult video & novelties               | GMU (commercial mixed use)        | Whole store                | Shopping center, adjacent to residential                              | Yes                                   |
| 3929 Victory Boulevard          | Portsmouth     | Adult novelties                       | GMU (commercial mixed use)        | Whole store                | Standalone, commercial                                                | Yes                                   |
| 1924 N Battlefield Blvd         | Chesapeake     | Adult novelties                       | B-2 (general business)            | Whole store                | Standalone, commercial                                                | Yes                                   |
| 732 Eden Way N                  | Chesapeake     | Lingerie and adult novelties          | M-2 (general industrial)          | Percentage?                | Shopping center, commercial                                           | Yes                                   |
| Mall ring road                  | Chesapeake     | Clothing w/adult novelties            | B-2 (general business)            | Percentage                 | Mall store                                                            | Yes                                   |
| 6604 E Virginia Beach Boulevard | Norfolk        | Adult video & novelties               | C-C (community commercial)        | Whole store                | Multi-unt commercial, adjacent to residential                         | Yes                                   |
| 352 Newtown Road                | Virginia Beach | Adult novelties                       | B-2 (community business)          | Whole store                | Stand-alone, adjacent to residential                                  | yes                                   |
| 277 N Lynnhaven Road            | Virignia Beach | Adult novelties                       | B-1A (limited community business) | Whole store                | Shopping center, adjacent to residential                              | No                                    |
| 477 S Lynnhaven Rd              | Virignia Beach | Adult novelties                       | B2 (?)                            | Whole store                | Shopping center, adjacent to residential                              | No                                    |
| 2728 N Mall Drive               | Virginia Beach | Lingeries and adult novelties         | B2 (community business)           | Percentage                 | Shopping center near mall, commercial                                 | No                                    |
| 564 First Colonial Rd           | Virginia Beach | Adult Novelties                       | B2 (community business)           | Whole store                | Stand-alone, commercial                                               | No                                    |
| 1301 Oceana Blvd                | Virignia Beach | Adult novelties                       | B2 (community business)           | Percentage                 | Stand alone, adjacent to residential                                  | No                                    |

|                              |                |                                                              |                            |                  |                                                   |     |
|------------------------------|----------------|--------------------------------------------------------------|----------------------------|------------------|---------------------------------------------------|-----|
| 1728 E Little Creek Rd       | Norfolk        | Adult novelties                                              | C-R (regional commercial)  | Whole store      | Stand-alone, outparcel in shopping center         | No  |
| 159 E Little Creek Rd        | Norfolk        | Lingerie and adult novelties                                 | C-C (community commercial) | Percentage       | Shopping center, adjacent to residential          | No  |
| 831 W Constance Road         | Suffolk        | Adult novelties                                              | B-2 (general commercial)   | Whole store      | Shopping center, commercial                       | Yes |
| 16916 Warwick Blvd           | Newport News   | Adult entertainment ("gogo bar") BC classified as restaurant | C2 (general commerical)    | NA               | Standalone commercial, adjacent to a Red Roof Inn | Yes |
| 606 Dresden Dr               | Newport News   | Adult entertainment ("gogo bar")                             | C1 (retail commercial)     | NA               | Standalone commercial, adjacent to apartments     | Yes |
| 7824 Warwick                 | Newport News   | Adult entertainment ("gogo bar") BC classified as lodge/club | C2 (general commerical)    | NA               | Standalone commercial, somewhat near apartments   | Yes |
| 100 Newmarket Square         | Hampton        | Adult etertainment ("gogo bar")                              | C-2 (limited commercial)   | NA               | Shopping center, commercial                       | Yes |
| 2623 Shell Rd                | Hampton        | Nightclub with adult entertainment (?) on a single night     | R-9 (residential)          | NA               | Standalone, adjacent to residential and school    | Yes |
| 4105 Portsmouth Blvd         | Portsmouth     | Adult entertainment ("gogo bar") BC class as tavern/bar      | GMU (commercial mixed use) | NA               | Standalone, industrial area                       | Yes |
| 1428 George Washington Hwy N | Chesapeake     | Adult entertainment ("gogo bar")                             | B-2 (general business)     | NA               | Standalone, industrial area                       | Yes |
| 3000 S Military Hwy          | Chesapeake     | Adult entertainment ("gogo bar")                             | B-2 (general business)     | NA               | Standalone, adjacent to residential               | Yes |
| 3922 George Washington Hwy   | Portsmouth     | Adult entertainment ("cabaret") BC class as bar              | GMU (commercial mixed use) | NA               | Shopping center, adjacent to apartments           | Yes |
| 3509 George Washington Hwy   | Portsmouth     | Adult Entertainment ("gogo bar") BC class as bar             | GMU (commercial mixed use) | NA               | Standalone, industrial/commercial area            | Yes |
| 3209 George Washington Hwy   | Portsmouth     | Adult Entertainment ("gogo bar") BC class as bar             | IL (industrial)            | NA               | Standalone, across the steet from residential     | Yes |
| 7661 Granby St               | Norfolk        | Adult entertainment ("gogo bar") BC class as tavern/bar      | C-R (regional commerical)  | NA               | Shopping center, adjacent to residential          | Yes |
| 1220 E Little Creek Rd       | Norfolk        | Adult Entertainment ("gogo bar")                             | C-C (community commerical) | NA               | Standalone, adjacent to residential               | Yes |
| 1808 Diamond Spring Rd       | Virginia Beach | Adult Entertainment ("gogo bar") -- attached to hotel???     | B2 (community commerical)  | NA               | Same building as a Red Roof Inn?                  | No  |
| 3300 Azalea Garden Rd        | Norfolk        | Adult entertainment (outsourced)                             | C-C (community commerical) | Off-site service | Offsite                                           | No  |
| 1960 Battlefield Blvd        | Chesapeake     | Adult Entertainment ("gogo bar")                             | B-2 (commercial)           | NA               | Standalone, adjacent to apartments                | Yes |
| 3845 Bonney Rd               | Virginia Beach | Adult Entertainment ("gogo bar")                             | B2 (community commerical)  | NA               | Shopping center, adjacent to apartments           | No  |
| 1724 Potters Rd              | Virginia Beach | (restaurant)                                                 | I-1 (indsutrial)           | NA               | Standalone, industrial area                       | No  |
| 446 Oceana Blvd              | Virginia Beach | Adult Entertainment ("gogo bar") (restaurant)                | B-2 (general business)     | NA               | Standalone, vacant surrounding                    | No  |



# Analysis of Adult Business Location Patterns

*These findings only comprise of businesses that have make their location available via search engine or have a use permit that is publically available. There is not a specific NAICS code for adult uses/adult entertainment, so census and state industry data was not queried for this analysis.*

## **Business Types**

1. Retail Establishments (20 locations)
  - Adult video/novelty stores
  - “Percentage” stores (lingerie/clothing or videos with some adult novelties)
    1. Distinction between "whole store" and "percentage" businesses – e.g., the store is established as a lingerie store with a certain percentage of adult merchandise/novelty items.
2. Adult Entertainment Venues (19 locations)
  - “Gogo bars” (strip clubs, effectually)
  - “Nightclubs with adult entertainment” (cabaret, “adult night”)
  - Mostly standalone establishments

## **Location Patterns**

### **Geographic Distribution**

Total Establishments: 39

By City (ranked by number of establishments):

1. Virginia Beach: 10 locations (25%)
2. Newport News: 8 locations (20%)
3. Portsmouth: 6 locations (15%)
4. Norfolk: 6 locations (15%)
5. Chesapeake: 6 locations (15%)
6. Hampton: 2 locations (5%)
7. Suffolk: 1 location (2.5%)

### **City-Specific Patterns**

#### **Virginia Beach (10 locations)**

- Highest concentration of retail (5 locations)
- Mixed use of shopping centers and standalone
- Even distribution between commercial/residential adjacent

## **Newport News (8 locations)**

- Highest concentration of entertainment venues in single city
- Strong correlation with commercial zoning
- Linear distribution along major arteries

## **Portsmouth (6 locations)**

- Concentrated along single corridor
- Highest percentage of industrial area locations
- Limited integration with shopping centers

## **Impact Mitigation Patterns**

1. Physical Buffers:
  - Substantial spacing noted in 3 locations
  - Vacant surrounding areas in 1 location
  - Commercial buffer zones in 8 locations
1. There's a notable pattern of businesses using alternative classifications (restaurants, clubs) possibly to navigate zoning restrictions.
2. The presence of "percentage" businesses predominantly in shopping centers suggests a deliberate strategy to maintain mainstream commercial viability.
3. Geographic corridors show distinct patterns of either retail or entertainment concentration, but rarely both, suggesting possible informal segregation of uses.

## **Location Type Analysis**

### **Overall Setting Distribution**

- Standalone Buildings: 22 (56%)
- Shopping Center/Mall/Multi-unit commercial: 15 (38%)
- Off-site Service: 1 (2.5%)
- Other: 1 (2.5%)

### **Adjacent Land Use**

Establishments adjacent to:

- Residential Areas: 15 (38%)
- Commercial Only: 13 (33%)
- Industrial Areas: 5 (12%)
- Hotels/Motels: 3 (7%)
- Not Specified/Other: 3 (7%)

## **Business Type by Location Setting**

Retail Establishments (20 total):

- Shopping Center/Mall/multi-unit commercial: 11 (55%)
- Standalone: 9 (45%)

Adult Entertainment Venues (19 total):

- Standalone: 13 (68%)
- Shopping Center: 4 (21%)
- Other: 1 (5%)
- Off-site Service: 1 (5%)

## **Key Statistical Insights**

### **1. Geographic Concentration**

- Top 3 cities (Virginia Beach, Newport News, Portsmouth) account for 60% of all establishments
- Hampton Roads core cities (Norfolk, Virginia Beach, Chesapeake) contain 52% of establishments

### **2. Setting Patterns**

- More than half are standalone structures
- Over 1/3 (35%) are integrated into larger retail environments
- Significant difference in location preferences between retail and entertainment venues

### **3. Proximity Patterns**

- More than a third are adjacent to residential areas
- Only 12 % are in primarily industrial areas
- Strong preference for commercial corridor locations (32%)

### **4. Business Type Distribution**

- Almost even split between retail and entertainment venues
- Retail shows stronger tendency for shopping center integration
- Entertainment venues show stronger preference for standalone locations

## **Zoning**

There's a clear preference for commercial zoning districts, though the specific type varies by jurisdiction.

(Permitting within GMU (Mixed Use) zoning in Portsmouth represents a different regulatory approach compared to other jurisdictions.)

Despite similar uses, there's variation in permit requirements and performance standards across jurisdictions.

## **Commercial Zoning Categories**

1. Commercial Districts
  - C1 (Retail Commercial): 4 locations (Newport News)
  - C2 (General Commercial): 4 locations (Newport News, Hampton)
  - C-C (Community Commercial): 3 locations (Norfolk)
  - C-R (Regional Commercial): 2 locations (Norfolk)
  - B-2 (General Commercial) : 1 location (Suffolk)
  - B-2 (General Business): 6 locations (Chesapeake)
  - B2 (Community Business): 5 locations (Virginia Beach)
  - B-1A (Limited Community Business): 1 location (Virginia Beach)
2. Mixed Use
  - GMU (General Mixed Use): 5 locations (Portsmouth)

## **Industrial Zoning (3 locations)**

- M-2 (General Industrial): 1 location (Chesapeake)
- IL (Light/Limited Industrial): 2 locations (Portsmouth and Virginia Beach)

## **Residential Zoning (1 location)**

- R-9 (Residential): 1 location (appears to be legally non-conforming use?)

## **Zoning Patterns by Business Type**

### **Retail Establishments**

- Predominantly in commercial/business districts
- Common zones:
  - C1 (Retail Commercial)
  - B-2 (General Business)
  - B2 (Community Business)
- One instance in M-2 (Industrial)

### **Entertainment Venues**

- More diverse zoning distribution
- Common zones:
  - GMU (Commercial Mixed Use)
  - B-2 (General Business)
  - C2 (General Commercial)
- Some industrial zoning
- One non-conforming residential zone

## **Setting Characteristics**

1. Retail Establishments:
  - Often located in shopping centers or strip malls
  - Mix of standalone and multi-tenant locations
  - Frequently adjacent to residential areas
  - Common in commercial corridors
2. Entertainment Venues:
  - Predominantly standalone buildings
  - Found in various contexts:
    - Industrial areas
    - Commercial corridors
    - Adjacent to residential areas
  - Several locations noted as adjacent to apartments

## **Geographic Distribution**

- Spread across multiple cities:
  - Newport News
  - Portsmouth
  - Chesapeake
  - Norfolk
  - Virginia Beach
  - Suffolk
  - Hampton

## **Key Findings**

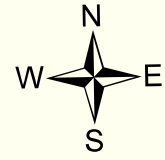
1. **Integration:** Many businesses are integrated into standard commercial areas rather than isolated districts
2. **Proximity to Residential:** Despite adult-oriented nature, significant number of establishments are adjacent to residential areas (result of legal non-conformities?)
3. **Business Model Variation:** Clear distinction between:
  - Dedicated adult businesses/establishments (whole store)
  - Retail store with adult components (percentage)
4. **Zoning Patterns:**
  - Predominantly in commercial/business zones
  - Some potential legally non-conforming uses
5. **Location:**
  - Entertainment venues favor standalone buildings
  - Retail more commonly integrated into shopping centers
  - Significant presence in commercial corridors
6. There's somewhat of a "corridor effect" where these businesses tend to cluster along major commercial routes, particularly in Virginia Beach and Portsmouth.

7. Despite often being considered "undesirable" land uses, these businesses are more commonly located near residential areas than industrial zones, suggesting zoning may not be effectively separating these uses or they are legally non-conforming
8. The even split between retail and entertainment venues, but their different location preferences, suggests distinct business or zoning strategies: retail establishments tend to locate in shopping centers, while entertainment venues opt (or are forced) to more isolated locations.



# James City County

## Zoning

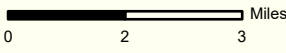
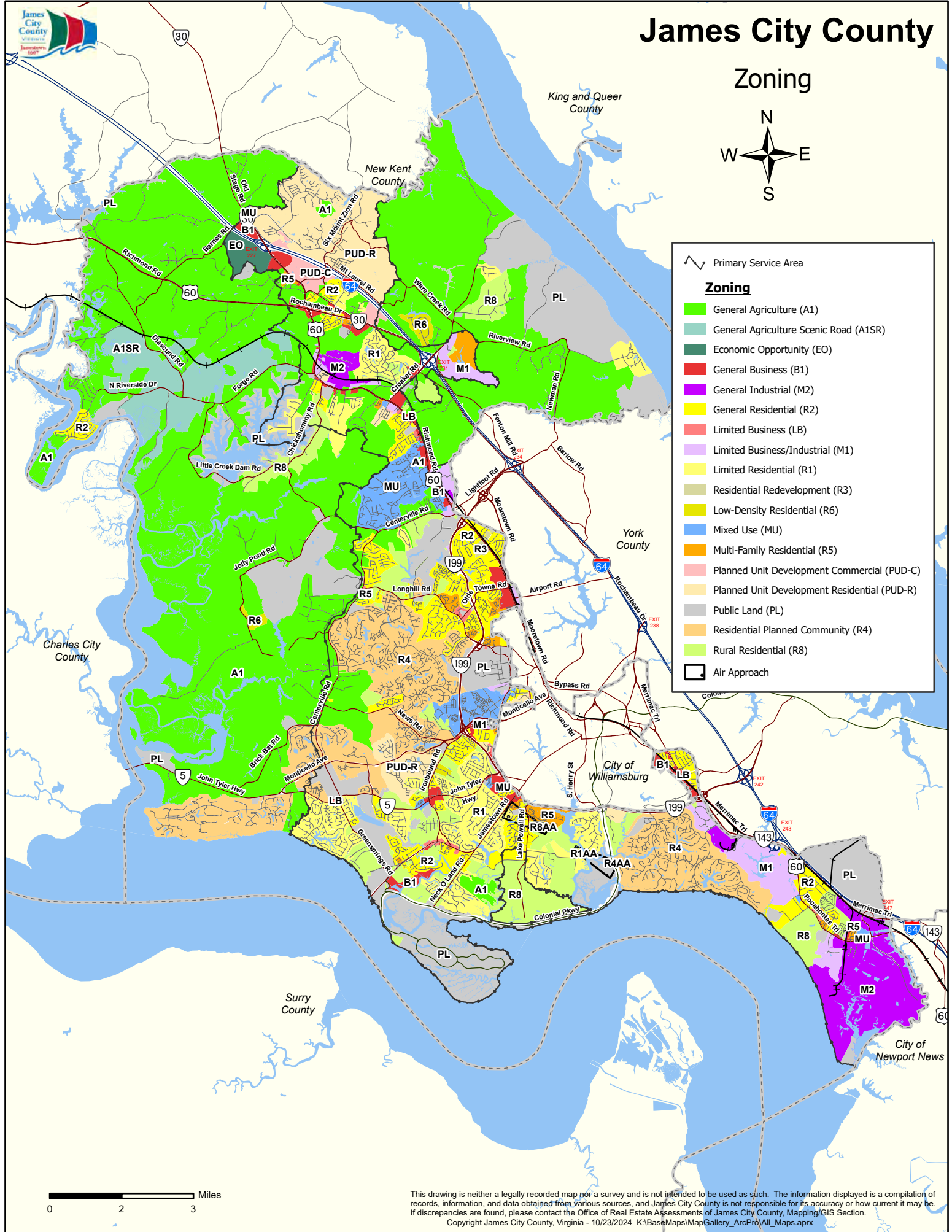


