

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 14TH DAY OF NOVEMBER, 2000, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Ronald A. Nervitt, Chairman, Powhatan District
Bruce C. Goodson, Vice Chairman, Roberts District

John J. McGlennon, Jamestown District
Jay T. Harrison, Sr., Berkeley District
James G. Kennedy, Stonehouse District
Sanford B. Wanner, County Administrator
Frank M. Morton, III, County Attorney

B. PLEDGE OF ALLEGIANCE

Cub Scout Pack 180, led the Board and citizens in the Pledge of Allegiance.

C. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, spoke of test scores on standardized tests; the lack of a County Ordinance concerning loitering; and the William and Mary band's performance on Veterans' Day at Cedar Grove Cemetery.

D. PRESENTATIONS

1. John Whaley – The Elderly in Hampton Roads

Mr. John Whaley, Deputy Executive Director - Economics, Hampton Roads Planning District Commission, gave a presentation on elderly population trends in Hampton Roads.

2. Employee and Volunteer Outstanding Service Awards

Mr. McGlennon presented plaques to the following volunteers: Jim Daniels, Joyce Grunewald Kauffmann (absent), Thomas Light, George Orenstein, Dick Orr, and Saint Martin's Episcopal Church (accepted by Heather Hardy); to the following employees: Carol Luckam, Tom Pennington, Riley Hazelwood, and Karen Williamson; and to the following groups of employees: Anthony Conyers, John Horne, Larry Foster; and Don Breland (absent) and Deborah Merritt.

E. CONSENT CALENDAR

Mr. Nervitt inquired if any Board member wished to remove an item from the Consent Calendar.

Mr. Harrison requested Item Number 3, Statement of Fiscal Goals, be pulled.

Mr. Harrison made a motion to approve the remaining items on the Consent Calendar.

On a roll call, the vote was: AYE: McGlennon, Harrison, Goodson, Kennedy, Nervitt (5). NAY: (0).

1. Minutes
 - a. October 18, 2000, Work Session
 - b. October 24, 2000, Regular Meeting
 - c. October 25, 2000, Work Session
2. Budget Adjustments – Grants and VDOT Contracts

RESOLUTION

BUDGET ADJUSTMENTS - GRANTS AND VDOT CONTRACTS

WHEREAS, the Board of Supervisors of James City County has received notice that three grants have been approved by the Commonwealth of Virginia for the offices of the Clerk of the Circuit Court and Commonwealth's Attorney; and

WHEREAS, the Virginia Department of Transportation (VDOT) has approved funding of two transportation improvements in the County - the Ironbound Road design project and the traffic signal improvements at the Anheuser Busch brewery.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby authorize the following amendments to the FY 2001 Budget and appropriates the following State revenues for grants and VDOT contracts:

General Fund

<u>Revenues:</u>	From the Commonwealth	
	State Compensation Board	\$ 4,815
	State Library	964

<u>Expenditures:</u>	Commonwealth's Attorney	\$ 4,815
	Clerk of the Circuit Court	964

Capital Projects Fund

<u>Revenues:</u>	Contributions	
	Road Improvements	\$101,005

<u>Expenditures:</u>	Road Improvements	
	Ironbound Road	\$ 32,405
	Brewery Traffic Signal	\$ 68,600

4. 2000 Emergency Operations Plan

RESOLUTION

JAMES CITY COUNTY 2000 EMERGENCY OPERATIONS PLAN

- WHEREAS, there exists many dangers of many types, including man-made disasters, natural disasters, and possible hostile actions of an unknown enemy; and
- WHEREAS, the safety and protection of the citizens and property is of foremost concern to the Board of Supervisors of the County of James City; and
- WHEREAS, the Board of Supervisors desires and the Commonwealth of Virginia statutes requires the adoption of appropriate planned protective measures.
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby adopts the James City County Emergency Operations Plan dated November, 2000

3. Statement of Fiscal Goals

Ms. Carol Swindell, Assistant Manager of Financial and Management Services, stated that changes to the Statement of Fiscal Goals were presented to the Board at its October 25, 2000, work session.

The recommended changes will aid in promoting the long-term fiscal health of the County by encouraging a healthy diversified economy and are included in the resolution presented for adoption.

Mr. McGlennon stated a concern regarding the used "per capita" figures, as those figures do not accurately reflect the County's average household sizes.

Mr. Harrison made a motion to adopt the resolution.

On a roll call, the vote was: AYE: McGlennon, Harrison, Goodson, Kennedy, Nervitt (5). NAY: (0).

RESOLUTION

STATEMENT OF FISCAL GOALS

- WHEREAS, the Board of Supervisors of James City County desires to establish a comprehensive statement of fiscal goals;
- NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby endorses and adopts the following:

STATEMENT OF FISCAL GOALS

General

1. To promote fiscal health of the County by encouraging a healthy diversified economy.

2. To establish minimally acceptable standards of quality for the County's various public services.
3. To take positive steps to improve productivity of County programs and employees.
4. To seek to eliminate duplicative functions within County government and semiautonomous agencies in the community.
5. At least every four years, to reassess services and service levels, utilizing service level standards of quality, seeking citizen advice and review in a zero-based budgeting process.

Accounting

6. To use accounting procedures and principles established by the Virginia Auditor of Public Accounts and Generally Accepted Accounting Principles (GAAP) and to annually apply to the Government Finance Officer's Association for its Certificate of Conformance in Financial Reporting.
7. To provide full disclosure in annual financial statements and bond representations.

