DANVILLE CITY COUNCIL REGULAR MEETING AGENDA

MUNICIPAL BUILDING

October 6, 2020

7:00 P.M.

PRESIDING:	Alonzo L. Jones, Mayor	
CITY COUNCIL MEMBERS:	James B. Buckner L.G. "Larry" Campbell, Jr. Samuel A. Kushner Barry P. Mayo	Dr. Gary P. Miller, Vice Mayor Sherman M. Saunders J. Lee Vogler, Jr., Madison J. Whittle
STAFF:	Ken F. Larking, City Manager Earl B. Reynolds, Jr., Deputy City Manager	W. Clarke Whitfield, Jr., City Attorney Susan M. DeMasi, City Clerk

The City Council is the City of Danville's legislative body and is composed of nine Council members. Council members are elected to serve a four year term of office and elects one of its own to serve as Mayor and presiding officer for a two year term.

Time and Place of Meeting
The public is invited and encouraged to attend and participate in the City Council meetings. The City Council meets in the City Hall, Fourth Floor, Council Chambers at 7:00 p.m. on the first and third Tuesday of each month. All meetings of the Council are open to the public.

Communications from Visitors
Communication from Visitors is an opportunity for citizens to address Council on matters not on the agenda. Citizens who desire to speak on agenda items will be heard when the agenda item is considered. Each speaker shall clearly state his or her name and address. Each individual speaker shall have five uninterrupted minutes. A representative of a group may have up to ten uninterrupted minutes to make a presentation. The representative shall identify the group and a group may have no more than one spokesperson. Time will be kept using the electronic timer on the podium.

Guidelines for Public Hearings
For Public Hearings the applicant or his or her representative shall be the first speaker(s). There shall be a time limit of ten (10) minutes for the applicant's or his or her representative's presentation. The presiding officer shall then solicit comments from the public, asking those in favor of the proposal to speak first, and then those opposed to the proposal. Each speaker must clearly state his or her name and address. There shall be a time limit of three (3) minutes for each individual speaker. If the speaker represents a group, there shall be a time limit of five (5) minutes. A speaker representing a group shall identify the group at the beginning of his or her remarks. A group may have no more than one spokesperson. The presiding officer may limit or preclude comment which is repetitive, redundant, cumulative, or irrelevant to the subject of the public hearing. After public comments have been received, in a land use case, the applicant or the

representative of the applicant, at his or her discretion, may respond with a rebuttal. There shall be a five (5) minute time limit for rebuttal.

MEETING CALLED TO ORDER

ROLL CALL

INVOCATION - Vice Mayor Gary P. Miller

PLEDGE OF ALLEGIANCE TO THE FLAG

ANNOUNCEMENTS AND SPECIAL RECOGNITION

Proclamation:	Head Start Awareness Month in the City of Danville
Presented to:	Tara K. Martin
Proclamation:	Fire Prevention Week
Presented to:	Tim Duffer, Deputy Fire Chief, and Richard Guill, Assistant Fire Marshall

COMMUNICATIONS FROM VISITORS

Citizens who desire to speak on matters not listed on the agenda will be heard at this time. Citizens who desire to speak on agenda items will be heard when the agenda item is considered.

MEETING MINUTES

A. Consideration of Approval of Minutes from Regular Council Meeting held on September 1, 2020. Council Letter Number CL - 2404.

NEW BUSINESS

A. Consideration of Approving and Authorizing a Cable Franchise Agreement with Verizon. Council Letter Number CL - 2389.

1. Public Hearing
2. An Ordinance Approving and Authorizing a Negotiated Franchise Agreement with Cellco Partnership D/B/A Verizon Wireless.

B. Consideration of Approving Resolutions in Support of Proposed Virginia Department of Transportation Smart Scale Transportation Projects. Council Letter Number CL - 2359.

1. A Resolution Endorsing a Smart Scale Application by the City of Danville to the Virginia Department of Transportation for the Proposed Construction of Piedmont Drive Pedestrian Accessibility Improvements.

2. A Resolution Endorsing a Smart Scale Application by the City of Danville to the Virginia Department of Transportation for the Proposed Construction of Riverside Drive Improvements from Arnett Boulevard to Main Street.

3. A Resolution Endorsing a Smart Scale Application by the City of Danville to the Virginia Department of Transportation for the Proposed Construction of Riverside Drive Improvements from Piney Forest Road to Audubon Drive.

4. A Resolution Endorsing a Smart Scale Application by the City of Danville to the Virginia Department of Transportation for the Proposed Construction of Riverside Drive Improvements from Park Avenue to Westover Drive.

5. A Resolution Endorsing a Smart Scale Application by the Danville Metropolitan Planning Organization to the Virginia Department of Transportation for the Proposed Construction of a Roundabout on Mount Cross Road at Dimon Drive and Parker Road West.

C. Consideration of Support of the Creation of a Regional Alliance.
Council Letter Number CL - 2409.

A Resolution Supporting Formation of the Danville- Pittsylvania Economic Development Alliance.

D. Consideration of Amending the Fiscal Year 2021 Budget Appropriation Ordinance for a Grant from the US Department of Justice in the Amount of $91,550.
Council Letter Number CL - 2393.

An Ordinance Amending the Fiscal Year 2021 Budget Appropriation Ordinance by Increasing Revenue from the United States Department of Justice Community Policing Development Program Grant in the Amount of $91,550 for use in Establishing a Program for Proactive Police Response to Prevent Domestic Violence
FIRST READING

E. Approval of a Lease Agreement and a Purchase and Sale Agreement for a New Police Station.
Council Letter Number CL - 2403.

1. A Resolution of the Council of the City of Danville, Virginia Approving and Authorizing a Lease Agreement Between 2291 Schoolfield, LLC and the City of Danville, Virginia for a New Police Station to be Located at 2291 Memorial Drive.

2. A Resolution of the Council of the City of Danville, Virginia Approving and Authorizing a Purchase and Sale Agreement Between 2291 Schoolfield, LLC and the City of Danville, Virginia for a New Police Station to be Located at 2291 Memorial Drive.

COMMUNICATIONS FROM:

A. City Manager

B. Deputy City Manager

C. City Attorney

D. City Clerk

E. Roll Call

ADJOURNMENT

Council Letter
City of Danville, Virginia

CL-2404 **Meeting Minutes A.**

City Council Regular Meeting

Meeting Date: 10/06/2020

Subject: Consideration of Approval of Meeting Minutes

From: Susan M. DeMasi, City Clerk

COUNCIL ACTION

Business Meeting: 10/06/2020

SUMMARY

Consideration of Approval of Minutes from Regular Council Meeting held on September 1, 2020.
Council Letter Number CL - 2404.

Attachments

Meeting Minutes

September 1, 2020

The Regular September meeting of the Danville City Council was held on September 1, 2020, at 7:00 p.m. in the Council Chambers located on the Fourth Floor of the Municipal Building. The following Council Members were present: James B. Buckner, L.G. “Larry” Campbell Jr., Mayor Alonzo L. Jones, Samuel A. Kushner, Barry P. Mayo, Vice Mayor Gary P. Miller, Sherman M. Saunders and J. Lee Vogler, Jr., (8) Madison J.R. Whittle was absent (1).

Staff Members present were: City Manager Ken F. Larking, Deputy City Manager Earl B. Reynolds, Jr., City Attorney W. Clarke Whitfield Jr., and City Clerk Susan M. DeMasi.

INVOCATION

Mayor Jones asked for a moment of silence for the passing of Danville Fireman Greg Thomas, community members Dr. Thomas Sweezer and Pastor Jasper Watkins, and the families dealing with these losses. This was followed by the Invocation given by L.G. “Larry” Campbell, Jr., followed by the Pledge of Allegiance, led by Vice Mayor Chad Martin from Martinsville.

ANNOUNCEMENTS AND SPECIAL RECOGNITIONS

Police Chief Scott Booth introduced Dr. Roberto and Dr. Rachel Santos from Radford University, noting the Santos’ were partners with the Danville Police Department; they wanted to come tonight to recognize the robust partnership they have developed over the last year and a half. They have been instrumental in the crime reduction in Danville. The Santos’ helped the City develop a model called Stratified Policing, which they innovated in the early 2000’s. This has been a great foundation for the City, starting back in 2019 when they restructured the department, and it has given the City great results. Dr. Roberto Santos noted they have worked with a lot of police departments throughout the United States, and it has been a pleasure to work with Chief Booth and the men and women of the Danville Police Department; the outcome has been phenomenal. They enjoyed the partnership and looked forward to a lasting partnership in the years to come. Dr. Rachel Santos noted they were from Radford University’s Center for Police Policy and Research. They wanted to partner with agencies in Southwest Virginia and were lucky to meet to Chief Booth. They were in the middle of the partnership and were starting a new level to look at repeat incidences of domestic violence; that was a yearlong project.

Mayor Jones thanked the Santos’ for their partnership. Council Members thanked Chief Booth and the Danville Police Department, and they have the full support of Council. Dr. Roberto Santos noted they have been working with the Chief on Stratified Policing, a comprehensive approach which incorporates community policing, offender focus, and place based police strategies; these were all evidence based strategies that they know work. The current project focuses on repeat domestic violence issues, and trying to minimize the impact of domestic violence using as many partners as they can. Dr. Rachel Santos explained in Radford they have a third grant they are working on, partnering with about thirteen agencies from across the country, including Danville, and they were looking at developing a framework for infusing community policing and engagement into a police department at every level. Dr. Roberto Santos noted they choose certain police departments they believe can contribute to the body of knowledge on this topic; they wanted to partner with Danville, because of the work they were doing. Chief Booth thanked the Mayor and members of Council for their continued support; it was appreciated.

COMMUNICATIONS FROM VISITORS

City Council did not receive any comments through its online portal or phone line prior to the deadline.

Mayor Jones recognized Shannon Hair, Vice President of Institutional Advancement and Development, and Executive Director of the Educational Foundation at Danville Community College, who thanked the City Manager, Ken Larking, and Director of Finance, Michael Adkins, in supporting a request to help the citizens of Danville regarding scholarships at DCC, who have been impacted by COVID. On behalf of the Board of Directors of the DCC Educational Foundation, he would like to thank them. Mr. Hair thanked Council for their time and support for all that was going on in the community.

Mayor Jones recognized Tommy Bennett, President of the Danville Branch of the NAACP who noted that a lot of people come before Council with complaints, he was there to thank the City Council, Mayor, City Manager, Deputy City Manager and the Chief of Police. He was so proud that Danville was moving forward. Mr. Bennett stated they were having an event on September 26th on the field at Westmoreland with a health fair, food giveaways and programs in the City represented. Mr. Bennett thanked Council again for all they were doing.

CONSENT AGENDA

Council Member Vogler **moved** for adoption of the following Consent Agenda items:

Minutes from the Regular Council Meeting held on August 4, 2020. Draft copies of the minutes had been distributed prior to the meeting.

Authorizing the Issuance of Bonds of the City of Danville, Virginia

An Ordinance entitled, Ordinance No. 2020-08.03 Authorizing the Issuance of Bonds of the City of Danville, Virginia, in the Maximum Aggregate Principal Amount of $16,000,000 to Finance the Acquisition, Construction and Equipping of Various Capital Projects.

The Motion was **seconded** by Council Member Campbell and carried by the following vote:

VOTE:	8-0-1
AYE:	Buckner, Campbell, Jones, Kushner, Mayo, Miller, Saunders and Vogler (8)
NAY:	None
ABSENT:	Whittle (1)

NEW BUSINESS

BUDGET AMENDMENT – CONSIDERATION OF AMENDING THE FISCAL YEAR 2021 BUDGET APPROPRIATION ORDINANCE FOR TOYOTA USA GRANT FUNDS IN THE AMOUNT OF $30,000

Upon **Motion** by Council Member Buckner and **second** by Council Member Mayo, an Ordinance entitled:

ORDINANCE NO. 2020-09.01

AMENDING THE FISCAL YEAR 2021 BUDGET APPROPRIATION ORDINANCE BY INCREASING REVENUE FROM THE TOYOTA USA GRANT PROGRAM IN THE AMOUNT OF $30,000 AND APPROPRIATING SAME.

was presented by its **First Reading**, as required by City Charter, to lie over before final adoption.

BUDGET AMENDMENT – CONSIDERATION OF AMENDING THE FISCAL YEAR 2021 BUDGET APPROPRIATION ORDINANCE FOR DMV ALCOHOL GRANT PROGRAM FUNDS IN THE AMOUNT OF $19,222

Upon **Motion** by Council Member Vogler and **second** by Council Member Mayo, an Ordinance entitled:

ORDINANCE NO. 2020-09.02

AMENDING THE FISCAL YEAR 2021 BUDGET APPROPRIATION ORDINANCE BY INCREASING REVENUE FROM VIRGINIA DEPARTMENT OF MOTOR VEHICLES HIGHWAY SAFETY SELECTIVE ENFORCEMENT – ALCOHOL GRANT PROGRAM IN THE AMOUNT OF $19,222 AND APPROPRIATING SAME

was presented by its **First Reading**, as required by City Charter, to lie over before final adoption.

BUDGET AMENDMENT – CONSIDERATION OF AMENDING THE FISCAL YEAR 2021 BUDGET APPROPRIATION ORDINANCE FOR THE DMV OCCUPANT PROTECTION GRANT PROGRAM - $5,250

Upon **Motion** by Council Member Campbell and **second** by Council Member Kushner, an Ordinance entitled:

ORDINANCE NO. 2020-09.03

AMENDING THE FISCAL YEAR 2021 BUDGET APPROPRIATION ORDINANCE BY INCREASING REVENUE FROM VIRGINIA DEPARTMENT OF MOTOR VEHICLES HIGHWAY SAFETY OFFICE SELECTIVE ENFORCEMENT – OCCUPANT PROTECTION GRANT PROGRAM IN THE AMOUNT OF $5,250 AND APPROPRIATING SAME.

was presented by its **First Reading**, as required by City Charter, to lie over before final adoption.

BUDGET AMENDMENT – CONSIDERATION AMENDING THE FISCAL YEAR 2021 BUDGET APPROPRIATION ORDINANCE FOR DMV SPEED GRANT PROGRAM FUNDS IN THE AMOUNT OF $9,100

Upon **Motion** by Vice Mayor Miller and **second** by Council Member Buckner, an Ordinance entitled:

ORDINANCE NO. 2020-09.04

AMENDING THE FISCAL YEAR 2021 BUDGET APPROPRIATION ORDINANCE BY INCREASING REVENUE FROM VIRGINIA DEPARTMENT OF MOTOR VEHICLES HIGHWAY SAFETY OFFICE SELECTIVE ENFORCEMENT – SPEED GRANT PROGRAM IN THE AMOUNT OF $9,100 AND APPROPRIATING SAME.

was presented by its **First Reading**, as required by City Charter, to lie over before final adoption.

BUDGET AMENDMENT – CONSIDERATION OF AMENDING THE FISCAL YEAR 2021 BUDGET APPROPRIATION ORDINANCE FOR CSA FUNDS IN THE AMOUNT OF $4,780,388

Upon **Motion** by Council Member Vogler and **second** by Council Member Mayo, an Ordinance entitled:

ORDINANCE NO. 2020-09.05

AMENDING THE FISCAL YEAR 2021 BUDGET APPROPRIATION ORDINANCE BY APPROPRIATING COMPREHENSIVE SERVICES ACT FUNDS AND PROVIDING LOCAL MATCHING FUNDS FOR A TOTAL AMOUNT OF $4,780,388 AND APPROPRIATING SAME.

was presented by its **First Reading**, as required by City Charter, to lie over before final adoption.

BUDGET AMENDMENT – CONSIDERATION OF AMENDING THE FISCAL YEAR 2021 BUDGET APPROPRIATION ORDINANCE FOR VIRGINIA DEPARTMENT OF AVIATION AIRPORT MAINTENANCE FUNDS

Upon **Motion** by Council Member Kushner and **second** by Council Member Saunders, an Ordinance entitled:

ORDINANCE NO. 2020-09.06

AMENDING THE FISCAL YEAR 2021 BUDGET APPROPRIATION ORDINANCE TO PROVIDE FOR STATE DEPARTMENT OF AVIATION MAINTENANCE GRANT FUNDS RELATED TO THE MAINTENANCE OF CERTAIN AIRPORT PROPERTIES IN THE AMOUNT OF $70,208 AND FOR THE LOCAL SHARE IN THE AMOUNT OF $17,552 FOR A TOTAL APPROPRIATION OF $87,760 AND APPROPRIATING THE SAME.

was presented by its **First Reading**, as required by City Charter, to lie over before final adoption.

BUDGET AMENDMENT – CONSIDERATION OF AMENDING THE FISCAL YEAR 2021 BUDGET APPROPRIATION ORDINANCE FOR TITLE III-B OLDER AMERICAN ACT GRANT FUNDS FOR SENIOR CITIZEN TRANSPORTATION SERVICES

Upon **Motion** by Council Member Buckner and **second** by Council Member Mayo, an Ordinance entitled:

ORDINANCE NO. 2020-09.07

AMENDING THE FISCAL YEAR 2021 BUDGET APPROPRIATION ORDINANCE BY INCREASING CERTAIN REVENUES TO PROVIDE FOR TITLE III-B GRANT FUNDS AND LOCAL SHARE FOR SENIOR CITIZEN TRANSPORTATION SERVICES AND APPROPRIATING THE SAME

was presented by its **First Reading**, as required by City Charter, to lie over before final adoption.

CITY CODE – AMENDING DANVILLE CITY CODE TO ADD THE LOCAL LEGENDS BANNER DISPLAY PROGRAM

Vice Mayor Miller **moved** for adoption of an Ordinance entitled:

ORDINANCE NO. 2020-09.08

AN ORDINANCE AMENDING CHAPTER 35 ENTITLED "STREETS AND SIDEWALKS" OF THE CODE OF THE CITY OF DANVILLE, 1986, AS AMENDED BY ADDING A SECTION 35-17.1 ENTITLED" LOCAL LEGENDS BANNER DISPLAY PROGRAM."

The Motion was **seconded** by Council Member Kushner and carried by the following vote:

VOTE: 8-0-1
AYE: Buckner, Campbell, Jones, Kushner,
Mayo, Miller, Saunders and Vogler (8)
NAY: None
ABSENT: Whittle (1)

<u>CONSIDERATION OF SUPPORT OF TOBACCO REGION REVITALIZATION COMMISSION GRANT FUNDS FOR THE SOUTHERN VIRGINIA MULTI-MODAL PARK</u>

Council Member Vogler **moved** for adoption of a Resolution entitled:

RESOLUTION NO. 2020-09.01

AUTHORIZING THE SUBMISSION OF AN APPLICATION FOR THE FISCAL YEAR 2021 VIRGINIA TOBACCO REGION REVITALIZATION COMMISSION SOUTHSIDE ECONOMIC DEVELOPMENT GRANT PROGRAM.

The Motion was **seconded** by Council Member Mayo and carried by the following vote:

VOTE: 8-0-1
AYE: Buckner, Campbell, Jones, Kushner,
Mayo, Miller, Saunders and Vogler (8)
NAY: None
ABSENT: Whittle (1)

<u>APPLICATION TO THE VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR AN INDUSTRIAL REVITALIZATION GRANT</u>

Council Member Campbell **moved** for adoption of a Resolution entitled:

RESOLUTION NO. 2020-09.02

APPROVING AND AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION BY THE DANVILLE OFFICE OF ECONOMIC DEVELOPMENT, TO THE VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, INDUSTRIAL REVITALIZATION FUND AND FOR THE CITY TO FUND THE BALANCE OF THE "RIVER DISTRICT PROJECT."

The Motion was **seconded** by Council Member Buckner and carried by the following vote:

VOTE: 8-0-1
AYE: Buckner, Campbell, Jones, Kushner,
Mayo, Miller, Saunders and Vogler (8)

NAY: None
ABSENT: Whittle (1)

APPROVING A CASINO RESORT DEVELOPMENT AGREEMENT

Council Member Buckner **moved** for adoption of a Resolution entitled:

RESOLUTION NO. 2020-09.03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANVILLE VIRGINIA FORMALLY APPROVING A CASINO RESORT DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF DANVILLE, THE INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA, CAESARS VIRGINIA, LLC, AND CAESARS ENTERTAINMENT, INC.

The Motion was **seconded** by Vice Mayor Miller and carried by the following vote:

VOTE: 7-0-1-1
AYE: Buckner, Campbell, Jones, Kushner,
Mayo, Miller, and Saunders (7)
NAY: None
ABSENT: Whittle (1)
ABSTAIN: Vogler (1)

STATEMENT OF CONFLICT OF INTEREST

I, J. Lee Vogler, Jr., do hereby state that I have a conflict of interest regarding the consideration of a Resolution formally approving the Casino and Resort Development Agreement by and among the City of Danville, the Industrial Development Authority, Caesars Virginia LLC and Caesars Entertainment, Inc., to be located at 1100 West Main Street listed on the agenda as New Business Agenda Item K. Therefore, pursuant to the State and Local Government Conflict of Interest Act, Virginia Code §2.2-3112, I must abstain from voting on this agenda item.

Witness my signature this 2nd day of September, 2020.

s/*J. Lee Vogler, Jr*.

COMMUNICATIONS

City Manager Ken Larking noted for several weeks, the City had alerted residents who were subject to disconnection due to delinquent balances on their utilities, that the City would be resuming disconnections starting on September 1. He received a call from the Mayor the day before, stating community organizations throughout Danville had been trying to help customers gather the funds necessary to help pay their delinquent balances. They asked the Mayor for more time to collect those requests and work with the City. Based on that, Mr. Larking contacted staff members and asked whether it was possible to delay a few weeks to allow residents to remove those delinquent balances and was told it wouldn't be problem. From the very beginning it has been a huge concern of his and his staff, and City Council, that there were many members of the community who were accumulating large balances; they have worked through a number of ways to mitigate that. Early on, the City set aside a portion of the CARES Act funding to help customers with their delinquent balances, if they qualified, demonstrating that they had a COVID related issue. They have extended that to some of the businesses as well. Community organizations stepping up to help the customers was great; any assistance that anyone was willing to provide was a help. Mr. Larking explained the City does have an equal payment plan and the plan has been changed so that people with a past balance could sign up for that. Mr. Larking thanked the employees in the Charles Harris Financial Center and Michael Adkins; the next few weeks will be a lot of work for them. Mr. Larking noted his email was klarking@danvilleva.gov and his number was 799-5100.

Mr. Larking noted at the last meeting, he had been excited because the City had an event where members of the community were going to give their presentation for the All-America City application. Mr. Larking stated he attended the event at the Ballou Park Center to watch the announcement of all the winners. It was great to watch the people who worked hard to get the City named an All-America City. Mr. Larking congratulated all those people who worked on this effort.

Vice Mayor Miller noted attitudes have changed about Danville, no one in Danville had gone out and bragged about their City, so the ceremony at Ballou Park for the All-America City was a great event. Dr. Miller noted Dr. Bill Sweezer passed away last week, he was a great physician and his passing will leave a huge hole in Danville.

Council Member Saunders noted Dr. Sweezer will be missed; he was a member of the Rare Breed Motorcycle Club and to be a member of that club you had to ride to California and back. Mr. Saunders asked that citizens pray for him and his family, and for the Danville firefighter and his family members. Mr. Saunders thanked Tommy Bennett for his remarks this evening; Danville was a great City. Mr. Saunders reminded citizens they have until September 30th to get their Census forms in; each person who does not fill out the Census form costs the City $2,000. Mr. Saunders thanked the City Manager and staff for all they do.

Council Member Vogler offered his condolences and prayers for Dr. Sweezer and his family, and prayers for Greg Thomas and the Danville Fire Department, they will be missed. Mr. Vogler discussed the Staunton River RIFA that he, Mr. Saunders and Mr. Campbell serve on and the agenda item just passed that related to that; it was a wonderful partnership with Hurt and Pittsylvania County bringing jobs to the region. Danville was now an All-America City, it was a wonderful event to receive the recognition, and it was something they were all proud of.

Council Member Buckner asked citizens to continue to pray for Dr. Sweezer, his friends and family, and also for Greg Thomas, the Danville Firefighter and his family. Mr. Buckner noted Mr. Saunders and Mayor Jones had stated that the state, the nation and the world were watching Danville right now; that has never been truer. Mr. Buckner encouraged everyone to speak well of the City, many people have been working hard to make this City a great place and to continue to move it in the right direction.

Council Member Campbell noted his agreement with Mr. Buckner and encouraged people to speak positively about the City. Mr. Campbell noted they were praying for all those that lost loved ones and their families. Danville was an All-America City, and this Thursday they would be recognizing Sherman Saunders at an event, and it was well deserved.

Council Member Kushner noted he has spoken in the past about the necessity of everyone needing to wear masks in public places and was pleased that more people were wearing masks in stores than were a month ago. There were still citizens that were not wearing masks, and some may not be wearing masks because they were not readily available to them. It would be helpful for those people to know whether and where those masks can be obtained at no cost, and asked the City Manager to get the word out.

Council Member Mayo noted his agreement with other Council Members to pray for Dr. Sweezer, Greg Thomas and the entire City. The City was going through a situation they have never seen before and everyone was impacted by it, but they will get through it; he was proud of what was going on in Danville. This past Friday, they had a Unity Matters event which was a huge success, held on Grant Street by Bibleway Cathedral, and were looking forward to another one next year. Mr. Mayo noted the All-America City event was a joy to watch and to see everyone celebrate.

City Manager Ken Larking noted citizens can go to the City's website: www.danvilleva.gov and at the top there was a "stay informed" button, citizens can click on that button, put in some information and stay informed on what was going on in the City. Mr. Larking noted they will make sure they put out some information through social media and the public information office to let people know how they can obtain a mask.

Mayor Jones thanked Chad Martin for being at the meeting this evening, and also thanked Tommy Bennett. Mayor Jones noted Thursday night at 6:00 p.m. at High Street was the event for Sherman Saunders. Mr. Saunders has given so much to the Danville community, he loves this City and people will hear this on Thursday night. Mayor Jones stated people were mourning for those that passed away this week, it was a process, and encouraged citizens to be kind to others as they do not know what others are going through.

The meeting adjourned at: 8:07 p.m.

APPROVED:

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MAYOR

ATTEST:

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CITY CLERK

Council Letter
City of Danville, Virginia

CL-2389 **New Business A.**

City Council Regular Meeting

Meeting Date: 10/06/2020

Subject: Wireless Facilities Right-of-Way Franchise Agreement with Verizon

From: W. Clarke Whitfield, Jr., City Attorney

COUNCIL ACTION

Business Meeting: 10/06/2020

SUMMARY

Verizon is seeking a non-exclusive franchise agreement with the City allowing for the installation of up to ten (10) wireless internet antennae upon City right-of-way, pursuant to the City Cable Code.