Primary Service Area

**Zoning**

- General Agriculture (A1)
- General Agriculture Scenic Road (A1SR)
- Economic Opportunity (EO)
- General Business (B1)
- General Industrial (M2)
- General Residential (R2)
- Limited Business (LB)
- Limited Business/Industrial (M1)
- Limited Residential (R1)
- Residential Redevelopment (R3)
- Low-Density Residential (R6)
- Mixed Use (MU)
- Multi-Family Residential (R5)
- Planned Unit Development Commercial (PUD-C)
- Planned Unit Development Residential (PUD-R)
- Public Land (PL)
- Residential Planned Community (R4)
- Rural Residential (R8)

Air Approach



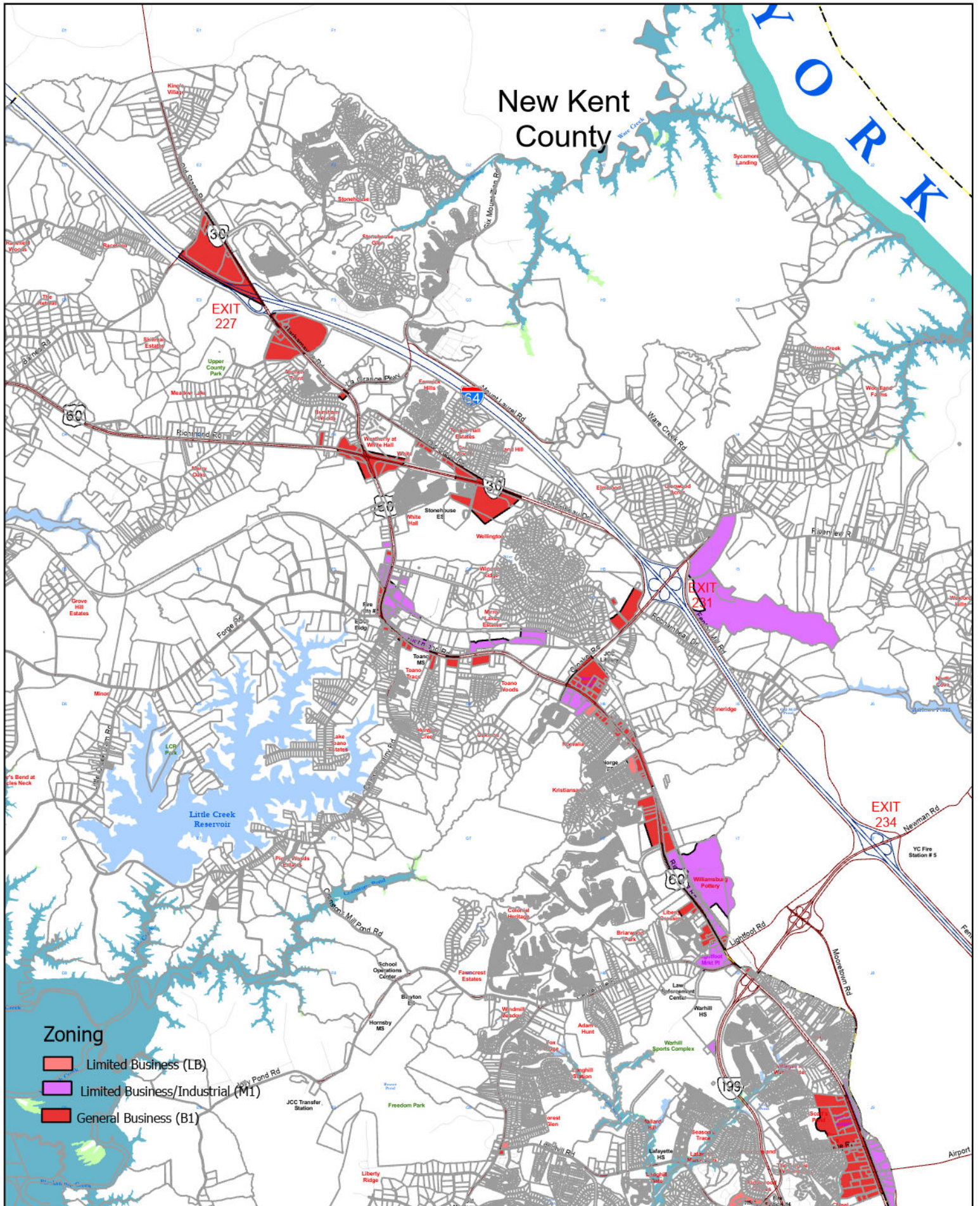
This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and James City County is not responsible for its accuracy or how current it may be. If discrepancies are found, please contact the Office of Real Estate Assessments of James City County, Mapping/GIS Section.  
Copyright James City County, Virginia - 10/23/2024 K:\BaseMaps\MapGallery\_ArcPro\All\_Maps.aprx



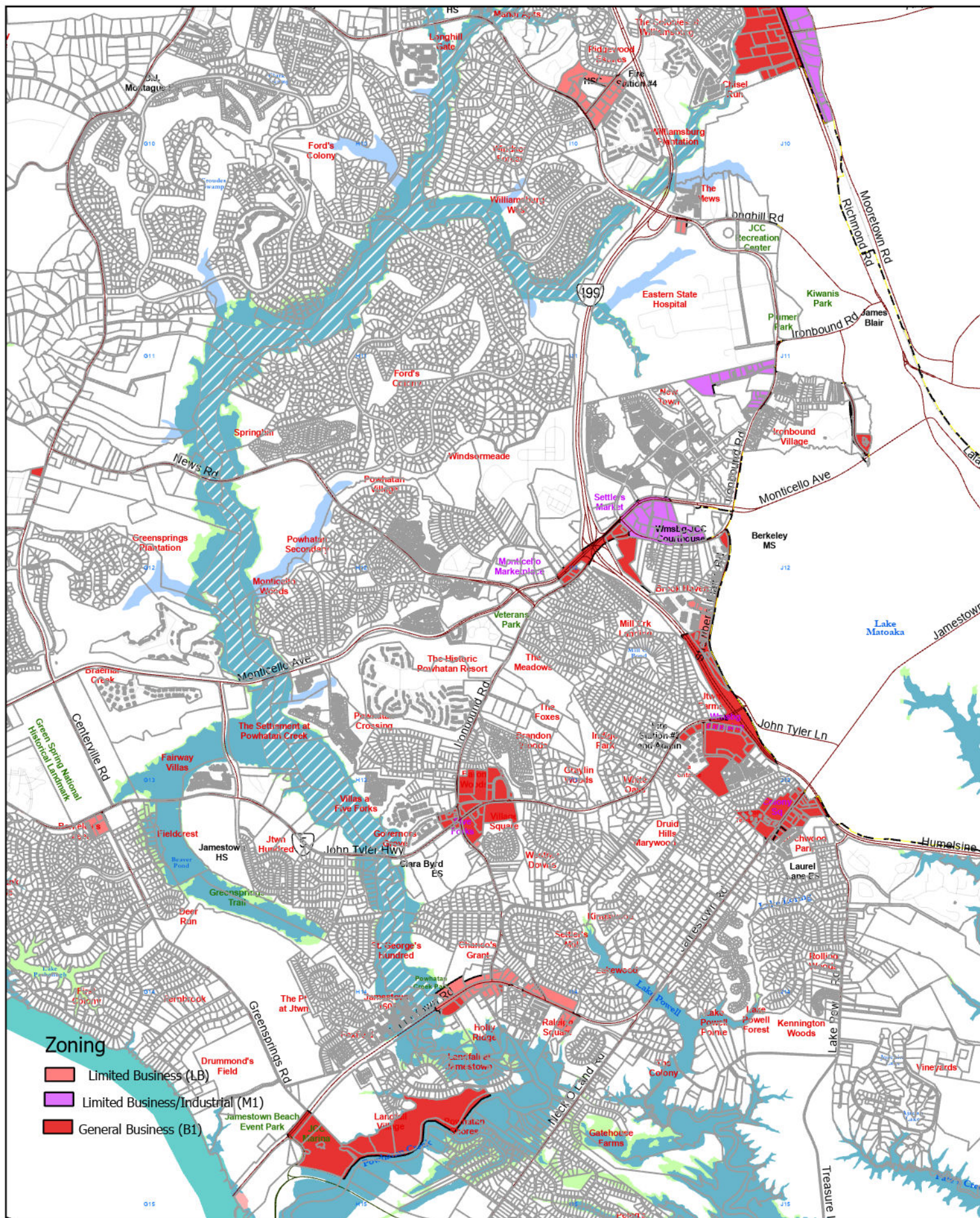




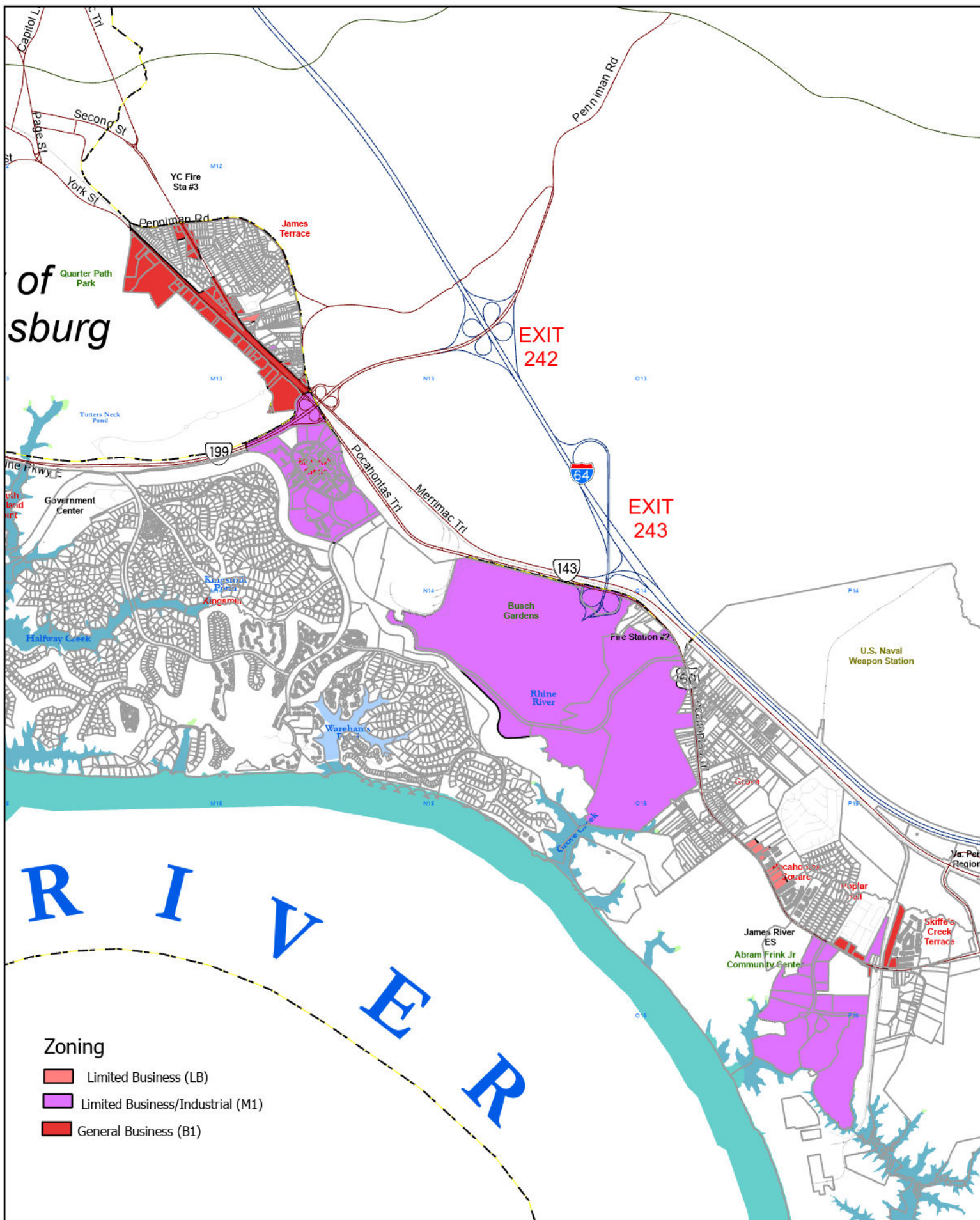
# New Kent County











## MEMORANDUM

DATE: July 8, 2025

TO: The Board of Supervisors

FROM: A. Vaughn Poller, Neighborhood Development Administrator

SUBJECT: Sale of a Portion of Property Located at 186 Clark Lane

---

During the development of the Master Plan for the Clark/Talley subdivision, a 0.241-acre portion of County-owned land located at 186 Clark Lane (the "Property") was deemed not suitable for a homesite or subdivision access due to its topography and configuration. It was also not desirable for open space for the new subdivision due to its isolated location and ongoing costs associated with maintenance and insurance. Subsequently, the Property was not included in the Master Plan for the rezoning of the Clark Lane subdivision. The County has not identified any current or future need for the Property.

The adjacent property owners at 201 Curry Drive and 182 Clark Lane have expressed interest in acquiring the Property to expand their lots and propose to share the purchase price of \$5,000.

Staff recommends approval of the attached resolution authorizing the County Administrator to execute the sale of the property.

AVP/ap  
SaleProp186ClrkLn-rev-mem

Attachment

## RESOLUTION

### SALE OF A PORTION OF PROPERTY LOCATED AT 186 CLARK LANE

WHEREAS, James City County (the “County”) currently owns a parcel of land containing approximately 2.665 acres located at 186 Clark Lane and further identified as James City County Real Estate Tax Map Parcel No. 3220100037; and

WHEREAS, the County has not identified any current or future need for a 0.241-acre portion of the property (the “Property”); and

WHEREAS, Mr. Aaron Snyder and Mr. Malcom Lee have offered to purchase the Property; and

WHEREAS, pursuant to Virginia Code Section 15.2-1800 a public hearing was advertised and a hearing conducted on the disposition of the Property; and

WHEREAS, the Board of Supervisors of James City County is of the opinion that the County should sell the Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the County Administrator to execute those documents necessary for the sale and transfer of the Property.