Capital Improvements

8. To establish capital improvements as public investments, designed to effectively provide the highest net present value, both financially and in the determination of service needs.
9. To seek to maximize the expenditures that support capital investments in the provision of direct services to meet and maintain minimum standards of quality.
10. To annually inventory capital facilities, estimate actual value, and estimate remaining useful life and replacement cost.
11. To establish for capital project requests an annual capital budget based upon the Capital Improvements Plan with "life cycle" costs including operating and maintenance coordinated with the operating budget.
12. To consider recommendations from the Planning Commission for a multiyear Capital Improvements Plan for public facility and infrastructure needs to include roads, water, sewer, land and land improvements, and building and building improvements, considered based upon need and consistent with the adopted Comprehensive Plan.
13. To avoid capital facility or infrastructure investments outside of the Comprehensive Plan's Primary Service Area for residential growth.
14. To develop financing plans for the multiyear improvement program based upon a five-year forecast of revenues and expenditures with advice and counsel from the County's Financial Advisor on proposed capital financing needs.
15. To appropriate, at a minimum, 5% of the cost of major capital projects from recurring revenues.

Debt

16. To evaluate alternatives to financing on a pay-as-you-go basis, to include debt financing (pay-as-you-use) for needed services.
17. To not incur general obligation debt and lease revenue debt of more than 3% of assessed valuation of property with debt service costs not to exceed 10 to 12% of total operating revenues, including school revenue; debt per capita not to exceed \$2,000 and debt as a percentage of income not to exceed 7.5%.
18. To use revenue or other self-supporting bonds instead of general obligation bonds.
19. To avoid long-term debt to finance current operations and short-term debt except for bond anticipation notes.
20. To avoid financing if the term of the indebtedness exceeds the expected useful life of the asset.

Investments

21. To make a cash-flow analysis (disbursement, collection, and deposit) of all funds to ensure maximum cash availability. To produce monthly information concerning cash position and investment performance.
22. To pool cash, as permitted by law, from several different funds for investment purposes.
23. To review arrangements with financial institutions on a continued basis for a specified period of time and with specified fees for each service.

Operating Budgets

24. To annually forecast revenues and expenditures for the next five years. Projections will include estimated operating costs of future capital improvements that are included in the capital budget.
25. To utilize workload measurements and performance ratings for all funds.
26. To maintain a budgeting control system that helps the County adhere to the budget, with monthly status reports comparing actual revenues and expenditures to budgeted amounts.
27. To provide for adequate maintenance of capital plant and equipment and develop from the fixed asset inventory records a capital asset replacement schedule.
28. To establish a risk management program to safeguard public assets held in trust and to minimize the financial liability arising from accidental injury or death.
29. To remain current in payments to the Virginia Retirement System and to pursue legislative options that reduce or eliminate unfunded pension liabilities.

30. To review operating policies and procedures and facility master plans adopted by the Board of Supervisors in detail at least every three years with proposed revisions accompanied by a financial impact analysis.
31. To annually increase the proportion of expenditures providing direct services to total budgeted expenditures and to annually decrease the proportion of expenditures supporting administration or other non-direct service activities.
32. To finance recurring expenses from recurring revenue sources and to not develop a dependency, within the operating budget, on nonrecurring revenue sources.

Reserves

33. To keep the fund balance designated for Fiscal Liquidity at the end of the fiscal year, equal to no less than 8%, with a target of 12%, of the total operating budget (General Fund plus the County's share of the Component Unit Schools).
34. To establish a contingency reserve fund of two percent of the general fund operating budget to pay for needs caused by unforeseen events. The Board shall determine the amount of funds to be held in contingency. The contingency shall be held to help with the following three events: 1) Catastrophic reserves, to provide limited emergency funds in the event of natural or man-made disasters; 2) Operational reserves, to provide additional funds for limited unexpected needs; and, 3) Revenue reserves, to provide limited funds to smooth fluctuations in revenues caused by changes in economic conditions.
35. To maintain a ratio of cash on hand and short-term investments, divided by current liabilities, of at least 1:1.
36. To establish and, to the extent feasible, fund on an annual basis a capital equipment replacement fund.

Revenues

37. To maintain a stable revenue system to shelter the County from short-run fluctuations in any one revenue source.
38. To attempt to establish a diversified revenue system with the maximum local legislative authority to set and change rates and fees.
39. To utilize State and Federal funds in pursuit of County goals and objectives, whenever possible.
40. To the extent feasible, user fees which reflect the cost of service shall be utilized to support programs which may be characterized as special services to specific populations or users with the full costs, direct and indirect, of activities supported by user fees shall be recalculated at least every three years.
41. To pursue an aggressive policy of collecting property taxes with the level of uncollected property taxes not exceeding 5% and the rate of delinquency not rising more than one year in a row.

- 42. To the extent possible, the County shall attempt to decrease the dependency on real estate taxes to finance the County's operating budget.
- 43. To review and update all rates and fees at least every three years.
- 44. To maximize State and Federal entitlement revenues.

Economic Development

- 45. To have County staff provide an annual accounting of the net revenue impact from County supported economic development activities. Staff will provide the Board with a recommendation for the application of these revenues. The goal of the recommendation will be to minimize the future burden on the tax rate by providing a revenue stream toward future major capital projects.

The aforementioned goals represent long-term "strategies" on the part of the Board of Supervisors. The implementation of these goals will be at the discretion of the Board as it applies to individual budget years.

F. PUBLIC HEARINGS

1. AFD-4-86. Pates Neck Renewal

Ms. Karen Drake, Planner, stated that Mr. James A. Daniels, Jr., has applied to renew the Pates Neck Agricultural and Forestal District (AFD) that is 624.297 acres, zoned A-1, General Agricultural, located off Little Creek Dam Road, and further identified as Parcel No. (1-1) on James City County Real Estate Tax Map No. (20-4).

Staff found this AFD to be consistent with the Comprehensive Plan and recommended renewing the District for a period of six years with the conditions listed on the Ordinance.

The AFD Advisory Committee voted 7-0 to continue the District for a six-year period with the conditions listed.

Mr. Nervitt opened the public hearing.

- 1. Mr. James Daniels, Jr., offered to answer questions from the Board

As no one else wished to speak, Mr. Nervitt closed the public hearing.

Mr. Kennedy made a motion to approve the resolution.