BACKGROUND

Chapter 9.5 (Cable) of the Danville City Code permits the City Council to enter into franchise agreements for the placement of telecommunication service infrastructure within the City Right-of-Way. Verizon Wireless (Cellco Partnership) is interested in entering into a 10-year franchise with the City for the installation of up to ten (10) wireless facilities within the City Right-of-Way. In exchange, the City would receive $1,000.00 per installation, the maximum amount allowable under State law.

State law recently changed to encourage the installation of privately-maintained wireless facilities (devices that retransmit wireless internet service) within local Rights-of-Way as well as the co-location of wireless facilities upon existing utility poles to minimize visual street obstructions and added construction costs.

To protect the public interest, the proposed franchise agreement requires Verizon to maintain adequate insurance and to indemnify the City and its property, and maintain the City's right to require all necessary permits and site planning prior to installation. While this agreement does not permit the co-location of wireless facilities upon City poles, included provisions do allow for the relocation of these wireless facilities, at Verizon's expense, onto City poles under the franchise if the City later decides to allow for such co-location generally.

Granting the attached franchise agreement will permit Verizon to install up to ten (10) wireless facilities within the City Right-of-Way and potentially upon existing City poles, provided they abide by all of the negotiated terms and conditions. Installing these proposed wireless facilities will improve internet coverage, and will do so in a manner that protects City involvement in the siting and installation process, minimizes visual clutter along public streets, and lowers internet costs ultimately passed through to customers within the City.

RECOMMENDATION

Staff recommends the approval of the attached franchise agreement and the granting of a 10-year franchise to Cellco Partnership, d/b/a Verizon Wireless, for the installation of up to ten (10) wireless facilities within the City Right-of-Way, subject to the terms and conditions contained within the agreement.

Attachments

Ordinance

Agreement

PRESENTED: ____________________

ADOPTED: ______________________

ORDINANCE NO. 2020-____.____

AN ORDINANCE APPROVING AND AUTHORIZING A NEGOTIATED FRANCHISE AGREEMENT WITH CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS.

WHEREAS, the City of Danville has authority, pursuant to the Code of Virginia to grant telecommunication franchises upon City-owned rights-of-way, and has enacted chapter 9.5 entitled “Cable Television”, of the Code of the City of Danville, 1986, as amended, effectuating this grant of power; and

WHEREAS, Cellco Partnership d/b/a Verizon Wireless (“Verizon”) provides wireless internet services in the City, and has requested a Franchise with the City for the installation of up to ten (10) wireless facilities in the City right-of-way pursuant to State law; and

WHEREAS, the City Manager and the City Attorney have negotiated an agreement with Verizon to install such wireless facilities upon the public right-of-way in the City under the terms and conditions substantially in the form attached hereto and further dentified as the “Franchise Agreement”.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia, that:

1. Pursuant to Chapter 9.5, entitled “Cable Television”, of the Code of the City of Danville, Virginia, 1986, as amended, the City grants a franchise to Cellco Partnership, to occupy the public right-of-way for the purpose of installing and operating up to ten (10) wireless facilities and accompanying structural supports under the terms and conditions more particularly set forth in the cable franchise agreement, in the form substantially attached hereto and incorporated herein as **Exhibit A** (the “Agreement” or “Franchise Agreement”); and

2. The provisions of Chapter 9.5, entitled “Cable Television” of the Code of the City of Danville, Virginia, 1986, as amended, are to be read together with the Franchise Agreement so as to give full force and effect to each. However, in the event of a manifest inconsistency between the provisions, the specific

provisions of the Franchise Agreement shall supersede the general provisions of the Code.

AND BE IT FURTHER ORDAINED, by the Council of the City of Danville, Virginia, that the City Manager, Kenneth F. Larking, be, and is hereby, authorized and directed to execute the Franchise Agreement and to any other documents necessary to be executed or signed to complete this transaction.

APPROVED:

____
MAYOR

ATTEST:

____
CLERK

Approved as to
Form and Legal Sufficiency:

____
Assistant City Attorney

CITY OF DANVILLE, VIRGINIA NONEXCLUSIVE FRANCHISE AGREEMENT WITH CELLCO PARTNERSHIP

This Nonexclusive Franchise Agreement (hereinafter "Agreement") is made and entered into as of this __________day of__________________2020 (the "Effective Date"), by and between the City of Danville, Virginia, a Virginia municipal corporation (hereinafter "City" or "Grantor") and Cellco Partnership d/b/a Verizon Wireless, whose principal place of business is One Verizon Way, Mail Stop 4AW100, Basking Ridge, NJ 07920 hereinafter ("Verizon" or "Grantee").

WHEREAS, Grantee, is a partnership duly organized and existing under the laws of the State of Delaware; and

WHEREAS, Grantee desires to use and occupy the streets and public rights-of-way (as hereinafter defined) located within the City for the purposes of constructing, installing, and maintaining network facilities for Wireless Services within and through the City; and

WHEREAS, pursuant to Article VII, Section 9 of the Constitution of Virginia and Chapter 21 of Title 15.2 of the Virginia Code, the City has the authority to grant franchises and other authorizations for the use and occupancy of the streets and public rights-of-way; and

WHEREAS, the City is agreeable to allowing Grantee to use the streets and public rights-of-way, subject to the terms and conditions hereinafter set forth and subject to any lawful and applicable regulatory ordinance that may be adopted by the City in the future;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the City and Grantee agree as follows:

Section 1. Grant of Authority. (a) Subject to the terms of this Agreement, the City hereby grants to Grantee a non-exclusive revocable license to construct, install, maintain, locate, move, operate, place, protect, reconstruct, reinstall, relocate, remove and replace Wireless Support Structures, Utility Poles, Wireless Facilities, Small Cell Facilities and related facilities for the provision of Wireless Services in, on, over, under and through the public streets and public rights-of-way in the City of Danville. The parties acknowledge and agree that the license granted to Grantee hereunder expressly includes the right to attach its equipment and Wireless Facilities, as applicable, on existing Utility Poles, existing Third Party Poles, existing Company Poles, and non-City owned street lights or non-City owned traffic-control structures within the public streets and rights of way, provided Grantee shall be solely responsible for obtaining any required consents from State agencies or private parties to the extent required by law and shall also obtain the required permits and consent from the City. This grant of authority does not extend to Grantor Poles or other City-owned structures as the Grantee will be required to enter into a separate agreement with the City as provided in Section 13 of this Agreement. It is expressly agreed that this Agreement does not give Grantee the right to occupy any public rights-of-way with permanent ground-mounted cabinets, pads and other similar structures except pursuant to the express approval of the City pursuant to the applicable provisions of the Danville City Code and local procedures of the City and nothing in this Agreement shall be construed as consent by the City for Grantee to provide Cable Service within the City.

(b) Grantee acknowledges that this license is for the benefit of Grantee only, and that Grantee is not authorized to lease, sublease, assign or otherwise allow other providers to use or occupy the public rights-of-way except in accordance with provisions of this Agreement.

(c) Grantee acknowledges that, to the extent allowed by State and Federal law, the City has the authority to adopt ordinances regulating the use of the public rights-of-way, so long as such ordinances apply equally to all certificated providers of Wireless Services and are related to using the public streets and public rights-of-way in the City. Grantee agrees to be bound by all such future lawful ordinances so long as it operates Wireless Services or has property or equipment within the public streets or rights-of-way located in the City. Additionally, the parties acknowledge and agree that if any federal, state or local laws or regulations (including, but not limited to, those issued by the Federal Communications Commission or its successor agency) and any binding judicial interpretations thereof (collectively, “Laws”) that govern any aspect of the rights or obligations of the parties under this Agreement shall change after the Effective Date, and such change makes any aspect of such rights or obligations inconsistent with the then-effective Laws, then the parties agree to promptly amend the Agreement as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change.

(d) This Agreement is not a grant by the City of any fee simple or other property interest and is made subject and subordinate to the prior and continuing right of the City of Danville to use the public streets and public rights-of-way occupied by Grantee for any lawful purpose including, but not limited to, the laying, installing, maintaining, repairing, protecting, replacing, and removing sanitary sewers, water mains, storm drains, gas mains, poles and other equipment for municipal uses and with the right of ingress and egress, along, above, over, across and in said public streets and public rights-of-way.

(e) The initial term of this Agreement shall commence from and after such date (the “Commencement Date”) that (a) the Agreement has been approved by the City Council governing body; and (b) all required bonds, letters of credit, certificates of insurance and other instruments required by this Agreement have been filed with, and accepted and approved by the City, which acceptance and approval shall not be unreasonably delayed, conditioned or withheld. Upon satisfaction of the requirements in this subsection, the Parties shall execute a License Acceptance in the form as shown on the attached Exhibit A, which shall establish the Commencement Date.

Section 2. Definitions. For the purpose of this Agreement, and the interpretation and enforcement thereof, the following words and phrases, whether or not capitalized within the Agreement, shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

"Affiliate" means a person or entity that directly, or indirectly, through one or more intermediaries, owns, controls, is owned or controlled by, or is under common ownership or control with another person or entity.

"Cable Service" shall have the same meaning as in the 47 U.S. Code § 522, and shall be synonymous with the term "cable television service."

"City" means the City of Danville, Virginia, and where appropriate to the context, its officers, agents, employees and volunteers.

"City Attorney" means the City Attorney or his designee.

“City Council” means the City Council of the City of Danville.

"City Manager" means the City Manager or his designee.

"City Property" means and includes all real and personal property owned by the City, including all property held in a proprietary capacity by the City.

“Company Pole(s)” means any structure installed or approved to be installed by or on behalf of Grantee or its Carriers (as defined in Section 10 herein), in Public Streets and Public Rights-of-Way.

"Conduit" means any materials, such as metal or plastic pipe, that protects wire, cable, lines, fiber optic cable, or other technology for the provision of Wireless Services.

“Director” means the City’s Director of Public Works or his designee.

"Duct" means a pipe, tube, channel or similar item for carrying wires, lines, cables, fiber optic cable, or other technology for the provision of Wireless Services.

“Fiber optic or other cable and related facilities” means fiber optic cables or other cable, facilities, conduits, converters, splice boxes, handholds, manholes, vaults, equipment, drains, surface location markers, appurtenances and related facilities located or to be located by Grantee in the public streets or rights-of-way of the City used or useful for the transmission of Wireless Services.

"Grantee" or "Verizon" means Cellco Partnership.

"Grantor" means the City of Danville, Virginia.

“Grantor Pole(s)” means any utility pole, light pole, traffic signal pole, or other structure owned by the City of Danville and capable of supporting a Small Cell Facility attachment.

“Micro-Wireless Facility” means a small cell facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer than 11 inches.

"Public streets and public rights-of-way" or “public ways” include the surface of, and the space above and below, any public street, road, highway, avenue, sidewalk, way, bridge, viaduct, alley or other public right-of-way, including unimproved surfaces, now or hereafter held by the City for the purpose of public travel, communications, alarm, street lighting, power distribution, water or sewer service or other public use, whether present or future, to the extent of the City's right, title, interest or authority to grant a franchise to occupy and use such public ways for the purpose of providing Wireless Services.

"Public works project or public improvements" include, without limitation, the construction, realignment, paving or repaving, or other work on any public street or public right-of-way, change of grade or alignment of any public street or public right-of-way, the construction or reconstruction of any water, sanitary sewer, storm sewer, force main, drainage, trail, sidewalk, curb, gutter, landscaping, beautification, communications facility of the City, or any other improvement.

"Small Cell Facility" means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

"Third Party Pole(s)" means any existing structure that is not owned, in whole or in part by the City or Grantee, and is installed within the Public streets and public rights-of-way as of the date of adoption of the ordinance authorizing this Agreement. Third Party Poles include, but are not limited to, Utility Poles.

"Utility Pole(s)" means a structure owned, operated, or owned and operated by a public utility, local government, or the Commonwealth (excluding Grantor Poles) that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, lighting, or electricity.

"Wireless Facilities" means equipment at a fixed location that enables Wireless Services between user equipment and a communications network, including (i) equipment associated with Wireless Services, such as private, broadcast, and public safety services, as well as unlicensed Wireless Services and fixed Wireless Services, such as mircrowave backhaul, and (ii) radio transceivers, antennas, coaxial, or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration, installed, constructed, maintained, located, moved, operated, placed, protected, reconstructed, reinstalled, relocated, removed and replaced in the public streets and public rights-of-way in the City of Danville by Grantee for the provision of Wireless Services – which shall include, but not be limited to, Small Cell Facilities, Micro-wireless Facilities, and Wireless Support Structures.

"Wireless Services" means (i) "personal wireless services" as defined in 47 U.S.C. §332(c)(7)(C)(i); (ii) "personal wireless service facilities" as defined in 47 U.S.C. §332(c)(7)(C)(ii), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using Wireless Facilities.

"Wireless Support Structure" means a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing structure or alternative structure designed to support or capable of supporting Wireless Facilities. "Wireless support structure" does not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

Section 3. Term of Agreement. (a) The initial term of this Agreement shall be for a term of ten (10) years from the Commencement Date, as set forth in the License Acceptance ("Initial Term"). At the end of the Initial Term, the Agreement shall thereafter automatically renew for three additional five-year terms (each, a "Renewal Term"); provided, however, that either party may, upon giving ninety (90) days' written notice prior to the end of the Initial Term or any five year Renewal Term, as applicable, terminate the Agreement at the end of the Term (as defined below) then in effect. Upon termination of this Agreement as herein provided, and unless the parties are in active good faith negotiation of a replacement agreement or otherwise and agree in writing to an extension, Grantee shall be prohibited from further access to the public rights-of-way in the City of Danville. The Initial Term and all Renewal Terms hereunder shall be collectively referred to as the "Term". Notwithstanding anything herein, after the expiration or termination of this Agreement, its terms and conditions shall survive and govern with respect to any remaining permits in effect until their expiration or termination.

(b) Either the City or Grantee may terminate this Agreement for an uncured material breach by the other. The non-breaching party must first provide written notice of the existence of a material breach to the breaching party. Such notice shall state the grounds for termination in reasonable detail. The party receiving notice of termination for cause shall thereafter have ninety (90) days to cure, or commence and vigorously pursue good faith efforts to cure the alleged material breach.

(c) Upon the expiration or termination of this Agreement (including any renewal period), or if any portion of Grantee's facilities are abandoned for a period of time exceeding ninety (90) days, Grantee shall remove its Wireless Facilities and equipment at its own expense. The City agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of Grantee shall remain the personal property of Grantee and Grantee shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws. If, in the event Grantee fails to remove its facilities within thirty (30) days following written notice from the City requiring such removal, the City may cause such facilities to be removed, without further notice, and charge the actual cost for removal to Grantee which shall pay such costs within thirty (30) days after the City's written demand to do so. The City may collect such costs, expenses and attorney's fees as debts owed to the City by bringing action in any court of competent jurisdiction to enforce this Section 3(c).

Section 4. Compliance With Applicable Law. The parties shall, at all times during the Term of this Agreement, including any renewal period, comply with all applicable federal, state, and local laws, ordinances, and regulations. Expressly reserved to the City is the right to adopt, in addition to the provisions of this Agreement and existing laws, such additional ordinances and regulations are necessary for the lawful exercise of its police power for the benefit and safety of the public.

Section 5. Construction; Location or Relocation of Facilities. All facilities of Grantee shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified by the City.

5.1. Whenever existing overhead electric utilities, cable facilities, or telecommunications facilities (collectively, "Other Service Providers") are relocated underground within a particular segment of a street or public right-of-way of the City, the City may also require Grantee to relocate its Wireless Facilities (with the exception of radios and antennas) underground, provided that: (a) such relocation does not prohibit, or have the effect of prohibiting, Grantee's Wireless Services from such location(s); (b) the relocation is commercially reasonable; provided, however that the City's relocation requirement shall be deemed commercially reasonable if said requirement made by the City is fair and consistent with what is required of Other Service Providers similarly situated in the City's right of way and whose facilities must also be relocated; (c) the City complies with the Undergrounding Notice Requirements as provided herein below; and (d) the additional incremental costs of such underground relocation (as compared to aerial) shall be paid by the City. Any such relocation, if required, shall be made concurrently to minimize the disruption of the public streets or public rights-of-way. As used herein, the applicable "Undergrounding Notice Requirements" shall be as follows: the City shall first notify Grantee in writing that it intends to require relocation of certain of Grantee's Wireless Facilities pursuant to this Agreement. Thereafter, Grantee shall have thirty (30) days to respond to the City in writing, specifying the projected costs associated with such relocation. If the parties conclude in writing that such relocation is commercially reasonable, and determine to proceed with the relocation, Grantee shall have ninety (90) days thereafter to effectuate same; provided, however, that if Grantee determines that additional time is required to complete the relocation, this timeframe may be reasonably extended as necessary, upon written approval from the City. Once the relocation is complete, Grantee shall submit an invoice to the City for the costs payable by the City pursuant to this Section 5.1, and the City shall promptly submit payment to Grantee. In the event such relocations conflict with reasonable requirements of the Grantee, the City and Grantee shall cooperate in good faith to find suitable alternatives, if available; provided, however, that the City will not be required to incur financial costs in identifying such suitable alternatives and shall not be required to acquire new locations for the Grantee.

In the course of constructing or relocating its Wireless Facilities, the Grantee shall not be permitted, unless mutually agreed upon, to create, or cause to be created, a new communication or electrical power aerial roadway crossing for any purpose, including, but not limited to, supplying power or communication connectivity to its Wireless Facilities.

5.2. Grantee shall obtain all required permits for the construction or installation of its Wireless Facilities as required in this Agreement; provided, however, that nothing in this Agreement shall prohibit the City and Grantee from agreeing to an alternative plan to review future City permit and construction procedures, provided such alternative procedures do not present an undue hardship to Grantee, and provide substantially equivalent safeguards for responsible construction practices.

5.3. In the performance and exercise of its rights and obligations under this Agreement, Grantee shall not interfere in any manner with the existence and operation of any public street and public or private right-of-way, sanitary sewer, water line, storm drain, gas main, pole, overhead or underground electric and telephone wires, television cables, public works, facilities of other telecommunication providers, City Property, or any other facility within the public street and public or private right-of-way, without the prior approval of the City.

5.4. Except as may be expressly provided herein, nothing in this Agreement shall be construed to abrogate or limit the right of the City of Danville to perform any public works or public improvements. If any Wireless Facilities of the Grantee interfere with the construction, operation, maintenance, repair or removal of such public works or public improvements, within ninety (90) days following Grantee's receipt of written notice from the City of Danville (or such other period of time set forth as may be agreed upon in writing by the City of Danville and the Grantee), Grantee shall, at its own expense protect, alter, remove or relocate its Wireless Facilities, as directed by the City. If Grantee fails to so protect, alter, remove or relocate its Wireless Facilities within such period and Grantee's inability to do so is not the result of a force majeure or other events beyond the control of Grantee, the City may break through, remove, alter or relocate the Wireless Facilities without any liability to City, and Grantee shall pay to the City the actual costs incurred in connection with such breaking through, removal, alteration or relocation. Grantee shall also reimburse the City for or bear any additional costs actually incurred by the City as a result of Grantee's failure to comply with the City's request to protect, alter or remove equipment under this Agreement. The City may collect actual costs it has incurred in collecting such costs (excluding attorney fees), as debts owed to the City, by bringing action in any court of competent jurisdiction or exercising the City's rights to draw on bonds or letters of credit, or in any other lawful manner, individually or in combination.

5.5. The City retains the right and privilege to cut or move any Wireless Facilities located within the public ways or other areas of the City as the City may determine to be necessary, appropriate or useful in response to any life-threatening emergency. The City will endeavor to notify Grantee of such emergencies which may impact its Wireless Facilities. Nothing herein shall create any duties or obligations on the City to so notify Grantee nor shall the City, its officers, agents, employees, or volunteers in any way be liable for any failure to notify Grantee.

5.6. The Wireless Facilities shall be located so as not to interfere with the public safety or, to the extent possible, with the convenience of persons using the public streets or rights-of-way. Grantee shall construct, maintain and locate its Wireless Facilities so as not to interfere with the construction, location and maintenance of roadways, sidewalks, trails, sewer, water, drainage, electrical, signal, fiber optic, and any other facilities of the City.

5.7. The City shall have the right to specifically designate the location of the Wireless Facilities with reference to roadways, sidewalks, trails, sewer and water mains, drainage facilities, fiber optic cable, signal poles, light poles and lines and similar services, other facilities, such as public telephone utilities, public electric utilities, cable television facilities, and railway, communication and power lines, in such a manner as to protect the public safety and public and private property. Failure by the City to designate the location of any portion of the Wireless Facilities shall not relieve Grantee of its responsibilities in matters of public safety, as provided in this Agreement.

5.8. Except in the cases of emergencies, Grantee shall not move, alter, change or extend any of its Wireless Facilities in any public street or public right-of-way unless prior written notice of its intention to do so is given to the Director and permission in writing to do so is granted, or such requirement is waived in writing by the Director. The City shall use its best efforts to either approve or deny Grantee's request to relocate the Wireless Facilities within thirty (30) days of receipt of Grantee's request; however, the City's failure to respond within said time period shall not be deemed to be an approval. Such permission shall be conditioned upon compliance with the terms and conditions of this Agreement, with such other terms and conditions as will preserve, protect and promote the safety of the public using the public ways, and as will prevent undue interference with or obstruction of the use of the public ways by the public, the City or by any other public utility, public service corporation or cable operator for their respective purposes and functions. Such work by Grantee shall also be coordinated with the City's annual paving program through the City's Department of Public Works.

5.9. Grantee shall not open, disturb or obstruct, at any time, any more of the public streets or public rights-of-way than is reasonably necessary to enable it to proceed in laying or repairing its Wireless Facilities. Grantee shall not permit any public street or public right-of-way so opened, disturbed or obstructed by it to remain open, disturbed or obstructed for a longer period of time than shall be reasonably necessary. In all cases where any public street or public right-of-way is excavated, disturbed or obstructed by Grantee, Grantee shall take all precautions necessary or proper for the protection of the public and shall maintain adequate warning signs, barricades, signals and other devices necessary or proper to adequately give notice, protection and warning to the public of the existence of all actual conditions present.

5.10. After the installation, removal, relocation or construction or maintenance of the Wireless Facilities is completed, Grantee shall, at its own cost, repair and return the public streets or public rights-of-way to a minimum of the same or better condition existing before such installation, removal, relocation construction or maintenance, in a manner as may be reasonably specified by the City and to the reasonable satisfaction of the City. Grantee shall be responsible for damage to City street pavements, existing utilities, curbs, gutters, sidewalks and any other facilities, structures, landscaping or grading due to Grantee's installation, construction, maintenance, repair or removal of its Wireless Facilities in the public streets, public rights-of-way, and shall repair, replace and restore in kind, the said damaged property at its sole expense. Upon failure of Grantee to repair, replace and restore said damaged property in a manner as may be reasonably specified by the City and to the reasonable satisfaction of the City, after thirty (30) days' notice in writing shall have been given by the City, or a different time frame to which Grantee and the City reasonably agree, the City may cause such necessary repairs to be made ("Self Help Repairs") and may collect the costs incurred from Grantee, including but not limited to, exercising the City's rights to draw on bonds or letters of credit. The City may collect such costs, and any expenses and attorney fees incurred in collecting such costs, as debts owed to the City, by bringing action in any court of competent jurisdiction or in any manner allowed by law.

5.11. Except as otherwise necessitated by installation, operation and maintenance of the Wireless Facilities contemplated by this Agreement, neither Grantee, nor any person acting on Grantee's behalf, shall take any action or permit any action to be done which may impair or damage any City Property, including, but not limited to, any public street, public right-of-way or other property located in, on or adjacent thereto. As stated above, Grantee shall, at its own expense, repair and return any City Property to the same or better condition existing before such installation, removal, relocation, construction or maintenance, in a manner as may be reasonably specified by the City and to the reasonable satisfaction of the City. Notwithstanding this provision, Grantee shall not be responsible for impairment or damage to City Property caused by Self Help Repairs.

5.12. In the event of an unexpected repair or emergency, Grantee may commence such repair and emergency response work as required under the circumstances, provided, however, that Grantee shall notify the City as promptly as possible, before such repair or emergency work is started (or as soon thereafter as possible if advance notice is not practicable).

5.13. Grantee shall maintain its Wireless Facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements, laws, ordinances, and regulations.

5.14. Grantee shall at all times employ a high standard of care and shall install and maintain and use approved methods and devices for preventing failure or accidents which are likely to cause damages, injuries or nuisances to the public.

5.15. Grantee shall obtain all required permits from the City and any other governmental entity having jurisdiction prior to commencing work of any nature and shall comply with all terms and conditions of any such permit. Grantee shall furnish detailed plans of the work and other required information, and shall pay all required fees prior to issuance of a permit in accordance with the rates in effect at the time of payment. Grantee shall comply with all applicable ordinances and permitting requirements. The City shall issue all permits in accordance with applicable federal, state and local law, including the Danville City Code and Chapter 15.1 of Title 56 of the Code of Virginia or its successor provisions.

A single permit may be issued for multiple excavations, pole installations, or pole attachments to be made in public streets and rights-of way; provided, however, any applicable fees established by the City shall apply to each such excavation, pole installation or pole attachment unless otherwise provided by law. Exceptions to the requirement for a written permit may be allowed in cases of emergencies involving public safety or restoration of service. In the case of emergency excavations or pole-related repairs made in a public street or public right-of-way without a permit, Grantee shall attempt to notify the Director immediately to obtain appropriate guidance and authority; however, in the event the Grantee is unable to make such contact after making a diligent attempt to do so, Grantee shall make a report of each such excavation or pole-related repair to the City within two (2) business days and pay any applicable administrative fee (without penalty). Any permit application and inspection related to repair of excavations or pole-related repairs shall be promptly acted upon by the City so as not to unreasonably delay Grantee in efficiently discharging its public service obligation and in any event shall be granted or denied within thirty (30) days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

As used in this Agreement, "business day" shall refer to any day other than a Saturday, Sunday or federal holiday, or any other day on which national banks in the Commonwealth of Virginia are not open for business.

5.16. (a) Promptly after installation, repair or extension of Wireless Facilities or any portion thereof or any pavement cut by Grantee in any public way of the City, the incidental trenches or excavations shall be refilled by Grantee in a manner reasonably acceptable to the City. Pavement, sidewalks, curbs, gutters or any other portions of public ways damaged, disturbed or destroyed by such work shall be promptly restored and replaced with like materials to their former or better condition by Grantee at its own expense. However, where it is necessary, and if authorized by the City, in order to achieve the former conditions, Grantee shall, at its own expense, use materials whose type, specification and quantities exceed or are different from those used in the installation. Where a cut or disturbance is made in a section of sidewalk or paving, rather than replacing only the area actually cut, Grantee shall replace the full width of the existing sidewalk or appropriate sections of paving as determined by the City and the full length of the section or sections cut, a section being defined as that area marked by expansion joints or scoring or as determined by the City. Grantee shall maintain, repair and keep in good condition for a period of two (2) years following such disturbance all portions of public ways disturbed by Grantee, provided such maintenance and repair shall be necessary because of defective workmanship or materials supplied by Grantee.