\_\_\_\_\_  
James O. Icenhour, Jr.  
Chair, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Teresa J. Saeed  
Deputy Clerk to the Board

HIPPLE  
NULL  
LARSON  
MCGLENNON  
ICENHOUR

VOTES

AYE    NAY    ABSTAIN    ABSENT

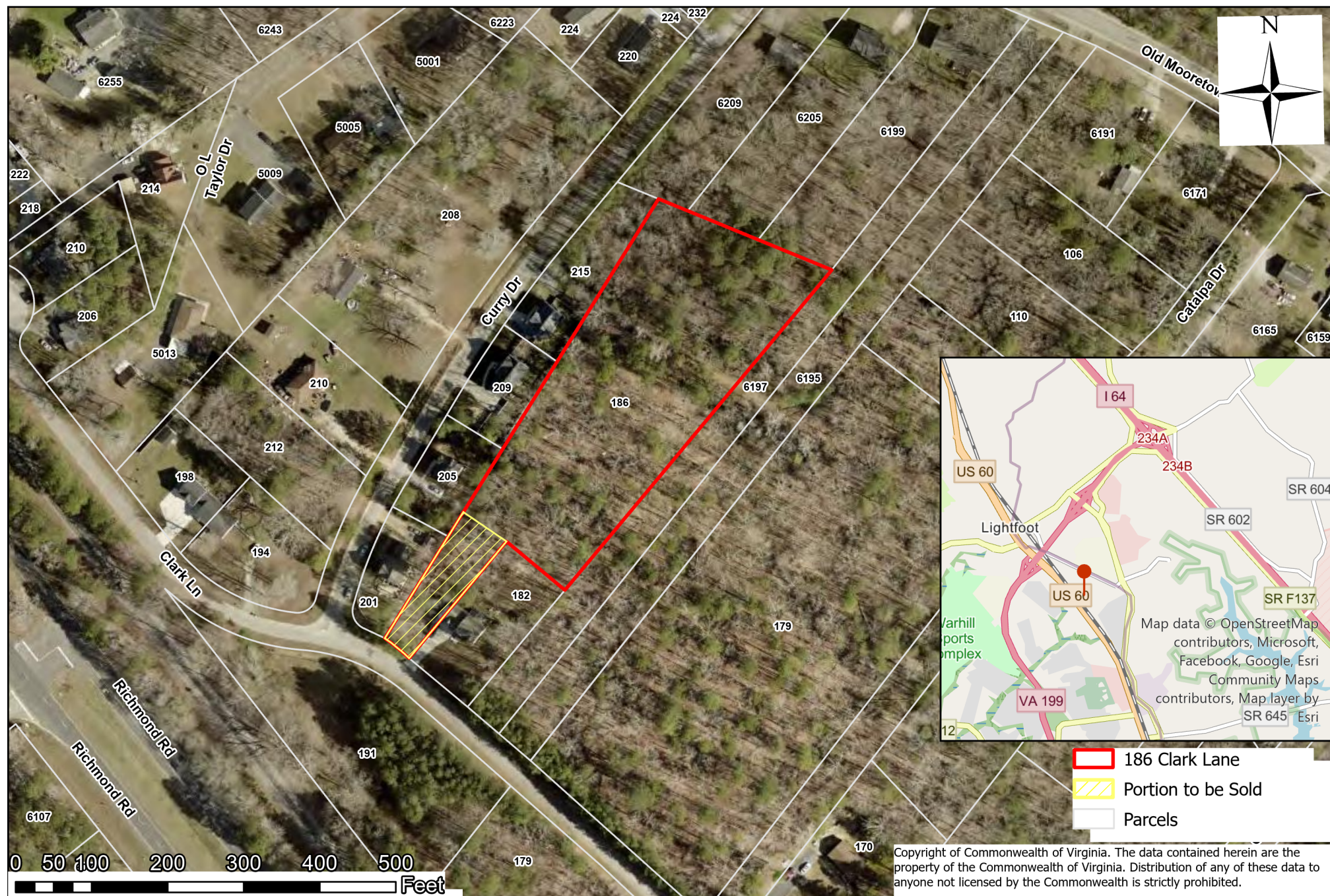
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| _____ | _____ | _____ | _____ |

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of July, 2025.

SaleProp186ClrkLn-rev-res



0.241 acres



## MEMORANDUM

DATE: July 8, 2025

TO: The Board of Supervisors

FROM: Andrew Dean, Assistant County Attorney  
Jason Purse, Assistant County Administrator

SUBJECT: Dominion Solar Project Ground Lease Agreement

---

Staff has been discussing lease terms with Virginia Electric and Power Company dba Dominion Energy Virginia (“Dominion”) for the lease of approximately 60-80 acres of land located at 1206 Jolly Pond Road, Williamsburg, Virginia 23188 (the “Property”). Both parties have agreed in principal to a final version of the lease, subject to Board approval. The material terms are as follows:

**Term:** The Lease Term is comprised of a Feasibility Term of Three Hundred Sixty-Five (365) days, that commences upon the Effective Date, Development Term of up to three (3) years (with two one-year options to extend), that commences at the end of the Feasibility Term, Construction Term of up to two (2) years from the end of the Development Term, an Operations Term that commences upon the expiration of the Construction Term and expires on the thirty-fifth (35th) anniversary of the expiration of the Construction Term (unless sooner terminated as provided in the Lease Agreement), and a Restoration Term of up to one (1) year after the expiration of the Operations Term as necessary to complete the Restoration Activities required by the Lease Agreement.

**Rent:** Years subject to change based on whether Development Term option years are exercised.

|                              |                                                                                                                                                                                     |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Year 0-1:                    | \$0 - Feasibility Term. The way the lease is currently structured, after paying \$0 for the “Feasibility Term”, they are essentially “paying in advance” for the rest of the terms. |
| Year 1:                      | \$1,000 - Development Term                                                                                                                                                          |
| Year 2:                      | \$2,000 - Development Term                                                                                                                                                          |
| Year 3:                      | \$3,000 - Development Term                                                                                                                                                          |
| Year 4 (first option year):  | \$9,000 - Development Term                                                                                                                                                          |
| Year 5 (second option year): | \$10,000 - Development Term                                                                                                                                                         |
| Year 6-8:                    | \$15,250 - Construction Term                                                                                                                                                        |
| Year 8-43 (35 years):        | \$1,000/acre per year - Operations Term; 1% increased per year                                                                                                                      |
| Year 43-44:                  | 1/12th of final Operations Term Base Rent                                                                                                                                           |

### **Property Location and Access**

During the Feasibility Term and the Development Term, James City County will control access to and operations on the Property. Through coordination with the County, Dominion will have access to the entire 545.58-acre parcel to conduct due diligence and environmental testing pursuant to the lease terms.

During the Feasibility Term and the Development Term, Dominion’s access will be on a “not to interfere basis” with James City County operations at the Property. Dominion’s access rights will be similar to the rights given to a prospective commercial buyer during a due diligence phase, and Dominion will be liable for any damage caused during this due diligence period.



## Contingencies

## Environmental Matters

### **Right of First Refusal to Purchase Property**

### **Documents Produced During Due Diligence Period**

### **Additional Detail Regarding Lease Terms**

|                                                          |          |
|----------------------------------------------------------|----------|
| Fifth anniversary of the Effective Date (if applicable): | \$10,000 |
| with \$5,000 of this amount credited to first year       |          |
| Construction Term Base Rent                              |          |



Dominion Solar Project Ground Lease Agreement

July 8, 2025

Page 3

Construction Term: Expires on the earlier of the 8th anniversary of the Effective Date or when Dominion enters into the Operations Term.

Construction Term Flat Rate: \$15,250

Operations Term: Defined as the date the Construction Term is completed and the Operations Term starts or the date the Construction Term expires pursuant to its terms.

Term: Expires on the thirty-fifth (35th) anniversary of the Operations Term Commencement Date.

Operations Term: \$1,000 per acre of the Property, per year  
Operations Term rent escalates by 1% annually on the anniversary of the Operations Term Commencement Date.

Restoration Term: Starts after termination of the Operations Term and expires on the earlier of completion of restoration activities or one year.

Restoration Term Rent: 1/12th Operations Term Rent calculate based on immediate year prior Operations Term Rent.

Staff recommends approval of the lease terms.

AD/JP/md  
DomSolarGrdLsAgr-mem

Attachments

## RESOLUTION

### LAND LEASE TO VIRGINIA ELECTRIC AND POWER COMPANY

WHEREAS, James City County currently owns the property located at 1206 Jolly Pond Road, also known as James City County Landfill (Transfer Station) (the “Property”); and

WHEREAS, Virginia Electric and Power Company has requested to enter into a lease for the purpose of building and operating a solar project on a portion of the Property; and

WHEREAS, the Board of Supervisors of James City County finds entering into a lease with Virginia Electric and Power Company to be in the public interest.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that the County Administrator is authorized to execute those documents necessary to enter into a lease with Virginia Electric and Power Company for the Property for purposes of construction and operation of a solar project.

\_\_\_\_\_  
James O. Icenhour, Jr.  
Chair, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Teresa J. Saeed  
Deputy Clerk to the Board

HIPPLE  
NULL  
LARSON  
MCGLENNON  
ICENHOUR

#### VOTES

| <u>AYE</u> | <u>NAY</u> | <u>ABSTAIN</u> | <u>ABSENT</u> |
|------------|------------|----------------|---------------|
| _____      | _____      | _____          | _____         |
| _____      | _____      | _____          | _____         |
| _____      | _____      | _____          | _____         |
| _____      | _____      | _____          | _____         |

Adopted by the Board of Supervisors of James City County, Virginia, this 8th day of July, 2025.

DomSolarGrdLsAgr-res

LEASE AGREEMENT

**SOLAR PROJECT GROUND LEASE AGREEMENT**

Between

**JAMES CITY COUNTY, VIRGINIA**, as Owner,

And

**VIRGINIA ELECTRIC AND POWER COMPANY**,  
a Virginia public service corporation, d/b/a  
**DOMINION ENERGY VIRGINIA**, as Tenant

dated the \_\_\_\_\_ day of May, 2025

## SOLAR PROJECT GROUND LEASE AGREEMENT

THIS SOLAR PROJECT GROUND LEASE AGREEMENT (this “**Lease Agreement**”) is made and entered into as of the Effective Date, between Owner (“**Owner**”) and Tenant (“**Tenant**”), who are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**,” designated in the Basic Terms below:

### Basic Terms

|                 |                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Effective Date: | All references in this Lease Agreement to the “ <b>Effective Date</b> ” will mean the later of the dates upon which Owner and Tenant execute this Agreement as set forth on the signature pages below. Notwithstanding the foregoing, the effectiveness of this Lease for Tenant’s use and occupancy is conditioned on satisfaction of the zoning conditions set forth in Section 2.2(f) below. |
| Owner:          | James City County, Virginia, a political subdivision of the Commonwealth of Virginia                                                                                                                                                                                                                                                                                                            |
| Owner Address:  | Attn: County Administrator<br>James City County, Virginia<br>101 Mounts Bay Road<br>Building D<br>Williamsburg, VA 23185<br><br><i>with a copy to</i><br>Attn: James City County Attorney’s Office<br>101-D Mounts Bay Road<br>Williamsburg, VA 23185                                                                                                                                           |
| Tenant:         | Virginia Electric and Power Company, a Virginia public service corporation d/b/a Dominion Energy Virginia                                                                                                                                                                                                                                                                                       |
| Tenant Address: | 120 Tredegar Street<br>Richmond, Virginia 23219<br>Attention: Real Estate<br><br><i>with a copy to</i><br>c/o Dominion Energy Services, Inc.<br>120 Tredegar Street, Richmond, Virginia 23219<br>Attention: Gina M. Burgin, Deputy General Counsel, Utility Operations, Real Estate & Claims ( <a href="mailto:gina.m.burgin@dominionenergy.com">gina.m.burgin@dominionenergy.com</a> )         |

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| Property: | <p>Part of certain real property containing approximately 545.58 usable acres, located in James City, Virginia, identified in the James City County land records as part of Parcel ID No. 3010100004, located at 1206 Jolly Pond Road, less and except approximately 3.25 acres containing the police shooting range and other improvements in several areas of the property (the “Excluded Property”) (the remaining approximately 542.23 acres of said real property, together with all improvements and fixtures thereon and all rights, privileges, easements, benefits and agreements appurtenant thereto, is hereinafter referred to as the “<b>Property</b>”). The Property and the Excluded Property, is more particularly shown and described on <u>Exhibit A</u> attached hereto and incorporated herein, including all rights and benefits appurtenant thereto, including (a) the right to access and utilize all radiant energy emitted from the sun upon, over and across the real property, (b) any easements and rights-of-way benefiting such real property, (c) to the extent Owner has any interest in the following: access rights, water and water rights, minerals, mineral and mining rights, crops and crop rights, development rights and entitlements, and other rights and benefits relating or appurtenant to such real property, and (d) any timber remaining on the Property as of the Effective Date.</p> <p>Notwithstanding the above reference to 545.58 acres, Owner and Tenant agree that during the Feasibility Term and the Development Term, Owner will maintain exclusive access and control of the Property and Tenant will coordinate all access to the Property with Owner’s representatives as further defined in Section 2.4 hereinbelow. Owner and Tenant anticipate that Tenant will receive approval of a site plan at which time the Property description hereinabove will be reduced to include only the area delineated in the approved site plan. Any adjustment pursuant to an approved site plan shall be shown on a survey provided by Tenant to replace Exhibit A and showing the boundary and acreage of the property area; and the size of the Property and Operations Term Base Rent shall be adjusted accordingly by an amendment to this Lease. The parties agree that upon approval of the site plan and reduction of the Property size through amendment to this lease, limitations on Tenant access to and control of the Property will be removed with certain exceptions as required for continued operation by Owner of a co-located transfer station and law enforcement shooting range.</p> |
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|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Development Term Base Rent:  | <p>Development Term Base Rent, payable annually in advance during the Development Term as provided in <u>Article 3</u> below, shall be paid as follows:</p> <p>First anniversary of the Effective Date:      \$1,000.00</p> <p>Second anniversary of the Effective Date:      \$2,000.00</p> <p>Third anniversary of the Effective Date:      \$3,000.00</p> <p>Fourth anniversary of the Effective Date (if applicable):      \$9,000.00</p> <p>- with \$5,000 of this amount credited to first year Construction Term Base Rent</p> <p>Fifth anniversary of the Effective Date (if applicable):      \$10,000.00</p> <p>- with \$5,000 of this amount credited to first year Construction Term Base Rent</p> |
| Construction Term Base Rent: | Construction Term Base Rent, payable annually in advance during the Construction Term as provided in <u>Article 3</u> below, shall be \$15,250.00.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Operations Term Base Rent:   | Operations Term Base Rent, payable annually in advance during the Operations Term as provided in <u>Article 3</u> below, shall be One Thousand Dollars (\$1,000.00) per acre of the Property, per year. Operations Term Base Rent shall escalate by 1% annually. Escalation shall be on the anniversary of the Operations Term Commencement Date.                                                                                                                                                                                                                                                                                                                                                              |
| Restoration Term Base Rent:  | Restoration Term Base Rent, payable in monthly installments in advance during the Restoration Term, and the amount of each monthly installment shall be equal to one twelfth (1/12 <sup>th</sup> ) of the Operations Term Base Rent due for the year immediately prior to the commencement of the Restoration Term.                                                                                                                                                                                                                                                                                                                                                                                            |

## ARTICLE 1. DEFINITIONS

Section 1.1 Defined Terms. When used in this Lease Agreement, the following capitalized terms shall have the definitions indicated:

“**Additional Easement**” and the related terms “**Additional Electric Interconnection Facilities Easement**”, “**Additional Utility Service Facilities Easement**”, “**Additional Support Facilities Easement**”, and “**Additional Access Easement**” have the meanings as described in Section 4.1.

“**Affiliate**” means any Person (i) who, directly or indirectly (including through one or more intermediaries) holds an equity interest in Tenant (a “**Parent Company**”), or (ii) in which Tenant or a Parent Company, directly or indirectly (including through one or more intermediaries) holds an equity interest. The term “Affiliate” also includes any Person that directly or indirectly controls, or is under common control with, or is controlled by, Tenant. As used in this definition, “control”



(including, “controlled by” and “under common control with”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or other ownership interests, by contract or otherwise). Any Person that owns directly or indirectly fifty-one percent (51%) or more of the securities having ordinary voting power for the election of directors or other governing body of an entity will be deemed to control such entity.

“**Assignee**” means any Person to which Tenant may assign its interest in this Lease Agreement or in the Project pursuant to the terms of Section 9.1.

“**Award**” means the term defined in Section 10.5.

“**Base Ground Rent**” means, collectively, the Construction Term Base Rent, the Operations Term Base Rent and the Restoration Term Base Rent.

“**Board of Supervisors**” means the Board of Supervisors of the James City County, Virginia.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are required or permitted to be closed in the Commonwealth of Virginia.

“**Casualty**” means any material damage to the Project Facilities and/or the Property caused by fire, flood, earthquake, erosion, sinkhole, subsidence, tornado, hurricane, mudslide, domestic or international terrorism, acts of God and other, similar causes.

“**Claim**” or “**Claims**” means the term defined in Section 10.3(a).

“**Clerk’s Office**” means the Clerk’s Office for the Circuit Court of James City County, Virginia.

“**Commercial Operation Date**” means the date on which the Project commences commercial operations and delivers continuous electrical energy output to the electric grid.

“**Confidential Information**” means the term defined in Section 7.7.

“**Construction Term**” means the term defined in Section 2.2(c).

“**Construction Term Base Rent**” means the amount as calculated pursuant to the Basic Terms.

“**Development Term**” means the term defined in Section 2.2(b).

“**Development Term Base Rent**” means the amount as calculated pursuant to the Basic Terms.