On a roll call, the vote was: AYE: McGlennon, Harrison, Goodson, Kennedy, Nervitt (5). NAY: (0).

ORDINANCE NO. _____

RENEWAL OF PATES NECKAGRICULTURAL AND FORESTAL DISTRICT (AFD-4-86)

- WHEREAS, James City County has completed a review of the Pates Neck Agricultural and Forestal District; and
- WHEREAS, in accordance with Section 15.2-4311 of the Code of Virginia, property owners have been notified, public meetings have been held, public hearings have been advertised, and public hearings have been held on the continuation of the Pates Neck Agricultural and Forestal District; and
- WHEREAS, the Agricultural and Forestal Districts Advisory Committee at its meeting on September 18, 2000, recommended approval of the application; and
- WHEREAS, the Planning Commission following its public meeting on October 2, 2000, recommended approval of the application.

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

1. That the Pates Neck Agricultural and Forestal District is hereby continued for a period of six years beginning the 17th day of November 2000, in accordance with the provisions of the Virginia Agricultural and Forestal District Act, Virginia Code Section 15.2-4300 et. seq.
2. That the district shall include the following parcels:

(20-4)(1-1)	Pates Neck Timber Company	624.297 acres
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3. That pursuant to Virginia Code, Section 15.2-4312, as amended, the Board of Supervisors requires that no parcel in the Pates Neck Agricultural and Forestal District be developed to a more intensive use without prior approval of the Board of Supervisors. Specifically, the following restrictions shall apply:
 - a. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of communications towers and related equipment, provided, a) The subdivision does not result in the total acreage of the District to drop below 200 acres; and b) The subdivision does not result in a remnant parcel of less than 25 acres.
 - b. No land outside the Primary Service Area (PSA) and within the Agricultural and Forestal District may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the district.
 - c. No special use permit shall be issued except for agricultural, forestal, or other activities and uses consistent with the State Code Section 15.2-4300 et. seq. which are not in conflict with the policies of this District. The Board of

Supervisors, at its discretion, may issue special use permits for wireless communications facilities on AFD properties which are in accordance with the County's policies and ordinances regulating such facilities.

2. Case No. Z-7-99/SUP-24-99. Griesenauer Residential Cluster (continued from October 10, 2000)

Ms. Jill Schmidle, Senior Planner, stated that Mr. Joseph S. Terrell, Sr., has requested this item be referred back to the Planning Commission due to substantive changes to the Proffers.

Staff recommended denial of this rezoning and special use permit request.

The Board of Supervisors and the Planning Commission established a Proffer Policy on August 24, 1999, in which the Board of Supervisors agreed to remand cases with substantive changes back to the Commission.

Ms. Schmidle recommended that the item be sent back to the Planning Commission and the case be continued until December 19, 2000.

Mr. Nervitt remanded the case back to the Planning Commission and continued the Public Hearing to December 19, 2000.

3. Purchase and Sale Agreement and Addendum/Sale of Old Courthouse

Mr. Morton stated that the Colonial Williamsburg Foundation (CWF) has proposed a purchase of the old courthouse and the 2.35-acre site on which it is located in Williamsburg for one million dollars.

The purchase price will be split 50-50 between the County and the City and the closing is to take place no later than April of 2001.

The Board and staff discussed the old courthouse's current zoning and the proposed rezoning; lack of public interest in purchasing the site; and the proposed sale price and how it was derived.

Mr. Nervitt opened the public hearing.

1. Mr. John Raup, Colonial Williamsburg Foundation (CWF), stated that CWF publicly offered to purchase the old courthouse two years ago, and since that time he is unaware of any other offers or interest in the property.

2. Mr. R. M. Hazelwood, Jr., stated \$554,000 from the sale of a previous courthouse was used to build the courthouse under discussion.

As no one else wished to speak, Mr. Nervitt closed the public hearing.

Mr. Goodson made a motion to approve the resolution.

On a roll call, the vote was: AYE: McGlennon, Harrison, Goodson, Nervitt (4). NAY: Kennedy (1).

RESOLUTION**PURCHASE AND SALE AGREEMENT AND ADDENDUM/****SALE OF OLD COURTHOUSE**

- WHEREAS, the County of James City ("County") and the City of Williamsburg ("City") have jointly constructed a new courthouse; and
- WHEREAS, the Colonial Williamsburg Foundation ("Foundation") had offered to purchase the old courthouse and negotiations for same have been ongoing for approximately one year; and
- WHEREAS, the City and the Foundation have executed a Purchase and Sale Agreement and an Addendum thereto to effectuate a sale under the terms and conditions set forth therein.
- NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that it hereby authorizes and instructs the County Administrator to execute the Purchase and Sale Agreement and Addendum thereto and such other documents as may be necessary to sell the old courthouse.

G. PUBLIC COMMENT - None**H. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Wanner recommended the Board recess until 8 a.m. Saturday, November 18, 2000, for a retreat on the budget cycle.

I. BOARD REQUESTS AND DIRECTIVES

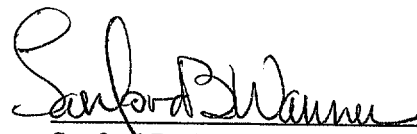
Mr. McGlennon requested information concerning alternate emergency transportation routes for neighborhoods with only one road access.

Mr. Kennedy congratulated the new officers at the James City-Bruton Volunteer Fire Department and the Ladies Auxiliary for their support.

Mr. Harrison stated that there would be a public neighborhood meeting for the Berkeley District at 7 p.m. on November 17, 2000, at the Virginia Power building to discuss the Transportation Improvement District, James City Service Authority, and affordable housing.

Mr. Goodson recommended the presentation by Mr. John Whaley be aired on the County's cable channel.

Mr. Nervitt recessed the meeting at 8:26 p.m.