(b) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation maintenance, repair or replacement of Wireless Facilities shall be replaced or restored, as nearly as may be practicable, to the condition existing prior to performance of work. All restoration work within the public ways or other areas shall be done in accordance with landscape plans approved by the City.

5.17. (a) Grantee shall promptly remove or correct any obstruction, damage, or defect in any public street or public right-of-way caused by Grantee in the installation, operation, maintenance or extension of Grantee's Wireless Facilities. Any such obstruction, damage, or defect which is not promptly removed, repaired or corrected by Grantee within thirty (30) days following proper written notice to do so, given by the City to Grantee, may be removed or corrected by the City, and the cost thereof shall be charged against Grantee and payable on demand. Any expense, cost, or damages incurred for repair, relocation, or replacement to City water, sanitary sewer, storm sewer, storm drainage, telecommunication facilities, streets, sidewalks, trails, curbs, gutters, or other property resulting from construction or maintenance of Grantee's Wireless Facilities shall be borne by Grantee, and any and all expense and cost incurred in connection therewith by the City shall be fully reimbursed by Grantee to the City.

(b) If weather or other conditions do not permit the complete restoration required by this Section, Grantee shall temporarily restore the affected property. Such temporary restoration shall be at Grantee's sole expense and Grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(c) Grantee or other person acting in its behalf shall use suitable barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property and shall comply with all federal, state, and local laws and regulations, including, but not limited to, the flagging requirements of the Virginia Department of Transportation and/or the City of Danville.

5.18. The parties acknowledge and agree that this Agreement shall not constitute a waiver of the Grantor's sovereign immunity. Except in the case of the City's gross negligence or intentional or willful misconduct, the City, its officers, agents, or employees, shall not be liable for any damage to or loss of any of Grantee's Wireless Services or Wireless Facilities within the public ways or any other areas of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, mowing, maintenance, filling, or work or activity or lack of any activity of any kind by or on behalf of the City.

5.19. Grantee shall cooperate with the City in coordinating its construction activities as follows:

(a) Grantee shall provide the City with a schedule of its proposed construction activities prior to commencing any expansion of its backbone system;

(b) Upon request, Grantee shall meet with the City and other users of the public ways to coordinate construction in the public ways; and

(c) All construction locations, activities and schedules shall be coordinated, as directed by the City, to minimize public inconvenience, disruption or damages. Grantee shall submit a written construction schedule to the City at least ten (10) business days before commencing any work in or about the public streets or public rights-of-way. Grantee shall further notify the City not less than five (5) business days in advance of such excavation or work and shall comply with the provisions of the Virginia Underground Utility Damage Prevention Act, Virginia Code Section 56-265.14, et. seq., or its successor provisions.

5.20. Notwithstanding anything to the contrary in this Section, the installation, placement, maintenance, or replacement of Micro-Wireless Facilities that are suspended on cables or lines that are strung between existing utility poles in compliance with national safety codes shall be exempt from locality-imposed permitting requirements and fees. However, the City may require a single use permit if such activities (i) involve working within the highway travel lane or require closure of a highway travel lane; (ii) disturb the pavement, shoulder, roadway, or ditch line; (iii) include placement on limited access rights-of-way; or (iv) require any specific precautions to ensure the safety of the traveling public or the protection of public infrastructure or the operation thereof, and either were not authorized in or will be conducted in a time, place, or manner that is inconsistent with the terms of the existing permit for that facility or the structure upon which it is attached.

5.21. The City may deny a zoning permit request for the installation of a Wireless Facility when the same does not comply with the Danville City Code, as the same may be amended or recodified from time to time.

Section 6. Compensation. The City shall not impose any fee for the use of the rights of way, except for zoning, subdivision, site plan, comprehensive plan fees of general application, or as otherwise authorized by law, upon the Grantee for the attachment or co-location of Small Cell Facilities on an existing structure in the Public streets and public rights-of-way of the City. For the installation of a new Wireless Support Structure, Grantee shall pay to the City a one-time application fee of $1,000 for each installation, which shall be in addition to the administrative and permitting fees authorized under Virginia Code Section 15.2-2316.4:1, or its successor provision. As this Agreement expressly excludes Grantor Poles and other City-owned structures, the compensation provisions of this Section 6 do not apply to Grantor Poles or other City-owned structures.

Section 7. Mapping. (a) Grantee shall maintain an accurate map of its Wireless Facilities. Grantee shall provide the City with "as built" drawings and an accurate map or maps showing the location of the Wireless Facilities, including pole lines and conduit lines and any other details requested by the City, to include digitized map(s) in both printed and electronic form readable by the current version of Auto CAD and tied to the Virginia State Plane Coordinate System and tied to the City's Survey Control monuments and geographic information system certifying the location of all Wireless Facilities within the City. Grantee shall, upon request, provide updated maps annually.

(b) If any of the requested information of Grantee in this Agreement is considered proprietary, confidential or a trade secret, Grantee will notify the City of this opinion and the City will keep such information confidential to the extent permitted by the Virginia Freedom of Information Act or other any successor statute or law. Grantee will submit an existing facilities map as a condition precedent to the City's approval of this Agreement. As for new installations, after the Effective Date of this Agreement, Grantee shall submit the proposed mapping of its plans for new construction to the City prior to any construction. As-built drawings of any new construction of Wireless Facilities shall be furnished to the City within sixty (60) days of completion of such construction. All as-built maps and drawings shall be drawn to scale and provide reference to a physical City benchmark to the extent the physical benchmark is in reasonable proximity to Grantee's new installation. All mapping shall be provided in a format compatible to the City's present and future mapping systems.

Alternatively, Grantee will pay for the cost of making the mapping compatible.

(c) Prior to its installation of any Wireless Facilities in the public streets or public rights-of-way and after Grantee provides the City with its proposed plans for the Wireless Facilities, the City may in its discretion designate certain locations to be excluded from use by Grantee for its Wireless Facilities, including, but not limited to, ornamental or similar specially designed street lights or other facilities or locations which, in the reasonable judgment of the City, do not have electrical service adequate for or appropriate for Grantee’s Wireless Facilities or cannot safely bear the weight or wind loading thereof, or any other facility or location that in the reasonable judgment of the City is incompatible with the proposed Wireless Facilities or would be rendered unsafe or unstable by the installation. The City may further exclude certain other facilities that have been designated or planned for other use or are not otherwise proprietary, legal or other limitations or restrictions as may be reasonably determined by the City. In the event such exclusions conflict with reasonable requirements of Grantee, the Parties will cooperate in good faith with Grantee to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial costs nor shall the City be required to acquire new locations for Grantee. Grantee shall, prior to any excavation or installation within the public streets or public rights-of-way, provide sufficient notification and joint installation opportunity on a shared cost basis to potential users of the public streets or public rights-of-way as may be provided for by a separate City policy. Such notification and adopted policies shall be designed to maximize co-location of providers to minimize the disturbance to the public streets or public rights-of-way and maximize its useable capacity.

Section 8. Insurance Requirements. At all times during the Term of this Agreement, Grantee shall, at its expense, maintain the insurance policies listed herein. Any required policy obtained through a third-party insurer shall be in a form and with an insurance company authorized or permitted to do business in the Commonwealth of Virginia and have a rating of no less than A-X by A.M. Best Co. Although Grantee is not currently self-insured, the City acknowledges and agrees that Grantee may elect to self-insure during the Term of this Agreement if: (a) Grantee meets the self-insurance requirements promulgated under Virginia law; and (b) Grantee has processed any necessary applications and/or materials with the Commonwealth of Virginia required to self-insure (and has provided copies of same to the City).

(a) Commercial General Liability. Grantee shall procure and maintain throughout the Term of this Agreement commercial general liability insurance with limits of Five Million Dollars ($5,000,000.00) per occurrence for bodily injury (including death), and for property damage and Five Million Dollars ($5,000,000) general aggregate including contractual liability. Grantee agrees that it will include the City as an additional insured as its interest may appear under this Agreement. However, the parties acknowledge that Grantee may meet the policy limit in this Section by combination of Grantee's General Commercial Liability Policy and Grantee's Umbrella or Excess Liability Policy.

(b) Workers' Compensation. Workers' Compensation insurance covering Grantee’s statutory obligation under the laws of the Commonwealth of Virginia and Employer's Liability

Insurance in the amount of One Million Dollars ($1,000,000) each accident/disease/policy limit for all its employees engaged in work under this Agreement.

(c) Commercial Automobile Liability. Commercial Auto Liability insurance having a combined single limit of liability of One Million Dollars ($1,000,000) each accident for bodily injury and property damage covering all owned or non-owned vehicles used in the performance of any work under this Agreement.

(d) Pollution Liability Insurance. Grantee shall maintain during the life of this Agreement Pollution Liability Insurance in the amount of One Million Dollars ($1,000,000) per occurrence. Coverage shall be provided for bodily injury and property damage resulting from pollutants which are discharged suddenly and accidentally. Such insurance shall also provide coverage for cleanup costs.

(e) Grantee shall, prior to commencing construction pursuant to the execution of this Agreement or within ten (10) business days after the granting of a permit contemplated by this Agreement, whichever is sooner, furnish to the City certificate(s) of insurance, showing the type, amount required herein, effective dates and date of expiration of the policies, and thereafter within ten (10) days of the expiration or modification of any such policies. Such certificate or certificates and evidence of insurance shall include the City, its officers, and employees as additional insureds as their interest may appear under this Agreement, excluding Worker's Compensation and Employer's Liability.

Section 9. Surety. Within thirty (30) days after this Agreement is approved by the City, and prior to the issuance of any permits for construction by Grantee, Grantee shall furnish and file with the City a performance bond issued by a surety authorized or permitted to do business in the Commonwealth of Virginia and in a form acceptable to the City of Two Thousand Five Hundred Dollars ($2,500.00) per pole up to a maximum amount of Twenty Five Thousand Dollars ($25,000.00). The rights reserved to the City with respect to such performance bond shall be in addition to all other rights Grantor may have under this Agreement or any other law.

Section 10. Transfer of ownership. Notwithstanding any provision of this Agreement, Grantee may not assign, transfer, lease, or sell any of the rights and privileges granted hereunder without the approval of the City Manager, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that no such consent need be obtained from the City Manager if Grantee assigns, transfers, leases or sells any rights and privileges granted hereunder to any of its principal, affiliates, subsidiaries of its principal, or to any entity which acquires all or substantially all of Grantee's assets by reason of a merger, acquisition, or other business reorganization (each a "Permitted Transfer"). Notwithstanding anything contained herein to the contrary, a Permitted Transfer shall not be effective until such transferee has filed with the City of Danville a duly executed instrument reciting the fact of such assignment, transfer, lease or sale and accepting the terms of this Agreement and agreeing to perform all of the conditions hereof. The City and Grantee acknowledge and agree that, notwithstanding anything in this Agreement to the contrary, certain Wireless Facilities deployed by Grantee in the rights-of-way pursuant to this Agreement may be owned and/or operated by Grantee's third-party wireless carrier customers ("Carriers") and installed and maintained by Grantee pursuant to license agreements between Grantee and such Carriers. Such facilities shall be treated as

Grantee’s Wireless Facilities for all purposes under this Agreement provided that (i) Grantee remains responsible and liable for all performance obligations under this Agreement with respect to such facilities; (ii) the City’s sole point of contact regarding such facilities shall be Grantee; and (iii) Grantee shall have the right to remove and relocate said facilities.

Section 11. Indemnification. Grantee agrees to indemnify, defend and hold harmless the City, its officers, employees and agents from and against all claims, demands, losses, damages, liabilities, fines, and penalties, and all actual costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney’s fees and costs of defense (collectively, the losses), arising out of any breach by Grantee of the terms and conditions of this Agreement, except to the extent proximately caused by the gross negligence or willful misconduct of the City of Danville, its officers, employees and agents. In addition, Grantee shall protect, indemnify, and hold harmless the City, its officers, agents, and employees, from any and all demands for fees, claims, suits, actions, causes of action, or judgments based on the alleged infringement or violation of any patent, invention, article, arrangement, or other apparatus that may be used in the performance of any work or activity arising out of the use of any Wireless Facilities or the provision of Wireless Services, except to the extent proximately caused by the gross negligence or willful misconduct of the City of Danville, its officers, employees or agents. Notwithstanding any provision of this Agreement, to the extent permitted by law and without waiving the City’s sovereign immunity, neither the Grantor nor the Grantee shall be liable to the other for consequential, indirect, or punitive damages (including lost revenue, loss of equipment, interruption, loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the City or Grantee was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

Section 12. Hazardous Substances. In its performance of this Agreement, Grantee shall not transport, dispose of or release any hazardous substance, material, or waste, except as reasonably necessary to allow Grantee in performance of its work under this Agreement or to reliably provide its Wireless Services, and in any event Grantee shall comply with all federal, state, and local laws, rules, regulations, and ordinances controlling air, water, noise, solid wastes, and other pollution, and relating to the storage, transport, release, or disposal of hazardous material, substances or waste. Regardless of the City's acquiescence, Grantee shall indemnify and hold the City, its officers, agents, employees and volunteers harmless from all costs, claims, damages, causes of action, liabilities, fines or penalties, including reasonable attorney's fees, resulting from Grantee's violation of this Section and agrees to reimburse City for all costs and expenses incurred by the City in eliminating or remedying such violations. Grantee also agrees to reimburse the City and hold the City, its officers, agents, employees and volunteers harmless from any and all costs, expenses, attorney’s fees and all penalties or civil judgments obtained against any of them as a result of Grantee's use or release of any hazardous substance or waste onto the ground, or into the water or air from, near or upon the City's premises. Grantee shall not be responsible for any condition, including the release of a hazardous material, substance or waste to the extent that such existed on the Effective Date of this Agreement or that otherwise did not result from Grantee’s activities. For purposes of this Section, the following definitions shall apply:

"Hazardous Substances" means asbestos and any and all pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials and hazardous substances as referenced or defined in, or pursuant to, 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, the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135, et seq.), as amended, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, et seq.), as amended, and the Toxic Substance Control Act (15 U.S.C. 2601, et seq.), as amended.

As used in this Section, "release" includes the placing, releasing, depositing, spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any substance.

Section 13. Applicability of State Law. (a) This Agreement covers existing Wireless Support Structures and the installation and maintenance of Small Cell Facilities on existing structures as provided in Chapter 15.1 of Title 56 of the Virginia Code, or its successor provisions. As of the effective date of this Agreement, the City does not permit attachment of any Small Cell Facility on Grantor Poles or other City-owned structures. If, during the term of this Agreement, the City of Danville allows third-party Small Cell Facility attachments to Grantor Poles or other City-owned structures, then the Grantee shall have the right request the installation or relocation of its Small Cell Facilities to Grantor Poles or other City-owned structures at Grantee's expense, subject to City approval and execution of a separate support structure agreement between Grantee and the City, on terms and conditions satisfactory to the parties.

(b) In the event of any conflict between the terms of this Agreement and state law, state law shall at all times control.

Section 14. General provisions.

(a) Authority. Grantee warrants and represents that it has obtained all necessary and appropriate authority and approval from all applicable federal and state agencies or authorities to provide all Wireless Facilities and Wireless Services it intends to provide within the City, and upon request by the City will provide evidence of such authority.

(b) Other remedies. Nothing in this Agreement shall be construed as waiving or limiting any rights or remedies that the City or Grantee may have, at law or in equity, for enforcement of this Agreement.

(c) Severability. If any Section, subsection, sentence, clause, phrase, or other portion of this Agreement, or its application to any person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

(d) Nonenforcement. Neither party shall be excused from complying with any of the provisions of this Agreement by any failure of the other party, upon any one or more occasions, to insist upon strict performance of this Agreement or to seek the other party's compliance with any one or more of such terms or conditions of this Agreement.

(e) Conflicts of law. If there is a conflict between the provisions of this Agreement and any law, whether federal, state, or City, including all future laws and ordinances, the law and conflicting Agreement provision will, to the extent reasonably possible, be construed so as to be consistent with each other and if such construction is not reasonably possible, the conflicting provision of this Agreement shall be deemed superseded by such law and have no effect, notwithstanding the contract clause of the United States Constitution.

(f) Controlling law and venue. By virtue of entering into this Agreement, Grantee agrees and submits itself to a court of competent jurisdiction in the City of Danville, Virginia or in the United States District Court for the Western District of Virginia, Roanoke Division, and further agrees that this Agreement is controlled by the laws of the Commonwealth of Virginia or any applicable federal laws and that all claims, disputes and other matters shall be decided only by such court according to the laws of the Commonwealth of Virginia or any applicable federal laws or by any regulatory body with jurisdiction, including the Federal Communications Commission.

(g) Captions. The Section captions and headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(h) Nondiscrimination. During the performance of this Agreement, Grantee agrees that it will not discriminate against any employee or applicant for employment on the basis of race, religion, color, sex, handicap or national origin. Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Grantee in all solicitations or advertisements for employees placed by or on behalf of Grantee, will state that Grantee is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements herein. Grantee agrees to comply with the good faith minority business efforts required by the Danville City Code.

(i) Notices. (a) Notices given pursuant to this Agreement shall be in writing and addressed as follows:

To the City:	City Manager 427 Patton St. Danville, Virginia 24541
With a Copy to:	City Attorney 427 Patton Street Danville, Virginia 24541
To Grantee:	Cellco Partnership d/b/a Verizon Wireless 180 Washington Valley Road

Bedminster, New Jersey 07921
Attn: Network Real Estate

With a Copy to: Williams Mullen
Attn: Stephen R. Romine
222 Central Park Avenue
Suite 1700
Virginia Beach, Virginia 23462

(b) Either party may change the address at which it will receive notices by providing written notice of the change to the other party.

[SIGNATURE PAGES FOLLOWS.]

IN WITNESS WHEREOF the Parties have each caused this Agreement to be executed and delivered by a duly authorized representative as of the date first above written.

CITY OF DANVILLE, VIRGINIA

____
By: Ken Larking
Title: City Manager

Attest:

____
City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF DANVILLE, to-wit:
The foregoing instrument was acknowledged before me this________ day of ________________, 2020 by Ken Larking, City Manager of the City of Danville.

Notary Public

My commission expires: ____________
My commission number: ____________

Approved as to Content:

____
Director of Public Works

Approved as to Form:

____
City Attorney

CELLCO PARTNERSHIP d/b/a

VERIZON WIRELESS

____

By:

Title:

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

The foregoing instrument was acknowledged before me this ________ day of ________________, 2020, by_____________________________ of Cellco Partnership d/b/a Verizon Wireless on its behalf.

Notary Public

My commission expires: ____________
My commission number: ____________

EXHIBIT A

LICENSE ACCEPTANCE

Ordinance Number____________, adopted on ________________approved the terms and conditions of this Agreement and under the authority granted by Danville City Code Section 9.5-10(g), herein determine that any conflicting portions of Chapter 9.5 of the City Code may be dispensed with.

The City hereby acknowledges that all required bonds, letters of credit, certificates of insurance and other instruments required by this Agreement have been filed with and accepted and approved by the City.

The Parties agree that the Commencement Date of this Agreement shall be ____________________, 20______

CITY OF DANVILLE, VIRGINIA

By: ___________________________

Title: City Manager

CELLCO PARTNERSHIP
d/b/a VERIZON WIRELESS

By: ____________________________

Title: __________________________

Council Letter
City of Danville, Virginia

CL-2359 **New Business B.**

City Council Regular Meeting

Meeting Date: 10/06/2020

Subject: Virginia Department of Transportation - Smart Scale Project Application Endorsements

From: Brian Dunevant, Assistant Public Works Director & City Engineer

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COUNCIL ACTION

Business Meeting: 10/06/2020

SUMMARY

The City of Danville has submitted four Smart Scale applications to the Virginia Department of Transportation for transportation projects within the City of Danville. The Danville Metropolitan Planning Organization has submitted one Smart Scale application to the Virginia Department of Transportation for a transportation project to be located within the City of Danville. Each application requires a resolution of support from Danville City Council. The proposed projects are as follows:

Danville: Piedmont Drive Pedestrian Accessibility Improvements
Danville: Riverside Drive Improvements - Arnett Boulevard to Main Street
Danville: Riverside Drive Improvements - Piney Forest Road to Audubon Drive
Danville: Riverside Drive Improvements - Park Avenue to Westover Drive
Danville Metropolitan Planning Organization: Mount Cross Road Roundabout

BACKGROUND

Smart Scale is a statewide program that distributes transportation funding based on a transparent and objective evaluation of projects that will determine how effectively they help the State of Virginia achieve its transportation goals. Smart Scale project applications are scored by the Virginia Department of Transportation based on scoring criteria established for the region in which the proposed project is located. Based on scoring and available funding, projects are then recommended to the Commonwealth Transportation Board. It is expected that the Commonwealth Transportation Board will formally vote to award project funding in June 2021. Projects that are not awarded funding can be resubmitted under a future application. It is anticipated that any projects awarded funding in June 2021 will be able to access preliminary engineering funds in Fiscal Year 2026. Projects are then expected to be developed and constructed based on an approved schedule.

RECOMMENDATION

It is recommended that Danville City Council consider approving the attached resolutions of support for the proposed transportation projects.

Attachments

Resolution

Resolution

Resolution

Resolution

Resolution

PRESENTED: ____________________

ADOPTED: ______________________

RESOLUTION NO. 2020 -____.____

A RESOLUTION ENDORSING A SMART SCALE APPLICATION BY THE CITY OF DANVILLE TO THE VIRGINIA DEPARTMENT OF TRANSPORTATION FOR THE PROPOSED CONSTRUCTION OF PIEDMONT DRIVE PEDESTRIAN ACCESSIBILITY IMPROVEMENTS.

WHEREAS, the Virginia Department of Transportation is accepting applications for Smart Scale funding; and

WHEREAS, the City of Danville desires to submit an application for the construction of pedestrian improvements along Piedmont Drive and other adjacent roadways; and

WHEREAS, the purpose of the project is to improve pedestrian accessibility and improve pedestrian safety; and

WHEREAS, a resolution of support from the local governing body is required to be submitted with the application.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Danville, Virginia, does hereby endorse the Smart Scale Application for the construction of improvements along Piedmont Drive, and other adjacent roadways, to improve pedestrian accessibility; and

BE IT FURTHER RESOLVED, that the City Manager, Kenneth F. Larking, be, and is hereby, authorized to execute the application and any and all other paperwork necessary to effect the above referenced transaction.

APPROVED:

____
MAYOR

ATTEST:

____
CLERK

Approved as to
Form and Legal Sufficiency:

____
CITY ATTORNEY

PRESENTED: ____________________

ADOPTED: ______________________

RESOLUTION NO. 2020 -____.____

A RESOLUTION ENDORSING A SMART SCALE APPLICATION BY THE CITY OF DANVILLE TO THE VIRGINIA DEPARTMENT OF TRANSPORTATION FOR THE PROPOSED CONSTRUCTION OF RIVERSIDE DRIVE IMPROVEMENTS FROM ARNETT BOULEVARD TO MAIN STREET.

WHEREAS, the Virginia Department of Transportation is accepting applications for Smart Scale funding; and

WHEREAS, the City of Danville desires to submit an application for the construction of Riverside Drive Improvements from Arnett Boulevard to Main Street; and

WHEREAS, the purpose of the project is to improve pedestrian accessibility, improve pedestrian safety and improve roadway safety; and

WHEREAS, a resolution of support from the local governing body is required to be submitted with the application.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of Danville, Virginia, does hereby endorse the Smart Scale Application for the construction of Riverside Drive Improvements from Arnett Boulevard to Main Street; and

BE IT FURTHER RESOLVED, that the City Manager, Kenneth F. Larking, be, and is hereby, authorized to execute the application and any and all other paperwork necessary to effect the above referenced transaction.

APPROVED:

____
MAYOR

ATTEST:

____
CLERK

Approved as to
Form and Legal Sufficiency:

____

CITY ATTORNEY

PRESENTED: ____________________

ADOPTED: ______________________

RESOLUTION NO. 2020 -____.____

A RESOLUTION ENDORSING A SMART SCALE APPLICATION BY THE CITY OF DANVILLE TO THE VIRGINIA DEPARTMENT OF TRANSPORTATION FOR THE PROPOSED CONSTRUCTION OF RIVERSIDE DRIVE IMPROVEMENTS FROM PINEY FOREST ROAD TO AUDUBON DRIVE.

WHEREAS, the Virginia Department of Transportation is accepting applications for Smart Scale funding; and

WHEREAS, the City of Danville desires to submit an application for the construction of Riverside Drive Improvements from Piney Forest Road to Audubon Drive; and

WHEREAS, the purpose of the project is to improve pedestrian accessibility, improve pedestrian safety, and improve roadway safety; and

WHEREAS, a resolution of support from the local governing body is required to be submitted with the application.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Danville, Virginia, does hereby endorse the Smart Scale Application for the construction of Riverside Drive Improvements from Piney Forest Road to Audubon Drive; and

BE IT FURTHER RESOLVED, that the City Manager, Kenneth F. Larking, be, and is hereby, authorized to execute the application and any and all other paperwork necessary to effect the above referenced transaction.

APPROVED:

____

MAYOR

ATTEST:

____
CLERK

Approved as to
Form and Legal Sufficiency:

____
CITY ATTORNEY

PRESENTED: ____________________

ADOPTED: ______________________

RESOLUTION NO. 2020 -____.____

A RESOLUTION ENDORSING A SMART SCALE APPLICATION BY THE CITY OF DANVILLE TO THE VIRGINIA DEPARTMENT OF TRANSPORTATION FOR THE PROPOSED CONSTRUCTION OF RIVERSIDE DRIVE IMPROVEMENTS FROM PARK AVENUE TO WESTOVER DRIVE.

WHEREAS, the Virginia Department of Transportation is accepting applications for Smart Scale funding; and

WHEREAS, the City of Danville desires to submit an application for the construction of Riverside Drive Improvements from Park Avenue to Westover Drive; and

WHEREAS, the purpose of the project is to improve pedestrian accessibility, improve pedestrian safety, and improve roadway safety; and

WHEREAS, a resolution of support from the local governing body is required to be submitted with the application.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of Danville, Virginia, does hereby endorse the Smart Scale Application for the construction of Riverside Drive Improvements from Park Avenue to Westover Drive; and

BE IT FURTHER RESOLVED, that the City Manager, Kenneth F. Larking, be, and is hereby, authorized to execute the application and any and all other paperwork necessary to effect the above referenced transaction.