“**Effective Date**” means the date, described in the Basic Terms, upon which this Lease Agreement becomes effective.

“**Electric Interconnection Facilities**” means a line or lines of towers or poles, with such wires and cables as from time to time are suspended therefrom, overhead and/or underground wires and cables, for the collection or transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, crossarms, conduits and other appliances and fixtures for use in connection with said towers, poles, wires and cables on, along and in the

Property; and one or more substations, interconnection facilities or switching facilities, together with all related or appropriate roads and rights of way, on, along, across and in the Property.

**“Electronic Transfer”** means a transfer of good and immediately available funds, whether by wire transfer, ACH payment, or other, similar method.

**“Encumbrances”** means any liens, encumbrances, covenants, conditions, reservations, restrictions, easements, leases, licenses, occupancies, tenancies, mineral rights, water rights or other matters affecting, relating to or encumbering the Property or any portion thereof.

**“Energy Storage Facilities”** means battery or other energy storage facilities either collocated with or integrated with the Generating Units, which energy storage facilities store energy either generated by the Generating Units or delivered from electric transmission or distribution facilities, inclusive of, or independent of, the Interconnection Facilities through which the Generating Units are interconnected, and then dispatch such energy through the Interconnection Facilities or some other electrical transmission or distribution facilities on or about the Property.

**“Environmental Law”** means any applicable Law, and any order of or binding agreement with any Governmental Authority: (i) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (ii) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Waste Materials. The term “Environmental Law” includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.; and the Virginia Solid Waste Management Regulations, as amended, 9 VAC 20-81 et seq.

**“Event of Default”** means the term defined in Section 8.1.

**“Event of Force Majeure”** means strikes, lockouts or other labor disturbances; delays in transportation; inability to secure labor or materials in the open market; acts of God or the elements, including fire, flood, washout, perils at sea, lightning, earthquake or accidents; conditions arising out of or attributable to acts of war, domestic or international terrorism, pandemic, Regulatory Suspension, civil disturbances or riots; the effect of any Law; the failure of any Governmental Authority to issue any permit, entitlement, approval or authorization within a reasonable period of time after an application for the same has been submitted; the inability to sell electricity at commercially reasonable prices in the open market during a period when a force

majeure clause under Tenant's power purchase contracts or other interconnection agreement for the sale of electricity at tariff rates is in effect; or any other matter or condition beyond the reasonable anticipation and control of the Party in question, whether or not similar to the matters or conditions herein specifically enumerated; and (in the case of Tenant) while litigation contesting all or any portion of the right, title and interest of Owner in the Property and/or of Tenant under this Lease Agreement shall be pending and not finally determined.

**"Feasibility Term"** means the term defined in Section 2.2(a).

**"Generating Units"** means solar-powered electric generating facilities, including modules, inverters, cables, foundations, mounting units and all ancillary improvements and equipment providing support or otherwise associated therewith.

**"Governmental Authority"** means any federal, state or local court, administrative agency, commission, instrumentality or other governmental authority (or any political subdivision thereof) and any electric reliability organization, regional transmission organization or independent system operator, in each case, with jurisdiction over the Property, the Project Facilities, or this Lease Agreement.

**"Investment Grade"** means a credit rating assigned to Tenant or one of Tenant's Affiliate's senior long-term unsecured debt obligations of at least BBB- from Standard & Poor's Rating Services, Baa3 from Moody's Investors Service, or another, similar ratings service with an equivalent rating standard as the foregoing.

**"Law(s)"** means each and all valid and applicable laws (including Environmental Laws), statutes, ordinances, regulations, orders and assessments of any Governmental Authority with jurisdiction over the Project Facilities or the Property.

**"Lease"** means all leasehold rights described and contained in this Lease Agreement, together with any other rights specified in this Lease Agreement.

**"Lease Agreement"** means this Solar Project Ground Lease Agreement.

**"Lender"** means any financial institution, equity investor or other person that from time to time provides secured financing or equity investment for some or all of the Project Facilities or Operations, and any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders involved in whole or in part in such financing, and their respective representatives, successors and assigns.

**"Lender's Lien"** means the term defined in Section 9.3.

**"Memorandum of Lease"** means a memorandum of this Lease Agreement, the form of which memorandum is attached as Exhibit B.

**"Monetary Default"** means the term defined in Section 8.1.

**"Non-Monetary Default"** means the term defined in Section 8.1.

**“Notice of Claim”** means the term defined in Section 10.3(b).

**“Offer”** means the term defined in Section 10.9(a).

**“Offer Notice”** means the term defined in Section 10.9(a).

**“Operations”** means the activities that Tenant has the right to undertake with respect to the Property pursuant to this Lease Agreement, including Section 2.1 and Section 5.1 hereof.

**“Operations Term”** means the term defined in Section 2.2(d).

**“Operations Term Base Rent”** means the amount as calculated pursuant to the Basic Terms.

**“Operations Term Commencement Date”** means the date upon which the Construction Term expires.

**“Overdue Rate”** means five percent (5%) per annum plus the Prime Rate announced from time to time by Bank of America, or the maximum rate permitted by Law, whichever is less.

**“Owner’s Adjacent Land”** means any real property owned by Owner at any time from and after the Effective Date that is adjacent to the Property.

**“Permitted Encumbrances”** means the term defined in Section 7.9(a).

**“Permitted Uses”** means those certain permitted uses as more particularly described in Article 5 but specifically excluding any right to exploit or extract any subsurface minerals on the Property. The prohibition against mineral extraction in the preceding sentence shall not prohibit Tenant from removing materials from the Property that may be deemed to be minerals if such removal is incidental to and a part of the ordinary and expected construction activities related to the Project Facilities.

**“Person”** means an individual, corporation, limited liability company, voluntary association, joint stock company, business trust, partnership, agency, Governmental Authority or other entity.

**“Project”** means the solar energy project to be constructed and operated on the Property.

**“Project Facilities”** means Generating Units, Electric Interconnection Facilities, substations, switching stations, electric transformers, Energy Storage Facilities, telecommunications equipment related to Generating Units, roads, meteorological equipment and sunlight measurement equipment, foundations, pads, footings, mounting structures, supports, foundations, communication cables and/or networks, lay-down and staging areas, crane pads, maintenance, administrative, operations, maintenance and storage buildings, reasonable signage and all related or ancillary improvements and equipment.

**“Property”** means the Property as described in the Basic Terms.

**“Regulatory Suspension”** mean the application of any applicable Laws that results in the delay, interruption, or suspension of (i) the development, construction or operation of the Project or (ii) the anticipated production, transmission or sale of electricity from the Project.

**“Renewable Energy”** and **“Renewable Energy Resources”** means the related terms as described in Section 5.1.

**“Rent”** means the term defined in Section 3.2.

**“Representatives”** mean a Party’s or a Lender’s officers, directors, members, managers, stockholders, partners, employees, agents, advisors, attorneys, accountants, engineers, contractors and consultants.

**“Restoration Activities”** means the following activities as required to remove and decommission the Project Facilities upon the expiration of the Operations Term: (i) removal from the surface of the Property and up to thirty-six (36) inches below the surface of the Property of any Project Facilities owned, installed or constructed by Tenant thereon (including footings and foundations); (ii) filling and compacting all trenches or other borings or excavations made by Tenant on the Property; (iii) removal from the surface of the Property all debris caused by Tenant’s activities related the Project; and (iv) reseeded and stabilization of disturbed areas as required by applicable Laws.

**“Restoration Term”** means the term defined in Section 2.2(e).

**“Restoration Term Base Rent”** means the amount as calculated pursuant to the Basic Terms.

**“Right of First Refusal”** means the term defined in Section 10.9.

**“Setback Requirements”** means the term defined in Section 7.6.

**“Taking”** means the term defined in Section 10.5.

**“Term”** or **“Lease Term”** means the Feasibility Term, Development Term, Construction Term, the Operations Term, and the Restoration Term, collectively, as further described in Section 2.2.

**“Waste Materials”** means solid waste, asbestos, lead and any and all discarded materials, pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials and hazardous substances as referenced or defined in, or regulated under, any federal, state, local or other applicable environmental law, statute, ordinance, rule, order, regulation or standard in effect on the date hereof including, without limitation, the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), as amended (**“RCRA”**), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136, et seq.), as amended (**“FIFRA”**), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.), as amended (**“CERCLA”**), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), as amended (**“HMTA”**), and the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), as amended (**“TSCA”**), and any other federal, state or local law governing such substances, as such laws may be amended from time to time.

## ARTICLE 2. GRANT OF RIGHTS; TERM

Section 2.1 Lease. For and in consideration of the covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed by Owner and Tenant, Owner hereby leases to Tenant, and Tenant hereby leases from Owner, the Property, together with all rights, privileges, easements and appurtenances belonging or in any way pertaining to the Property.

Section 2.2 Lease Term. The term of this Lease Agreement shall commence on the Effective Date and shall continue thereafter until the expiration of the Restoration Term, unless sooner terminated as provided for herein (the “**Term**” or the “**Lease Term**”). The Lease Term shall consist of the following:

(a) The period commencing on the Effective Date and expiring Three Hundred Sixty-Five (365) days thereafter, unless sooner terminated by Tenant or unless such term is reduced by Tenant in its sole discretion (the “**Feasibility Term**”). From and after the Effective Date through the Construction Term, Tenant, personally or through its authorized agents or representatives, shall be entitled, upon twenty-four (24) hours advance notice to Owner, to enter upon the Property to inspect the Property and to make such investigations, including appraisals, engineering studies, interviews of governmental and quasi-governmental officials, soil tests, environmental studies, underwriting analyses, and to conduct such non-invasive environmental studies, and geotechnical and engineering studies of the Property as Tenant deems reasonably necessary or advisable. Prior to performing any geotechnical or soil borings or any Phase II environmental sampling at the Property (collectively, “**Invasive Testing**”), Tenant shall give prior written notice of such Invasive Testing to Owner at least ten (10) days before the Invasive Testing is scheduled to occur, and Owner shall have the right to have a representative present during any such Invasive Testing. Tenant, at its expense, shall promptly repair any material damage to the Property caused by any such Invasive Testing undertaken by or on behalf of Tenant. During the Feasibility Term, Tenant will not operate at the Property, nor have any presence at the Property except in order to conduct any inspections, studies, or Invasive Testing. Owner acknowledges that it has sole responsibility to manage, direct, or control operations at the Property, including all decisions related to Waste Materials;

(b) The period commencing at the end of the Feasibility Term and expiring three (3) years thereafter (the “**Development Term**”), unless sooner terminated by Tenant or unless such term is extended by Tenant’s exercise of an option to extend the term. Tenant shall have two (2) one-year options to extend the Development Term by giving Owner at least thirty (30) days prior written notice before the end of the existing Development Term;

(c) The period commencing at the end of the Development Term and expiring on the earlier of (i) the Commercial Operation Date or (ii) the eighth (8th) anniversary of the Effective Date (the “**Construction Term**”);

(d) The period commencing on the Operations Term Commencement Date and expiring on the thirty-fifth (35<sup>th</sup>) anniversary of the Operations Term Commencement Date, unless sooner terminated as provided in this Lease Agreement (the “**Operations Term**”); and

(e) The period commencing on the expiration or earlier termination of the Operations Term and expiring on the earlier of (i) the completion of the Restoration Activities or (ii) one (1) year after the expiration or earlier termination of the Operations Term (the “**Restoration Term**”).

(f) Notwithstanding any other provision of this Lease, the parties acknowledge that to extent the proposed use of the Property by Tenant, including the development of solar energy resources, does not meet current zoning regulations, such use will require rezoning or other zoning permit(s) or approvals by James City County (the “**Zoning Approval**”). Accordingly, this Lease shall not be deemed effective for the Construction Term and Operations Term, until Zoning Approval is granted. Until that time, Tenant’s rights under the Lease are limited to those things allowed during the Feasibility Term and Development Term, and if Zoning Approval is not granted before the end of the Development Term, as may be extended, this Lease shall automatically terminate.

Section 2.2 Early Termination by Tenant. Tenant shall have the right to terminate this Lease Agreement at any time during the Feasibility Term and Development Term by giving Owner prior written notice. Additionally, Tenant shall have the right to terminate this Lease Agreement at any time during the Construction Term and the Operations Term by giving Owner at least one hundred eighty (180) days prior written notice of the date that such Term will end and the Restoration Term will commence. Tenant shall be required to complete all Restoration Activities during the Restoration Term as provided herein. In such event, (i) Owner shall retain all Rent paid prior to the date that the Restoration Term commences, and (ii) if the date that the Restoration Term commences is any date other than the anniversary of the Effective Date, any Construction Term or Operations Term Base Rent previously paid shall be credited toward Restoration Term Base Rent, provided that if the total amount credited toward Restoration Term Base Rent is greater than the actual amount of Restoration Term Base Rent, Owner shall retain the remaining amount of such Construction Term or Operations Term Base Rent. At Owner’s request, after completion of the Restoration Activities Tenant will execute a written notice of the termination of this Lease Agreement, which notice shall be in a recordable form and in form reasonably acceptable to Tenant.

Section 2.3 Tenant Materials. Tenant shall provide Owner copies of any reports, test results, inspections or other due diligence materials produced or received by Tenant as a result of Tenant’s inspection and investigation of the Property.

### **ARTICLE 3. PAYMENTS AND FEES**

Section 3.1 Base Ground Rent. During the Term, Tenant shall pay annual Base Ground Rent, in advance, to Owner, as provided herein. Beginning with the commencement of the Development Term and Construction Term, Tenant shall pay to Owner the Development Term Base Rent and Construction Term Base Rent, respectively, by Electronic Transfer. The Development Term Base Rent and Construction Term Base Rent shall be prorated to take into



account the number of days that such Term is less than the one-year period for which the most recent installment of such Base Rent has been paid, and the balance of that prepaid Development Term Base Rent or Construction Term Base Rent shall be credited toward the first installment of such Base Rent due on Construction Term Commencement Date or the Operations Term Commencement Date, as applicable. Within ten (10) Business Days after the Operations Term Commencement Date and on each anniversary of the Operations Term Commencement Date thereafter throughout the Term, Tenant shall pay to Owner annual Operations Term Base Rent by Electronic Transfer, as such rent shall be calculated pursuant to the Basic Terms. Within ten (10) Business Days after the expiration of the Operations Term, and monthly thereafter during the Restoration Term, Tenant shall pay to Owner Restoration Term Base Rent by Electronic Transfer, as such rent shall be calculated pursuant to the Basic Terms.

Section 3.2 Additional Payments. During the Lease Term Tenant shall pay as additional ground rental (collectively with the Base Ground Rent, the “**Rent**”) (i) all amounts, liabilities and obligations payable by Tenant under the terms hereof on the date such payment obligations are due and payable, (ii) interest at a rate equal to the Overdue Rate on such of the foregoing amounts, liabilities and obligations as are payable to Owner and are not paid when due and that Owner shall have paid on behalf of Tenant, from the date of payment thereof by Owner until paid by Tenant, and (iii) interest at the Overdue Rate on all overdue installments of Base Ground Rent not paid within ten (10) Business Days after Owner delivers to Tenant written notice of Tenant’s failure to timely pay an installment of Base Ground Rent.

Section 3.3 INTENTIONALLY OMITTED.

Section 3.4 INTENTIONALLY OMITTED.

#### **ARTICLE 4. ADDITIONAL EASEMENTS**

Section 4.1 Cooperation Regarding Additional Easements. Owner acknowledges that commercial operation of the Project may require, from time to time during the Project’s existence, additional temporary easements in favor of Tenant or certain third parties on the Property and Owner’s Adjacent Land (each an “**Additional Easement**”). Accordingly, if Tenant, the independent system operator with jurisdiction over the system in which the Project operates, the transmission or distribution system owner or operator to whose distribution or transmission lines the Project interconnects, the phone or other communications provider, or the off-taker to whom output and/or renewable energy credits from the Project are to be sold, determines that one or more separate easements is required for the efficient and/or safe operation of the Project, then Owner agrees to diligently seek approval of the Board of Supervisors to grant such Additional Easements on, over, across, along and/or above the Property or Owner’s Adjacent Land, including the right to install and maintain on the Property (i) Electric Interconnection Facilities, inclusive of metering equipment, substations, switching stations, distribution and transmission lines and facilities, both overhead and underground, which carry electrical energy to and/or from the Project (each an “**Additional Electric Interconnection Facilities Easement**”), (ii) communications, electrical, and other utility service lines and facilities, both overhead and underground, which provide communications, electrical service or other utility services for the Project Facilities and/or the Electric Interconnection Facilities (each an “**Additional Utility Service Facilities Easement**”), (iii) wind measurement equipment and

control, maintenance and administration buildings that benefit the Project (each an “**Additional Support Facilities Easement**”), and/or (iv) roads for ingress and egress for any Project Facilities (each an “**Additional Access Easement**”). Notwithstanding the foregoing, Owner shall not be required to seek approval of the Board of Supervisors to grant any Additional Easement if Tenant is then in default of the Lease Agreement or interferes with any Permitted Encumbrances or Owner’s or any third party’s use and enjoyment of any other property owned by Owner or is in violation of any agreement to which Owner is a party.