 Sanford B. Wanner
 Clerk to the Board

NOV 14 2000

ORDINANCE NO. 166A-2BOARD OF SUPERVISORS
JAMES CITY COUNTY
VIRGINIARENEWAL OF PATES NECKAGRICULTURAL AND FORESTAL DISTRICT (AFD-4-86)

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WHEREAS, in accordance with Section 15.2-4311 of the Code of Virginia, property owners have been notified, public meetings have been held, public hearings have been advertised, and public hearings have been held on the continuation of the Pates Neck Agricultural and Forestal District; and

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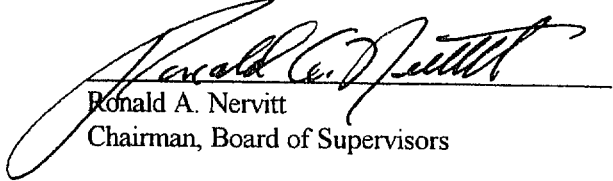
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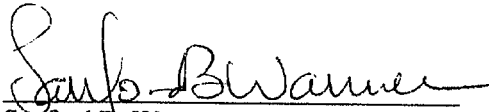
(20-4)(1-1) Pates Neck Timber Company 624.297 acres
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 - a. The subdivision of land is limited to 25 acres or more, except where the Board of Supervisors authorizes smaller lots to be created for residential use by members of the owner's immediate family, as defined in the James City County Subdivision Ordinance. Parcels of up to five acres, including necessary access roads, may be subdivided for the siting of communications towers and related equipment, provided, a) The subdivision does not result in the total acreage of the District to drop below 200 acres; and b) The subdivision does not result in a remnant parcel of less than 25 acres.

- 2 -

- b. No land outside the Primary Service Area (PSA) and within the Agricultural and Forestal District may be rezoned and no application for such rezoning shall be filed earlier than six months prior to the expiration of the district.
- c. No special use permit shall be issued except for agricultural, forestal, or other activities and uses consistent with the State Code Section 15.2-4300 et. seq. which are not in conflict with the policies of this District. The Board of Supervisors, at its discretion, may issue special use permits for wireless communications facilities on AFD properties which are in accordance with the County's policies and ordinances regulating such facilities.


Ronald A. Nervitt
Chairman, Board of Supervisors

ATTEST:


Sanford B. Wanner
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
MCGLENNON	AYE
HARRISON	AYE
GOODSON	AYE
KENNEDY	AYE
NERVITT	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 14th day of November, 2000.

PatesNeck.res

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT, dated as of the 14th ^{November} ~~September~~, 2000, among the CITY OF WILLIAMSBURG, a Virginia municipal corporation (the "City"), JAMES CITY COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the "County") (and with the City and the County being sometimes collectively referred to as the "Seller"), and THE COLONIAL WILLIAMSBURG FOUNDATION, a Virginia non-stock, non-profit corporation (the "Purchaser"), provides:

RECITALS:

The Seller is the owner of a certain parcel of real estate located on Court Street in the City of Williamsburg, Virginia, containing approximately 2.35 acres, more or less, and on which is located the former courthouse and municipal jail, all as is more particularly described in Exhibit A attached hereto (the "Property"). The Seller wishes to sell the Property to the Purchaser, and the Purchaser wishes to purchase the Property from the Seller, all in accordance with the terms and provisions hereof.

AGREEMENT:

THAT for and in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller and the Purchaser hereby agree as follows:

1. **Purchase and Sale; Purchase Price.** The Seller agrees to sell the Property to the Purchaser, and the Purchaser agrees to purchase the Property from the Seller, in accordance with the terms and provisions of this Agreement. The term "Property," as used herein, shall mean the land described in Exhibit A attached hereto together with (a) all improvements thereon, except those items referred to in Section 5(d); and (b) all easements, rights, privileges, remainders, reversions, and appurtenances thereunto belonging or in any way appertaining to such land and in the beds thereof, either at law or in equity, in possession or expectancy, now or hereafter acquired. The purchase price for the Property shall be \$1,000,000.00 (the "Purchase Price"). The parties hereto acknowledge and agree that the Property is being purchased in gross and not by the acre.

2. **Payment of Purchase Price.** The Purchase Price shall be paid to the Seller in the following manner:

(a) **Deposit.** The Purchaser shall, upon the full execution of this Agreement by the Seller and the Purchaser and the delivery to the Purchaser of a fully-executed counterpart of this Agreement, pay to Phillips & Bartlett, P.C., Seller's Attorney, an earnest money deposit in the amount of \$5,000.00 (the "Deposit"), to be held in escrow in said firm's escrow account pending settlement hereunder. The Deposit shall be (i) delivered to the Seller and applied toward

the Purchase Price in the event Closing (as hereinafter defined) occurs hereunder, or (ii) returned to the Purchaser pursuant to Sections 4(c), 5, 10, 12(b), 13 or 15(g) hereof in the event this Agreement is terminated, or (iii) delivered to and retained by the Seller pursuant to Section 12(a) hereof in the event the Purchaser defaults hereunder.

(b) **Balance of Purchase Price.** The Purchaser shall pay the balance of the Purchase Price, as adjusted pursuant to Section 9 hereof, to the Seller at Closing in cash by delivery of a check or, at the Seller's option, by making a wire transfer of immediately available federal funds to an account at a financial institution designated in writing by the Seller.

3. **Seller's Environmental Representations, Warranties and Covenants.** The Seller represents and warrants that Seller has received no written notice, with the exception of those notices specifically pertaining to the presence of asbestos and lead paint previously provided to the Purchaser, regarding the existence (now or in the past) of any: (i) Hazardous Materials (as hereinafter defined) in, on or under the Property, or (ii) underground storage tanks located at or under the Property, with the exception of those underground storage tanks expressly referenced in subsection 4(c) hereof. For the purposes of this Agreement, the term "Hazardous Materials" shall mean (i) "hazardous substances" or "toxic substances," as those terms are defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 et seq, or the Hazardous Materials Transportation Act, 49 U.S.C. 1801, as amended; (ii) "hazardous wastes," as that term is defined by the Resource Conservation and Recovery Act (RCA), 42 U.S.C. 6901 et seq, as amended; (iii) any pollutant or contaminant or hazardous, dangerous, or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as amended; (iv) crude oil or petroleum products; (v) except as noted above, asbestos in any form or condition; and (vi) polychlorinated biphenyls (PCBs) or substances or compounds containing PCBs.