APPROVED:

____
MAYOR

ATTEST:

____
CLERK

Approved as to
Form and Legal Sufficiency:

____
CITY ATTORNEY

PRESENTED: ____________________

ADOPTED: ______________________

RESOLUTION NO. 2020 -____.____

A RESOLUTION ENDORSING A SMART SCALE APPLICATION BY THE DANVILLE METROPOLITAN PLANNING ORGANIZATION TO THE VIRGINIA DEPARTMENT OF TRANSPORTATION FOR THE PROPOSED CONSTRUCTION OF A ROUNDABOUT ON MOUNT CROSS ROAD AT DIMON DRIVE AND PARKER ROAD WEST.

WHEREAS, the Virginia Department of Transportation is accepting applications for Smart Scale funding; and

WHEREAS, the Danville Metropolitan Planning Organization completed a Mount Cross Road corridor analysis in May 2017 which recommended a roundabout on Mount Cross Road at Dimon Drive and Parker Road West; and

WHEREAS, the Danville Metropolitan Planning Organization desires to submit an application for the construction of a roundabout on Mount Cross Road at Dimon Drive and Parker Road West; and

WHEREAS, the purpose of the project is to improve transportation flow and safety in the intersection and along the corridor; and

WHEREAS, a resolution of support from the City Council of the City of Danville is required to be submitted with the application.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Danville, Virginia, does hereby endorse the Smart Scale Application for the construction of a roundabout on Mount Cross Road at Dimon Drive and Parker Road West; and

BE IT FURTHER RESOLVED, that the City Manager, Kenneth F. Larking, be, and is hereby, authorized to execute the application and any and all other paperwork necessary to effect the above referenced transaction.

APPROVED:

____
MAYOR

ATTEST:

____
CLERK

Approved as to
Form and Legal Sufficiency:

____
CITY ATTORNEY

Council Letter
City of Danville, Virginia

CL-2409 **New Business C.**

City Council Regular Meeting

Meeting Date: 10/06/2020

Subject: Consideration of Support of a Regional Alliance

From: Ken F. Larking, City Manager

COUNCIL ACTION

Business Meeting: 10/06/2020

SUMMARY

Staff is recommending approval of the attached resolution supporting formation of an Economic Development Regional Alliance with Pittsylvania County.

BACKGROUND

On June 9, 2020, Danville City Council attended a joint meeting with the Pittsylvania County Board of Supervisors for the presentation of the Regional Economic Development Plan. One of the recommendations of that plan was formation of a regional alliance. The elected bodies directed staff to work with the steering committee for the plan, to come up with the framework of this regional alliance. The steering committee recommended a leadership council made up of nine members. The County Board of Supervisors has approved formation of a leadership council made up of seven members. This resolution conforms with what Pittsylvania County adopted on September 15, 2020.

RECOMMENDATION

It is recommended that City Council approve a Resolution supporting the creation of a Regional Alliance, which will include a leadership council of seven members.

Attachments

Resolution

PRESENTED:_______________________

ADOPTED:_________________________

RESOLUTION NO. 2020-___._____

A RESOLUTION SUPPORTING FORMATION OF THE DANVILLE-PITTSYLVANIA ECONOMIC DEVELOPMENT ALLIANCE.

WHEREAS, The City of Danville, Pittsylvania County, and the Danville Regional Foundation jointly sponsored a thorough review of the Region's Economic Development Program(s); and

WHEREAS, the three entities jointly appointed a Steering Committee to guide the development of an Economic Development Strategy for the Region; and

WHEREAS, the Steering Committee presented the final draft of the Region's new Economic Development Strategy to a joint meeting of the City Council and Board of Supervisors on June 9, 2020; and

WHEREAS, the Strategy recommends the appointment of an Alliance, comprised of area stakeholders, to be responsible and accountable for the progress of strategy implementation; and

WHEREAS, the Steering Committee proposed that the Alliance Leadership Council be comprised of nine (9) members, including the City Manager, County Administrator, DRF CEO, IALR Executive Director, Chamber President, two (2) industry leaders and two (2) regional/state Economic Development Leaders; and

WHEREAS, the Board of Supervisors adopted a resolution supporting an Alliance Leadership Council of seven (7) members, including the City Manager, County Administrator, DRF CEO, IALR Executive Director, Chamber President, two (2) industry leaders; and

NOW THEREFORE, BE IT RESOLVED, that the City Council hereby approves of the City's participating in the Danville-Pittsylvania Economic Development Alliance with a Leadership Council consisting of seven members, as approved by the Pittsylvania County Board of Supervisors.

Given under my hand this 6th day of October, 2020.

APPROVED:

____
MAYOR

ATTEST:

____
CLERK

Approved as to
Form and Legal Sufficiency:

____
CITY ATTORNEY

Council Letter
City of Danville, Virginia

CL-2393 **New Business D.**

City Council Regular Meeting

Meeting Date: 10/06/2020

Subject: Fiscal Year 2020 Community Policing Development Microgrant

From: Scott Booth, Police Chief

COUNCIL ACTION

First Reading: 10/06/2020
Final Adoption 10/20/2020

SUMMARY

The Danville Police Department is requesting an amendment to the Fiscal Year 2021 Budget to include a $91,550 grant to create a proactive police response to prevent the escalation of domestic violence. This will allow the Danville Police Department to partner with Drs. Rachel and Roberto Santos with Radford University, and Haven of the Dan River Region in how the Police Department responds to and manages domestic violence. This project will provide training for patrol supervision, and establish the necessary problem solving skills and knowledge to respond to evidence-based domestic violence. The project will also provide ongoing assistance and analysis that will provide the department with a sustainable model.

RECOMMENDATION

It is recommended that Danville City Council adopt the attached Ordinance Amending the Fiscal Year 2021 Budget Appropriation Ordinance by anticipating revenues in the amount of $91,550 from the United States Department of Justice 2020 Community Policing Development Program.

Attachments

Ordinance

PRESENTED:________________________

ADOPTED:__________________________

ORDINANCE NO. 2020-__________.____________

AN ORDINANCE AMENDING THE FISCAL YEAR 2021 BUDGET APPROPRIATION ORDINANCE BY INCREASING REVENUE FROM THE UNITED STATES DEPARTMENT OF JUSTICE COMMUNITY POLICING DEVELOPMENT PROGRAM GRANT IN THE AMOUNT OF $91,550 FOR USE IN ESTABLISHING A PROGRAM FOR PROACTIVE POLICE RESPONSE TO PREVENT DOMESTIC VIOLENCE.

WHEREAS, the City of Danville has been awarded a grant from the United States Department of Justice Community Policing Development Program grant in the amount of $91,550; and

WHEREAS, the funding will provide reimbursement to the City for expenditures for implementing a program for proactive police response to prevent domestic violence; and

WHEREAS, the grant requires no matching funds.

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Danville, Virginia that the Fiscal Year 2021 Budget Appropriation Ordinance be, and the same is hereby, amended by increasing revenue to anticipate the receipt of funds in the amount of $91,550 from the United States Department of Justice Community Policing Development Program, such revenue and appropriation to be as follows:

ANTICIPATED REVENUE

Description	Account No.	Amount
US DOJ Community Policing Development Program	61626000-48230	$91,550

ANTICIPATED EXPENDITURES

Description	Account No.	Amount
US DOJ Community Policing Development Program	61626999-50	$91,550

AND BE IT FURTHER ORDAINED, that this appropriation shall be a continuing appropriation and shall carry forward from year to year until expended for the purpose for which appropriated; and

BE IT FURTHER ORDAINED, that this appropriation shall be a flexible budget for Federal, State, and other grant funding; and

BE IT FINALLY ORDAINED, that all other accounts and provisions of the Fiscal Year 2021 Budget Appropriation Ordinance, as amended, not hereby amended, shall continue in full force and effect unless and until hereafter further amended or repealed.

APPROVED:

____
MAYOR

ATTEST:

____
CLERK

Approved as to
Form and Legal Sufficiency:

____
CITY ATTORNEY

Council Letter
City of Danville, Virginia

CL-2403 **New Business E.**

City Council Regular Meeting

Meeting Date: 10/06/2020

Subject: Approval of Lease Agreement and Purchase and Sale Agreement.

From: Scott Booth, Police Chief

COUNCIL ACTION

Business Meeting: 10/06/2020

SUMMARY

The City received three proposals related to the construction or renovation of a building to serve as the new Police Department Headquarters. The winning bid was able to provide the most cost-effective option that also happens to best meet the needs of the department. The proposal can be described as follows:

It will be located at the former Dan River Mills executive office building located at 2291 Memorial Drive. There will be a combination of historic restoration of the existing building and new construction. The total cost is expected to be $17 million, which will be financed. In order to capture the best price for the City, the following structure is needed:

1. The developer plans to use historic tax credits to lower the cost of the renovation of the existing building. The historic building will be subdivided from the rest of the property and the plan is to lease that portion for a period of fifteen years with a first right of refusal during the entire 15-year term of the lease. After negotiations, the developer has agreed to not offer the building for sale for the first seven years of the lease. Beginning on the first day of the eighth year, the developer can offer the building for sale. The developer may not sell the premises, however, without the written permission of the City. The monthly lease payments for this portion of the project during the first seven years is $80,424.29. This monthly rate will decrease to $60,000 beginning on the first day of the eighth year. Due to the requirements of the Federal Historic Tax program, the property has to be owned by the developer for at least five years.

2. The developer will build an additional building adjacent to the existing historic building on a separate lot for $8,000,000. The City will enter into a purchase and sale agreement for this property and the developer will owner-finance the cost of construction under the following terms: $2.9 million upfront payment toward specific tenant up-fits and payments of $45,573.76 each month for first seven years of this agreement with the ability to make a balloon payment of $3,057,802.41 on the first day of year eight to finalize the purchase of this property.

Should the casino referendum pass, the City will use $5,924,000 from the initial $20 million payment from Caesars to pay towards specific tenant up-fits for the new construction, and to set aside two years of lease/purchase payments. After the initial two years, the City will use gaming tax revenue proceeds to pay lease/purchase payments.

Should the referendum fail, the structure of this agreement will likely change and the City Council would need to determine whether it is willing to raise taxes to cover the cost.

BACKGROUND

After years of minor construction efforts to the existing police space and expanding police functions to other parts of the Municipal Building, public library spaces, and the Green Street Recreational building, the need for a new police facility was introduced to City Council during the Fiscal Year 2014 budget process.

In 2016, the City funded a city-wide space study that identified a police facility as the number one City space need. In 2018, a second space study was funded to specifically identify and define the space needs of the Police Department.

In 2019, the City enlisted the services of Dewberry Engineering Consultants to identify and evaluate possible sites within the city for a new police facility. Ten sites were identified, evaluated and presented to the City for consideration.

In May 2020, the City issued an RFP inviting qualified developers to respond to a Request for Proposals (RFP) concerning the construction of a new or renovation of an existing structure to lease to the City of Danville, with an option to purchase, to serve as a new Police facility.

Three entities responded to the RFP as listed below:

Company	Company Location	Proposed Estimated Cost	Proposed Site Location
Blair Construction	Gretna, VA	$17,750,000	Dan River Mills Corporate Building
HBA Architecture & Interior Design, Inc.	Virginia Beach, VA	$25,000,000	Site not identified
FD Stonewater	Arlington, VA	$28,149,738	Former Danville Toyota site

After careful review of the RFP responses, the Blair Construction bid was selected to begin term negotiations for development and leasing.

RECOMMENDATION

Staff recommends the approval of both agreements under the condition that all obligations outlined in these documents are contingent upon the passage of the casino vote referendum on Tuesday, November 3, 2020.

Attachments

Resolution

Lease Agreement

Resolution

Purchase and Sale Agreement

PRESENTED: ____________________

ADOPTED:______________________

RESOLUTION NO. 2020-____.____

A RESOLUTION OF THE COUNCIL OF THE CITY OF DANVILLE, VIRGINIA APPROVING AND AUTHORIZING A LEASE AGREEMENT BETWEEN 2291 SCHOOLFIELD, LLC AND THE CITY OF DANVILLE, VIRGINIA FOR A NEW POLICE STATION TO BE LOCATED AT 2291 MEMORIAL DRIVE.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Danville, Virginia, that it hereby approves and authorizes a Lease Agreement between 2291 Schoolfield, LLC and the City of Danville, Virginia for a new police station to be located at 2291 Memorial Drive in the form substantially attached hereto and made a part hereof with any such changes as are deemed advisable by the City Manager, City Attorney, or Economic Development; and

BE IT FURTHER RESOLVED by the Council of the City of Danville, Virginia, that it hereby directs the City Manager, or his designee, to execute the lease agreement and any other documents necessary to complete the transaction described in this resolution.

APPROVED:

____
MAYOR

ATTEST:

____
CLERK

Approved as to
Form and Legal Sufficiency:

____
CITY ATTORNEY

REAL ESTATE LEASE

BY AND BETWEEN

____

"LESSOR"

AND

CITY OF DANVILLE

"LESSEE"

REAL ESTATE LEASE

THIS LEASE is made as of the ___ day of _______________, 2020, by and between Lessor and Lessee (the "Effective Date").

NOW, THEREFORE, in consideration of the covenants set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

WITNESSETH:

For the purposes of this Lease, the following terms shall have the following definitions and meanings:

1. **Terms and Definitions.**

(a) **Lessor:** ____

(b) **Lessor's Address:**

____
____
____
Attention: _________________

With a copy to:

____
____
____
____

(c) **Lessee:** CITY OF DANVILLE

(d) **Lessee's Address:**

____
____
____
____

With a copy to:

____
____
____
____

(e) **Premises Address:** _________________________, Danville, VA 24541

(f) **Premises:** Those certain premises legally described on Exhibit A attached hereto, together with all improvements located thereon, including but not limited to the Improvements.

(g) **Intentionally Deleted.**

(h) **Term:** Unless sooner terminated in accordance with the terms of this Lease, the initial term of this Lease shall be for a period commencing on the Rent Commencement Date and terminating on the date that is fifteen (15) years after the Rent Commencement Date (the "Term"). Notwithstanding the foregoing, this Lease will constitute a binding legal agreement as of the Effective Date.

(i) **Improvements:** Those improvements to the building located on the Premises and all other work to be performed by Lessor on the Premises pursuant to this Lease, and as more particularly described on the plans and specifications attached hereto as Exhibit B (the "Final Plans").

(j) **Estimated Completion Date of the Improvements:** Lessor anticipates that the Improvements shall be completed no later than March 1, 2022, except as otherwise set forth herein. In the event Lessor is unable to begin work on the Premises on or before November 30, 2020, the anticipated completion date of March 1, 2022 shall be extended day for day until Lessor can begin work on the Premises.

(k) **Improvements Completion Date:** The date upon which the Improvements are "Substantially Completed", which shall occur when (i) all of the Improvements and related work, as described in the Final Plans, have been completed in accordance with the requirements of this Lease, except for minor Punch List Items, as defined herein, which do not materially interfere with the utilization of the Improvements for the purposes for which they were intended, and (i) the Premises has been cleaned and all construction materials have been removed and (ii) a permanent certificate of occupancy for the Improvements has been issued to permit lawful occupancy and use of the Premises or if Lessee takes possession of the Premises.

(l) **Rent Commencement Date:** The earlier of (1) the first day of the month following the Improvements Completion Date or (2) August 1, 2022.

(m) **Monthly Basic Rent:** Beginning on the Rent Commencement Date, Lessee agrees to pay rent for the Premises at a fixed annual rate (the "Annual Basic Rent") to be $965,091.48, payable on the first day of each month in advance in equal monthly installments of $80,424.29 (the "Monthly Basic Rent") (except that rent payable for less than a full month shall be payable based on the number of days in such month for which such rent is payable) at Lessor's mailing address in subparagraph l(b) of this Lease or at such other place as Lessor has notified Lessee in writing in accordance with the notice provision in the Lease, without notice, offset or abatement. Beginning on the first day of the eight year, the monthly lease rate shall decrease from $80,424.29 to $60,000.

(n) **Permitted Use:** The Premises may be used as a police station and related uses, including but not limited to parking. Any other use must be approved by Lessor in writing, which approval shall not be unreasonably withheld, conditioned or delayed.

(o) **Lessor's Initial Construction Representative:** Tim Clark, email: ____________________, Telephone: ___________________. [CONFIRM IF MULTIPLE PARTIES ARE NEEDED]

(p) **Lessee's Initial Construction Representative:** ________________, email: ___________________, Telephone: ___________________. [CONFIRM IF MULTIPLE PARTIES ARE NEEDED]

(q) **Lease Year:** A period of twelve (12) consecutive months. The first "Lease Year" shall be the full twelve (12) month period commencing on the Rent Commencement Date, or if the Rent Commencement Date is not the first day of a calendar month, then the Lease Year shall commence on the first day of the calendar month immediately following the Rent Commencement Date. Each succeeding Lease Year shall be the twelve (12) month period beginning on the anniversary date of the first day of the first Lease Year.

2. **Premises Leased.**

(a) **Lease**. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Premises. Lessor shall deliver the Premises to Lessee in the condition required by this Lease on the Improvements Completion Date.

(b) **Improvements Punch List; Change Orders**.

Lessor will notify Lessee in writing of the contemplated date when the Improvements will be Substantially Completed ("Completion Notice"), at least thirty (30) days prior to such contemplated date. When Lessor considers the Improvements to be Substantially Complete, Lessor will notify Lessee and, within three (3) business days thereafter, Lessor's representative and Lessee's representative shall conduct a walk-through of the Premises and compile a list of incomplete and corrective items relating to the Improvements (collectively, "Punch List Items"). Lessor shall complete and correct the Punch List Items. Lessor shall construct or cause to be constructed the Improvements in compliance with all laws, ordinances, codes and regulations in effect at the time of construction. Lessor shall obtain a warranty from each general contractor against defective materials and workmanship with respect to the Improvements for a period of at least one (1) year from Substantial Completion and standard warranties from the respective installer or manufacturer of the mechanical systems. Because Lessee has the obligation to maintain, repair and replace the Premises, including the Improvements, Lessor shall use its best efforts to assign to Lessee the right to enforce the warranties related to the Improvements. In the event any warranties received in relation to the construction of the Improvements are not assignable to Lessee to enforce the same, Lessor agrees to promptly enforce such warranties on Lessee's behalf upon Lessee’s written request. Notwithstanding anything to the contrary set forth herein, Lessee does not waive the right to cause Lessor at Lessor's sole cost and expense to (1) comply with Lessor's obligations set forth in this Lease relating to the repair, maintenance and replacement of the Premises, (2) complete any Punch List Items in accordance with the terms of this Lease, or (3) comply with Lessor's obligations to construct the Improvements in accordance with the terms and conditions of this Lease.

(ii) Lessee may request changes to the Final Plans following the issuance of a building permit issued to Lessor for the Improvements (each a “Change Order”), provided Lessee shall pay to Lessor’s general contractor directly all costs and expenses associated with any Change Order as determined by Lessor’s general contractor and Lessee shall execute a written acknowledgement that it is solely responsible for the costs thereof.

(c) **AS IS**. EXCEPT AS PROVIDED HEREIN, NEITHER LESSOR NOR ANYONE ACTING FOR OR ON BEHALF OF LESSOR, HAS MADE ANY REPRESENTATION, WARRANTY, STATEMENT OR PROMISE TO LESSEE CONCERNING THE PREMISES; THAT IN ENTERING INTO THIS LEASE, LESSEE HAS NOT RELIED UPON ANY REPRESENTATION, STATEMENT OR WARRANTY OF LESSOR OR ANYONE ACTING FOR OR ON BEHALF OF LESSOR, OTHER THAN AS EXPRESSLY CONTAINED IN THIS LEASE; AND LESSEE DOES HEREBY WAIVE AND LESSOR DOES HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND OR TYPE WHATSOEVER WITH RESPECT TO THE PREMISES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THOSE OF MARKETABILITY, MERCHANTABILITY AND TITLE, FITNESS FOR A PARTICULAR PURPOSE, LESSEEABILITY, HABITABILITY, OR USE, EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE.

(d) **Approval of Premises**. Lessee's taking possession of the Premises will be conclusive evidence that (1) Lessee has inspected (or has caused to be inspected) the Premises, and (2) Lessee accepts the Premises as being in good and satisfactory condition, subject to Lessor's obligation to complete the items on the Improvements Punch List.

3. **Term**.

(a) **Commencement and End**. The Term of this Lease shall be for the period designated in Subparagraph 1(h), unless such Term shall be sooner terminated in accordance with the terms of this Lease. Notwithstanding anything to the contrary contained herein, Lessee or Lessor or both together may not terminate or cancel this Lease or terminate or cancel the obligation to pay Annual Basic Rent hereunder, for any reason whatsoever, without prior written authorization by Lessor’s lender, Freedom First Federal Credit Union (the “Lender”), which authorization Lender may grant or deny in its reasonable business discretion.

(b) **Confirmation**. Within thirty (30) days after the Rent Commencement Date, Lessor and Lessee shall execute a statement confirming the Rent Commencement Date.

(c) **Termination**. In the event that Lessor has not acquired the Premises on or before November 30, 2020, then Lessee may elect to terminate this Lease by providing written notice to Lessor.

4. **Possession.** From the Effective Date of this Lease until the Improvements Completion Date, Lessor shall be in sole and exclusive possession of the Premises for purposes of completing the Improvements, and Lessee shall not be entitled to occupy or use the Premises or the Improvements until Lessor tenders possession of the Improvements to Lessee; provided, however, Lessor shall permit, at Lessor’s general contractor’s sole discretion, Lessee and any officer, director, owner, partner, employee, agent, or contractor of Lessee to enter onto the Premises from time to time for the purpose of inspecting the Premises.

5. **Rent**.

(a) **Annual Basic Rent**.

(i) **Payment**. Lessee agrees to pay Lessor the Basic Rent, in equal monthly instalments beginning on the Rent Commencement Date and payable on the first day of each month thereafter.

(ii) **Prorations**. In the event the Term of this Lease commences or ends on a day other than the first day of a calendar month, then the rental for such periods shall be prorated in the proportion that the number of days this Lease is in effect during such periods bears to thirty (30), and such rental shall be paid at the commencement of such periods.

(iii) **No Offset**. Annual Basic Rent and all additional rent, shall be paid to Lessor, without any prior demand therefor and without any deduction or offset whatsoever, in lawful money of the United States of America, at the address of Lessor designated in Subparagraph 1(b) or to such other person or at such other place as Lessor may from time to time designate in writing. Notwithstanding the foregoing, Lessor may require rent to be paid by electronic transfer to an account designated by Lessor in writing to Lessee.

(b) **Additional Rent**. All amounts which Lessee is required to pay or discharge pursuant to this Lease in addition to Monthly Basic Rent together with every penalty, overdue interest and cost which may be added for nonpayment or late payment thereof, shall constitute additional rent hereunder ("Additional Rent" or "additional rent;" "rent", as used herein, shall include Annual Basic Rent and additional rent unless the context clearly requires its exclusion). In the event of any failure by Lessee to pay or discharge any Additional Rent, Lessor shall have all rights, powers and remedies provided for herein or by law or otherwise in the case of nonpayment of Annual Basic Rent. Lessee may pay Additional Rent directly to the person entitled thereto.

(c) **Late Charges**. Lessee also covenants to pay to Lessor on demand as Additional Rent, interest at a rate equal to 10% per annum (the "Overdue Rate") on, any amounts payable pursuant to this Lease, from the date such sum was due (after the expiration of any applicable notice and cure periods provided herein) until the date received by Lessor.

6. **Net Lease**.

(a) **Net Lease**. This Lease is a "net lease" and Lessee shall pay all Annual Basic Rent and Additional Rent without notice, demand, counterclaim, set-off, or deduction, and, except as specifically provided herein, without abatement, suspension, deferment, diminution or reduction, free from any charges, assessments, impositions, expenses or deductions of any and every kind or nature whatsoever. Except as expressly set forth in this Lease, all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises and the appurtenances thereto and the use and occupancy thereof by Lessee or anyone claiming by, through or under Lessee as lessee hereunder which may arise or become due during or with respect to the Term shall be paid by Lessee. Except as expressly set forth in this Lease, Lessee assumes the sole responsibility for the condition, use, operation, maintenance and management of the Premises, and Lessor shall have no responsibility in respect thereof and shall have no liability for damage to the Premises or property of Lessee unless caused by the negligence, gross negligence, recklessness or intentional act of Lessor, its members, employees or agents.

(b) **Taxes**.

(i) **Payment and Discharge**. Lessee hereby covenants and agrees to pay and discharge, on or before the last day upon which the same may be paid without interest or penalty, all taxes (if any), assessments, levies, fees, utilities, water and sewer costs and other governmental and similar charges, general and special, ordinary or extraordinary, and whether or not the same shall have been within the express contemplation of the parties hereto, and any interest and penalties thereon, which are levied or assessed or are otherwise due during the Term (collectively, "Taxes and Impositions"). Notwithstanding anything contained in this Lease to the contrary, Lessee shall have no obligation to pay any estate, margin, franchise, gross receipts, inheritance, succession or capital levy of Lessor growing out of, or levied in connection with, this Lease or Lessor's right or interest in the Premises.

(ii) **Installments**. If any tax and assessment levied or assessed against the Premises may legally be paid in installments, Lessee shall have the option to pay such tax or assessment in installments; provided, however, that upon the termination of the Term, Lessee shall pay any such Taxes and Impositions in full, on or prior to such termination date. If such amounts cannot be paid, prior to the termination of this Lease, Lessee shall escrow and deposit with Lessor a sum equal to the Taxes and Impositions that will accrue during the Term but will not become due and payable until after the Term. Lessor shall deliver to Lessee any excess amount within two (2) weeks of when such Taxes and Impositions are paid. The obligations of Lessee contained in this Subparagraph 6(b)(ii) shall survive, and be enforceable by Lessor, after the expiration or earlier termination of this Lease.

(iii) **No Income Tax Liability**. Nothing in this Lease shall require payment by Lessee of any net income, gross receipts or profits taxes of Lessor, any taxes imposed by any state or local government on, or measured by, the net income of Lessor, unless any such tax is in lieu of or a substitute for any other tax or assessment upon or with respect to the Premises otherwise payable by Lessee under this Lease, in which case such tax would be payable by Lessee hereunder.

(iv) **Proof of Payment**. Lessee shall furnish to Lessor within thirty (30) days after any written demand therefor by Lessor, proof of the payment of any tax, assessment, fee, water and sewer cost or charge which is payable by Lessee within the last past twelve (12) calendar months.