Section 4.2 INTENTIONALLY OMITTED.

Section 4.3 Location of Additional Easements. The proposed location of any Additional Easement on Owner’s Adjacent Land shall be subject to the prior approval of Board of Supervisors. During the Restoration Term Tenant shall remove any facilities, wires or other improvements installed in any Additional Easement (whether on the Property or on Owner’s Adjacent Land) as required pursuant to the Restoration Activities. Tenant shall cause a notice of termination of any Additional Easement to be recorded in the Clerk’s Office as soon as reasonably practicable after the expiration of the Lease Term, which obligation shall survive the expiration or termination of this Lease Agreement.

**ARTICLE 5. PERMITTED USE; RIGHTS OF PARTIES**

Section 5.1 Tenant shall have the exclusive right to use the Property for the Project Facilities and to evaluate, develop and use solar energy resources found on, about, over and across the Property (such energy resources collectively referred to as the “**Renewable Energy Resources**”), together with the exclusive right to the free and unobstructed insolation and flow of the Renewable Energy Resources on, about, over and across the Property, including, without limitation, (a) using, converting, maintaining, and capturing the Renewable Energy Resources on, above, over, through and across the Property (“**Renewable Energy**”); (b) collecting, distributing, transmitting, storing and selling the energy output from the Renewable Energy; and (c) engaging in any other lawful uses reasonably related to the development of the Renewable Energy, including, without limitation, the development, erection, installation, construction, improvement, reconstruction, enlargement, removal, relocation, replacement and repowering, and the use, maintenance, repair and operation, of the following: (i) a weather station and solar radiation and solar energy monitoring devices and other weather measurement devices, monitoring and recording equipment and facilities with respect to the Renewable Energy Resources, including, without limitation, the establishment at Tenant’s sole discretion of a land-based or satellite-based high speed Internet connection and/or a meter for the load at the Property; (ii) the Generating Units and other facilities related to the harnessing of sunlight for photovoltaic or solar thermal electric generation, together with mounting substrates or supports and their associated structure and foundations; (iii) the Electric Interconnection Facilities and any other telecommunications equipment, interconnection and/or switching facilities, circuit breakers, transformers, utility lines and installations, cables, wires, fiber, conduit, footings, foundations, towers, poles, crossarms, guy lines and anchors, and any related or associated improvements, fixtures, facilities, appliances, machinery and equipment; (iv) Energy Storage Facilities; (v) any other improvements, fixtures, facilities, appliances, machinery and equipment, whether temporary or permanent, deemed necessary by Tenant, in its sole discretion, that are related to or associated with any of the foregoing items; (vi) filming and recording (including a webcam

showing site activities on the Internet) any aspect of the Property, the Project Facilities and/or the Project for measuring the energy output, publicity, marketing, security, research or educational purposes associated with development of Renewable Energy Resources; and (vii) implementing, operating and maintaining security deemed appropriate by Tenant with respect to the Project Facilities, which may include (but shall not be limited to) video monitoring, night-vision monitoring, motion detection, and on-site security personnel. Notwithstanding anything to the contrary herein, Tenant shall be entitled to determine the size, type and manufacturer of the Project Facilities to be located upon the Property in its sole discretion. After the Effective Date, Owner shall not (a) actively grant any rights under this Lease Agreement or in or to the Property to any other Person or (b) amend, terminate or surrender any documents or rights entered into by Owner (or its predecessors in interest) or granted to Owner (or its predecessors in interest), as applicable, with respect to the Property, in each case, which are reasonably expected to impair Tenant's rights under this Lease Agreement, without Tenant's prior written consent.

Section 5.2 No Required Construction or Production. Nothing contained in this Lease Agreement shall be construed as requiring Tenant (i) to undertake construction or installation, or to alter or remove any Project Facilities on the Property or elsewhere, except for removal of all Project Facilities upon the expiration, surrender or earlier termination of this Lease Agreement as provided herein, (ii) to continue operation of any Project Facilities from time to time located on the Property or elsewhere, or (iii) to generate or sell any minimum or maximum amount of electrical energy from the Property. Tenant shall have the sole and absolute discretion as to if, when and to what extent that (i) any construction Project Facilities shall occur and (ii) the frequency and extent to which the Generating Units will operate and generate electricity. Owner acknowledges that Tenant has made no representations or warranties to Owner, including any regarding development of, or the likelihood of power generation from, the Property.

Section 5.3 Use of Roads. Tenant may use any existing roads on the Property for all purposes under this Lease Agreement and shall maintain the same in good repair and condition. Tenant, at Tenant's sole cost and expense, shall have the right to construct roads reasonably necessary in Tenant's reasonable discretion. If new roads are necessary, they shall be designed and constructed to the appropriate industry standard no higher than necessary to accommodate their intended functions, and such roads shall be limited to the width that is, in Tenant's reasonable discretion, reasonably necessary or as otherwise required by Law.

Section 5.4 INTENTIONALLY OMITTED.

## **ARTICLE 6. TENANT'S OBLIGATIONS**

Section 6.1 Compliance with Law. In conducting its Operations on the Property, Tenant shall comply in all material respects with all Laws, however, Tenant may contest the validity or applicability of any Laws (including but not limited to any property tax) related to the Property, the Tenant, the Project, the Operations, or any other activity or property of Tenant, by appropriate legal proceedings brought in the name of Tenant or in the names of both Tenant and Owner where appropriate or required; provided Owner, by approval of its Board of Supervisors, shall have the right to consent to being named in such proceedings. Any such contest or proceeding, including any initiated by Tenant and maintained in the name of Owner, shall be at Tenant's

expense and be controlled and directed by Tenant, but in consultation with Owner and at no cost to Owner, excepting proceedings which arise due to Owner's violation of any Laws.

Section 6.2 Location of Project Facilities. Project Facilities may be located anywhere on the Property and Tenant shall not be required to obtain Owner's approval or consent as to the location of any Project Facilities so long as such facilities are constructed, operated and maintained in compliance with all applicable Laws, all Permitted Encumbrances and this Lease Agreement.

Section 6.3 Fences and Gates. Tenant shall, at Tenant's sole cost and expense, have the right to construct and erect fences, gates and other security precautions as reasonably necessary to accommodate the Project. Additionally, to the extent Tenant may need to remove any fences, gates, or other access limitations for ingress or egress and to reasonably accommodate the Project, Owner and Tenant shall cooperate in good faith create such accommodations for the Project.

Section 6.4 Restoration. Tenant shall have the exclusive right to occupy the Property during the Restoration Term to complete the Restoration Activities. In addition, Tenant shall comply with all applicable Laws with respect to decommissioning requirements and restoration activities described herein, and to the extent that the required Restoration Activities are less restrictive than the decommissioning requirements and restoration activities required by applicable Laws, Tenant shall be obligated to perform the more restrictive decommissioning requirements and restoration activities required by such applicable Laws.

Section 6.5 Taxes.

(a) Taxes Payable. From and after the Effective Date, subject to terms and conditions of this Section 6.5, Tenant shall be responsible for, and shall pay to Owner upon presentment of any applicable tax bills, any and all (i) real and personal property taxes, (ii) general and special assessments, and (iii) other similar charges levied on or assessed against the Property and/or Project Facilities located on the Property, any other Tenant personal property located on or in the Property or any facilities or improvements located on the Property, to the full extent of installments relating to any period of the Lease Term. Notwithstanding any other provision of this Section 6.5, if applicable Laws expressly permit the payment of any property taxes in installments (whether or not interest accrues on the unpaid balance), Tenant may, at its election, utilize the permitted installment method, but shall pay to Owner each installment with any interest before delinquency. Upon receipt of any tax payments from Tenant, Owner shall be obligated to make such tax payments to the appropriate Governmental Authority within twenty (20) Business Days of receipt of such tax payments from Tenant. Tenant shall have the right to contest the correctness or validity of any taxes, assessments and charges for which it is responsible hereunder. Notwithstanding any other provision of this Section 6.5, Tenant shall not be obligated to pay for (i) any income taxes attributable to Owner, (ii) any increase in the assessed value of the Property for tax purposes caused by Owner other than as a result of entering into and/or performing this Lease Agreement, or (iii) taxes or assessments arising from or related to Owner's Adjacent Land. For the sake of clarity, Tenant shall be responsible for all "roll back" taxes assessed against the Property as a result of a change in use of the Property for the Project.

(b) Owner Obligation to Provide Tax Bills and Assessment Notices to Tenant. Upon receipt by Owner of (i) any tax bill payable by Tenant pursuant to this Section 6.5 or (ii) any assessment notice related to taxable property for which Tenant is obligated to pay taxes pursuant to this Section 6.5, Owner shall forward to Tenant such bill or assessment notice, as the case may be, within twenty (20) days after receipt of same.

(c) Payment of Delinquent Taxes. If Tenant is delinquent in the payment of any taxes that it is obligated to pay, and such delinquency is not related to Owner's failure to timely deliver a tax bill to Tenant, then Owner may, at its option, pay such delinquent amounts. If Owner has paid such delinquent amounts on behalf of Tenant, then Tenant shall pay such delinquent amounts plus interest at the Overdue Rate calculated from the due date of such payment, and Tenant shall pay said amount within twenty (20) Business Days following written notice from Owner.

(d) Tax Credits. From and after the Effective Date, all tax credits, tax incentives or tax related grants or benefits relating to the Operations, the Project or the Project Facilities are, and shall remain, the property of Tenant.

Section 6.6 Utilities. Tenant shall be solely responsible for and promptly pay for all water, electric, telecommunications and any other utility services used by the Project Facilities or Tenant on the Property. Tenant shall cause all accounts for utilities used or consumed in or about the Property in connection with the Project, if any, to be placed in the name of Tenant. Tenant shall be entitled to take any steps or actions necessary to connect with local or nearby utility companies for the provision of water, electric, telecommunications or any other utility services for use related to the Project.

Section 6.7 Representations and Warranties of Tenant. Tenant hereby represents and warrants to Owner, as of the Effective Date, the following: (i) each Person signing this Lease Agreement on behalf of Tenant is authorized to do so; (ii) Tenant has the full and unrestricted legal power, right and authority to enter into this Lease Agreement, and to perform its obligations hereunder; (iii) no other Person is required to join in this Lease Agreement in order for the same to be fully enforceable by Owner; (iv) this Lease Agreement is and will be in full force and effect as to Tenant, without the necessity of any consent of or joinder herein by any other Person; (v) this Lease Agreement constitutes the valid and binding obligation of Tenant, and is enforceable in accordance with its terms; and (vi) Tenant is not the subject of any bankruptcy, insolvency or probate proceeding.

Section 6.8 Mechanics' Liens. Tenant shall pay all costs for any construction done by it or on its behalf on the Property as permitted by this Lease Agreement. Tenant hereby gives Owner notice of its intent to commence construction of material improvements on the Property in connection with the Project and, after substantial completion of the Project, Tenant shall keep the Property free and clear of all mechanics' liens resulting from construction done by or for Tenant. Tenant shall have sixty (60) days after first becoming aware of any mechanics' lien encumbering the Property to (i) pay such mechanics' lien, (ii) contest the correctness or the validity of any such mechanics' liens and procure and record a lien release bond issued by an entity authorized to issue surety bonds in the Commonwealth of Virginia in an amount required by applicable Laws to cause

such lien to be released from record title to the Property, or (iii) otherwise cause the removal of such lien from record title to the Property.

## **ARTICLE 7. OWNER'S OBLIGATIONS**

Section 7.1 No Interference – Non-Obstruction. Owner's activities on the Property shall not materially interfere with the Permitted Uses or decrease the output or efficiency of any Project Facilities. Further, Owner's activities on the Property shall not materially interfere with Tenant's then-existing Lease, easement or other rights relating to (i) access by Tenant, its Affiliates or Representatives to the Property or any lands in the vicinity of or adjacent to the Property used by Tenant in the Operations, (ii) Operations of Tenant or its Affiliates or Representatives on the Property or on lands adjacent to or in the vicinity of the Property used by Tenant in the Operations, (iii) the exercise of Tenant's rights under this Lease Agreement, or (iv) the undertaking of any other activities permitted by Tenant hereunder.

Without limiting the generality of the foregoing, for so long as this Lease Agreement is in effect, Owner may not take any action with respect to the Property that would reasonably be expected to interfere with Tenant's use of the Property or the operation of the Project. After notification to Owner, Tenant shall have the right to remove any obstructions on the Property that adversely affect its use of the Property as permitted under this Lease Agreement.

Section 7.2 Compliance with Obligations. Owner shall comply on a timely basis with all of its legal and contractual obligations with respect to the Property. If Owner fails to do so, then, without limitation upon any other rights or remedies that Tenant may have at law or in equity, Tenant may (but shall not be obligated to) pay or otherwise satisfy any unpaid obligations of Owner which, if left unsatisfied, could delay, interfere with, impair or prevent Operations or the exercise of any of Tenant's other rights under this Lease Agreement, or the financing of the Project, and Tenant shall thereupon be subrogated to the rights of the obligee of such obligations. Without limitation on any other rights or remedies available to Tenant, any sums so expended by Tenant shall be immediately reimbursed to Tenant by Owner.

### Section 7.3 Rights of Third Parties.

(a) From and after the Effective Date, any right, title or interest created by Owner in favor of, or granted to, any third party and related to the Property or this Lease Agreement shall be subject to this Lease Agreement and all of Tenant's rights, title and interests created hereby.

(b) If at any time during the Term any Encumbrance to Owner's title to the Property which was created prior to the Effective Date is found, exists or is claimed to exist against the Property or any portion thereof, creates rights superior to those of Tenant, and Tenant in its sole discretion determines that the existence, use, operation, implementation or exercise of such Encumbrance would reasonably be expected to delay, interfere with, impair or prevent Operations or the exercise of any of Tenant's other rights under this Lease Agreement or the financing of the Project, then Tenant shall be entitled to seek to obtain a subordination, non-disturbance agreement, consent or other agreement (in a form and containing provisions reasonably acceptable to Tenant) from the holder of such Encumbrance that will eliminate such risks for the benefit of Tenant, and

Owner shall reasonably cooperate with and assist Tenant in connection therewith, at Tenant's sole cost and expense. The holder of such Encumbrance shall be permitted to rely on this section as Owner's express consent, without further consent required, to Tenant's request for a subordination, non-disturbance agreement, consent or other agreement (in a form and containing provisions reasonably acceptable to Tenant) that will eliminate such risks for the benefit of Tenant.

Section 7.4 No Ownership Right. Owner shall have no ownership, no lien rights or other interest in any Project Facilities installed by Tenant on the Property. Tenant may remove any or all Project Facilities at any time. Without limiting the generality of the foregoing, Owner hereby waives any statutory or common law lien that it might otherwise have in or to the Project Facilities or any part thereof. Any and all solar resource data collected by or on behalf of Tenant after the Effective Date is the sole property of Tenant. Notwithstanding anything in this Lease Agreement to the contrary, no part of the Project Facilities or Electric Interconnection Facilities installed by Tenant on the Property shall be considered part of the Property or an improvement to real property; the Project Facilities or Electric Interconnection Facilities shall at all times be considered tangible personal property owned exclusively by Tenant.

Section 7.5 Cooperation. Owner shall reasonably cooperate (and shall use commercially reasonable efforts to cause any of its Representatives to cooperate) with Tenant, at Tenant's sole cost and expense, in the conduct of Tenant's construction and operations of the Project Facilities and in otherwise giving effect to the purpose and intent of this Lease Agreement, including in Tenant's efforts to obtain from any Governmental Authority or any other Person any environmental impact review, easement, permit, entitlement, approval, authorization or other rights necessary or convenient in connection with construction and Operations; and Owner shall (and shall use commercially reasonable efforts to cause any such other Person to) promptly upon request and without demanding additional consideration, execute, and, if appropriate, cause to be acknowledged and recorded, any map, application, permit or document that is reasonably requested by Tenant in connection therewith.