4. **Purchaser's Representations, Warranties and Covenants.** The Purchaser hereby makes the following representations, warranties and covenants:

(a) **Indemnity; Restoration.** The Purchaser hereby agrees that, if Closing does not occur, it will, within sixty (60) days after the expiration of the Study Period (as hereinafter defined), repair any damage that the Purchaser caused to the Property. Should the Purchaser fail to so repair the Property within such sixty (60) day period, the Seller may so repair the Property and the Purchaser agrees to pay the Seller for the out-of-pocket costs actually incurred by the Seller in repairing the Property within thirty (30) days after billing by the Seller. This section shall survive the delivery of the Deed (as hereinafter defined) and any termination of this Agreement notwithstanding any provision in this Agreement to the contrary.

(b) **Use of Property.** The Purchaser represents, warrants and covenants that it will demolish and remove all above-ground improvements on the Property, including the remediation of environmental hazards related to such above-ground improvements. The Purchaser will use commercially reasonable efforts to complete that work within eighteen (18)

months after the date of Closing and, in all events, such work will be completed within twenty-four (24) months after the date of Closing. After such work is completed, the Purchaser will compact, stabilize, and regrade the Property in order to restore it to a developable condition, after which the Purchaser intends to use the Property for purposes related to the Purchaser's mission as permitted under the Museum Support zoning classification, including, but not limited to, parking and the expansion of the DeWitt Wallace Museum.

(c) **Removal of Oil Tanks.** The Purchaser agrees to remove and dispose of the two underground oil tanks located on the Property of which the Seller has notified the Purchaser as of the date hereof. The Purchaser and Seller agree that each shall be responsible for 50% of the costs incurred in connection with the remediation of any Hazardous Materials that may have leaked from the tanks, to the extent that such costs do not exceed a total of \$5,000. If prior to settlement it is reasonably determined that such costs will exceed \$5,000, Purchaser may either (a) accept responsibility for costs over \$5,000, or (b) terminate this Agreement by providing written notice thereof to the Seller, in which event the Deposit shall be returned to the Purchaser and, except as otherwise expressly provided, neither party shall have any further rights or obligations hereunder. The Seller agrees to cooperate with the Purchaser in applying for and obtaining additional funding from the Commonwealth of Virginia pursuant to the Virginia Petroleum Storage Tank Fund.

5. **Conditions Precedent.** The Purchaser's obligation to purchase the Property under this Agreement is subject to the satisfaction or written waiver by the Purchaser of the following conditions precedent:

(a) **Study Period.** The Purchaser shall have one hundred and twenty (120) days following the delivery to the Purchaser of a fully executed counterpart of this Agreement (the "Study Period") within which to conduct and complete, at the Purchaser's sole expense, all inspections, investigations, examinations of title, surveys, testing (including but not limited to subsurface testing) and undertakings with respect to the Property that the Purchaser desires, in the sole discretion of the Purchaser. During the Study Period, the Purchaser shall have the right to enter upon the Property for the purpose of performing the foregoing inspections and investigations. If the results of any such inspection or investigation are deemed unsatisfactory, in the Purchaser's sole discretion, then the Purchaser may terminate this Agreement by providing written notice thereof to the Seller prior to the expiration of the Study Period, in which event the Deposit shall be returned to the Purchaser and neither party shall have any further rights or obligations under this Agreement, except as expressly provided in this subsection 5(a).

(b) **Title Examination; Survey.** The Purchaser shall have until the expiration of the Study Period to obtain, at the Purchaser's sole expense, a title examination and survey of the Property and an owner's title insurance commitment, in form and substance, and issued by a title insurance company, acceptable to the Purchaser and subject only to those exceptions to title to the Property that the Purchaser agrees to accept in its sole and unfettered discretion. If the Purchaser is not satisfied with the state of title to the Property or with the survey of the Property, the Purchaser shall notify the Seller of such title or survey objections in writing prior to the expiration of the Study Period. Until Closing, the Seller agrees to cooperate with the Purchaser

in eliminating or modifying any title or survey objections to the Purchaser's satisfaction; provided, however, in no circumstance shall the Seller be required to expend any funds or incur any liability as a result thereof. If such title or survey objections are not cured to the Purchaser's satisfaction, then the Purchaser may either (i) terminate this Agreement by providing written notice thereof to the Seller prior to the expiration of the Study Period, in which event the Deposit shall be returned to the Purchaser and neither party shall have any further rights or obligations hereunder, except as expressly provided herein or (ii) waive such title or survey objections and proceed to Closing without any reduction in the Purchase Price, in which event the Property will be conveyed to the Purchaser subject to such title or survey objections and without any further obligation or liability of Seller to Purchaser. The Seller agrees that, from and after the date hereof to thirty (30) calendar days after the expiration of the Study Period, it will not convey or encumber title to the Property or any portion thereof, or lease or enter into any other occupancy agreement with respect to the Property or any portion thereof, without the Purchaser's prior written consent, which the Purchaser shall not be obligated to grant, unless the Purchaser terminates this Agreement by providing written notice thereof to the Seller as provided herein.

(c) **Seller's Deliveries.** The Seller shall have delivered to the Purchaser, on or before the date of Closing, all of the documents and other information required of the Seller pursuant to Section 7.

(d) **Removal of Personal Property.** The Seller shall have removed all agreed upon personal property, monuments, structures and equipment from the Property.