(v) **Lessor Protections**. If Lessee fails to pay and perform its required obligations regarding Taxes and Impositions within thirty (30) days after Lessee's receipt of Lessor's written notice of such failure, Lessor shall have the right to pay and perform such payments. Lessee shall pay to Lessor on demand as additional rent all costs incurred by Lessor in performing on Lessee's behalf with interest thereon at the Overdue Rate.

(vi) **Indemnity**. To the extent permitted under Virginia Law and the Virginia Constitution and without waiving its Sovereign Immunity, Lessee hereby indemnifies Lessor for, from and against any claims, losses, demands, and costs arising out of or related to Lessee's failure to pay and discharge Taxes and Impositions. Notwithstanding the foregoing, Lessee shall have the right to contest any such Taxes and Impositions, or to pay such Taxes and Impositions under contest and then contest such Taxes and Impositions, in accordance with the then-applicable state or local procedures, all at Lessee's sole cost and expense but without any penalty hereunder, provided that Lessee may bring such contest in Lessor's name, and Lessor shall fully cooperate in such contest. Lessee shall pay any Taxes and Imposition owing at the times required by applicable law but in all events not later than the conclusion of any such contest.

(c) **Hazardous Materials**.

(i) **No Violations**. Except for Hazardous Materials (as defined below) contained in products used by Lessee for ordinary cleaning and office purposes and maintenance of equipment, Lessee represents to Lessor that on the date hereof, and covenants with Lessor that during the entire Term, the Premises shall not contain any Hazardous Materials (as defined below) and shall be in substantial compliance with all laws, rules, regulations, orders, and ordinances regulating the use, storage, transport or handling of Hazardous Materials (as defined below). "Hazardous Materials" shall mean any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) each of the following statutes, and regulations, orders and decrees, now or hereafter promulgated thereunder, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time: (A) the Comprehensive Environmental Response, Compensation and Liability Act (codified in scattered sections of 26 U.S.C., 33 U.S.C., 42 U.S.C. and 42 U.S.C. Section 9601 et seq.) ("CERCLA"); (B) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); (C) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.); (D) the Toxic Substances Control Act (15 U.S.C. Section 2061 et seq.); (E) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (F) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (G) the Safe Drinking Water Act (21 U.S.C. Section 349, 42 U.S.C. Section 201 and Section 300 et seq.); (H) the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.); (I) the Superfund Amendments and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (J) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. Section 1101 et seq.); (K) the Uranium Mill Tailings Radiation Control Act (42 U.S.C. Section 7901 et seq.); (L) the Occupational Safety and Health Act (29 U.S.C. Section 655 et seq.); (M) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (N) the Noise Control Act (42 U.S.C. Section 4901 et seq.); and (O) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 1100 et seq.) (collectively, "Environmental Requirements") regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or materials, as now or at any time hereafter in effect or enacted during the Term of this Lease.

(ii) **<u>Indemnity</u>**. To the extent permitted under Virginia Law and the Virginia Constitution and without waiving its Sovereign Immunity, Lessee hereby indemnifies Lessor and its directors, officers, members, partners, shareholders, employees and agents for, from and against all losses and all other claims, actions, losses, damages, costs and expenses of every kind, including reasonable attorneys', experts' and consultants' fees and costs, incurred at any time and arising from or in connection with (i) the existence of Hazardous Materials on or about the Premises arising from Lessee's use and occupancy of the Premises; (ii) the handling, release, threatened release, transport, storage, use or disposal, at any time, by Lessee or Lessee's employees or agents of Hazardous Materials at or about the Premises, or (iii) the failure to comply in full with all Environmental Requirements with respect to the Premises by Lessee or Lessee's employees or agents, excepting any Hazardous Materials liability in connection with the Premises caused by Lessor or its agents, contractors, subcontractors and invitees. Notwithstanding anything in the foregoing to the contrary, Lessee shall in no way be liable or required to indemnify Lessor for (a) any environmental condition occurring prior to the Rent Commencement Date, or (b) any environmental condition caused by a tenant, owner, or user of an adjacent property.

7. **<u>Lessor's Representations</u>**. Lessor warrants and represents to Lessee as follows:

(a) **<u>Authority</u>**. Lessor has full power, right and authority to execute and perform this Lease.

(b) **<u>No Conflict</u>**. There are no consents or approvals which have not been obtained that are required for the execution and delivery of this Lease by Lessor. The execution of this Lease shall not constitute a default under any material contract or agreement to which Lessor is bound.

(c) **<u>Survival</u>**. The warranties, representations, covenants, and obligations of Lessor contained in this Paragraph 7 shall survive, and be enforceable by Lessee, after the expiration or earlier termination of this Lease for a period of five (5) years provided that in the event Lessee purchases the Premises the warranties, representations, covenants and obligations of Lessor shall immediately terminate.

(d) **<u>Environmental</u>**. To the best of Lessor's actual knowledge as of the date of this Lease, Lessor has not received written notice from a governmental authority of a violation of any applicable environmental law or Environmental Requirements. During the Term of this Lease, Lessor shall remediate any Hazardous Materials in the Premises to the extent required by applicable Laws, so long as Lessee is not responsible for such Hazardous Materials and so long as Lessee is not in breach of its obligations under Subparagraph 6(c).

(e) **Ownership and Use of Premises**. As of the Effective Date, Lessor owns or will own fee simple title to the Premises and there are no documents of record affecting the Premises that prohibit the Premises from being used for the Permitted Use. Lessor will not cause any documents to be filed of record against the Premises, excluding any documents required in connection with any financing desired by Lessor, without Lessee's prior written consent, which may be withheld in Lessee's sole discretion if it would adversely affect Lessee's ability to use the Premises for the Permitted Use.

8. **Lessee's Covenants and Representations**.

(a) **Authority**. Lessee has full power, right and authority to execute and perform this Lease. Lessee is a validly existing municipal corporation and has all requisite power and authority to enter into and perform its obligations under this Lease, and all other agreements and undertakings to be entered into by Lessee in connection herewith. This Lease has been duly authorized by all necessary action on the part of, has been or will be duly executed and delivered by Lessee; is binding on Lessee; and is enforceable against Lessee in accordance with its terms, subject to applicable principles of equity and insolvency laws.

(b) **No Conflict**. As of the Effective Date, there are no consents or approvals which have not been obtained that are required for the execution and delivery of this Lease by Lessee. The execution of this Lease shall not constitute a default under any material contract or agreement to which Lessee is bound. Neither execution of this Lease nor discharge by the Lessee of any of its obligations hereunder shall cause Lessee to be in violation of any applicable law, constitution, or regulation, its charter or organizational documents or any agreement to which it is a party.

(c) **Survival.** The warranties, representations, covenants, and obligations of Lessee contained in this Paragraph 8 shall survive, and be enforceable by Lessor, after the expiration or earlier termination of this Lease for a period of five (5) years. Any indemnity of Lessee to Lessor in this Lease shall survive, and be enforceable by Lessor, after the expiration or earlier termination of this Lease for a period of five (5) years.

9. **Use**,

(a) **Use Limitation**. Lessee shall use the Premises only for the use specified in Subparagraph l(n), subject to Subparagraph 9(b). Following delivery of possession of the Premises to Lessee by Lessor, Lessee shall have access to the Premises twenty-four hours a day, seven days per week.

(b) **No Violation**. Lessee shall not use or occupy the Premises in violation of any law or of the certificate of occupancy issued for the Premises. Lessee shall comply with any direction of any governmental authority having jurisdiction which shall, by reason of the nature of Lessee's use or occupancy of the Premises, impose any duty upon Lessee or Lessor with respect to the Premises or with respect to the use or occupation thereof subject to Lessee's right to contest Legal Requirements contained in Paragraph 18. Lessee shall not cause, maintain or permit any nuisance in, on or about the Premises. Lessee shall not commit or suffer to be committed any waste in or upon the Premises and shall keep the Premises in first class repair and appearance.

10. **Payments and Notices**.

(a) **Notices**. Any notice required or permitted to be given hereunder must be in writing and may be given by hand delivery; registered or certified mail, return receipt requested; or by nationally-recognized overnight courier service addressed to Lessee at the address designated in Subparagraph l(d) or to Lessor at the address designated in Subparagraph l(b). Either party may by written notice to the other specify a different address for notice purposes. Any notice required or given under this Lease shall be deemed given upon delivery to, and receipt by, the other party.

(b) **No Waiver**. Lessor's acceptance of any Overdue Rate, or other interest shall not constitute a waiver of Lessee's default with respect to the overdue amount or prevent Lessor from exercising any of the other rights and remedies available to Lessor under this Lease or any law now or hereafter in effect.

11. **Brokers**. The parties represent to the other that no brokerage commissions are due to any party. Each party shall hold the other harmless from all damages and indemnify the other for, from and against all said damages paid or incurred by the other resulting from any claims that may be asserted against such party by any broker, agent or finder undisclosed herein.

12. **Holding Over**. If Lessee holds over after the expiration or earlier termination of the Term hereof without the express written consent of Lessor, Lessee shall become a tenant at sufferance only, at a rental rate equal to one hundred twenty-five (125%) of the Annual Basic Rent which would be applicable to the Premises upon the date of such expiration (prorated on a daily basis), and otherwise subject to the terms, covenants and conditions herein specified. Acceptance by Lessor of rent after such expiration or earlier termination of this Lease shall not constitute a holdover hereunder or result in a renewal.

13. **Taxes on Lessee's Property**. Lessee shall be liable for and shall pay before delinquency, taxes levied against any personal property or trade fixtures of or used by Lessee in or about the Premises (if any). If any such taxes on personal property or trade fixtures on the Premises are levied against Lessor or Lessor's property, Lessee shall pay the taxes as Taxes and Impositions pursuant to Subparagraph 6(b). Notwithstanding the foregoing, Lessee shall have the right to contest such taxes without penalty hereunder in the manner specified in Subparagraph 6(b)(vi) hereof.

14. **Alterations**. The parties acknowledge that this Paragraph 14 shall only apply to changes made to the Improvements after the Improvements Completion Date.

(a) **Changes**. Lessee may, at any time and from time to time during the Term of this Lease but subject to Lessor's approval pursuant to Subparagraph 14(b), at its sole cost and expense, make alterations, additions, installations, substitutions, improvements and decorations (hereinafter collectively called "Changes") in and to the Premises, on the following conditions, and providing such Changes will not result in a violation of or require a change in the certificate of occupancy (or its equivalent) applicable to the Premises:

(i) The permitted use of the Premises shall not be affected, and no Changes shall weaken or impair the structural strength or, in the reasonable opinion of Lessor, create the potential for unusual expenses to be incurred upon the removal of Changes and the restoration of the Premises upon the termination of this Lease.

(ii) All building and service systems or installations of the Premises

("Service Facilities") shall not be adversely affected.

(iii) In performing the work involved in making such Changes, Lessee shall be bound by and observe all of the conditions and covenants contained in this Paragraph 14.

(iv) Lessee shall not be permitted to install and make part of the Premises any materials, fixtures or equipment which are subject to liens, conditional sales contracts or chattel mortgages without the consent of Lessor.

(v) At the date upon which the Term of this Lease shall end, or the date of any earlier termination of this Lease, Lessee shall on Lessor's written request remove the Changes so designated by Lessor for removal, and repair any damages occasioned by such removal, reasonable wear and tear excepted.

(b) **Lessor's Approval**. Before proceeding with any Change, Lessee shall submit to Lessor, for Lessor's written approval, plans and specifications, including any applicable mechanical, electrical and plumbing drawings, for the work to be done. If Lessor shall disapprove of any of Lessee's plans, Lessee shall be advised of the reasons for such disapproval. In any event, Lessee agrees to pay to Lessor, as additional rent, the actual and reasonable cost of Lessor's third party consultants (not to exceed $2,500) for review of such plans and specifications, within thirty (30) days of receipt of invoices either from Lessor or such consultants. Any Change for which approval has been received shall be performed in accordance with the approved plans and specifications, and no amendments or additions to such plans and specifications shall be made without the prior written consent of Lessor. Following construction of the work, Lessee shall prepare or cause to be prepared, at Lessee's expense, a record set of as-built plans reflecting the actual construction of the work, except for changes which do not affect the Services Facilities or the structural portions of the Improvements.

(c) **Work**. After Lessor's written approval has been sent to Lessee, Lessee shall enter into an agreement for the performance of the work to be done pursuant to this Paragraph 14 with a contractor reasonably approved by Lessor unless Lessor authorizes Lessee to make the Changes. Lessee's contractors shall obtain on behalf of Lessee and at Lessee's sole cost and expense, all necessary governmental permits and certificates for the commencement and prosecution of the Changes and for final approval thereof upon completion. Any Changes in excess of $50,000 shall be bonded by a performance and payment bond. In the event Lessee shall request any material changes in the work to be performed after the submission of the plans referred to in this Paragraph 14, such changes shall be subject to the same approvals and notices as the Changes initially submitted by Lessee.

(d) **Compliance**. All Changes and the performance thereof shall at all times substantially comply with (i) all laws, rules, orders, ordinances, directions, regulations and requirements of all governmental authorities, agencies, offices, departments, bureaus and boards having jurisdiction thereof, (ii) all rules, orders, directions, regulations and requirements of any applicable fire rating bureau, or of any similar insurance body or bodies, and (iii) all reasonable rules and regulations of Lessor of which Lessee has prior notice, and Lessee shall cause Changes to be performed in compliance therewith and in good and first class workmanlike manner, using materials and equipment at least equal in quality to the original installations of the Premises, provided that such materials are then commercially available in the marketplace. Changes shall be performed by contractors or mechanics reasonably approved by Lessor pursuant to this Paragraph 14. Throughout the performance of Changes, Lessee, at its expense, shall carry, or cause its contractors to carry, worker's compensation insurance in statutory limits, and general liability insurance for any occurrence in or about the Premises, of which Lessor shall be named as additional party insured, in such limits as Lessor may reasonably prescribe. Such policies shall comply with the applicable provisions of Paragraph 21 hereof.

(e) **No Liens**. Lessee further covenants and agrees that any mechanic's lien filed against the Premises for work claimed to have been done for, or materials claimed to have been furnished to Lessee, will be discharged by Lessee, by bond or otherwise, within thirty (30) days after the filing thereof, at the cost and expense of Lessee. Except as provided in Subparagraph 14(f), all permanently installed alterations, decorations, additions or improvements upon the Premises, made by either party, unless Lessor elects otherwise, shall become the property of Lessor, and shall remain upon, and be surrendered with the Premises, as a part thereof, at the end of the Term hereof, except that Lessor may by written notice to Lessee, require Lessee to remove all changes made by Lessee, and Lessee shall repair any damage to the Premises arising from such removal, reasonable wear and tear, and damage by casualty or condemnation excepted, and if Lessee fails to so remove such items at the end of the Term, Lessee shall pay to Lessor all of Lessor's costs of such removal and repair.

(f) **Removal**. All articles of personal property and all business and trade fixtures, machinery and equipment, furniture and movable partitions owned by Lessee or installed by Lessee at its expense in the Premises shall be and remain the property of Lessee and may be removed by Lessee at any time during the Term, provided that Lessee shall repair any damage caused by such removal, reasonable wear and tear, and damage by casualty or condemnation excepted. If Lessee shall fail to remove any articles of personal property, business or trade fixtures, machinery and equipment, furniture and movable partitions owned by Lessee or installed by Lessee from said Premises upon termination of this Lease for any cause whatsoever, Lessor may, at its option, remove the same in any manner with no obligation to store and with no liability to Lessee. Lessee agrees to pay Lessor upon demand any and all reasonable expenses incurred in such removal, including court costs and reasonable attorney's fees, which obligation shall survive termination of this Lease.

(g) **No Modification of Liabilities**. Nothing contained in this Paragraph 14 shall be deemed to relieve Lessee of any duty, obligation or liability with respect to making any repair, replacement or improvement or complying with any laws, order or requirement of any government or other authority required of Lessee under the terms of this Lease and nothing contained in this Paragraph 14 shall be deemed or construed to impose upon Lessor any obligation, responsibility or liability whatsoever, for the care, supervision or repair of the Premises or any part thereof.

15. **Repairs**.

(a) **Lessee's Obligation**. Subject to Lessor's restoration obligations under Paragraph 22 expressly set forth in this Lease, Lessee shall, at its sole cost and expense, keep and maintain the Premises in the same condition as existed on the Improvements Completion Date, normal wear and tear excepted, subject to any Changes, and will make all structural and non-structural, and ordinary and extraordinary changes, repairs and replacements, foreseen or unforeseen, which may be required, whether or not caused by its act or omission. Subject to Lessor's restoration, maintenance, repair and replacement obligations expressly set forth in Paragraph 22 of this Lease, Lessee shall, when and if needed or whenever reasonably requested by Lessor to do so by written notice to Lessee, at Lessee's sole cost and expense, maintain and make all repairs to the Premises.

(b) **Lessor Maintenance**. Except as set forth in Paragraph 22 of this Lease, Lessor shall have no obligation to maintain or repair the Premises, including, but not limited to, the Improvements.

(c) **Lessor Protections**. If Lessor provides notice to Lessee which requires the action of Lessee with respect to repairs or maintenance as set forth in Subparagraph 15(a) above, and Lessee fails to provide such action as required by the terms of this Lease, then Lessor may proceed to take the required action upon delivery of an additional thirty (30) days' notice (or immediately after notice in the case of an emergency) to Lessee specifying that Lessor is taking such required action, and if Lessee does not commence such repairs or maintenance or present a plan to perform such repairs and maintenance within said thirty (30) days (or such longer period of time as may be reasonably required) and diligently pursue the same to completion, then Lessor shall be entitled to prompt reimbursement by Lessee of Lessor's reasonable costs and expenses in taking such action plus interest on such unpaid amount at the Overdue Rate.

16. **Intentionally Deleted**.

17. **Entry by Lessor**. Subject to Lessor's agreement to minimize any disturbance of Lessee's use of the Premises by exercise of the following rights, Lessor reserves and shall during normal business hours upon 24 hours' advance notice have the right to enter the Premises (except that no notice shall be required in the case of an emergency) to inspect the same and to show said Premises during the last six (6) months of the Term of this Lease, to prospective tenants accompanied by Lessor, all without being deemed guilty of any eviction of Lessee. Except as expressly provided to the contrary in this Lease, Lessee hereby waives any claim for damages for any injury or inconvenience to or interference with Lessee's quiet enjoyment of the Premises. Notwithstanding the foregoing, Lessor acknowledges and agrees that there are certain areas in the Premises which Lessor may not be able to access due to Lessee's use and the parties shall work together to provide Lessor access to such areas as soon as is practical, if practical.

18. **Legal Requirements**.

(a) **Lessee's Obligations**. Lessee shall, as of the Improvements Completion Date and at Lessee's sole cost and expense, perform and comply with all laws, rules, orders, ordinances, regulations and requirements now or hereafter enacted or promulgated, ordinary or extraordinary, of every government and municipality having jurisdiction over the Premises and of any agency thereof, including without limitation, the Americans With Disabilities Act of 1990 and other health, safety and access laws, relating to the Premises, or the Improvements thereon, or the facilities or equipment thereon or therein, or the streets and sidewalks adjoining the Premises, or the appurtenances to the Premises, or the privileges connected therewith (collectively, "Legal Requirements"), whether or not such Legal Requirements shall necessitate structural changes, improvements, interference with use and enjoyment of the Premises, replacements or repairs, extraordinary as well as ordinary, and Lessee shall so perform and comply, whether or not such Legal Requirements shall currently exist or shall hereafter be enacted or promulgated, and whether or not such Legal Requirements are within the present contemplation of Lessor or Lessee. Notwithstanding the foregoing, Lessee shall have the right to contest such Legal Requirements, in accordance with the then-applicable state or local procedures, all at Lessee's sole cost and expense but without any penalty hereunder, provided such contest shall not have a material adverse effect on the Premises. Lessee shall, at Lessee's cost and expense, perform and comply with the terms of any easement or other covenant of record. Lessee shall comply with the terms of and perform its obligations under any consent of Lessee to any assignment of this Lease to a lender.

(b) **Lessor Protections**. Unless Lessee is lawfully contesting the Legal Requirements, if Lessee fails to pay and perform its required obligations regarding Legal Requirements within thirty (30) days after Lessee's receipt of Lessor's written notice of such failure, and if Lessee does not commence such action within said thirty (30) days (or such longer period of time as may be reasonably required) and diligently pursue the same to completion, Lessor shall have the right to pay and perform such payments. Lessee shall pay to Lessor on demand as additional rent all costs incurred by Lessor in performing on Lessee's behalf with interest on such unpaid amount at the Overdue Rate.

19. **Indemnification**. To the extent covered by insurance as required under Section 21 or as otherwise provided in this Section 19, Lessee hereby agrees to defend (with counsel reasonably satisfactory to Lessor), indemnify and hold Lessor harmless for, against and from any and all loss, cost, liability, damage or expense including, but not limited to, penalties, fines, reasonable attorneys' fees and costs (collectively, "**Claims**") arising from Lessee's use of the Premises or the conduct of its business therein or from any activity, work, or thing done, permitted or suffered by Lessee, its agents, contractors, employees or invitees in or about the Premises during the Term, and such indemnification will survive as set forth in Paragraph 8(c). Notwithstanding the foregoing, Lessee shall not be required to defend, indemnify and hold Lessor harmless from any Claims to any person, property or entity to the extent resulting from the gross or intentional negligence of Lessor or its agents, employees, licensees or invitees. Notwithstanding the foregoing, in the event no insurance proceeds are available, Lessee's indemnification obligations shall be limited to the extent permitted under Virginia Law and the Virginia Constitution and without waiving its Sovereign Immunity.

20. **Damage to Property**. Lessee waives any and all rights of recovery, claims, actions or causes or action against Lessor and its members, partners, shareholders, directors, officers, employees, invitees or agents, for any loss or damage to property resulting from fire, explosion, electricity, water or rain which may leak from any part of the Premises or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place or any other patent or latent cause whatsoever, regardless of whether the negligence of the other party caused such loss or damage. Lessee shall give prompt notice to Lessor in case of fire or accidents in the Premises or of defects therein or in the fixtures located therein.

21. **Insurance**.

(a) **Types of Coverage**. Lessee at its sole cost and expense shall, during the entire Term hereof, obtain, maintain and keep in full force and effect, providing at least the coverages set forth herein:

(i) Comprehensive all risk insurance on the Improvements (including all replacements and additions thereto) and its personal property, in each case (A) in an amount equal to 100% of the "Full Replacement Cost," which for purposes of this Lease shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation; (B) containing a waiver of all co-insurance provisions; and (C) providing for a deductible of not greater than $50,000. If any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area," Lessee shall obtain flood hazard insurance, but in no event less than the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended.

(ii) A policy for commercial general liability insurance covering Lessee's use and occupancy of the Leased Premises, including bodily injury, property damage, contractual liability under this Lease, independent contractors, products and completed operations liability occurring on the Premises, minimum combined single limit $2,000,000 and $5,000,000 aggregate. Such policy shall include a blanket waiver of subrogation in favor of Lessor and shall include Lessor as an additional insured under a blanket endorsement. Lessee's insurance shall be primary, with any insurance maintained by Lessor to be considered excess. Lessee agrees that it will not keep, use, sell, or offer for sale in or upon the Premises any article which may be prohibited by the standard form of fire insurance policy. Such insurance (A) to be on the "occurrence" form; and (B) to continue at not less than the aforesaid limit until required to be changed by Lessor in writing to an amount which is then customary and commercially reasonable in relation to the type of operation then being conducted by Lessee in the Premises, by reason of changed economic conditions making such protection inadequate.

(iii) Worker's compensation insurance covering all persons employed by Lessee in connection with any work done on or about the Premises with respect to which claims for death or bodily injury could be asserted against Lessor or the Premises. In lieu of such workmen's compensation insurance, Lessee may provide a program of self-insurance so long as it complies with the rules, regulations and requirements of the appropriate state agency of the Commonwealth of Virginia, but no less than $500,000.

(iv) Any other form or forms of insurance as Lessee or Lessor or the mortgagees of Lessor may reasonably require from time to time.

(b) **Policies**.

(i) All insurance provided for in Subparagraph (a) hereof shall be obtained under valid and enforceable policies (the "Policies" or in the singular, the "Policy").

(ii) The Policies maintained pursuant to this Lease shall (A) with respect to all policies of fire, all risk or similar casualty insurance, provide that the insurer waives all rights of subrogation against Lessor, any successor to Lessor's interest in the Premises and Lessor's mortgagee; and (B) be primary and without right or provision of contribution as to any other insurance carried by Lessor. All Policies shall require thirty (30) days prior written notice to Lessor before any Policy is terminated or cancelled.

(iii) The insurance companies must be approved, authorized or licensed to provide insurance in Virginia and have a rating of "A" or better for claims paying ability assigned by Moody's Investors Service, Inc. and Standard & Poor's Rating Group or a general policy rating of A- or better and a financial class of VIII or better assigned by A.M. Best Company, Inc. Virginia Risk Sharing Association (VRSA) is also specifically approved, authorized under this paragraph and under this lease to provide the required insurance as a Qualified Insurer. Each such insurer shall be referred to herein as a "Qualified Insurer." Lessee agrees that certificates of insurance or will be delivered to Lessor prior to Lessee taking occupancy of the Premises.

(iv) Lessee may provide any required insurance through an umbrella or blanket liability or casualty Policy, provided, in each case, such Policy affords the coverage required above and is issued by a Qualified Insurer.

(v) All Policies of insurance provided for or contemplated by Subparagraph (a), except for the Policy referenced in Subparagraph (a)(iii), shall name Lessor, Lessee and Lessor's mortgagee as the insured or additional insured, as required by this Paragraph 21 or as their respective interests may appear, and in the case of property damage, boiler and machinery and flood insurance, shall contain a standard non-contributing mortgagee clause naming the mortgagee of Lessor as the person to which all payments made by such insurance company shall be paid as loss payee and mortgagee providing, among other things, that the loss thereunder shall be payable to the mortgagee. If no mortgagee exists, Lessor shall be named as sole loss payee. If Lessor is named as loss payee, and a blanket property policy is in place, Lessee shall be entitled to participate in any settlement and adjustment with the carrier subject to Lessor's reasonable approval, provided that in any case, Lessor shall and hereby is authorized to solely collect and receive any such insurance proceeds with respect to its interests as established by this Lease.

(c) **Payment of Proceeds**. Notwithstanding anything in this Lease to the contrary, Lessee will immediately pay to Lessor any insurance proceeds received by Lessee (except to the extent related to Lessee's trade fixtures, equipment, furniture or other personal property) related to the Improvements, and the Changes, if any. Lessee shall be entitled to any portion of the insurance proceeds which relate to Lessee's trade fixtures, equipment, furniture and other personal property.