Section 7.6 Setback Waiver. Owner hereby waives any setbacks or setback requirements that may apply to the installation of Project Facilities and are imposed by any Governmental Authority or required under applicable Laws (the "**Setback Requirements**") to the extent Owner can waive such Setback Requirements under applicable Law. Further, if so requested by Tenant or any of its Affiliates, Owner shall promptly, at Tenant's cost, execute, and if appropriate, cause to be acknowledged and recorded against the Property, any setback waiver, setback elimination or other document or instrument required by any Governmental Authority or that Tenant or such Affiliate deems necessary or convenient to the obtaining of any entitlement or permit.

Section 7.7 Confidentiality. To the extent permitted by applicable Laws, Owner shall hold in confidence, and shall require its Representatives to hold in confidence, for the sole benefit of Tenant, (i) this Lease Agreement, (ii) any statements or accountings related to the Project, (iii) all information pertaining to the rent and to calculation of rent payments (including the sale price of power), (iv) any other financial information provided by or on behalf of Tenant, (v) any books, records, or product designs of Tenant or Affiliate thereof, and (vi) any information regarding energy output or availability from Operations on the Property (collectively, "**Confidential Information**"). Confidential Information shall not include information that (i) is in the public



domain by reason of prior publication through no act or omission of Owner, (ii) was already known to Owner at the time of disclosure and which Owner is free to use or disclose without breach of any obligation to any Person, (iii) was independently developed by Owner without use of Confidential Information, (iv) was ordered to be publicly released by a Governmental Authority acting in accordance with applicable Law, or (v) is subject to mandatory disclosure under the Virginia Freedom of Information Act. Owner shall not use any such Confidential Information for its own benefit, publish or otherwise disclose such Confidential Information to others, or permit the use of such Confidential Information by others for their benefit or to the detriment of Tenant. Notwithstanding the foregoing, Owner may disclose such information to (i) Owner's lenders, attorneys, prospective purchasers, accountants and other personal financial advisors, and Owner's Representatives who, in Owner's reasonable judgment, have a bona fide need to know such Confidential Information, and (ii) any prospective purchaser of or lender against the Property; provided that in making such disclosure Owner advises the Person receiving the Confidential Information of the confidentiality thereof and obtains the agreement of said Person to abide by the confidentiality provisions above. Owner may also disclose Confidential Information pursuant to any lawful subpoena or court order, in which case Owner shall give Tenant sufficient advance notice of such proceedings to allow Tenant to oppose the issuance of the same (or, if this is not possible, as much notice as is practicable). Owner recognizes and acknowledges the competitive value of the Confidential Information and the damage that could result to Tenant if the Confidential Information were used or disclosed by Owner except as authorized by this Lease Agreement. Accordingly, Tenant shall be entitled to all remedies available at law, including but not limited to equitable relief by way of specific performance, injunction, or otherwise if Owner or any of its Representatives breaches any of the provisions of this Lease Agreement.

Section 7.8 Estoppel Certificates. Within ten (10) business days after request by Tenant, any Lender, or any proposed or actual Assignee, Owner shall execute and deliver an estoppel certificate (i) certifying (if true) that this Lease Agreement is in full force and effect and has not been modified, (ii) certifying (if true) that to the best of Owner's knowledge there are no uncured Events of Default hereunder, and no condition or event exists which, with the passage of time, would become an Event of Default (or, if any uncured Events of Default or any such conditions or events exist, stating with particularity the nature thereof), and (iii) any other certifications as may be reasonably requested by Tenant, Lender or Assignee. Tenant, any existing or proposed Lender, or any Assignee shall have the right to rely on the certifications made in such estoppel certificate.

Section 7.9 Representations and Warranties. Owner hereby represents and warrants to Tenant as of the Effective Date that:

(a) (i) Owner is the sole fee owner of the surface and mineral estate of the Property, subject to no Encumbrances or any agreements that could affect Tenant's use, possession or occupancy of the Property except those shown on **Schedule B** to that certain leasehold title commitment issued by Fidelity National Title Insurance Company as Commitment No. DC2402452, and the unrecorded leases and other agreements listed in **Exhibit C** hereto, true and correct copies of which, or written summaries thereof if oral leases have been provided to Tenant ("**Permitted Encumbrances**"), (ii) each Person signing this Lease Agreement on behalf of Owner is authorized to do so, (iii) Owner has the full and unrestricted legal power, right and authority to

enter into this Lease Agreement, and to perform its obligations hereunder, (iv) no other Person (including any spouse) is required to join in this Lease Agreement in order for the same to be fully enforceable by Tenant and for Tenant to enjoy all the rights and benefits accorded to it hereunder, (v) this Lease Agreement is in full force and effect, without the necessity of any consent of or joinder herein by any other Person, (vi) this Lease Agreement constitutes the valid and binding obligation of Owner, and is enforceable in accordance with its terms (except as enforcement may be limited by general principles of equity and/or bankruptcy, insolvency, moratorium and similar laws affecting creditors' rights and remedies generally), and (vii) Owner is not the subject of any bankruptcy, insolvency or probate proceeding.

(b) To Owner's knowledge, neither this Lease Agreement nor the Property or any portion thereof is in violation of any Law.

(c) To Owner's knowledge, there are no pending or threatened actions, suits, claims, legal proceedings or any other proceedings affecting or that could affect the Property or any portion thereof, at law or in equity, before any court or governmental agency.

## **ARTICLE 8. DEFAULT; REMEDIES; PROTECTION OF LENDERS**

Section 8.1 Default. Subject to the rights of Lenders as provided in this Lease Agreement, each of the following events shall constitute an "**Event of Default**" by a Party and shall permit the non-defaulting Party to pursue the remedies set forth in this Lease Agreement or to pursue other remedies except as expressly limited by the terms of this Lease Agreement:

(a) Failure to Pay. The failure or omission by either Party to pay amounts required to be paid pursuant to this Lease Agreement when due hereunder, and such failure or omission has continued for thirty (30) days after written notice from the other Party; or

(b) Failure to Perform. The failure or omission by either Party to observe, keep or perform any of the other material terms, agreements or conditions set forth in this Lease Agreement, and such failure or omission has continued for sixty (60) days (or such longer period as may be reasonably required to cure such failure or omission, provided that cure has commenced and such Party is diligently proceeding to complete such cure) after written notice from the other Party.

Subject to the rights of Lenders as provided in this Lease Agreement, upon the occurrence and during the continuation of an Event of Default by Tenant, Owner may, at its option, and in addition to and cumulatively of any other rights Owner may have at law or in equity or under this Lease Agreement, (i) cure the Tenant Event of Default on Tenant's behalf, in which event Tenant shall reimburse Owner on demand for all sums so expended by Owner, or (ii) enforce, by all proper and legal suits and other means, its rights hereunder, including the collection of sums due hereunder, in which event Owner shall have all remedies available at law or in equity except as limited by the terms of this Lease Agreement. Notwithstanding any other provision of this Lease Agreement or any rights or remedies which Owner might otherwise have at law or in equity, with respect to any Event of Default under this Lease Agreement that is not remedied within the time provided in this Lease Agreement, Owner shall be limited to seeking damages and Owner shall not (and Owner waives the right to) commence any action or proceeding in which termination,

cancellation, rescission or reformation of this Lease Agreement is sought as a remedy. Owner shall not be entitled to punitive or consequential damages from an Event of Default.

As used in this Article 8, “**Monetary Default**” means failure to pay when due any Rent or other monetary obligation of any Party under this Lease Agreement. All Events of Default that are not Monetary Defaults shall be deemed a “**Non-Monetary Default**.” If (i) a judgment is rendered against a Party for monetary damages in connection with a Non-Monetary Default, (ii) such judgment becomes final and non-appealable, and (iii) such judgment is not paid within thirty (30) days after written demand for payment, then such failure to pay shall then become a Monetary Default by such Party under this Lease Agreement.

Upon the occurrence and during the continuation of an Event of Default by Owner, Tenant may, at its option, and in addition to and cumulatively of any other rights Owner may have at law or in equity or under this Lease Agreement, (i) cure the Owner Event of Default on Owner’s behalf, in which event Owner shall reimburse Tenant on demand for all sums so expended by Tenant, (ii) terminate this Lease Agreement by notice to Owner and in conformity with procedures required hereby and by applicable Law, or (iii) enforce, by all proper and legal suits and other means, its rights hereunder, including the collection of sums due hereunder, in which event Tenant shall have all remedies available at law or in equity except as limited by the terms of this Lease Agreement. Tenant shall have the right but not the obligation after providing at least sixty (60) days’ prior written notice to Owner, to perform, acquire, or satisfy any lien, encumbrance, agreement or obligation of Owner which is a lien or encumbrance on the Property or Improvements if Owner is not contesting the correctness or validity of such lien, encumbrance, agreement or obligation and such lien, encumbrance, agreement or obligation does not result in a material risk of loss of the Property or Improvements. Tenant shall not be entitled to punitive or consequential damages from an Event of Default.

#### Section 8.2 Protection of Lenders.

(a) If Tenant has assigned, hypothecated, mortgaged or pledged all or any portion of its right, title or interest under this Lease Agreement and/or in any Project Facilities, it shall promptly deliver written notice of the same (including the address of the Lender) to Owner, together with a general description of the interest transferred; provided, however, that the failure to give such notice shall not constitute an Event of Default under this Lease Agreement but rather shall only have the effect that Owner shall not be required to recognize or be bound by such assignment, hypothecation, mortgage or pledge (and all notice and other requirements in this Article 8 benefiting such Lender shall accordingly be inapplicable) until such notice shall have been given (unless such information is included in an estoppel certificate signed by Owner, in which event notice hereunder shall not be necessary). Every Lender shall have the right, but not the obligation, (i) to make any payments due under this Lease Agreement, (ii) to assign its mortgage, (iii) to enforce its mortgage, and (iv) to do any other act or thing that may be necessary or appropriate to be done in the performance and observance of the terms hereof. All payments so made and all things so done and performed by any Lender shall be as effective to prevent or cure any Event of Default as they would have been if made, done and performed by Tenant, and Owner agrees to accept, in writing, such performance, payment and cure. Owner agrees to accept such payment and performance, and Owner authorizes the performing Lender (or its Representatives)

to enter upon the Property to complete such performance with all the rights, privileges and obligations of Tenant hereunder.

(b) Owner agrees for the benefit of each Lender that it will not, without prior consent to such Lender (which consent shall be given or withheld on the basis of the documents governing the relationship between such Lender and Tenant): (i) amend or modify, or take any action causing, consenting to or accepting the amendment or modification of this Lease Agreement, if such amendment or modification would materially affect the rights of Tenant hereunder or would reduce the rights or remedies of such Lender hereunder or impair or reduce the security for any Lender's Lien, (ii) by agreement with Tenant, cancel, terminate, or suspend this Lease Agreement, or (iii) take any action causing, consenting to or accepting the cancellation, termination or suspension of this Lease Agreement.

(c) Owner shall deliver to each Lender a duplicate copy of all notices of an Event of Default that Owner may from time to time deliver to Tenant, and Owner shall deliver such copies to each such Lender at the same time Owner delivers such Event of Default notices to Tenant.

(d) Upon Tenant's failure to cure any Event of Default within the time provided in this Article 8, the Lender(s) shall have an additional thirty (30) days after the expiration of the time provided in Section 8.1 to cure such Event of Default. Lenders shall nevertheless be deemed to have cured and remedied such Event of Default if (i) on or before thirty (30) days after receiving the Notice of Default from Owner, any such Lender shall have acquired Tenant's then-remaining right, title and interest in the Property, or shall have commenced foreclosure or other appropriate proceedings for such purposes and shall be prosecuting such proceedings to completion with commercially reasonable diligence, (ii) any such Lender shall have fully cured within such thirty (30) day period any failure to perform any monetary obligations of Tenant hereunder and shall thereafter continue to perform such monetary obligations, and (iii) after obtaining Tenant's then-remaining right, title and interest in the Property, any such Lender commences performance of the non-monetary obligations of Tenant hereunder and thereafter pursues the same to completion with commercially reasonable diligence. All rights of Owner to terminate this Lease Agreement as a result of the occurrence of an Event of Default hereunder, if any, shall be expressly conditioned upon (i) each such Lender having first received a copy of the notice of default as and when provided in this Article 8, and (ii) such Lenders having failed to cure the Event of Default.

(e) If any such Lender is prohibited by any process or injunction issued by, or by reason of any action of, any court having jurisdiction over any bankruptcy, reorganization, insolvency or other debtor-relief proceeding from commencing or prosecuting foreclosure or other appropriate proceedings, then the times specified in Section 8.2(d) for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided, however, that such Lender (or another Lender) shall have fully cured, within the time specified in Section 8.2(d), any failure to perform any monetary obligations of Tenant hereunder, and shall thereafter continue to perform such monetary obligations when and as due hereunder.

(f) The transfer of Tenant's interest under this Lease Agreement to any Lender and/or to one or more purchasers or tenants (i) at a foreclosure sale by judicial or nonjudicial

foreclosure and sale, (ii) by a conveyance by Tenant in lieu of foreclosure, or (iii) by any other assignment or conveyance, including by a Lender following foreclosure and sale, or as a result of any other legal proceeding, shall not require the consent of Owner, and Owner agrees that upon such foreclosure, sale, conveyance, assignment or other proceeding, Owner shall recognize such Lender or such other purchaser(s) or Tenant(s) as the successor to Tenant under this Lease Agreement; provided, however, that, subject to Section 8.2(h), such Lender or such purchaser or Tenant assumes the obligations of Tenant under this Lease Agreement and pays all amounts in arrears due from Tenant to Owner hereunder.

(g) Neither the bankruptcy nor the insolvency of Owner or Tenant shall be grounds for terminating this Lease Agreement so long as Tenant or a Lender has paid Rent and all other monetary obligations of Tenant in accordance with the terms of this Lease Agreement. If this Lease Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if this Lease Agreement is terminated for any reason other than an Event of Default which could have been, but was not cured by a Lender as provided in this Article 8, and if, within thirty (30) days after receiving notice of such rejection or termination, any Lender shall so request, then, so long as such Lender has cured any Event of Default, Owner shall execute and deliver to such Lender or its designee a new agreement, which new agreement shall (i) be on the same terms and conditions as this Lease Agreement (except for any requirements that have been fulfilled by Tenant prior to rejection or termination of this Lease Agreement), (ii) be for a term equal to the remaining Term before giving effect to such rejection or termination, (iii) contain a lease of the portion of the Property in which such Lender had an interest on the date of such rejection or termination, (iv) require payment to Owner of the amount of rent, calculated using only the portion of Property covered by the new agreement, (v) enjoy the same priority as this Lease Agreement over any lien, encumbrance or other interest created by Owner, and (vi) be executed within thirty (30) days after receipt by Owner of notice of the Lender's election to enter into a new agreement.

(h) No Lender shall have any duty, obligation or liability under this Lease Agreement prior to the time of its entry into physical possession of the Property or its commencement of performance of Tenant's obligations under this Lease Agreement or under a new agreement entered into as provided in this Article 8. If a Lender elects to perform Tenant's obligations under this Lease Agreement or to enter into a new agreement as provided in this Article 8, then such Lender shall not have any personal liability to Owner for the performance of such obligations, and the sole recourse of Owner in seeking the enforcement of such obligations shall be to such Lender's interest in the Project Facilities and under this Lease Agreement. If a Lender assigns its interest in this Lease Agreement or in a new agreement entered into pursuant to this Article 8 to any Person, then, provided that such assignee assumes the obligations of Tenant (or such Lender, as the case may be) under this Lease Agreement, such Lender shall be released from any further liability hereunder.

(i) There shall be no merger of the leasehold estate or easement interest created thereby, with the fee estate in the Property by reason of the fact that the Lease or said leasehold estate may be held, directly or indirectly, by or for the account of any person or persons who own such fee estate or any interest therein, and no such merger shall occur unless and until all persons then having an interest in such fee estate and all persons (including any Lender) then having an interest in this Lease Agreement, shall join in a written instrument effecting such merger and duly record the same.

(j) Each Lender is and shall be an express third-party beneficiary of the terms of this Section 8.2 and shall be entitled to enforce the obligations of Owner hereunder.

(k) Nothing herein shall permit the Tenant to create a lien in favor of a Lender against Owner's fee interest in the Property.