(e) **Representations, Warranties and Covenants; Seller's Certificate.** All of the Seller's representations and warranties made in section 3 of this Agreement shall be true and correct as of the date of Closing as if then made, there shall have occurred no material adverse change in the condition of the Property since the date hereof, the Seller shall have performed all of its material covenants and other material obligations under this Agreement and the Seller shall have executed and delivered to the Purchaser at Closing a certificate to the foregoing effect.

(f) **Rezoning.** The obligation of the Purchaser to purchase the Property is contingent upon rezoning of the Property to the Museum Support zoning classification under the City of Williamsburg zoning ordinance. It is understood by the parties that the City will institute the necessary rezoning procedures and that the requested rezoning will be processed in accordance with applicable State and local laws and ordinances. The City, however, makes no representation whatsoever that such rezoning will be approved.

(g) **Approvals.** All approvals necessary to consummate the sale shall have been obtained, not later than March 31, 2001, from the City Council of the City of Williamsburg, the Board of Supervisors for James City County and the Board of Trustees (or the Executive Committee thereof) of the Purchaser.

If any of the foregoing conditions precedent is not satisfied prior to the date of Closing, the Purchaser may either (i) waive such condition precedent and proceed to Closing in which event the Seller shall have no obligation under this Agreement for the failure of any such

condition(s) precedent not being satisfied, or (ii) terminate this Agreement by written notice given to the Seller not later than sixty (60) days after the last day of the Study Period, in which event this Agreement shall terminate, the Deposit shall be refunded to the Purchaser and neither the Seller nor the Purchaser shall have any further rights or obligations under this Agreement except as otherwise expressly provided in this Agreement.

6. **Closing.** Closing of the purchase and sale of the Property pursuant to this Agreement ("**Closing**") shall be held at the offices of Phillips and Bartlett, P.C., in Williamsburg, Virginia, or at such other location that is reasonably acceptable to the parties hereto, on a date that is the later to occur of (a) not less than fifteen (15) days after all of the conditions precedent set forth in subsections 5(a) through (e), inclusive, and (g) have been satisfied or waived in writing by the Purchaser, or (b) thirty (30) days after the date on which the Property is rezoned as described in Section 5(f).

7. **Seller's Deliveries.** At Closing, the Seller shall prepare, execute and deliver the following documents to the Purchaser (with the form and substance of all such documents being mutually acceptable to the Seller and the Purchaser): (a) a Special Warranty Deed acceptable in form and substance to Purchaser and its insurer and based on an ALTA survey of the Property (the "**Deed**") conveying marketable fee simple title to the Property to the Purchaser free of all leases, liens and other encumbrances affecting the Property or any portion thereof, other than the usual utility easements (b) all necessary information for IRS Form 1099-S, (c) an affidavit as to nonforeign status of the Seller, (d) a Virginia Department of Taxation Form R-5, (e) an affidavit of the Seller as to mechanics' liens and possession, and (f) the certificate described in Section 5(e). Upon delivery of the Deed by Seller and acceptance by Purchaser, this Agreement shall terminate and shall have no further force and effect, and neither Seller nor Purchaser shall have any further liability or obligation to the other except for those obligations, if any, under Sections 4(a), (b) and (c) and 14.

8. **Purchaser's Deliveries.** At Closing, the Purchaser shall pay to the Seller the portion of the Purchase Price described in Section 2(b) hereof, which sum, along with the Deposit, shall be divided equally between the City and the County and shall deliver to City the recordable right of first refusal required by Section 14.

9. **Closing Costs; Prorations.** The Seller shall pay the cost of preparing the Deed, any grantor's recordation tax that shall be due and the Seller's attorneys' fees. The Purchaser shall pay the recordation taxes and costs associated with recording the Deed (other than the grantor's tax) and the Purchaser's attorneys' fees. Real estate taxes shall be prorated as of the date of Closing.

10. **Risk of Loss.** The risk of any loss or damage to the Property prior to Closing shall remain upon the Seller, except as may be caused by Purchaser or any of its employees or contractors.

11. **Brokers.** Each party represents and warrants that it has not engaged the services of or dealt with any broker, salesperson or other person or entity who may claim a commission or other payment in conjunction with this Agreement. Should either party breach the foregoing

representation, such party shall be responsible for the payment of all related costs thereto. This section shall survive the delivery of the Deed and any termination of this Agreement.

12. **Default.**

(a) **By Purchaser.** If the Purchaser defaults in performing any of the Purchaser's obligations under this Agreement (material or otherwise), the Seller shall have the right either to (i) retain the Deposit as liquidated damages to be split equally between City and County, or (ii) seek specific performance of the Purchaser's obligation to purchase the Property hereunder and, if Seller is successful in its suit for specific performance, the Seller shall credit the Deposit toward the Purchase Price, and the Purchaser shall pay the Seller's reasonable attorneys' fees and related court and other legal costs incurred in connection with bringing and prosecuting such suit for specific performance. The Seller hereby expressly waives any right the Seller may have to other damages (compensatory, consequential or otherwise) or any other remedy as a result of such default.

(b) **By Seller.** If the Seller defaults in performing any of the Seller's obligations under this Agreement (material or otherwise), or if any of Seller's representations or warranties made in the Agreement shall be untrue or incorrect, the Purchaser's sole remedy shall be either (i) to terminate this Agreement by providing written notice thereof to the Seller and receive a refund of the Deposit, in which event neither party shall have any further rights or obligations hereunder, except as expressly provided herein, or (ii) seek specific performance of the Seller's obligation to convey title to the Property hereunder and, if Purchaser is successful in its suit for specific performance, the Seller shall pay the Purchaser's reasonable attorneys' fees and related court and other legal costs and expenses incurred in connection with bringing and prosecuting such suit for specific performance. The Purchaser hereby expressly waives any right the Purchaser may have to any other damages (compensatory, consequential or otherwise) as a result of such default, or if any of Seller's representations or warranties made in the Agreement shall be untrue or incorrect.