(d) **No Separate Insurance**. Lessee shall not obtain any separate or additional insurance which is contributing in the event of loss unless Lessor and Lessor's mortgagee (if any) are each insured thereunder (as their interests may appear). Lessor may, but shall not be obligated to, take out and carry any other form or forms of insurance as it or the mortgagees of Lessor may reasonably determine advisable. Lessee acknowledges that it has no right to receive any proceeds from any such insurance policies carried by Lessor.

(e) **Compliance**. Lessee shall comply with all of the terms and conditions of each insurance policy maintained pursuant to the terms of this Lease. Lessee shall promptly comply with all reasonable requirements of the insurance authority or of any insurer now or hereafter in effect relating to the Premises.

(f) **Lessor Protections**. If any Policy shall be canceled or cancellation shall be threatened or the coverage thereunder reduced or threatened to be reduced, in any way by reason of the use or occupation of the Premises or any part thereof by Lessee or by any assignee or subtenant of Lessee or by anyone permitted by Lessee to be on the Premises and, if Lessee fails to remedy the condition giving rise to cancellation, threatened cancellation or reduction of coverage within five (5) days after written notice thereof from Lessor, Lessor may, at its option to obtain such Policies and enter upon the Premises and attempt to remedy such condition and Lessee shall forthwith pay the cost thereof to Lessor as additional rent. Notwithstanding the foregoing provisions of this Subparagraph 21(f), if Lessee fails to remedy as aforesaid, Lessee shall be in default of its obligations hereunder and Lessor shall have no obligation to attempt to remedy such default.

(g) **Waiver of Subrogation**. As provided in Subparagraph 21(b)(ii) above, any policy or policies of fire, all risk or similar casualty insurance, which either party obtains in connection with the Premises and the insurance required to be obtained by Lessee pursuant to the provisions of Subparagraph 21(a)(iii) above shall include a clause or endorsement denying the insurer any rights of subrogation against the other party to the extent rights have been waived by the insured prior to the occurrence of injury or loss. Lessor and Lessee hereby waive any rights of recovery against the other for injury or loss due to hazards covered by any policy of insurance to the extent of the insurance proceeds actually received, regardless of whether the negligence of the other party caused such loss or damage and irrespective of whether such policies contain such a waiver of subrogation clause or endorsement.

22. **Damage or Destruction**.

(a) **Lessor's Rebuilding**. In the event the Premises are damaged by fire or other perils covered by insurance required to be carried by Lessee or insurance otherwise carried by Lessor (if Lessor so elects) under this Lease, Lessor shall commence and proceed diligently with the work of repair, reconstruction and restoration of the Premises, including but not limited to the Improvements, and this Lease shall continue in full force and effect, and the rent shall not be abated. Lessor shall not be required to commence its work unless and until the insurance proceeds and the necessary funds needed from Lessee, if any, are made available to Lessor. Notwithstanding anything in the Lease to the contrary less and except Section 3(a), which this Section is subject to in its entirety, if such damage or destruction (i) occurs in the last eighteen (18) months of the Term and such damage costs more than $250,000 to repair or (ii) will take more than twelve (12) months to complete following the demolition of the improvements on the Premises and removal of debris as reasonably determined by Lessor, then either Lessee or Lessor shall have the option to terminate this Lease as of the date of such damage or destruction by providing written notice to the other party; provided Lessee shall not have the right to terminate the Lease if it has not made available to Lessor the funds in excess of the insurance proceeds necessary to complete the repair of the Premises. Under any of the conditions of this Subparagraph 22(a), Lessor shall give written notice ("Damage Notice") to Lessee of the estimated cost and time to complete the repairs within ninety (90) days from the date Lessor learns of the necessity for repairs as a result of the damage. Upon the occurrence of any damage to the Premises, in addition to all requirements herein to name Lessor's mortgagee (or Lessor if no mortgagee exists) as loss payee, Lessee shall deliver and assign to Lessor (or to any party designated by Lessor) any insurance proceeds paid to Lessee under the Policies, if any, except for that portion of insurance proceeds allocable to Lessee's trade fixtures and personal property. If the cost of the repairs exceeds the amount of insurance proceeds and deductibles received by Lessor, the additional cost of such necessary repairs shall be paid by Lessee to Lessor prior to Lessor's repair of the damage. In the event either Party elects to terminate this Lease pursuant to this Subparagraph 22(a), this Lease shall be deemed to have terminated as of the date of such destruction with the insurance proceeds (except for the portion of such proceeds relating to coverage for Lessee's articles of personal property, all business and trade fixtures, machinery and equipment, furniture and movable partitions owned by Lessee or installed by Lessee in the Premises, on a last paid basis) paid to and retained by Lessor in accordance with Subparagraph 21(c) above.

(b) **Possible Lease Termination**. If the repairs cannot, in the reasonable opinion of Lessor as stated in the Damage Notice, be completed twelve (12) months after the demolition of the improvement on the Premises and the removal of all debris, and subject to Section 3(a), Lessee may elect, conditioned on Lessee delivering all required insurance proceeds and deductibles required by this Lease to Lessor, if paid to Lessee, no later than ninety (90) days after the date of Lessee's receipt of the Damage Notice, to terminate this Lease by written notice to Lessor effective as of the date specified in the notice, which date shall not be more than sixty (60) days after the date such notice is given by Lessee. In the event Lessee elects to terminate this Lease, Lessor shall be entitled to all insurance proceeds received by Lessor or Lessor's lender (or received by Lessee and paid to Lessor pursuant to this Lease) provided that in the event the insurance proceeds do not cover the outstanding indebtedness owed by Lessor to Lessor's lender, Lessee shall be responsible to pay Lessor at termination an amount necessary to cover the shortfall. Notwithstanding the foregoing, Lessee shall have no right to terminate this Lease if Lessee has failed to carry the insurance required by this Lease.

(c) **Lease Termination**. Upon any termination of this Lease under any of the provisions of this Paragraph 22, the parties shall be released thereby without further obligation to the other from the date possession of the Premises is surrendered to Lessor except for items which have theretofore accrued and are then unpaid and for provisions that survive the termination of this Lease.

(d) **No Release**. Lessee shall not be released from any of its obligations under this Lease except to the extent and upon the conditions expressly stated in this Paragraph 22. Lessee shall be obligated to pay Annual Basic Rent and all additional rent during the period of time from the date of damage until the Premises have been restored or until the Lease is terminated.

(e) **Lessor's Scope of Repair**. It is hereby understood that if Lessor is obligated to or elects to repair or restore the Premises as herein provided, Lessor shall be obligated to make repairs or restoration only of those portions of the Premises as existed as of the Rent Commencement Date or modified by approved alterations.

(f) **Exclusive Agreement**. The provisions of this Lease, including this Paragraph 22, constitute an express agreement between Lessor and Lessee with respect to any and all damage to, or destruction of, all or any part of the Premises, and any statute or regulation with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises.

23. **Eminent Domain**.

(a) **Permanent Taking**. In case the whole of the Premises, or any portion thereof that has a material adverse effect on Lessee's business as a Permitted Use, shall be permanently taken by one or more takings for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking, subject to Section 3(a), Lessor or Lessee shall have the right to terminate this Lease effective as of the date possession is required to be surrendered to said authority ("Permanent Taking"). The termination shall be made on not less than thirty (30) days prior written notice to the other party hereto but in all events such notice shall be given within ninety (90) days of the date of surrender of possession for such Permanent Taking. Lessee shall immediately give written notice to Lessor of any threatened Permanent Taking and Lessor shall have at least ninety (90) days from its receipt of such notice to elect to cancel this Lease, subject to Section 3(a).

(b) **Other Taking**. In the event of taking of the Premises or any part thereof that is not a Permanent Taking, (i) this Lease shall be and remain unaffected thereby and rent shall not abate, and (ii) Lessee nor Lessor shall be responsible for all repairs at its cost, which will be reimbursed by Lessor from any condemnation award received by Lessor, if any.

24. **Bankruptcy**. If Lessee shall file a petition in bankruptcy under federal bankruptcy law as then in effect, or if Lessee is adjudicated a bankrupt in involuntary bankruptcy proceedings and such adjudication shall not have been vacated within sixty (60) days from the date thereof, or if a receiver or trustee be appointed of Lessee's property and the order appointing such receiver or trustee not be set aside or vacated within sixty (60) days after the entry thereof, or if Lessee shall assign Lessee's estate or effects for the benefit of creditors, or if this Lease shall otherwise by operation of law pass to any persons other than Lessee, then and in any such event Lessor may, if Lessor so elects, with or without notice of such election and with or without entry or action by Lessor, forthwith terminate this Lease, and notwithstanding any other provisions of this Lease except for Section 3(a) which shall still apply in full. Lessor, in addition to any and all rights and remedies allowed by law or equity, shall upon such termination be entitled to recover damages in the amount provided in Subparagraph 25(b) below and neither Lessee nor any person claiming through or under Lessee or by virtue of any statute or order of any court shall be entitled to possession of the Premises.

25. **Defaults and Remedies**.

(a) **Events of Default**. After the passage in full of the cure periods described below, the occurrence of any one or more of the following events shall constitute a default hereunder by Lessee:

(i) The failure by Lessee to make any payment of rent or additional rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of 10 days after receipt of notice from Lessor of if Lessee fails to make such payment when due Lessor shall not be required to give Lessee written notice of failure to make such payment more than once during a given Lease Year.

(ii) Abandonment of the Premises by Lessee; provided that the foregoing shall not constitute a default so long as Lessee, at Lessee's cost, makes provisions for security for the Premises reasonably satisfactory to Lessor and continues to maintain the Premises and to pay rent as required hereunder.

(iii) Intentionally Deleted.

(iv) The failure by Lessee to observe or perform any of the covenants or provisions of this Lease to be observed or performed by Lessee, other than as specified in Subparagraph 25(a)(i) through (iii) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee shall commence such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(v) (1) The making by Lessee of any general assignment for the benefit of creditors; (2) the filing by or against Lessee of a petition to have Lessee adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); (3) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within sixty (60) days; or (4) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease where such seizure is not discharged within sixty (60) days.

(b) **Remedies**. Upon the occurrence of a default by Lessee, in addition to any other remedies available to Lessor at law or in equity, including, without limitation, Lessor's right to continue the Lease in effect after Lessee's breach and abandonment and recover rent as it becomes due, Lessor shall have the immediate option, subject to Section 3(a), to terminate this Lease and all rights of Lessee hereunder. In the event that Lessor shall elect to so terminate this Lease then Lessor may recover from Lessee:

(i) any unpaid rent which had been earned at the time of such termination; plus

(ii) the amount of the unpaid rent owed for the remainder of the Term; plus

(iii) any other amounts incurred by Lessor, including court costs and attorneys' fees, due to Lessee's failure to perform its obligations under this Lease.

(c) **Lessor Protections**. If Lessee fails to comply with its obligations under this Lease after the expiration of any applicable notice and/or cure periods provided herein; Lessor shall have the right to undertake such obligations (without liability for any loss or damage to Lessee's property or business), including without limitation, Taxes and Impositions or Legal Requirements, and Lessee shall pay to Lessor, on demand, the costs thereof with interest thereon at the Overdue Rate. In the event of any default by Lessee, Lessor shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property shall be stored at the expense of and billed to Lessee. No re-entry or taking possession of the Premises by Lessor pursuant to this Subparagraph 25(c) (pursuant to Lessee's abandonment or otherwise) shall be construed as an election to terminate this Lease unless a written notice of such termination be given to Lessee subject to Section 3(a).

(d) **Cumulative Remedies**. All rights, options and remedies of Lessor contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Lessor shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. No waiver of any default of Lessee hereunder shall be implied from any acceptance by Lessor of any rent or other payments due hereunder or any omission by Lessor to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver. The consent or approval of Lessor to or of any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent or approval to or of any subsequent similar acts by Lessee.

(e) **Lessor's Default**. Notwithstanding anything to the contrary set forth in this Lease, Lessor shall not be in default in the performance of any obligation required to be performed by Lessor pursuant to this Lease unless Lessor fails to perform such obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail Lessor's failure to perform; provided, however, if the nature of Lessor's obligation is such that more than thirty (30) days are required for its performance, then Lessor shall not be in default under this Lease if it shall commence such performance within such thirty (30) day period and shall thereafter diligently pursue the same to completion. If an event of default by Lessor occurs hereunder, Lessee may perform such obligations and Lessor shall reimburse Lessee all actual third-party, out-of-pocket costs incurred by Lessee in connection with performing such obligations, together with interest thereon at the Overdue Rate, within thirty (30) days after Lessee delivers to Lessor written demand therefor, accompanied by invoices substantiating Lessee's claim. Lessee may pursue a claim against Lessor for actual damages, injunctive relief, or specific performance; provided, however, in each case, Lessor's liability or obligations with respect to any such remedy shall be limited as provided in Subparagraph 41(a). No waiver by Lessee of any violation or breach of any of the terms contained herein shall waive Lessee's rights regarding any future violation of such term. Any and all remedies set forth in this Lease: (1) shall be in addition to any and all other remedies Lessee may have at law or in equity, (2) shall be cumulative, and (3) may be pursued successively or concurrently as Lessee may elect. The exercise of any remedy by Lessee shall not be deemed an election of remedies or preclude Lessee from exercising any other remedies in the future. Notwithstanding anything herein to the contrary, Lessor shall not be liable to Lessee for consequential, special or punitive damages by reason of a failure to perform (or a default) by Lessor under this Lease.

26. **Assignment and Subletting**. Lessee shall not assign or encumber its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises, without first obtaining Lessor's prior written consent, which consent may be withheld by Lessor in its sole discretion. Any assignment, sublease or encumbrance without Lessor's prior written consent shall be voidable, at Lessor's election, and shall constitute a default. Lessee shall at all times insure the payment of Annual Basic Rent regardless of any assignment or subletting.

27. **Quiet Enjoyment**. Lessor covenants and agrees with Lessee that upon Lessee paying the rent required under this Lease and performing all of the covenants and provisions aforesaid on Lessee's part to be observed and performed under this Lease, Lessee shall and may peaceably and quietly have, hold and enjoy the Premises in accordance with this Lease, free from any person claiming by, through or under Lessor.

28. **Subordination**. Lessee agrees to subordinate this Lease to any deed of trust, mortgage or other security instrument now or hereafter covering all or any part of the Premises.

29. **Estoppel Certificate**.

(a) Within fifteen (15) business days following any written request which Lessor may make from time to time not to exceed two requests in any Lease Year, Lessee shall execute and deliver to Lessor a statement (i) setting forth the term of the Lease; (ii) setting forth the date the Term shall expire; (iii) stating that the Lease has not been amended, modified or supplemented (or if such has occurred, setting forth such matters); (iv) setting forth the amount of fixed yearly rent and the last date on which such rent had been received; (v) setting forth to Lessor's actual knowledge that there are no defaults on the part of Lessee under the Lease (or if such has occurred, setting forth such default). Lessor and Lessee intend that any statement delivered pursuant to this Paragraph 29 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Premises or any interest therein, including Lessee's interest. Lessor's written request hereunder shall include, as attachments, legible copies of the Lease, and of any modification, amendment, or the like to the Lease.

(b) Within fifteen (15) business days following any written request which Lessee may make from time to time, Lessor shall execute and deliver to Lessee a statement (i) setting forth the term of the Lease; (ii) setting forth the date the Term shall expire; (iii) stating that the Lease has not been amended, modified or supplemented (or if such has occurred, setting forth such matters); (iv) setting forth the amount of fixed yearly rent and the last date on which such rent had been received; (v) setting forth to Lessor's actual knowledge that there are no defaults on the part of Lessee under the Lease (or if such has occurred, setting forth such default).

30. **Lessor's Waiver of Lien Rights**. Notwithstanding anything to the contrary in this Lease, Lessor acknowledges that the trade fixtures, furnishings equipment and personal property of Lessee shall in no event become the property of Lessor. Furthermore, Lessor waives any right, title or interest in Lessee's personal property located on the Premises, including any landlord's lien or other right or interest that would arise in law or at equity or attach to Lessee's personal property as a result of Lessee entering into this Lease until such time as Lessor may obtain an enforceable judgment against Lessee from a court with jurisdiction of Lessee or Lessee's Property, at which time Lessor shall have such lien rights at law and in equity to enforce and collect such judgment and Lessee's obligations under this Lease.

31. **Applicable Law**. This Lease shall be governed by and construed pursuant to the laws of the Commonwealth of Virginia without regard to the conflict of law principles thereof, and if legal action by either party is necessary for or with respect to the enforcement of any or all of the terms and conditions hereof, then exclusive venue therefore shall lie in the City of Danville, Virginia or the U.S. District Court for the Western District of Virginia.

32. **Successors and Assigns**. Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

33. **Intentionally Deleted**.

34. **Attorneys' Fees**. Should there be any litigation growing out of this Lease, each Party shall pay its own out-of-pocket costs and expenses, including without limitation, professional fees such as appraisers', accountants' and attorneys' fees.

35. **Definition of Lessor**. The term "Lessor" as used in this Lease, so far as covenants or obligations on the part of Lessor are concerned, shall be limited to mean and include only the owner or owners of the fee title to the Premises. In the event of any transfer, assignment or other conveyance or transfers of any such title or interest, Lessor herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer, assignment or conveyance of all liability as respects the performance of any covenants or obligations on the part of Lessor contained in this Lease accruing after the date of such transfer thereafter to be performed.

36. **Waiver**. The failure of Lessor or Lessee to seek redress for violation of, or to insist upon strict performance of, any term, covenant or condition of this Lease shall not be deemed a waiver of such violation.

37. **Time**. Time is of the essence with respect to the performance of every provision of this Lease in which time or performance is a factor.

38. **Prior Agreement; Amendments**. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding, oral or written, express or implied, pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Lease to the extent they are not incorporated herein.

39. **Severability**. Any provision of this Lease which shall prove to be invalid, void or illegal in no way affects, impairs or invalidates any other provision hereof, and such other provisions shall remain in full force and effect.

40. **Recording**. Either party may request the execution of a Memorandum of Lease to be recorded in the Clerk's Office of the Circuit Court of the City of Danville. The party requesting the Memorandum of Lease to be recorded shall pay all recording costs and taxes owed in connection therewith. This Lease may not be recorded.

41. **Limitation on Liability**.

(a) The obligations of Lessor under this Lease do not constitute personal obligations of the individual members, partners, directors, officers or shareholders of Lessor, and Lessee shall not seek recourse against the individual members, partners, directors, officers or shareholders of Lessor or any of their personal assets for satisfaction of any liability in respect to this Lease. Any liability of Lessor under this Lease shall be limited to Lessor's interest in the Premises.

(b) The obligations of Lessee under this Lease do not constitute personal obligations of the individual members, partners, directors, officers, employees or elected officials of Lessee, and Lessor shall not seek recourse against the individual members, partners, directors, officers or shareholders of Lessee or any of their personal assets for satisfaction of any liability in respect to this Lease.

42. **Intentionally Deleted**.

43. **Modification**. If in connection with obtaining construction, interim or permanent financing for the Premises, the lender shall request reasonable modifications in this Lease as a condition

to such financing, Lessee will not unreasonably withhold its consent thereto, provided that such modifications do not increase the obligations of Lessee hereunder, do not diminish the rights of Lessee hereunder, do not adversely affect the leasehold interest hereby created or Lessee's rights hereunder, and Lessor agrees to promptly reimburse Lessee for any costs incurred in negotiating amendment required by the lender, including, without limitation, reasonable attorneys' fees. In the event that after good faith negotiations among Lessor, Lessee and such lender, this Lease will not be financed by such lender and Lessee will not agree to amend this Lease, Lessor may, subject to Section 3(a) and on six (6) months written notice to Lessee cancel this Lease without further obligation by Lessor or Lessee, and Lessor shall return all prepaid rent to Lessee.

44. **Accord and Satisfaction**. No payment by Lessee or receipt by Lessor of a lesser amount than the rent payment herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

45. **No Partnership or Joint Venture**. Nothing in this Lease shall be deemed to constitute Lessor and Lessee as partners or joint venturers. It is the express intent of the parties hereto that their relationship with regard to this Lease be and remain that of lessor and lessee.

46. **Force Majeure**. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, governmental actions, civil commotions, fire or other casualty, inability to obtain services, labor, or materials or reasonable substitutes therefor, and other causes beyond the reasonable control of the party obligated to perform (collectively, the "Force Majeure") shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure, notwithstanding anything in this Lease to the contrary. Notwithstanding the foregoing, a Force Majeure will not relieve Lessee of its obligation to pay Annual Basic Rent and any other amounts owed hereunder.

47. **Waiver of Jury Trial**. Lessor and Lessee hereby irrevocably waive any right to a trial by jury.

48. **Counterparts**. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

49. **Signage**. Lessee shall have the right to install signage on the Premises (including, without limitation, on the exterior of the Premises). All such signage is subject to any applicable governmental laws, ordinances, regulations, subdivision codes, covenants and restrictions.

50. **Right of First Refusal**.

(a) In consideration of Lessee entering into this Lease, Lessor agrees that it shall not offer to sell or accept an offer to purchase the Premises prior to the eighth anniversary of the Rent Commencement Date (the “Right to Sale Date”). During the entire term of this Lease, Lessor hereby grants Lessee a right of first refusal to purchase the Premises (the "Right of First Refusal"). If, at any time Lessor elects to offer the Premises for sale or receives a letter of intent or other form of offer to purchase all or any part of the Premises that Lessor intends to accept (each, an "Offer"), Lessor must first offer the Premises (or applicable portion thereof) to Lessee on the same terms and conditions of the Offer. Promptly after receipt of the Offer, Lessor must deliver written notice to Lessee (pursuant to Paragraph 10 of this Lease), which notice must be accompanied by a true and correct copy of any written Offer (and/or a description of all material terms of the Offer if the Offer is not written or the terms under which Lessor is willing to sell the Premises) (the "ROFR Notice"). Lessor covenants and warrants that all Offers submitted to Lessee under this Paragraph 50 shall be bona fide offers from legitimate prospective third party purchasers that are unaffiliated with and unrelated to Lessor or terms and conditions by which Lessor is willing to sell the Premises. Lessee will have thirty (30) days after Lessee's receipt of the ROFR Notice (the "ROFR Acceptance Period") to deliver written notice to Lessor either accepting or rejecting (at Lessee's sole option and discretion) Lessor's offer to sell the Premises to Lessee on the terms set forth in the Offer in accordance with the Right of First Refusal. If Lessee timely delivers such an acceptance notice within the ROFR Acceptance Period, Lessor and Lessee shall promptly execute a purchase agreement for the sale of the Premises to Lessee upon the same terms and conditions as set forth in the Offer. If Lessee fails to deliver written notice to Lessor within the ROFR Acceptance Period, Lessee shall be deemed to have rejected the Offer and Lessor may proceed to sell the Premises to the third party identified in the Offer or offer the Premises for sale in accordance with the terms and conditions of the Offer. If such sale does not close within one hundred eighty (180) days of the expiration of the ROFR Acceptance Notice Period, Lessor shall be required to again offer the Premises to Lessee pursuant to this Paragraph 51 prior to any purchase or sale of the Premises (in whole or in part) thereafter. The Right of First Refusal granted in this Paragraph 51 is an on-going Right of First Refusal and will apply each time Lessor receives an Offer or desire to sell the Premises, but shall not survive the sale of the Premises, at which point Lessee's Right of First Refusal shall terminate. Time is of the essence of this Paragraph 50. In the event this Lease is terminated, Lessee’s rights set forth in this Section 50 shall not survive termination.

(b) Any time after the Right to Sale Date, Lessor may note sale the premises without the written permission of the Lessee.

51. **<u>Debt Service Payment</u>.** Upon request of Lessee, but no more than once per month, Lessor shall provide assurances and verify that Lessor is making all debt service payments associated with these premises in a timely manner to Freedom First Credit Union.

52. **<u>Referendum Contingency</u>**. The obligations of Lessor and Lessee hereunder are contingent upon, and this this Lease shall be of no effect unless and until, the casino vote referendum on November 3, 2020 is passed by the voters of the City of Danville and until the returns are made and canvassed as in other elections, the results certified by the electoral board to the court ordering such election, and the Danville Circuit Court entering an order proclaiming the results of such election and a duly certified copy of such order is transmitted to the Virginia Lottery Department and to the City of Danville affirming that the casino vote referendum has received a majority of votes by the voters and has passed.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

LESSOR:

____

By: ____________________________________
Its: ____________________________________

LESSEE:

CITY OF DANVILLE

By: ____________________________________
Its: ____________________________________

Exhibit A

Legal Description of Premises

Exhibit B

Final Plans

PRESENTED: ____________________

ADOPTED: ____________________

RESOLUTION NO. 2020-____.____

A RESOLUTION OF THE COUNCIL OF THE CITY OF DANVILLE, VIRGINIA APPROVING AND AUTHORIZING A PURCHASE AND SALE AGREEMENT BETWEEN 2291 SCHOOLFIELD, LLC AND THE CITY OF DANVILLE, VIRGINIA FOR A NEW POLICE STATION TO BE LOCATED AT 2291 MEMORIAL DRIVE.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Danville, Virginia, that it hereby approves and authorizes a Purchase and Sale Agreement between 2291 Schoolfield, LLC and the City of Danville, Virginia for a new police station to be located at 2291 Memorial Drive in the form substantially attached hereto and made a part hereof with any such changes as are deemed advisable by the City Manager, City Attorney, or Office Economic Development; and

BE IT FURTHER RESOLVED by the Council of the City of Danville, Virginia, that it hereby directs the City Manager, or in his designee, to execute said Purchase and Sale Agreement and any other documents necessary to complete the transaction described in this resolution.

APPROVED:

____
Chairman

ATTEST:

____
Secretary

Approved as to
Form and Legal Sufficiency:

____
City Attorney

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("Agreement") is dated as of the _______ day of __________________, 2020 by and between _______________________________________ ("Seller"), and City of Danville, Virginia ("Buyer").

RECITALS

A. Seller has contracted to acquire that certain parcel of real property located in the City of Danville, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Parcel").

B. Seller intends to construct for Buyer those certain improvements and other work (collectively, "Improvements") pursuant to the plans and specifications attached hereto as Exhibit B and incorporated herein by reference (the "Final Plans").

C. The Parcel, together with the Improvements, are referred to herein collectively as the "Property".

D. Buyer desires to purchase the Property from Seller, and Seller desires to sell the Property to Buyer, on the terms, covenants and conditions contained in this Agreement.

In consideration of the mutual covenants, agreements and representations contained herein, the adequacy and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. PURCHASE AND SALE; INSTALLMENT. Buyer agrees to purchase the Property from Seller, and Seller agrees to sell the Property to Buyer, subject to the conditions, covenants and terms contained in this Agreement. The parties agree that this transaction is, and shall be reported and reflected on all documents as, an installment sale.