## **ARTICLE 9. ASSIGNMENT AND SUBLETTING**

Section 9.1 Assignment. Except as otherwise provided herein, Tenant may not assign, transfer or sublease its interest (or any portion thereof) in this Lease Agreement or in the Project to any Person without the prior written consent of Owner, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Tenant may, without the prior written consent of Owner, sublease all or any portion of the Property, or assign this Lease Agreement, in whole or in part, to (i) an Affiliate, (ii) any entity that acquires all or substantially all of Tenant's Project Facilities on the Property, or (iii) a Person with an Investment Grade, provided Tenant delivers to Owner written notice of such assignment. Notwithstanding the foregoing, Tenant shall remain liable under this Lease Agreement on an assignment under subparagraphs (i) and (ii) unless the Assignee has an Investment Grade.

Section 9.2 Conveyances/Assignments by Owner. Subject to the terms of this Lease Agreement, Owner shall have the right to devise, convey, gift, assign, transfer and/or sell Owner's interest in all or a portion of the fee title to the Property (along with any rights associated with the fee title) to any Person. Owner shall notify Tenant in writing of any sale, assignment or transfer of any of Owner's interest in all or a portion of the fee title to the Property, or any part thereof along with any evidence of such sale, assignment or transfer. Until Tenant receives such notice and the supporting documentation, Tenant shall have no duty to any successor Owner, and Tenant shall not be in default under this Lease Agreement if it continues to make all payments to the original Owner before Tenant receives such notice of sale, assignment or transfer and any evidence of such transfer required by Tenant. Notwithstanding anything herein, Owner shall not sever, convey, assign, sell or otherwise transfer the Property's solar energy rights or interests, the rights to develop, install, operate or maintain solar energy conversion systems, or any other rights granted under this Lease Agreement, including the right to receive payments from the Tenant, separate and apart from the Property's fee title to the Property. Any future owner of all or a portion of Owner's interest in the fee title to the Property by virtue of such transfer assumes Owner's obligations under this Lease Agreement as to the portion of Owner's interest in the fee title so purchased or so transferred.

Section 9.3 Right to Encumber. Tenant may, at any time and from time to time, conditionally or unconditionally, and without obtaining the consent of Owner, hypothecate, mortgage, grant, collaterally assign, or pledge all or any portion of Tenant's right, title or interest under this Lease Agreement and/or in any Project Facilities to any Lender as security for the repayment of any indebtedness and/or the performance of any obligation relating in whole or in part to Project Facilities or Operations (a "**Lender's Lien**").

## ARTICLE 10. GENERAL PROVISIONS

### Section 10.1 Insurance.

(a) Tenant at its expense will maintain or cause to be maintained at all times, with financially responsible insurers approved to do business in the Commonwealth of Virginia insurance, including, without limitation, (i) commercial general liability insurance, including personal injury and property damage against claims arising out of or connected with the possession, use, operation or leasing of the Property in the amount of \$2,000,000 each occurrence and \$4,000,000 in the aggregate and (ii) with respect to the improvements related to the Project, during such time periods that material construction activities are being conducted by Tenant on the Property, “all risk” builder’s risk insurance and on or before the Operations Term Commencement Date, commercial property insurance. Any insurance required under this Section 10.1 may be subject to reasonable deductibles as are usually carried by prudent persons or companies of similar financial condition operating similar properties. Such insurance may be included under a blanket policy or policies covering the Property and other property and assets not constituting part of the Property. Any property insurance policies carried by Tenant shall include a waiver of the insurer’s rights of subrogation against the Owner. Owner shall be an additional insured under Tenant’s commercial general liability insurance policy, and Tenant shall provide Owner with evidence of such insurance in the form of a self-insured letter or certificate of insurance upon commencement of this Lease Agreement. Approval to self-insure applies only to the Tenant.

(b) Notwithstanding the foregoing, to the extent allowed under applicable Law, Tenant may elect to self-insure for any of the required insurance provided Tenant has an Investment Grade. If Tenant elects to self-insure, Tenant will provide Owner, if requested by Owner, with a letter of self-insurance in lieu of a certificate of insurance.

### Section 10.2 Environmental Matters.

(a) Owner represents and warrants to Tenant that the Property is in compliance with Environmental Laws and the Uniform Environmental Covenants Act Environmental Covenant recorded in the Williamsburg/James City County Circuit Court (Instrument #170020925) on November 2, 2017 (“UECA Covenant”). Owner further represents and warrants to Tenant that Owner has provided to Tenant or will provide within thirty (30) days of the Effective Date, any and all information relating to the former landfill that operated at the Property and all subsequent reports, studies, and other compliance documents prepared in accordance with Environmental Laws (the “**Landfill Documents**”). Owner further represents and warrants to Tenant that no other Landfill Documents are in its possession or known to exist by Owner, other than those that are required to be provided pursuant to this Section 10.2(a).

(b) Owner assumes responsibility for and agrees to comply with (i) all Environmental Laws applicable to Owner’s former and current use of the Property; (ii) all recommendations and requirements of the Virginia Department of Environmental Quality (“**DEQ**”) and the environmental covenants in the UECA Covenant including, but not limited to, quarterly inspections and inspections after major storm events of the landfill cap and stormwater conveyances, including repairs as needed, compliance with activity and use limitations in the

UECA Covenant, and submission of the five-year UECA Covenant inspection report; (iii) all remediation and other requirements regarding groundwater contamination, methane, and other Waste Materials located on or released on or from the Property other than by Tenant or its Representatives, including without limitation any groundwater contamination, methane and Waste Materials located on the Property prior to the Effective Date.

(c) Owner assumes responsibility for timely notifying DEQ as to the change in use of the Property and other related events as required by the UECA Covenant. Tenant agrees to coordinate with Owner as necessary and to provide information as may be required by DEQ in order for Owner to comply with this Section 10.2(c).

(d) Owner agrees to provide a copy concurrently to Tenant of all reports, correspondence, and other documentation that Owner or Owner's Representatives submit to DEQ or other Governmental Authorities in connection with the Property.

(e) Owner acknowledges that it properly abandoned all existing groundwater monitoring and gas monitoring wells in accordance with DEQ-approved procedures.

(f) To the extent that Owner is required to undertake remediation or other activities at the Property as a result of the groundwater contamination, methane and/or Waste Materials located on or released on or from the Property, Owner agrees that it will ensure that Tenant's access to the Property and Operations at the Property are not impeded or negatively affected by such remediation or other activities.

(g) Tenant assumes responsibility for and agrees to comply with (i) all Environmental Laws applicable to Tenant's use of the Property, and (ii) all remediation obligations as required by any Environmental Law or Governmental Authority related to any Waste Materials brought onto the Property or utilized on the Property by Tenant or anyone acting through or on behalf of Tenant.

### Section 10.3 Indemnity.

(a) Indemnification. Tenant agrees to indemnify, defend and hold harmless Owner against any and all losses, damages (excluding consequential damages unless required to be paid by Owner pursuant to a legal judgment obtained by a third party against Owner for a claim for which Tenant is required to provide indemnity hereunder), expenses and other liabilities, including without limitation reasonable attorneys' fees and any third-party claims, to the extent pertaining to a third-party claim for physical damage to property or physical injury to any person (each, a "**Claim**" and collectively, the "**Claims**"), to the extent resulting from or arising out of (i) any operations or activities of Tenant on the Property, (ii) any negligent act or negligent failure to act or willful misconduct on the part of Tenant or anyone else engaged in doing work for Tenant, (iii) any breach or inaccuracy of any representations or warranties made by Tenant under this Lease Agreement, or (iv) any breach of this Lease Agreement by Tenant. This indemnification shall survive the termination of this Lease Agreement. This indemnification shall not apply to losses, damages, claims, expenses and other liabilities to the extent (i) caused by any negligent or deliberate act or omission on the part of Owner or its Representatives; (ii) caused by Waste Materials and/or methane or groundwater contamination located on the Property; or (iii) covered



by insurance to the extent such proceeds are received by Owner. **EXCEPT WHERE TENANT HAS ENGAGED IN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OWNER WAIVES THE RIGHT TO COLLECT FROM TENANT PUNITIVE OR CONSEQUENTIAL DAMAGES FOR ANY MATTER UNDER THIS LEASE AGREEMENT, PROVIDED THAT TENANT SHALL BE REQUIRED TO PAY ANY PUNITIVE OR CONSEQUENTIAL DAMAGES AWARDED TO A THIRD PARTY AS THE RESULT OF A THIRD-PARTY CLAIM.**

(b) Notice of Claim. Subject to the terms of this Lease Agreement and upon obtaining knowledge of a Claim for which it is entitled to indemnity under this Article 10, within thirty (30) days of obtaining such knowledge, Owner shall deliver a written notice of such Claim (“**Notice of Claim**”) to Tenant. The failure to provide (or timely provide) a Notice of Claim will not affect Owner’s rights to indemnification; provided, however, Tenant is not obligated to indemnify Owner for the increased amount of any loss that would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

(c) Defense of Third-Party Claims. Tenant shall defend, in good faith and at its own expense, any Claim or demand pursuant to this Article 10 as set forth in a Notice of Claim relating to a third-party Claim, and Owner, at its expense, may participate in the defense, unless (i) Tenant chooses counsel not reasonably acceptable to Owner or (ii) Tenant does not pursue with reasonable diligence such defense, in which case Owner’s participation shall be at Tenant’s expense. Owner and Tenant shall cooperate fully with each other in connection with the defense, negotiation or settlement of any such legal proceeding, Claim or demand. Owner shall have a right to written notice of any settlement, and Tenant shall not execute or otherwise agree to any consent decree that provides for other than monetary payment within such Tenant’s sole ability to pay, without approval from the Board of Supervisors. Notwithstanding the foregoing, if Tenant is using good faith efforts and reasonable diligence to defend such Claim, Owner shall have the right to pay or settle any such Claim, provided that in such event it shall waive any right to indemnity therefor by Tenant. If Tenant elects not to defend or settle such proceeding, Claim or demand or fails to use good faith efforts and reasonable diligence in its participation in such proceeding or its defense of such Claim or demand and Owner defends, and settles or otherwise deals with any such proceeding, Claim or demand, then Owner shall provide thirty (30) days’ advance written notice of any property settlement, which settlement may be without the consent of Tenant, provided that Owner acts reasonably and in accordance with its good faith business judgment. If Owner defends, settles or otherwise handles any such proceeding, Claim or demand as described in the preceding sentence, Tenant shall reimburse Owner for all of Owner’s costs and expenses, including reasonable attorneys’ and consultants’ fee, incurred as a result of such proceeding, Claim or demand.

(d) Access to Information. If any Claim is made by a third party against an Owner, Owner shall use its best efforts to make available to Tenant those Representatives whose assistance, testimony or presence is necessary to assist Tenant in evaluating and in defending such Claims; provided, however, that any such access shall be conducted in such a manner as not to interfere unreasonably with the operations of the business of Owner, provided that failure to use commercially reasonable efforts to provide necessary witnesses or access to information will excuse Indemnifying Party’s performance.

(e) Reduction for Insurance and Other Recovery. The indemnities set forth in Section 10.3 above shall be without regard to whether Owner may also have a Claim against a third party for any of the losses. The gross amount that an Indemnifying Party is liable to, for, or on behalf of any Owner shall be reduced by any insurance proceeds, payments received in respect of a judgment or settlement or other amounts actually recovered by or on behalf of Owner related to the loss. If an Owner shall have received or shall have had paid on its behalf an indemnity payment in respect of a loss and shall subsequently receive, directly or indirectly, insurance proceeds, payments in respect of a judgment or settlement or other amounts in respect of such loss, then Owner shall pay to Tenant all such amounts received or, if less, the amount of the indemnity payment.

Section 10.4 Safety Measures; Waiver and Recognition. Owner authorizes Tenant to take reasonable safety measures to reduce the risk of damage to the Project Facilities or the risk that the Project Facilities will cause damage, injury or death to people, livestock, other animals or property, and Tenant may, subject to applicable laws and rights of third parties, construct fencing around one or more of the Generating Units and take other reasonable security precautions if Tenant determines, in its sole discretion, that such fencing and/or security measures will reduce such risks of damage, death or injury. The cost of any fencing constructed by Tenant, or of any other such security measures taken by Tenant, shall be borne solely by Tenant and shall be removed by Tenant on the expiration or early termination of this Lease Agreement pursuant to the requirements in Section 6.4.

**OWNER ADDITIONALLY RECOGNIZES THE NEED TO EXERCISE EXTREME CAUTION WHEN IN PROXIMITY TO ANY OF THE PROJECT FACILITIES AND THE IMPORTANCE OF RESPECTING GATES, FENCES, SIGNAGE, RULES AND OTHER SAFETY MEASURES UTILIZED BY TENANT, AND OWNER AGREES TO EXERCISE SUCH CAUTION AND RESPECT TO SUCH MEASURES AT ALL TIMES AND TO CAUSE ITS REPRESENTATIVES TO DO THE SAME. OWNER ACKNOWLEDGES THAT THERE MAY BE RISKS ASSOCIATED WITH SOLAR POWER ENERGY GENERATION, INCLUDING BUT NOT LIMITED TO ELECTROMAGNETIC FIELDS, STRAY VOLTAGE, AND HEALTH EFFECTS POTENTIALLY ASSOCIATED WITH NOISE, SHADOW, AND GLARE, AND OWNER KNOWINGLY WAIVES AND RELEASES TENANT AND ITS EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, AGENTS, SERVANTS, ATTORNEYS, AFFILIATES, PARENT, SUBSIDIARIES, SUCCESSORS AND ASSIGNS, AND ALL PERSONS, FIRMS, CORPORATIONS AND ORGANIZATIONS ACTING ON ITS BEHALF FROM ANY PRESENT OR FUTURE CLAIMS, AT LAW OR IN EQUITY, WHETHER KNOWN OR UNKNOWN, FORESEEABLE OR OTHERWISE, ARISING FROM OR RELATING TO SUCH RISKS AND OWNER SHALL HAVE NO RIGHT TO INDEMNITY PURSUANT TO SECTION 10.3 FOR ANY SUCH CLAIMS.**

**SUCH RELEASE INCLUDES CLAIMS OF WHICH OWNER IS PRESENTLY UNAWARE OR WHICH OWNER DOES NOT PRESENTLY SUSPECT TO EXIST WHICH, IF KNOWN BY OWNER, WOULD MATERIALLY AFFECT OWNER'S RELEASE TO TENANT.**

**OWNER HEREBY SPECIFICALLY ACKNOWLEDGES THAT OWNER HAS CAREFULLY REVIEWED THIS SUBSECTION AND DISCUSSED ITS IMPORT WITH LEGAL COUNSEL AND THAT THE PROVISIONS OF THIS SUBSECTION ARE A MATERIAL PART OF THIS LEASE AGREEMENT.**

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**Owner**

Section 10.5 INTENTIONALLY OMITTED.

Section 10.6 Notices. Any notices, statements, requests, demands, consents, correspondence or other communications required or permitted to be given hereunder shall be in writing and shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, or by overnight or other courier or delivery service, freight prepaid, to the address of the Party to be notified as indicated in the Basic Terms (and if to a Lender, the address indicated in any notice to Owner provided under Section 8.2(a) or in any estoppel certificate signed by Owner). All notices shall be deemed delivered when actually received or refused delivery by intended recipient. Each Party and any Lender may change its address for receipt of notices by sending written notice hereunder of such change to the other Party (in the case of a Lender, to both Parties) in the manner specified in this Section 10.6. Notwithstanding the foregoing, any amounts payable to Owner under this Lease Agreement shall be deemed tendered three (3) days after a check for the same, addressed to Owner's address above, is deposited in the United States mail, first-class postage prepaid.

Section 10.7 Force Majeure; Casualty.

(a) Force Majeure. Notwithstanding any other provision of this Lease Agreement, each Party's obligations under this Lease Agreement (other than monetary obligations, none of which shall be excused or delayed by reason of this Section 10.7) shall be suspended and excused, and the Term, and any other time periods set forth herein shall continue and be extended for a like period of time, while such Party is hindered or prevented, in whole or in part, from complying with any term, covenant, condition or provision of this Lease Agreement, by any Event of Force Majeure.

(b) Casualty. If any Casualty event occurs such that the Project Facilities are unable to produce seventy-five percent (75%) of the energy that the Project Facilities produced during the year immediately prior to the Casualty then, at Tenant's option, Tenant shall have the option to (i) repair, rebuild and/or replace the Project Facilities (without any abatement for the payment of Base Ground Rent), or (ii) terminate the Development Term, Construction Term or the Operations Term, as applicable, and enter into the Restoration Term of this Lease Agreement by giving Owner written notice of such termination no later than six (6) months after the date of such Casualty. Any Base Ground Rent payments made before the date of such termination shall be prorated based on the number of days from such termination date through the date that the next installment of Ground Base Rent would have been due, and the overage shall be applied toward the Restoration Term Base Rent payments.