13. **Condemnation.** If all or any portion of the Property is taken or threatened to be taken pursuant to the power of eminent domain (or purchase in lieu thereof), or the Seller has received written notice of an intent to condemn any part of the Property from the condemning authority, then the Purchaser may terminate this Agreement by providing written notice thereof to the Seller, in which event the Deposit shall be refunded to the Purchaser, and neither party shall have any further rights or obligations hereunder, except as expressly provided herein. If the Purchaser does not elect to so terminate this Agreement, the parties shall proceed to Closing with an adjustment in the Purchase Price equal to any condemnation award or payment actually received by the Seller. If the Seller does not receive such award or payment by the date of Closing, the Seller shall assign all of the Seller's right, title and interest in such award or payment to the Purchaser at Closing without an adjustment to the Purchase Price.

14. **Right of First Refusal.** For a period of twenty (20) years from and after Closing, the Purchaser covenants and agrees that the Purchaser will not sell or otherwise transfer title to all or any portion of its interest in the Property or any interest in any of the same unless it

shall first notify the City of the interest sought to be sold or transferred (the "Offered Interest"), together with a true copy of a written offer executed by an independent third party bona-fide prospective purchaser or lessee, as the case may be, containing all of the terms and conditions of such offer (the "Offer"); provided that Purchaser may assign or grant a security interest or mortgage in its interest in the Property to its lenders without the consent of the City; provided further that Purchaser's lenders may exercise any and all remedies available to them pursuant to such security interest or mortgage and may assign the Property to any person in the event of a foreclosure or other action following the occurrence and during the continuation of a default under Purchaser's loan documents. The City shall then have the right, to be exercised within thirty (30) days after such notice, to notify Purchaser of the City's agreement to acquire or lease the Offered Interest, in its own name or in the name of a nominee designated by it, on the same terms and conditions as contained in the Offer (including, without limitation any requirement that prospective purchaser lease back the property to Purchaser or its designee, in which case the closing of such acquisition or leasing shall occur on a date, and at a time and place, selected by the City by written notice to Purchaser, which date shall not be more than thirty (30) days after the date of the City's notice of exercise of its said right. Should the City exercise its right to purchase the Property under this Section, the Purchaser shall convey marketable fee simple title to the Property and all improvements located thereon to the City free and clear of all liens and encumbrances other than the usual utility easements by Special Warranty Deed, the risk of loss shall remain with the Purchaser until closing, and each party in its respective capacity of seller or purchaser shall bear such attorneys fees and costs as are normally attendant to seller and purchaser in the sale of real property. If the City shall waive its right by written notice to Purchaser, or shall fail to exercise its right within the time period above set forth, the City's right of first refusal automatically shall terminate and be of no further force or effect, Purchaser shall be free to sell or transfer the Offered Interest without first offering the Offered Interest to the City, and the City shall, upon written request from Purchaser, execute, acknowledge and deliver any documents reasonably requested by the Purchaser to confirm the termination of the City's right of first refusal. The City and the Purchaser agree to execute and deliver a recordable Memorandum of Right of First Refusal at Closing, memorializing the parties' rights under this Section.

15. **Miscellaneous Provisions.**

(a) **Notices.** All notices shall be in writing and sent by hand, facsimile transmission, overnight delivery service or certified mail, return receipt requested, to the following addresses:

If to Seller:

The City of Williamsburg
City Manager
421 Lafayette Street
Williamsburg, VA 23185

and

James City County
County Administrator
P.O. Box 8784
Williamsburg, VA 23187

with a copy to:

Joseph F. Phillips, Jr., Esq.
City Attorney
P.O. Box 440
Williamsburg, VA 23187-0440
Facsimile: (757) 229-7323

and

Frank M. Morton, III, Esq.
County Attorney
Williamsburg, VA 23187
Facsimile: (757) 253-6833

If to
Purchaser:

John S. Bacon, Esq.
General Counsel
The Colonial Williamsburg Foundation
P.O. Box 1776
Williamsburg, VA 23187-1776
Facsimile: (757) 565-8891

with a copy to:

William A. Walsh, Jr., Esq.
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074
Facsimile: (804) 788-8218

Notices shall be deemed received (i) if hand delivered, when received, (ii) if given by facsimile, when transmitted to the facsimile number specified above during normal business hours and confirmation of complete receipt is received during normal business hours (provided a copy of the same is sent by overnight delivery service on the same day), (iii) if given by overnight delivery service, the business day after being sent prepaid by such overnight delivery service, or (iv) if given by certified mail, return receipt requested, postage prepaid, two (2) days after posting with the United States Postal Service. Either party may change its address by notifying the other party in a manner described above.

(b) **Entire Agreement; Modification; Construction; Survival.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations and agreements, written or oral. This Agreement

may be modified only by a written instrument duly executed by the Seller and the Purchaser. This Agreement shall be construed, performed and enforced under the laws of the Commonwealth of Virginia. This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns. The representations and warranties set forth in Sections 3 and 4 hereof shall survive Closing and the delivery of the Deed.

(c) **Counterparts.** This Agreement may be executed in counterparts by the parties. It is not necessary that the signatures of the parties appear on the same counterpart or counterparts. All counterparts shall collectively constitute a single agreement.

(d) **Facsimile Delivery.** This Agreement may be delivered by facsimile transmission.

(e) **Days.** If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is a Saturday or Sunday or a legal holiday in the jurisdiction in which the action is required to be performed or in which is located the intended recipient of such notice, consent or other communication, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first business day following such Saturday, Sunday, or legal holiday. Unless otherwise specified herein, all references herein to a "day" or "days" shall refer to calendar days and not business days.

(f) **Warranty.** Neither the City nor the County warrants the other party's performance of this Agreement; provided, however, that should either the City or the County fail to perform any of its obligations or covenants or breach any of its representations pursuant to this Agreement, the Purchaser shall have the right to terminate this Agreement in which event the Deposit shall be returned to the Purchaser and neither party shall have any further rights or obligations hereunder, except as otherwise expressly provided herein.