2. PURCHASE PRICE. The total purchase price ("Purchase Price") for the Property shall be $8,000,000.00. The Purchase Price as follows: $2,900,000.00 to be paid by Buyer to Seller on or before November 23, 2020 and the balance for the Purchase Price to be reflected by a Promissory Note In the principal amount of $5,100,000.00 delivered from Buyer to Seller in the form attached hereto as Exhibit C (the "Note"). The Note shall be secured by that certain Deed of Trust and Security Agreement in the form attached hereto as Exhibit D (the "Deed of Trust").

3. TRANSFER OF TITLE; NOTICE OF SUBSTANTIAL COMPLETION; CHANGE ORDERS. Fee simple title to the Property shall be transferred to Buyer from Seller at Closing, as defined below, once the Improvements are "Substantially Completed", which shall occur when (i) all of the Improvements have been completed, except for minor Punch List Items, as defined herein, which do not materially interfere with the utilization of the Improvements for the purposes for which they were intended, and (i) the Property has been cleaned and all construction materials have been removed and (ii) a permanent certificate of occupancy for the Improvements has been issued to permit lawful occupancy and use of the Property. Seller will notify Buyer in writing of the contemplated date when the Improvements will be Substantially Completed ("Completion Notice"), at least thirty (30) days prior to such contemplated date. When Seller considers the Improvements to be Substantially Complete, Seller will notify Buyer and, within ten (10) days thereafter, Seller's representative and Buyer's representative

shall conduct a walk-through of the Property and compile a list of incomplete and corrective items relating to the Improvements (collectively, "Punch List Items"), which items Seller shall complete and correct at Seller's sole cost and expense promptly thereafter. Seller shall obtain a warranty from each general contractor against defective materials and workmanship with respect to the Improvements for a period of at least one (1) year from Substantial Completion and standard warranties from the respective installer or manufacturer of the mechanical systems of which warranties shall be assigned by Seller to Buyer without recourse or warranty of assignability. Seller shall use its best efforts to obtain warranties in the name of Buyer or which are assignable to Buyer. Seller shall assign to Buyer all other construction warranties, and all warranties relating to workmanship and materials, of any kind, that it may receive in relation to the construction of the Improvements. In the event any warranties received in relation to the construction of the Improvements are not assignable to Buyer, Seller agrees to promptly enforce such warranties on Buyer's behalf upon Buyer's written request. Notwithstanding anything to the contrary set forth herein, Buyer does not waive the right to cause Seller at Seller's sole cost and expense to (1) complete any Punch List Items in accordance with the terms of this Agreement, or (2) comply with Seller's obligations to construct the Improvements in accordance with the terms and conditions of this Agreement. Seller obligation to complete the Punch List Items shall survive Closing, as defined below, and Buyer will provide Seller with reasonable access to the Property to complete the Punch List Items following the transfer of the Property to Buyer. Notwithstanding anything herein to the contrary, Buyer may request changes to the Final Plans following the issuance of a building permit issued to Seller for the Improvements (each a “Change Order”), provided Buyer shall pay to Seller’s general contractor directly all costs and expenses associated with each Change Order as determined by Seller’s general contractor and Buyer shall execute a written acknowledgement that it is solely responsible for the costs thereof.

4. CLOSING. The purchase and sale of the Property shall be consummated at closing ("Closing") which shall occur on the earlier of: (i) August 1, 2022 or (ii) within twenty-one (21) days following when Seller considers the Improvements to be Substantially Complete and shall be held at ____ ____ or such other place as the parties may agree.

5. CLOSING DELIVERABLES.

5.1 By Seller:

i. Special Warranty Deed conveying the Property to Buyer;

ii. Non-Foreign Affidavit;

iii. An assignment, without recourse and on a non-exclusive basis, of all contractor and manufacturer warranties regarding the Improvements;

iv. A Bill of Sale conveying to Buyer all personal property included with the Improvements;

v. Owner’s Affidavit;

vi. Duplicate original of the Settlement Statement; and

vii. Such other documents as may be reasonably requested by Buyer.

5.2 By Buyer:

i. The Note;

ii. The Deed of Trust;

iii. The Security Agreement;

iv. Duplicate original of the Settlement Statement; and

v. Such other documents as may be reasonably requested by Seller.

6. EXPENSES; PRORATIONS.

6.1. Fees, Expenses, Transfer Taxes. Seller shall pay the cost to prepare the deed, the Grantor's tax in connection with the recordation of the deed and Seller's attorney fees. Buyer shall be responsible for all other costs and expenses in connection with the Deed, the Deed of Trust, UCC-1 financing statements, and all other costs and expenses associated with the Property except as specifically set forth herein.

6.2. Real Property Taxes and Assessments. All real property taxes and assessments shall be prorated at the Closing with Seller responsible for paying all of the same, to the extent duly allocable to the period ending on the day immediately prior to the Closing Date, and Buyer shall be responsible for paying all of the same, if any, to the extent duly allocable to the period commencing upon the Closing Date.

7. DEFAULT AND REMEDIES.

7.1 Default. The failure by either party to observe or perform any of the covenants or provisions of this Agreement, where such a failure shall continue for a period of fifteen (15) days after written notice thereof from the non-breaching party to the breaching party, shall constitute a breach under this Agreement. If the nature of the breaching party's default is non-monetary and such that more than fifteen (15) days are reasonably required for its cure, then the breaching party shall not be deemed to be in default if the breaching party shall commence such cure within said fifteen (15) day period and thereafter diligently prosecute such cure to completion.

7.2 Remedies. If either party breaches this Agreement, upon expiration of the cure period, the non-breaching party may exercise all right and remedies available in law or in equity. Notwithstanding anything to the contrary contained herein, Seller or Buyer or both together may not terminate or cancel or assign this Agreement or the obligation to purchase and pay on the Note hereunder, for any reason whatsoever, without prior written authorization by Seller's lender, Freedom First Federal Credit Union (the "Lender"), which authorization Lender may grant or deny in its reasonable business discretion.

7.3 Build to Suit. BUYER ACKNOWLEDGES AND AGREES THAT SELLER IS CONSTRUCTING THE IMPROVEMENTS TO ACCOMMODATE AND SATISFY THE UNIQUE AND SPECIFIC REQUIREMENTS OF BUYER AND THAT SELLER WOULD NOT CONSTRUCT THE IMPROVEMENTS BUT FOR THE AGREEMENT OF BUYER UNDER THIS AGREEMENT AND THE FINAL PLANS. IF BUYER BREACHES ITS OBLIGATION TO PURCHASE THE PROPERTY HEREUNDER, THEN SELLER WILL BE IRREPARABLY DAMAGED DUE TO THE UNIQUE AND BUILD-TO-SUIT NATURE OF THE IMPROVEMENTS THAT SELLER IS CONSTRUCTING ON BEHALF OF BUYER. CONSEQUENTLY, SELLER SHALL HAVE THE

RIGHT OF SPECIFIC PERFORMANCE AGAINST BUYER IN ADDITION TO ANY REMEDIES SELLER HAS AT LAW, IN EQUITY, OR PURSUANT TO THIS AGREEMENT OR THE FINAL PLANS FOR SUCH BREACH, INCLUDING BUT NOT LIMITED TO CLAIMS FOR DAMAGES,.

7.4 Limitation of Liability. The obligations of Seller under this Agreement shall be without recourse to the assets of any member, partner, officer, shareholder, director, unit holder or employee of Seller. The sole recourse of Buyer for any obligation of Seller under this Agreement shall be limited solely to the Property and the income and proceeds therefrom.

8. CONDITION OF PROPERTY; SELLER'S WARRANTY; LIMITATIONS.

8.1 Buyer's Acknowledgement. Buyer understands and acknowledges that the Property may be subject to earthquake, fire, floods, erosion, high water table, dangerous underground soil conditions and similar occurrences that may alter its condition or affect its suitability for any proposed use. Seller shall have no responsibility or liability with respect to any such occurrence. Except for the express representations and warranties of Seller contained in this Agreement, Buyer represents and warrants that it is acting, and will act only, upon information obtained by it directly from its own inspection of the Property. The suitability or lack of suitability of the Property for Buyer's intended use, or availability or lack of availability of permits or approvals of governmental or regulatory authorities (other than a temporary certificate of occupancy for the Improvements) shall obligations of Buyer hereunder.

8.2 Seller's Warranty. Seller warrants to Buyer that the Improvements shall be in good operating condition on the Closing Date and shall be completed substantially in accordance with the requirements of this Agreement. Seller's warranty shall not extend to, or provide a remedy for, abuse, defects caused by Buyer's alteration or modification of the Improvements, improper or insufficient maintenance, improper operation, and normal wear and tear under normal usage. Seller's warranty obligations shall commence at the time of Substantial Completion. If within one year after Substantial Completion the Improvements are found not to be in accordance with the requirements of this Agreement, Seller shall, after receipt of written notice from Buyer, promptly correct, or cause the general contractor to correct, such work. In no event shall Seller be liable to Buyer for any latent or patent construction defects that are not asserted by Buyer within one (1) year after Substantial Completion.

8.3 Limitations. Except as expressly provided in this Agreement, the Property is purchased and sold "AS IS". The Purchase Price and the terms and conditions set forth herein are the result of arm's-length bargaining between entities familiar with transactions of this kind, and said price, terms, and conditions reflect the fact that Buyer shall have the benefit of, and is relying upon, no statements, representations, or warranties whatsoever made by or enforceable directly against Seller relating to the condition, operations, dimensions, descriptions, soil condition, suitability, compliance or lack of compliance with any state, federal, county or local law, ordinance, order, permit or regulation, or any other attribute or matter of or relating to the Property. Buyer represents, warrants, and covenants to Seller that, except for Seller's express representations and warranties specified in this Agreement, Buyer is relying solely upon its own investigation of the Property. If Seller obtains or has obtained the services, opinions, or work product of surveyors, architects, engineers, title insurer, governmental authorities, or any other third person or entity with respect to the Property, Buyer and Seller agree that Seller shall do so only for the convenience of both parties, and the reliance by Buyer upon any such services, opinions, or work product shall not create or give rise to any liability of or against Seller.

9. REPRESENTATIONS AND WARRANTIES.

9.1 Buyer's Representation and Warranties. Buyer represents and warrants to Seller that, as of the date this Agreement is executed, and as of the Closing Date, Buyer has full right, power, and authority to execute and deliver this Agreement and to perform the undertakings of Buyer contained herein, and that this Agreement constitutes valid and binding obligations of Buyer that are legally enforceable in accordance with their terms, and that none of the undertakings of Buyer contained herein violates any applicable statute, law, regulation or ordinance or any order or ruling of any court or governmental entity, or conflicts with, or constitutes a breach or default under, any agreement by which Buyer is bound or regulated. Buyer is a validly existing municipal corporation and has all requisite power and authority to enter into and perform its obligations under this Agreement, and all other agreements and undertakings to be entered into by Buyer in connection herewith. This Agreement has been duly authorized by all necessary action on the part of, has been or will be duly executed and delivered by Buyer; is binding on Buyer; and is enforceable against Buyer in accordance with its terms, subject to applicable principles of equity and insolvency laws. As of even date herewith, there are no consents or approvals which have not been obtained that are required for the execution and delivery of this Agreement by Buyer. The execution of this Agreement shall not constitute a default under any material contract or agreement to which Buyer is bound. Neither execution of this Agreement nor discharge by the Buyer of any of its obligations hereunder shall cause Buyer to be in violation of any applicable law, constitution, or regulation, its charter or organizational documents or any agreement to which it is a party.

9.2 Seller's Representation and Warranties. Seller hereby represents and warrants to Buyer that, as of the date this Agreement is executed, and as of the Closing Date (except as provided otherwise below), as follows:

i. The person executing this Agreement on behalf of Seller is duly authorized to do so and is authorized to sell the Property. Seller is, or will become, the owner of the Property. The Property will not be encumbered by any liens, easements, or licenses except for the exceptions shown on Buyer's title commitment or otherwise of record as of the date of execution of this Agreement, and the recordation of the Deed of Trust and an UCC-1 financing statement in connection with the Deed of Trust. Notwithstanding the foregoing, Buyer acknowledges that easements or other agreements may be required in connection with the construction and use of the Improvements and such documents may be recorded as long as they do not impact Buyer's use and enjoyment of the Property. Buyer further agrees that Seller may reserve at Closing easements for the benefit of that certain parcel of real property containing _____________ acres and described on Exhibit E attached hereto.

ii. To the best of Seller's knowledge, there is no pending condemnation or similar proceeding affecting the Property or any portion thereof, and Seller has not received any notice and has no knowledge that any such proceeding is contemplated as of the date of this Agreement.

iii. There are no contracts or other obligations outstanding for the sale, exchange, lease or transfer of the Property or any portion thereof.

iv. There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debtor relief laws contemplated or filed by Seller or pending against Seller or the Property.

v. Seller is not a foreign individual, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations).

vi. All the documents executed by Seller which are to be delivered to Buyer on or before the Closing Date will be legal, valid, and binding obligations of Seller.

vii. From and after the date hereof, and except as otherwise provided in this subparagraph, Seller shall not without the prior written consent of Buyer enter into any agreement, contract, commitment, lease or other transaction to sell, dispose of or lease any portion of the Property.

10. CONDEMNATION. If, between the date hereof and the Closing Date, condemnation or eminent domain proceedings affecting the Property are initiated or are threatened to be initiated, then this Agreement, shall remain in full force and effect without any diminution of the Purchase Price, and Seller shall assign to Buyer upon the Closing Date all of Seller's rights to any condemnation awards.

11. MISCELLANEOUS

11.01. Assignment. Buyer nor Seller shall assign its rights or delegate is obligations hereunder without obtaining the prior written consent of the other party.

11.02. Attorneys' Fees. If any action or proceedings is brought to interpret or enforce the terms of this Agreement, each party pay its on reasonable attorneys' fees and costs.

11.03. Notices. All notices and requests hereunder shall be in writing and shall be sent by hand delivery, or by certified or registered mail, postage prepaid, return receipt requested, or via overnight delivery to the following street addresses and shall be deemed received upon delivery to the other party:

Seller's Address:
____
____
Attention: __________________

With a copy to:

C. Cooper Youell, IV
Whitlow & Youell, PLC
28A Kirk Avenue SW
Roanoke, VA 24011

Tenant's Address:
____
____
____
____

With a copy to:

W. Clarke Whitfield, Jr.
City Attorney's Office
P.O. Box 3300
Danville, VA 24543

11.04 Cooperation. Each party shall fully cooperate with the other in connection with the requirements imposed by this Agreement upon the other to the end that neither party shall act in any manner to impede the other in performing its obligations hereunder.

11.05. Interpretation. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia, and if legal action by either party is necessary for or with respect to the enforcement of any or all of the terms and conditions hereof, then exclusive venue therefore shall lie in the City of Danville, Virginia, or the United States District Court for the Western District of Virginia. This Agreement contains the entire agreement between the parties respecting the purchase and sale of the Property and supersedes all prior agreements between the parties hereto with respect to such matters. The paragraph headings of this Agreement are for convenience only and are not to be construed as part of this Agreement, and do not in any way amplify or define the terms, conditions, and covenants of this Agreement and shall not be used in construction or interpretation hereof. There are no third party beneficiaries to this Agreement.

11.06. Successor and Assigns; Time is of the Essence. This Agreement shall be binding upon and inure to the benefits of the heirs, successors and assigns of the parties hereto. In no event shall Buyer have any right to delay or postpone the Closing to create a partnership, corporation or other form of business association or to obtain financing to acquire title to the Property or to coordinate with any other sale, transfer, exchange or conveyance. Time is of the essence of each term of this Agreement.

11.07 Waivers. Except as herein otherwise expressly provided, no waiver by a party of any breach of this Agreement or of any warranty or representation hereunder shall be deemed to be a waiver of any other breach not of the same or similar nature, and no acceptance of payment or performance by a party after any breach by any other party shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by such other party whether or not the first party knows of such breach at the time it accepts such payment or performance. No failure or delay by a party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right by the first party while the other party continues to be in default.

11.08 Severability. If any term or provision of this Agreement is determined to be invalid or unenforceable, the remaining terms and provisions shall not be affected thereby and shall remain in full force and effect to the maximum extent permitted by law.

11.09 Counterparts. This Agreement may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

11.10. Force Majeure. The performance of Seller's obligations under this Agreement shall be extended by any delay caused by any of the following events (each a "Force Majeure Event"): any acts of god, casualty, damage, destruction, fire, flood, severe weather, war, riot, civil unrest, earthquake, strike, lockout, unavailability of building materials or supplies, embargoes, epidemics, labor unrest, governmental action or inaction or any other event beyond Seller's control. The financial condition of Seller shall not be deemed to be a Force Majeure Event. Within five (5) days after the occurrence of a Force Majeure Event, Seller shall provide Buyer with a written notice which describes the Force Majeure Event in detail and sets forth the number of calendar days of extension caused or estimated to be caused by such Force Majeure Event.

11.11. Waiver of Jury Trial. THE PARTIES HERETO WAIVE ANY RIGHT TO HAVE A JURY TRIAL FOR ANY DISPUTE UNDER THIS AGREEMENT.

11.12. Contingencies. The obligations of Buyer and Seller hereunder are contingent upon and this Purchase and Sale Agreement shall be of no effect unless and until the casino vote referendum on November 3, 2020 is passed by the voters of the City of Danville and until the returns are made and canvassed as in other elections, the results certified by the electoral board to the court ordering such election, and the Danville Circuit Court entering an order proclaiming the results of such election and a duly certified copy of such order is transmitted to the Virginia Lottery Department and to the City of Danville affirming that the casino vote referendum has received a majority of votes by the voters and has passed.

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[REMAINDER OF PAGE LEFT BLANK – SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

SELLER:

____

By: ___________________________________
Its: ___________________________________

PURCHASER:

CITY OF DANVILLE

By: ___________________________________
Its: ___________________________________

Exhibit A

[Attached description of the Parcel]

Exhibit B

[Attach copies of the Final Plans]

Exhibit C

PROMISSORY NOTE

U.S. $5,100,000.00 ______________, 2020

FOR VALUE RECEIVED, ____________________________ (hereinafter the "Borrower"), promises to pay to _______________________________ (hereinafter the "Noteholder"), or order, the principal sum of $5,100,000.00, together with interest on the unpaid balance from time to time remaining.

Borrower shall begin making 84 monthly equal payments of principal and interest in the amount of $45,573.76 on _________________, and on the _____ day of each month thereafter, with a final balloon payment of all outstanding principal and interest, anticipated to be $3,057,802.41 if all payments are made on time, due on ________________________ [month one of year eight].

All sums payable under this Note shall be payable to the Noteholder at ____, or at such other place as the holder of this Note may designate from time to time to the Borrower in writing. Noteholder may require all amounts owed under the Note to be paid by electronic transfer.

The Borrower may not prepay this Note in whole or in part.

For purposes of this Note, "Event of Default" means any one or more of the following:

(a) The Borrower fails to make any installment or other payment described in this Note within 5 days after receipt of written notice from the Noteholder the same is past due;

(b) The Borrower breaches or fails to perform any term, covenant, warranty or agreement contained any Loan Document and such breach or failure is not capable of being cured;

(c) The Borrower breaches or fails to perform any other term, covenant, warranty or agreement contained in any Loan Document, and such breach or failure shall continue for 15 days after written notice of it has been given to the Borrower by the Noteholder, provided an Event of Default shall not have occurred if Borrower begins to cure the default within the 15 day period and diligently proceeds to cure the same;

(d) Any representation or warranty of the Borrower in any Loan Document or in any certificate delivered to Noteholder thereunder proves to have been untrue in any material respect at the time it was made;

(e) The Borrower (i) voluntarily commences any proceeding or files any petition seeking relief under Title 11 of the United States Code or any other federal, state or foreign bankruptcy, insolvency or similar law, (ii) consents to the institution of, or fails to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) applies for or consents to the appointment of a receiver, trustee, custodian, sequestrator or similar official for it or for a substantial part of its property, (iv) files an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) makes a general assignment for the benefit of creditors, (vi) becomes unable, admits in writing its inability, or fails generally, to pay its debts as they become due, or (vii) takes corporate or other action for the purpose of effecting any of the foregoing; and

(f) An involuntary proceeding is commenced or an involuntary petition is filed in a court of competent jurisdiction seeking (i) relief in respect of the Borrower or of a substantial part of its property, under Title 11 of the United States Code or any other federal, state or foreign bankruptcy, insolvency or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator or similar official for the Borrower or for a substantial part of its property or (iii) the winding up or liquidation of the Borrower and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall continue unstayed and in effect for 30 days.

From and after an Event of Default hereunder, interest shall accrue on the outstanding principal balance at the rate equal to 10% per annum ("Default Rate") until paid in full. Upon an Event of Default, the Noteholder may accelerate all amounts owed under this Note and demand immediate payment in full and pursue all remedies available at law or in equity. Should an Event of Default occur under this Note and Noteholder elects to accelerate the outstanding indebtedness, the Borrower shall nevertheless remain liable for a prepayment premium to Noteholder in an amount equal to the total interest that would have been paid to the Noteholder under this Note if the debt had been paid in accordance with the terms of this Note (the "Yield Maintenance Fee") The Yield Maintenance Fee remains payable by the Borrower regardless of the acceleration of the indebtedness by Noteholder. Additionally, the Yield Maintenance Fee is payable by the Borrower in connection with any post-default payment or refinance of the debt, including any payment made following an event set forth in (e) or (f) above.

The Borrower hereby waives and renounces the benefit of all exemption rights as against the indebtedness represented by this Note and any renewals or extensions hereof, and further waives demand, protest, notice of protest, presentment for payment, notice of dishonor and all defenses on the grounds of extension of time for payment of this Note; and the Borrower further agrees to pay all costs and expenses of any kind or nature whatsoever, including, but not limited to, reasonable attorneys' fees incurred or expended by the holder of this Note in collecting the sums due hereunder upon an Event of Default by the Borrower under the terms of this Note.

Any notice to the Borrower provided for in this Note shall be given to the Borrower at ____, or to such other address as Borrower may designate by notice to the Noteholder. Any notice to the Noteholder shall be given to the Noteholder at the payment address stated above, or at such other address as may have been designated by notice to the Borrower. Any notice given in accordance with this Note shall be sent by: hand delivery; certified mail, return receipt requested; or by overnight delivery and shall be deemed given upon receipt.

This Note shall be construed and applied in accordance with, and the respective rights, obligations and remedies of the parties hereto shall be governed in all respects by, the laws of the Commonwealth of Virginia, and if legal action by either party is necessary for or with respect to the enforcement of any or all of the terms and conditions hereof, then exclusive venue therefore shall lie in the City of Danville, Virginia, or the United States District Court for the Western District of Virginia.

The indebtedness evidenced by this Note is secured by a Deed of Trust and Security Agreement of even date herewith given by the Borrower to Michael S. Whitlow and C. Cooper Youell, IV, as trustees, for the benefit of the Noteholder, on certain property located in the City of Danville, Virginia, as more particularly described therein.

IN WITNESS WHEREOF, the Borrower has duly executed this Note.

BORROWER:

____

By: ______________________________(SEAL)

Its: ______________________________

Exhibit D

PREPARED BY
AND RETURN
TO: C. Cooper Youell, IV (VSB# 43327)
Whitlow & Youell, PLC
P.O. Box 779
Roanoke, VA 24004

TAX MAP REFERENCE NO.: ____________________________

DEED OF TRUST AND SECURITY AGREEMENT

This DEED OF TRUST AND SECURITY AGREEMENT, (hereafter referred to as "Deed of Trust") is made as of ________________________, 2020, by and among ____, whose address is ____ (the "Grantor" or "Borrower"), **C. COOPER YOUELL, IV**, whose business address is 28A Kirk Avenue, SW, Roanoke, Virginia 24011, and **MICHAEL S. WHITLOW**, whose business address is 28A Kirk Avenue, SW, Roanoke, Virginia 24011, as trustees either of whom may act alone (collectively, the "Trustee") and ____, as beneficiary, whose address is ____ ("Grantee"). Grantee and Trustee are the grantees hereunder for indexing purposes by the clerk of the court.

WITNESSETH :

To secure payment and performance of obligations under that certain Promissory Note made to the order of Grantee in the original principal amount of ____ ($__________________) dated as of the date hereof (the "Note"); and to secure all other indebtedness of Borrower to Grantee whenever borrowed or incurred, whether or not reasonably contemplated by the parties hereto as of the date hereof, and any renewals, extensions, novations, or modifications of the foregoing (collectively the "Obligations"), and in consideration of these premises and for other considerations, Grantor does grant and convey unto Trustee, as trustee for Grantee in fee simple, all of Grantor's right, title and interest now owned or hereafter acquired in and to the following (collectively, the "Property"): (i) that certain tract of land in the City of Danville, Commonwealth of Virginia described in Exhibit A attached hereto and made part hereof (the "Land"); (ii) all buildings and improvements now or hereafter erected on the Land; (iii) all fixtures, machinery, equipment and other articles of real, personal or mixed property attached to, situated or installed in or upon, or used in the operation or maintenance of, the Land or any buildings or improvements situated thereon, whether or not such real, personal or mixed property is or shall be affixed to the Land; (iv) all building materials, building machinery and building equipment delivered on site to the Land during the course of, or in connection with, any construction, repair or renovation of the buildings and improvements situated or to be situated thereon; (v) all leases, licenses and occupancy agreements of all or any part of the Land and all extensions, renewals, and modifications thereof, and any options, and guarantees relating thereto; all rents, income, revenues, security deposits, issues, profits, awards and payments of any kind payable under the leases or otherwise arising from the Land; (vi) all contract rights, accounts receivable and general intangibles relating to the Land or the use, occupancy, maintenance, construction, repair or operation thereof; (vii) all management agreements, utility agreements and deposits; (viii) all maps, plans, surveys and specifications; (ix) all warranties and guaranties; all permits, licenses and approvals; and all insurance policies; (x) all estates, rights, tenements, hereditaments, privileges, easements, and appurtenances of any kind benefiting the Land; (xi) all means of access to and from the Land; and all water and mineral rights; and (xii) all "Proceeds" of any of the above-described property, which term shall have the meaning given to it in the Uniform Commercial Code of the jurisdiction where this Deed of Trust is recorded (the "UCC"), whether cash or non-cash, and including, without limitation, insurance proceeds and condemnation awards; and (xiii) all replacements, substitutions and accessions thereof.

TO HAVE AND TO HOLD the Property and all the estate, right, title and interest, in law and in equity, of Grantor's in and to the Property unto Trustee, his or her successors and assigns, in fee simple forever.