Section 10.8 Meetings with Third Persons. During the Term, Tenant and its Representatives shall have the right to meet with any Governmental Authority and with any other Persons with whom Owner has contractual arrangements in connection with or relating to the Property or any portion thereof, and to discuss with any such Persons the terms of this Lease Agreement, the terms of any contractual arrangements between Owner and any such Person, and any other matters relating to the Property or Tenant's intended use of the Property.

Section 10.9      Right of First Refusal. Owner grants and conveys onto Tenant a right of first refusal to purchase the Property, or any portion thereof (the "**Right of First Refusal**"), upon the following terms and conditions:

(a) If, during the Term Owner receives from any third party a bona-fide offer to purchase all or a portion of the Property (the "**Offer**") which Owner intends to accept, Owner shall deliver to Tenant written notice of such offer (the "**Offer Notice**"), which Offer Notice shall include all the terms of such Offer (with a copy of the Offer attached) shall be irrevocable until the Election Notice is received or deemed received by the Owner.

(b) Tenant shall have forty-five (45) days after the receipt of such Offer Notice in which to elect to purchase the Property (or the portion thereof) for the same price and on the same terms and conditions contained in the Offer. If Tenant does not respond within the forty-five (45) day period, the Right of First Refusal shall terminate as to that Offer.

(c) If Tenant elects to purchase the Property (or the portion thereof), Tenant will deliver written notice to Owner on or before the end of the forty-five (45) day period. Thereafter, the parties shall enter into a purchase agreement on the terms stated in the Offer.

(d) If Tenant elects not to purchase the Property (or the portion thereof), Owner shall be entitled to sell the Property (or the portion thereof) to the potential purchaser on substantially the same terms and conditions contained in the Offer Notice free and clear of any right of Tenant under this Lease Agreement, except as provided as follows: (i) the purchase price paid by the potential purchaser may not be less than the purchase price presented to Tenant in the Offer Notice; and (ii) if the Offer is for only a portion of the Property, then Tenant's Right of First Refusal shall be terminated only as to the portion of the Property identified in the Offer but shall remain in full force and effect for the remainder of the Property not included in the Offer.

(e) If the purchase price to be paid by the potential purchaser is less than initially offered to Tenant in the Offer Notice, Tenant's Right of First Refusal shall revive and Owner must re-offer the Property (or the portion thereof) to Tenant according to the terms of this Lease Agreement for the reduced purchase price before consummating the sale to the potential purchaser

Section 10.10      Third-Party Beneficiaries. Except with respect to the rights of Lenders (which Lenders are hereby expressly made third-party beneficiaries hereof to the extent

of their respective rights hereunder), the agreements and covenants contained herein are made solely for the benefit of the Parties, their respective successors and assigns, and shall not be construed as benefiting any Person who is not a Party to this Lease Agreement, nor otherwise give rise to any cause of action in any Person who is not a Party hereto.

Section 10.11      Attorneys' Fees. In the event of any litigation related to the interpretation or enforcement of this Lease Agreement, or which in any other manner relates to this Lease Agreement or the Property, the prevailing Party shall be entitled to recover from the other Party all of its reasonable attorneys' fees and court and other reasonable costs incurred and paid. If a voluntary or involuntary bankruptcy proceeding is commenced by or against Tenant, Owner shall be entitled to recover from Tenant its attorneys' fees and court and other costs incurred because of the bankruptcy.

Section 10.12      Covenants Running With the Land. The Property shall be held, conveyed, assigned, hypothecated, encumbered, leased, used and occupied subject to the provisions of this Lease Agreement, which provisions shall run with the Property, and shall be binding upon and inure to the benefit of the Parties and each other Person having any interest therein during their ownership thereof, and their respective tenants, heirs, executors, administrators, successors and assigns.

Section 10.13      Governing Law. This Lease Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without giving effect to the choice of law principles thereof.

Section 10.14      Memorandum. Concurrent with execution hereof, the Parties shall execute the Memorandum of Lease and cause it to be acknowledged and recorded in the Clerk's Office. Tenant shall pay all costs (including transfer and recordation taxes and fees) associated with such recordation. If the Memorandum of Lease is recorded, each Party covenants to execute and acknowledge (i) a valid release of such Memorandum of Lease, in recordable form, effective upon the expiration, or earlier termination, of this Lease Agreement (and which may thereupon be recorded by Owner), and (ii) an amendment to such Memorandum of Lease, in recordable form, upon any amendment to this Lease Agreement which renders any information set forth within the original Memorandum of Lease incorrect in any material respect (and which may thereupon be recorded by Tenant). The provisions of this section shall survive expiration or earlier termination of this Lease Agreement.

Section 10.15      Savings Clause. If any term or provision hereof is held to be invalid, void or otherwise unenforceable by any court of competent jurisdiction, then the same shall not affect the validity or enforceability of any other term or provision hereof, the terms and provisions hereof being severable.

Section 10.16      No Waiver. The waiver of any covenant, condition or agreement contained herein shall not constitute a waiver of any other covenant, condition or agreement herein or of the future performance thereof.

Section 10.17      Entire Agreement; Modifications. This Lease Agreement, including any Exhibits attached hereto, contains the entire agreement between the Parties in connection

with any matter mentioned or contemplated herein, and all prior or contemporaneous proposals, agreements, understandings and representations, whether oral or written, are merged herein and superseded hereby. No modification, waiver, amendment, discharge or change of this Lease Agreement shall be valid unless the same is in writing and signed by the Party against whom the enforcement thereof is sought.

Section 10.18      Multiple Counterparts. This Lease Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document. Documents obtained via facsimile machine or by electronic imaging through email, secure messaging, text messaging or other similar means shall also be considered originals for all purposes. Notwithstanding the foregoing, each Party shall be obligated to execute and deliver original signatures to the Memorandum of Lease for purposes of recording such Memorandum of Lease.

Section 10.19      Provision of Copy of Agreement. If Owner so requests in writing, Tenant shall provide, within thirty (30) days of such request, one (1) complete copy of this Lease Agreement.

Section 10.20      Survival. The provisions of this Lease Agreement relating to indemnification from one Party to the other Party, Tenant's restoration obligations under Section 6.4 and Owner's confidentiality obligations under Section 7.7 shall survive any termination or expiration of this Lease Agreement. Additionally, any provisions of this Lease Agreement that require performance subsequent to the termination or expiration of this Lease Agreement also shall survive such termination or expiration.

Section 10.21      Cooperation. The Parties agree to reasonably cooperate with each other in the implementation and performance of this Lease Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Lease Agreement. Unless expressly provided otherwise in this Lease Agreement, wherever this Lease Agreement gives a Party a right to determine, require, specify, or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

Section 10.22      Construction. In this Lease Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa. The terms "include," "includes" and "including" shall be deemed to be followed by the words "without limitation." Both Parties acknowledge that each was actively involved in the negotiation and drafting of this Lease Agreement and that no law or rule of construction shall be raised or used in which the provisions of this Lease Agreement shall be construed in favor of or against either Party because one is deemed to be the author thereof. Captions or titles used herein are for convenience of reference only and do not affect the meaning or intent hereof.

**(Signatures Appear on the Following Pages)**

IN WITNESS WHEREOF, the Parties have caused this Lease Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date (as of the later of the dates set forth below).

|                                          |
|------------------------------------------|
| Execution Authorized<br>By Board Minutes |
| # _____                                  |
| Date _____                               |
| <b>APPROVED</b>                          |
| Substance                                |
| Form                                     |

**OWNER:**

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

By: \_\_\_\_\_  
Scott Stevens  
County Administrator  
Date: \_\_\_\_\_

**(Signatures Continue on the Following Page)**

**TENANT:**

**VIRGINIA ELECTRIC AND POWER  
COMPANY**, a Virginia public service corporation  
**d/b/a DOMINION ENERGY VIRGINIA**

\_\_\_\_\_  
Date

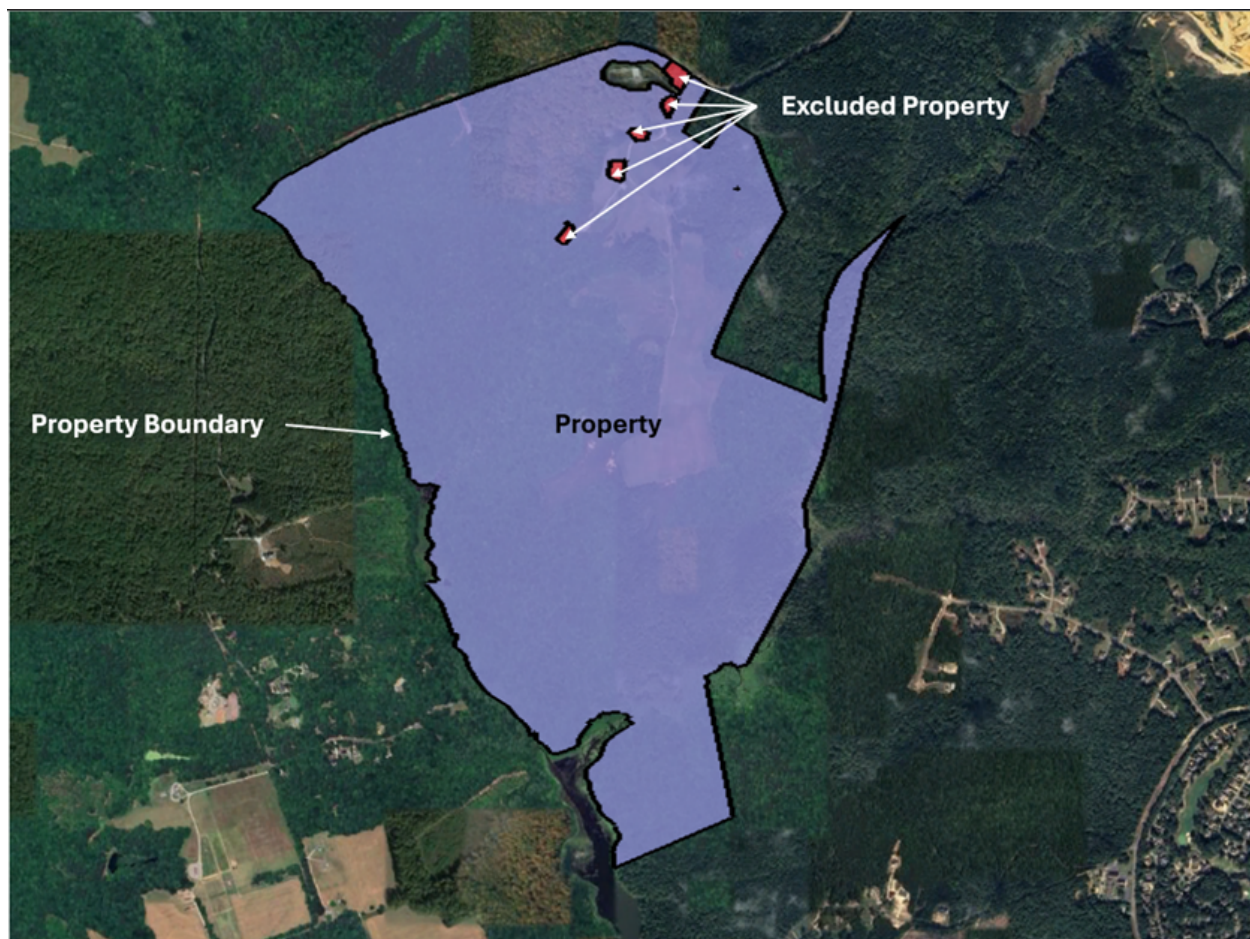
By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_



**Exhibit A to Lease Agreement**



**Exhibit B to Lease Agreement**

**Memorandum of Lease**

This instrument prepared by  
and after recording return to:

\_\_\_\_\_

\_\_\_\_\_

Richmond, Virginia \_\_\_\_\_

Tax Map Numbers: \_\_\_\_\_

Actual Value of Leased Property: \$ \_\_\_\_\_

**NOTE TO CLERK:** THE RECORDING TAXES DUE ON A MEMORANDUM OF LEASE PURSUANT TO CODE OF VIRGINIA (1950) SECTION 58.1-807(B) IS CALCULATED ON THE BASIS OF THE LOWER OF (A) THE GROSS RENTAL DUE OVER THE LEASE TERM OR (B) THE LEASED PROPERTY'S ACTUAL VALUE. THE LEASED PROPERTY CONSISTS OF [PORTIONS OF THE ABOVE-REFERENCED TAX MAP PARCELS HAVING AN AGGREGATE AREA OF \_\_\_\_\_ ACRES AND AN AGGREGATE PRORATED TAX ASSESSED VALUE OF \$ \_\_\_\_\_.] THE GROSS RENTAL DUE OVER THE LEASE TERM EXCEEDS THIS PRORATED TAX ASSESSED VALUE.

**MEMORANDUM OF SOLAR PROJECT GROUND LEASE AGREEMENT**

This MEMORANDUM OF SOLAR PROJECT GROUND LEASE AGREEMENT (this "**Memorandum**") is effective as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "**Effective Date**"), by and between \_\_\_\_\_ a \_\_\_\_\_, having an address of \_\_\_\_\_ ("**Owner**"), and VIRGINIA ELECTRIC AND POWER COMPANY, a Virginia public service corporation d/b/a Dominion Energy Virginia, with an address of 120 Tredegar Street, Richmond, Virginia, 23219, Attention: Real Estate ("**Tenant**").

WITNESSETH:

That in consideration of the rents, covenants and conditions more particularly set forth in that certain Solar Project Ground Lease Agreement of even date herewith made by and between Owner and Tenant (the "**Lease Agreement**"), Owner and Tenant do hereby covenant, promise and agree as follows:

1. **Defined Terms.** Capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Lease Agreement.
2. **Property.** Pursuant to the terms of the Lease Agreement, Owner does demise unto Tenant and Tenant does take from Owner for the term (as hereinafter defined) the Property described on Exhibit A-1 attached hereto and made a part hereof.

3. **Term.** The Lease Term commenced on the Effective Date. The Lease Term is comprised of a Feasibility Term of Three Hundred Sixty-Five (365) days, that commences upon the Effective Date, Development Term of up to three (3) years (with two one-year options to extend), that commences at end of the Feasibility Term, Construction Term of up to two (2) years from the end of the Development Term, an Operations Term that commences upon the expiration of the Construction Term and expires on the thirty-fifth (35<sup>th</sup>) anniversary of the expiration of the Construction Term (unless sooner terminated as provided in the Lease Agreement), and a Restoration Term of up to one (1) year after the expiration of the Operations Term as necessary to complete the Restoration Activities required by the Lease Agreement.

4. **Effect of Memorandum.** The sole purpose of this instrument is to give notice of the Lease Agreement and its terms, covenants and conditions to the same extent as if the Lease Agreement were fully set forth herein. This Memorandum shall not modify in any manner the terms, conditions or intent of the Lease Agreement and the parties agree that this Memorandum is not intended nor shall it be used to interpret the Lease Agreement or determine the intent of the parties under the Lease Agreement.

**(Signatures and Notarial Acknowledgements Appear on the Following Pages)**

IN WITNESS WHEREOF, each of the parties hereto has caused this Memorandum to be executed in its name pursuant to due authority.

|                                          |
|------------------------------------------|
| Execution Authorized<br>By Board Minutes |
| # _____                                  |
| Date _____                               |
| <b>APPROVED</b>                          |
| Substance                                |
| Form                                     |

**OWNER:**

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

By: \_\_\_\_\_  
Scott Stevens  
County Administrator

Date: \_\_\_\_\_

STATE/COMMONWEALTH OF \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_,  
on behalf of such \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My commission expires: \_\_\_\_\_

Notarial Registration Number: \_\_\_\_\_

**(Signatures and Notarial Acknowledgements Continue on the Following Page)**

**TENANT:**

**VIRGINIA ELECTRIC AND POWER  
COMPANY**, a Virginia public service corporation  
**d/b/a DOMINION ENERGY VIRGINIA**

\_\_\_\_\_  
Date

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of Virginia Electric and Power Company, a Virginia  
public service corporation d/b/a Dominion Energy Virginia, on behalf of the company.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My commission expires: \_\_\_\_\_

Notarial Registration Number: \_\_\_\_\_

**Exhibit A-1 to Memorandum**

The Property

**Exhibit C to Lease Agreement**

Permitted Encumbrances

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