(g) **Automatic Termination.** This Agreement shall automatically terminate and become null and void in the event this Agreement has not been executed by the Seller and the Purchaser and fully-executed counterparts delivered to each of the parties hereto no later than 5:00 p.m. local Williamsburg, Virginia time on September 30, 2000.


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Seller and the Purchaser have executed this Agreement as of the dates indicated below.

SELLER:

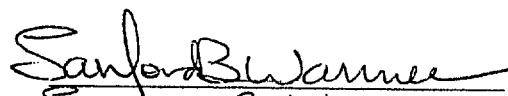
CITY OF WILLIAMSBURG, VIRGINIA

Date: October 16, 2000

By: 
 Name: JACKSON C. Tuttle
 Title: CITY MANAGER
 Federal ID No.: 54-6001680

JAMES CITY COUNTY, VIRGINIA

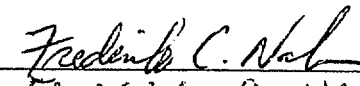
Date: 11/15/00

By: 
 Name: SANFORD B. WARNER
 Title: COUNTY ADMINISTRATOR
 Federal ID No.: 54-6001365

PURCHASER:

**THE COLONIAL WILLIAMSBURG
FOUNDATION**

Date: 8/2/00

By: 
 Name: FREDERICK C. NAHM
 Title: SENIOR VICE PRESIDENT
 Federal ID No.: 54-6565-888

ADDENDUM
to Purchase and Sale Agreement
Regarding Old Williamsburg/James City County
Courthouse dated ~~September~~ ¹⁴ November, 2000

I. City's Option to Purchase

As a condition of Closing hereunder, Purchaser shall at time of settlement, grant to City the conditional right and option to purchase the Property from Purchaser. A recordable agreement granting such option shall be in form satisfactory to the City and shall contain the following terms and conditions:

1. **Purchase Price.** The Basic Purchase Price for the Property shall be the total of Purchaser's actual costs of performing all work required under section 4(b) of the Purchase and Sale Agreement of which this Addendum is a part, plus an administrative fee equal to ten percent (10%) of such actual costs plus ONE MILLION and 00/100 DOLLARS (\$1,000,000). The exact amount of such costs and administrative fee shall be determined as follows: Within sixty (60) days of completion of all work required by section 4(b), but in no case later than twenty-five (25) months following Closing, Purchaser shall deliver to the Williamsburg City Manager a detailed and complete accounting showing all costs incurred pursuant to section 4(b), which accounting shall be certified as true and complete by a duly authorized representative of Purchaser. Such accounting shall be accompanied by a recordable supplement to the option agreement prepared at Purchaser's expense, setting forth the agreed Basic Purchase Price to be signed by the Williamsburg City Manager and a duly authorized official of Purchaser. The City shall cause a copy thereof to be recorded among the City of Williamsburg land records.

In case of exercise of this Option, as of time of settlement, the Basic Purchase Price shall be adjusted for inflation to reflect any increase, but not any decrease, which has occurred in the Consumer's Price Index for All Items for All Urban Consumers U. S. City Average, as determined by the United States Department of Labor, Bureau of Labor Statistics, based on All Items for All Urban Consumers, Northeast Region (Reference #CUUR0100SA0), (the "Index") between August 2000 and the date of settlement under the exercised Option. The August 2000 Index figure was 179.9 and for purposes of calculating change shall equal 100, (the "Basic Index"). At settlement, if the most currently available corresponding index figure exceeds the Basic Index, the purchase price shall be increased to an amount arrived at by multiplying the Base Purchase Price derived at as provided in the foregoing paragraph, by a fraction, of which the numerator shall be the most currently available index figure preceding the settlement date, and the denominator shall be the Basic Index.

The Purchase Price as determined in accordance with the foregoing paragraph shall be paid in full at settlement.

2. Duration and Exercise.

A. This Option shall remain in force until December 31, 2016 at which time, if not duly exercised it shall expire without further action of the parties. Any failure by City during the option period to exercise the right of first refusal granted to City pursuant to paragraph 14 of

this Contract shall not terminate this Option and said Option shall be binding upon Seller and Seller's successors in title for the duration of the Option period.

B. This Option shall become exercisable on November 1, 2016 if by such date, Purchaser or Purchaser's successor(s) in title has not substantially commenced construction on the Property of improvements, other than parking facilities allowed by applicable zoning. Such improvements at a minimum, shall consist of a building or buildings and attendant landscaping, exclusive of parking, which occupies at least 50 % of the total area of the Property.

C. City may exercise this Option by giving written notice to Purchaser or Purchaser's successor(s) in title not later than 5:00 p.m. on December 31, 2016. Notice of exercise shall be given as provided in Section 15A of this Contract.

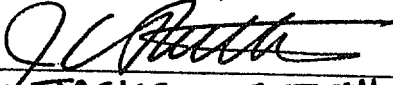
D. This Option shall be non-assignable.

II. Continuation of Contract

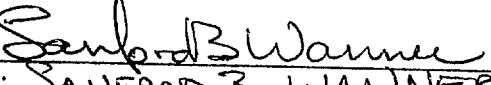
The parties hereby extend the September 30, 2000 Automatic Termination date provided for in section 15(g) of the Contract to November 30, 2000.

WITNESS the following signatures.

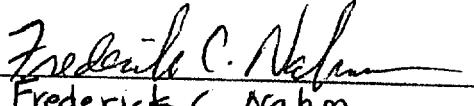
CITY OF WILLIAMSBURG, VIRGINIA

By: 
 Name: JACKSON C. TUTTLE
 Title: CITY MANAGER

JAMES CITY COUNTY, VIRGINIA

By: 
 Name: SANFORD B. WANNER
 Title: COUNTY ADMINISTRATOR

PURCHASER:
 THE COLONIAL WILLIAMSBURG
 FOUNDATION

By: 
 Name: Frederick C. Nahm
 Title: Senior Vice-President