IN TRUST, HOWEVER, TO THAT EXTENT PERMITTED UNDER APPLICABLE LAW, that if all Obligations are timely paid and performed and each and every representation, warranty, agreement, and condition of this Deed of Trust, the Note and any other related documents (collectively, the "Loan Documents") are complied with and abided by, this Deed of Trust and the estate hereby created shall cease and be null, void, and cancelled of record at the request and expense of Grantor, and if Default (as hereinafter defined) occurs, Trustee is authorized to foreclose and sell the Property or any portion thereof under power of sale or by judicial proceeding according to applicable law and as provided herein.

Grantor WARRANTS AND REPRESENTS that Grantor is lawfully seized of the Property, in fee simple, absolute, that Grantor has the legal right to convey and encumber the same, and that the Property is free and clear of all liens and encumbrances except for those set forth on any title insurance commitment approved by Grantee prior to the date hereof ("Title Commitment"). Grantor further warrants and will forever defend the Property and title thereto to Trustee, Grantee and Grantee's successors and assigns, against the lawful claims of all persons whomsoever.

To protect the security of this Deed of Trust, Grantor further represents, warrants and agrees with Trustee and Grantee as follows:

Payment of Obligations. That the Obligations shall be timely paid and performed.

Grant of Security Interest in Personal Property. This Deed of Trust constitutes a security agreement under the UCC and shall be deemed to constitute a fixture financing statement. Grantor hereby grants a security interest in any personal property included in the Property, including all building materials, building machinery and building equipment delivered on site to the Land during the course of, or in connection with, any construction, repair or renovation of the buildings and improvements situated or to be situated thereon. On request of Grantee, Grantor will execute one or more UCC-1 financing statements in form satisfactory to Grantee. Grantee is authorized to file UCC-1 financing statements relating to the Property without Grantor's signature where permitted by law. Grantor appoints Grantee as its attorney-in-fact to execute such documents necessary to perfect Grantee's security interest on Grantor's behalf. The appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain outstanding.

Leases, Subleases, and Easements. Grantor shall maintain, enforce and cause to be performed all of the terms and conditions under any lease, sublease or easement which may constitute a portion of the Property. Grantor shall not, without the consent of Grantee, enter into any new lease having a term of more than 13 months, sublease or easement to a third party with respect to all or any portion of the Property, agree to the cancellation or surrender under any leases of all or any portion of the Property, agree to prepayment of rents, issues of profits (other than rent paid at the signing of a lease or sublease), modify any such lease so as to shorten the term, decrease the rent, accelerate the payment of rent, or change the terms of any renewal option.

Required Insurance. Grantor at its sole cost and expense shall, during the entire Term hereof, obtain, maintain and keep in full force and effect, providing at least the coverages set forth herein:

(i) comprehensive all risk insurance on the Improvements (including all replacements and additions thereto) and its personal property, in each case (a) in an amount equal to 100% of the "Full Replacement Cost," which shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation; (b) containing a waiver of all co-insurance provisions; (c) providing for a deductible of not greater than $50,000 If any portion of the Property is currently or at any time in the future located in a federally designated "special flood hazard area," Grantor shall obtain flood hazard insurance, but in no event less than the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended;

(ii) a policy for commercial general liability insurance covering Grantor's use and occupancy of the Property, including bodily injury, property damage, contractual liability, and owned/non-owned auto liability, occurring on the Property, minimum combined single limit $2,000,000 and $5,000,000 aggregate. Such policy shall include a blanket waiver of subrogation in favor of Grantee and shall include Grantee as an additional insured under a blanket endorsement. Grantor's insurance shall be primary, with any insurance maintained by Grantee to be considered excess. Grantor agrees that it will not keep, use, sell, or offer for sale in or upon the Property any article which may be prohibited by the standard form of fire insurance policy. Such insurance (a) to be on the "occurrence" form; and (b) to continue at not less than the aforesaid limit until required to be changed by Grantee in writing to an amount which is then customary and commercially reasonable in relation to the type of operation then being conducted by Grantor in the Property, by reason of changed economic conditions making such protection inadequate.

(iii) Worker's compensation insurance covering all persons employed by Grantor in connection with any work done on or about the Property with respect to which claims for death or bodily injury could be asserted against Grantee or the Property. In lieu of such workmen's compensation insurance, Grantor may provide a program of self-insurance so long as it complies with the rules, regulations and requirements of the appropriate state agency of the Commonwealth of Virginia, but no less than $500,000.

(iv) Any other form or forms of insurance Grantor shall maintain with respect to the Property: (a) during construction of any improvements on the Property by Grantor and authorized by Grantee, “all-risk” builders risk insurance which must include windstorm, hail damage, fire and vandalism (Completed Value form with extended coverage), in an amount not less than the completed replacement value of the improvements under construction, naming Grantee as mortgagee and loss payee; (b) upon completion of construction, upon occupancy of any improvements, and at all other times, insurance against loss or damage by fire and other casualties and hazards by insurance written on an “all risk” basis with extended coverage endorsement, including, without limitation, malicious mischief and vandalism coverage, in an amount not less than the replacement cost thereof, naming Grantee as loss payee and mortgagee; (c) if the Property is required to be insured pursuant to the National Flood Reform Act of 1994, and the regulations promulgated thereunder, flood insurance is required in the amount equal to the lesser of the loan amount or maximum available under the National Flood Insurance Program, but in no event should the amount of coverage be less than the value of the improved structure, naming Grantee as mortgagee and loss payee, if, after closing, the Property (or any part thereof) is remapped and if the vertical improvements are determined to be located in a special flood hazard area, Grantor must obtain and maintain a flood insurance policy; (d) as applicable, insurance which complies with the workers' compensation and employers' liability laws of all states in which Grantor shall be required to maintain such insurance; and (e) liability insurance providing coverage in such amount as Grantee may require but in no event less than $2,000,000 per occurrence and $5,000,000 in the aggregate; and (f) such other insurance as Grantee may require from time to time.

All property insurance policies shall contain an endorsement or agreement by the insurer in form satisfactory to Grantee that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Grantor and the further agreement (within both the property and liability policies) of the insurer waiving rights of subrogation against Grantee, and rights of set-off, counterclaim or deductions against Grantor.

All insurance policies shall be issued by companies licensed to transact business in the Commonwealth of Virginia and shall have a rating of "A" or better for claims paying ability assigned by Moody's Investors Service, Inc. and Standard & Poor's Rating Group or a general policy rating of A- or better and a financial class of VIII or better assigned by A.M. Best Company, Inc. Grantor shall furnish Grantee with evidence satisfactory to Grantee that each such policy has been timely renewed or replaced with no gap in coverage. All such policies shall provide that the policy will not be canceled or materially amended without at least thirty (30) days prior written notice to Grantee. In the event Grantor fails to provide, maintain, keep in force, and furnish to Grantee the policies of insurance required by this Deed of Trust, Grantee may procure such insurance or single-interest insurance in such amounts, at such premiums, for such risks and by such means as Grantee chooses, at Grantor's expense; provided, however, Grantee shall have no responsibility to obtain any insurance, but if Grantee does obtain insurance, Grantee shall have no responsibility to assure that the insurance obtained shall be adequate or provide any protection to Grantor.

The Parties agree that Virginia Risk Sharing Association (VRSA) is specifically approved and authorized under this section and under this Deed of Trust to provide the required insurance.

Insurance Proceeds. After occurrence of any loss to any of the Property, Grantor shall give prompt written notice thereof to Grantee. In the event of such loss all insurance proceeds, including unearned premiums, shall be payable to Grantee, and Grantor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Grantee and not to Grantee and Grantor jointly. Grantee is hereby authorized by Grantor to make proof of loss if not promptly made by Grantor, settle, adjust or compromise any claims for loss or damage under any policy or policies of insurance and Grantor appoints Grantee as its attorney-in-fact to receive and endorse any insurance proceeds to Grantee, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied. Grantor shall pay the costs of collection, including attorneys' fees, of insurance proceeds payable on account of any damage or destruction. Grantor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Grantee as security for payment of the Obligations.

In the event of any damage to or destruction of the Property, Grantee shall have the option of applying or paying all or part of the insurance proceeds to (i) the Obligations in such order as Grantee may determine, (ii) restoration, replacement or repair of the Property in accordance with Grantee's standard construction loan disbursement conditions and requirements, or (iii) Grantor. Nothing herein shall be deemed to excuse Grantor from restoring, repairing and maintaining the Property as required herein. Notwithstanding the foregoing, provided that all of the following conditions are fully satisfied by Grantor, Grantee shall disburse insurance proceeds for repair and restoration of the Property in accordance with reasonable construction loan disbursement conditions and requirements: (i) no Default or event which, with the giving of notice or the passage of time, or both, would constitute a Default shall have occurred; (ii) Grantor shall have delivered evidence satisfactory to Grantee that the Property can be fully repaired and restored prior to the maturity of the Obligations; (iii) the work is performed under a contract satisfactory to Grantee in accordance with plans and specifications and a budget satisfactory to Grantee in accordance with all legal requirements; (iv) Grantor has paid as and when due all of Grantee's costs and expenses incurred in connection with the collection and disbursement of insurance proceeds, including without limitation, inspection, monitoring, engineering and legal fees. If not paid on demand, at Grantee's option, such costs may be deducted from the disbursements made by Grantee or added to the sums secured by this Deed of Trust; and (v) such other terms and conditions as Grantee may reasonably require.

Impositions. Grantor will pay all taxes (if any), levies, assessments and other fees and charges imposed upon or which may become a lien upon the Property under any law or ordinance (all of the foregoing collectively "Impositions") before they become delinquent and in any event in the same calendar year in which they first became due.

Use of Property. Grantor shall use and operate, and require its lessees or licensees to use and operate, the Property in compliance with all applicable laws (including, for example, the Americans with Disabilities Act and the Fair Housing Act) and ordinances, covenants, and restrictions, and with all applicable requirements of any lease or sublease now or hereafter affecting the Property. Grantor shall not permit any unlawful use of the Property or any use that may give rise to a claim of forfeiture of any of the Property. Grantor shall not allow changes in the stated use of Property from that disclosed to Grantee at the time of execution hereof. Grantor shall not initiate or acquiesce to a zoning change of the Property without prior notice to, and written consent of, Grantee.

Maintenance, Repairs and Alterations. Grantor shall keep and maintain the Property in good condition and repair, replace and maintain as necessary to fully protect and preserve the value of the improvements on the Property. Grantor will not remove, demolish or structurally alter any of the buildings or other improvements on the Property (except such alterations consistent with the Grantee approved development activities and as may be required by laws, ordinances or regulations) without the prior written consent of Grantee. Grantor shall promptly notify Grantee in writing of any material loss, damage or adverse condition affecting the Property.

Eminent Domain. Should the Property or any interest therein be taken or damaged by reason of any public use or improvement or condemnation proceeding ("Condemnation"), or should Grantor receive any notice or other information regarding such Condemnation, Grantor shall give prompt written notice thereof to Grantee. Grantee shall be entitled to all compensation, awards and other payments or relief granted in connection with such Condemnation and, at its option, may commence, appear in and prosecute in its own name any action or proceedings relating thereto. Grantee shall be entitled to make any compromise or settlement in connection with such condemnation. All compensation, awards, and damages awarded to Grantor related to any Condemnation (the "Proceeds") are hereby assigned to Grantee and Grantor agrees to execute such further assignments of the Proceeds as Grantee may require. Grantee shall have the option of applying or paying the Proceeds in the same manner as insurance proceeds as provided herein. Grantor appoints Grantee as its attorney-in-fact to receive and endorse the Proceeds to Grantee, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied.

Inspections. Grantee, or its representatives or agents, are authorized to enter during normal business hours upon 24 hours' advance notice upon the public portions of the Property for the purpose of inspecting the Property and for the purpose of performing any of the acts it is authorized to perform under the terms of this Deed of Trust. Notwithstanding the foregoing, Grantee acknowledges that it may not have immediate access to portions of the improvements on the Property due to the nature of the operations on the Property by Grantor and the parties shall work together to afford Grantee access to as much of the improvements on the Property as is practical.

Liens and Subrogation. Grantor shall pay and promptly discharge all liens, claims and encumbrances upon the Property. Grantor shall have the right to contest in good faith the validity of any such lien, claim or encumbrance, provided: (i) such contest suspends the collection thereof or there is no danger of the Property being sold or forfeited while such contest is pending; (ii) Grantor first deposits with Grantee a bond or other security satisfactory to Grantee in such amounts as Grantee shall reasonably require; and (iii) Grantor thereafter diligently proceeds to cause such lien, claim or encumbrance to be removed and discharged.

Waiver of Grantor's Rights. To the fullest extent permitted by law, Grantor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisement before sale of any portion of the Property, (ii) in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby or any of the other Obligations, and any rights to a hearing prior to the exercise by Grantee of any right, power, or remedy herein provided to Grantee. To the full extent Grantor may do so, Grantor agrees that Grantor will not at any time insist upon, plead, claim or seek to take the benefit or advantage of any law now or hereafter in force providing for any exemption (including homestead exemption), appraisement, valuation, stay, extension or redemption, and Grantor for itself and its heirs, devisees, representatives, successors and assigns, and for any and all persons claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of valuation, appraisement, redemption, stay of execution, the benefit of all exemption laws, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created.

Payments by Grantee. In the event of Default (as hereinafter defined) in the timely payment or performance of any of the Obligations, Grantee, at its option and without any duty on its part to determine the validity or necessity thereof, may pay the sums for which Grantor is obligated. Further, in the event of Default, Grantee may pay such sums as Grantee deems appropriate for the protection and maintenance of the Property including, without limitation, such sums to pay Impositions and other levies, assessments or liens, maintain insurance, make repairs, secure the Property, maintain utility service, intervene in any condemnation and pay attorneys' fees and other fees and costs to enforce this Deed of Trust or protect the lien hereof (including, without limitation, foreclosure) or collect the Obligations, without limitation, including those incurred in any proceeding including bankruptcy or arbitration. Any amounts so paid shall bear interest at the rate stated in the Note and shall be secured by this Deed of Trust.

Indemnification. To the extent permitted under Virginia Law and the Virginia Constitution and without waiving its Sovereign Immunity, Grantor shall protect, indemnify and save harmless Grantee from and against all losses, liabilities, obligations, claims, damages, penalties, fines, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "Damages") imposed upon, incurred by or asserted or assessed against Grantee on account of or in connection with (i) the Note or any failure or alleged failure of Grantor to comply with any of the terms of, or the inaccuracy or breach of any representation in, the Loan Documents; (ii) the Collateral or any claim of loss or damages to the Property or any injury to, or death of, any person or property that may be occasioned by any cause whatsoever pertaining to the Property or the use, occupancy or operation thereof, (iii) any failure or alleged failure of Grantor to comply with any law, rule or regulation applicable to it or to the Property or the use, occupancy or operation of the Property (including without limitation, the failure to pay any taxes, fees or other charges), (iv) any damages whatsoever by reason of any alleged action, obligation or undertaking of Grantee relating in any way to or any matter contemplated by the Loan Documents, (v) any claim for brokerage fees or such other commission relating to the Property or any other Obligations, or (vi) any and all liability arising from any leases related to the Property. The indemnity provided for herein shall survive payment of the Obligations. In the event Grantee incurs any damages arising out of or in any way relating to the transaction contemplated by the Loan Documents (including any of the matters referred to in this Section), the amounts of such damages shall be added to the Obligations, shall bear interest, to the extent permitted by law, at the interest rate borne by the Obligations from the date incurred until paid and shall be payable on demand.

Assignment of Rents. Grantor hereby absolutely assigns and transfers to Grantee all of Grantor's right, title and interest in and to: (i) all present and future leases, subleases, licenses, or occupancy agreements of all or any portion of the Property, together with any renewals, modifications or replacements thereof, and any options, rights of first refusal or guarantees of any lease now or hereafter in effect (collectively, the "Leases"); (ii) all rents, income, receipts, revenues, reserves, issues and profits arising under any Lease (together with the items described in iii, iv, and v below, the "Rents"); (iii) all security deposits and escrow accounts made by any tenant or subtenant under any Lease; (iv) all awards and payments of any kind derived from or relating to any Lease including, without limitation, claims for the recovery of damages to the Property by proceeds of any insurance policy or otherwise, claims for damages resulting from acts of insolvency or bankruptcy, lump sum payments for the cancellation or termination of any Lease, awards payable by reason of condemnation action or the exercise of any right of first refusal or option to purchase, payments made by tenants in lieu of rent, and the return of any insurance premiums or ad valorem tax payments made in advance and subsequently refunded; and (v) the proceeds of any rental insurance carried by Grantor on the Property. Grantor appoints Grantee as its irrevocable attorney in fact to appear in any actions and to collect any awards or payments.

Prior to an event of Default hereunder or under the Note or under any other Obligations and demand by Grantee for delivery of the security deposits to Grantee or Grantee's designee, Grantor shall maintain the security deposits in an identifiable account. After default and upon demand by Grantee, Grantor shall deliver the security deposits, if any, to Grantee. Upon delivery of the security deposits to Grantee, the Grantee will hold the security deposits pursuant to the terms of the Leases in respect of which such security deposits were obtained by Grantor. Provided, however, in no event shall Grantee be liable under any Lease of any part of the Property for the return of any security deposit in any amount in excess of the amount delivered to the Grantee by Grantor.

This assignment is intended to be and constitutes an unconditional, absolute and present assignment from Grantor to Grantee of all of Grantor's right, title and interest in and to the Leases and Rents (subject to the terms and conditions hereof), and not an assignment in the nature of a pledge of such Leases and Rents or the mere grant of a security interest therein. Notwithstanding that this assignment is effective immediately, so long as there shall exist no Default (as hereinafter defined) by Grantor in the payment and performance of the Obligations or a default in the performance of any obligation or agreement in the performance of any obligation or agreement in any Lease, Grantor shall have the privilege under a revocable license to collect as they become due, but not prior to accrual, all Rents from the Property and to receive and hold the same.

Notwithstanding any legal presumption to the contrary, Grantee shall not be obligated by reason of its acceptance of this assignment to perform any obligation of Grantor under any of the Leases, and Grantee shall not, prior to entry upon and actually taking physical possession of the Property, be deemed a mortgagee in possession. This assignment shall not operate to place responsibility upon Grantee for the control, care, management or repair of the Property or for the carrying out of any of the terms and conditions of the Leases or to make Grantee responsible or liable for any waste committed on the Property by any lessee or any other party, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Grantee assumes no liability for any security deposited or rent prepaid by any lessee with Grantor, unless and until such deposits or prepaid rents are delivered to Grantee. Grantor shall, and does hereby agree, To the extent permitted under Virginia Law and the Virginia Constitution and without waiving its Sovereign Immunity, To the extent permitted under Virginia Law and the Virginia Constitution and without waiving its Sovereign Immunity, to indemnify Grantee for, and to hold Grantee harmless from, any and all liability, loss or damage which may or might be incurred under the Leases or under or by reason of this assignment and from any and all claims and demands whatsoever which may be asserted against Grantee by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Grantor hereby agrees to defend, at its own cost and expense, any action brought against itself or Grantee relative to the Leases or this Assignment.

Due on Sale or Further Encumbrance or Transfer of an Interest in Grantor. Without the prior written consent of Grantee in each instance, Grantor shall not (i) sell, convey, transfer or encumber the Property, or any part thereof or interest therein, whether legal or equitable, (ii) cause or permit any transfer of the Property or any part thereof, whether voluntarily, involuntarily or by operation of law, or (iii) enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property. A "transfer" of the Property includes, without limitation,: (a) the direct or indirect sale, transfer or conveyance of the Property or any portion thereof or interest therein; (b) the execution of an installment sale contract or similar instrument affecting all or any portion of the Property; (c) the transfer, pledge, assignment or encumbrance (whether in one transaction or a series of transactions) of any limited liability company membership interests in such Grantor, including, without limitation, changes in members; (d) an agreement by Grantor leasing all or a part of the Property or a sale, assignment or other transfer of or the grant of a security interest in and to any Leases.

NOTICE: THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL IN THE EVENT OF SALE, CONVEYANCE, OR FURTHER ENCUMBRANCE OF THE PROPERTY HEREBY CONVEYED.

Remedies of Grantee on Default. The occurrence of any one of the following events shall constitute a default ("Default") hereunder:

(i) default in the payment of any installment of principal and/or interest as the same become due;

(ii) default in the payment of any tax, water, sewer or utility charges or assessment before the same becomes delinquent;

(iii) default in keeping in force and delivery the policies of insurance required herein;

(iv) default in the payment of any installment which may then be due or delinquent on any assessment for local improvement for which an official bill has been issued by the appropriate authority and which may now or hereafter affect the Property and may be or become payable in installments;

(v) default in the observance or performance of any other covenant or agreement of the Grantor hereunder;

(vi) a default under the Note; or

(vii) if legal and/or equitable title to the Property or any part thereof shall vest in anyone other than the Grantor without the prior written consent of Grantee.

Upon the occurrence of Default the following remedies are available, without limitation, to Grantee: (i) Grantee may exercise any or all of Grantee's remedies under this Deed of Trust or any of the other Loan Documents including, without limitation, acceleration of the maturity of all payments and Obligations; (ii) Grantee may take immediate possession of the Property or any part thereof (which Grantor agrees to surrender to Grantee) and manage, control or lease the same to such persons and at such rental as it may deem proper, and collect and apply Rents to the payment of: (a) the Obligations, together with all costs and attorneys' fees; (b) all Impositions and any other levies, assessments or liens which may be prior in lien or payment to the Obligations, and premiums for insurance, with interest on all such items; and (c) the cost of all alterations, repairs, replacements and expenses incident to taking and retaining possession of the Property and the management and operation thereof; all in such order or priority as Grantee in its sole discretion may determine, provided the taking of possession shall not prevent concurrent or later proceedings for the foreclosure sale of the Property; and (iii) upon application of Grantee, Trustee shall sell the Property and pay the proceeds of the sale according to the following terms and conditions: (a) Trustee shall foreclose upon this Deed of Trust and sell the Property, or any part of the Property, at public sale conducted according to applicable law (referred to as "Trustee's Sale"); (b) Trustee shall give public notice of sale by advertising, in accordance with applicable law, once a week for two successive weeks in a newspaper having general circulation in the county or city in which any part of the Land is located, and by such additional or different form of advertisement the Trustee deems advisable Trustee shall provide such notice and shall advertise a Trustee's Sale in the manner required by applicable law and Grantor agrees that if such advertisement be inserted on a daily basis it shall be published not less than once a day for three (3) days, which may be consecutive days; (c) Trustee shall conduct additional Trustee's Sales as may be required until all of the Property is sold or the Obligations are satisfied; (d) Trustee may receive bids at Trustee's Sale from Grantee and may accept from Grantee, as successful bidder, credits against the Obligations as payment of any portion of the purchase price; (e) Trustee may receive a reasonable fee for Trustee's services hereunder, not to exceed the maximum fee allowed by applicable law; and (f) Trustee shall apply the proceeds of Trustee's Sale, as required by law; (v) with respect to any portion of the Property governed by the UCC, Grantee shall have all of the rights and remedies of a secured party thereunder. Grantee may elect to foreclose upon any Property that is fixtures under law applicable to foreclosure of interests in real estate or law applicable to personal property; and (vi) all other remedies available at law or in equity.

Substitute Trustee. Grantee may, at any time and from time to time, without notice, at Grantee's discretion and without cause or reason, remove Trustee and appoint a substitute trustee ("Substitute Trustee") by filing in the records where this Deed of Trust is recorded an instrument affecting such removal and appointment. A Substitute Trustee shall be vested with title to the Property and with all rights, powers, and duties of the original Trustee herein and all provisions hereof pertaining to the Trustee shall similarly affect any Substitute Trustee. Any oath or bond by the Trustee is hereby waived.

Miscellaneous Provisions. Grantor agrees to the following: (i) all remedies available to Grantee with respect to this Deed of Trust or available at law or in equity shall be cumulative and may be pursued concurrently or successively. No delay by Grantee in exercising any remedy shall operate as a waiver of that remedy or of any Defaults. Any payment by Grantee or acceptance by Grantee of any partial payment shall not constitute a waiver by Grantee of any Default; (ii) the provisions hereof shall be binding upon and inure to the benefit of Grantor, his heirs, personal representatives, successors and assigns including, without limitation, subsequent owners of the Property or any part thereof, and shall be binding upon and inure to the benefit of Grantee, its successors and assigns and any future holder of the Note or other Obligations; (iii) any notices, demands or requests shall be sufficiently given to Grantor if in writing and mailed or delivered to the address of Grantor shown above or to another address as provided herein and to Grantee if in writing and mailed or delivered to the address of Grantee shown above or to such other address as Grantee may specify from time to time, and in the event Grantor changes Grantor's address at any time prior to the date the Obligations are paid in full, Grantor shall promptly give written notice of such change of address by registered or certified mail, return receipt requested, all charges prepaid; (iv) this Deed of Trust may be terminated or modified only by an instrument in writing signed by the Grantee and Grantor and may be modified without the Trustee joining or signing such instrument; (v) the captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not a part of this Deed of Trust; (vi) if the lien of this Deed of Trust is invalid or unenforceable as to any part of the Obligations, the unsecured portion of the Obligations shall be completely paid (and all payments made shall be deemed to have first been applied to payment of the unsecured portion of the Obligation) prior to payment of the secured portion of the Obligations and if any clause, provision or obligation hereunder is determined invalid or unenforceable the remainder of this Deed of Trust shall be construed and enforced as if such clause, provision or obligation had not been contained herein; (vii) this Deed of Trust shall be governed by and construed under the laws of the Commonwealth of Virginia without regard to the conflict of law principles thereof, and if legal action by either party is necessary for or with respect to the enforcement of any or all of the terms and conditions hereof, then exclusive venue therefore shall lie in the City of Danville, Virginia, and the United States District Court for the Western District of Virginia; and (viii) Grantor by execution and Grantee by acceptance of this Deed of Trust agrees to be bound by the terms and provisions hereof.

Debt Service Payment. Upon request of Buyer, but no more than once per month, Seller shall provide assurances and verify that Seller is making all debt service payments associated with the Property in a timely manner to Freedom First Federal Credit Union.

Final Agreement. This Deed of Trust and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

[**SIGNATURE ON FOLLOWING PAGE**]

IN WITNESS WHEREOF, this Deed of Trust has been duly executed, delivered, and sealed by Grantor on this day and year first above-written.

GRANTOR:

____

By: ____________________________ (Seal)

Its: ____________________________

COMMONWEALTH OF VIRGINIA)

CITY/COUNTY OF ____________)

On this ___ day of _________________________, 2020, before me, the undersigned Notary Public, personally appeared _____________________________, _____________________________ of _______________________________________, and executed the Deed of Trust

____

Notary Public

My commission expires: ___________________

My registration number is: _________________

[AFFIX NOTARY SEAL]

Exhibit A to Deed of Trust

Exhibit E

[Attached description of the Adjacent Property]