

City of Virginia Beach

"WORLD'S LARGEST RESORT CITY"

CITY COUNCIL

MAYOR MEYERA E. OBERNDORF, At Large
VICE MAYOR WILLIAM D. SESSOMS, JR., At-Large
JOHN A. BAUM, Blackwater Borough
LINWOOD O. BRANCH III, Virginia Beach Borough
WILLIAM W. HARRISON, JR., Lynnhaven Borough
HAROLD HEISCHBER, At Large
BARBARA M. HENLEY, Pungo Borough
LOUIS R. JONES, Bayside Borough
REBA S. McCLANAN, Princess Anne Borough
NANCY K. PARKER, At-Large
LOUISA M. STRAYHORN, Kempsville Borough

JAMES K. SPORE, City Manager
LESLIE L. LILLEY, City Attorney
RUTH HODGES SMITH, CMC / AAE, City Clerk



CITY HALL BUILDING
2401 COURTHOUSE DRIVE
VIRGINIA BEACH, VIRGINIA 23456-9005
(757) 427-4303

CITY COUNCIL AGENDA

June 24, 1997

I. BRIEFINGS - Conference Room - 2:30 PM

- A. HAMPTON ROADS CROSSING
Phil Shucet, President, Baker Environmental
- B. TRANSAMERICA CORRIDOR
Chris Lloyd, Planning Group Manager
- C. LIBRARY REFERENDUM OPTIONS
Martha J. Sims, Director, Public Libraries
- D. GENERAL OBLIGATION BOND SALE - June 11, 1997 - Results
Patricia A. Phillips, Director, Finance

II. REVIEW OF AGENDA ITEMS

III. CITY COUNCIL CONCERNS

IV. INFORMAL SESSION - Conference Room - 5:00 PM

- A. CALL TO ORDER - Vice Mayor William D. Sessoms, Jr., Presiding
- B. ROLL CALL OF CITY COUNCIL
- C. RECESS TO EXECUTIVE SESSION

V. FORMAL SESSION - Council Chamber - 6:00 PM

- A. CALL TO ORDER - Vice Mayor William D. Sessoms, Jr., Presiding
- B. INVOCATION: The Reverend Mark Vender
Calvary Presbyterian Church
- C. PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA
- D. ELECTRONIC ROLL CALL OF CITY COUNCIL
- E. CERTIFICATION OF EXECUTIVE SESSION
- F. MINUTES
 - 1. INFORMAL & FORMAL SESSIONS - June 10, 1997
- G. AGENDA FOR FORMAL SESSION

H. **CONSENT AGENDA**

The Consent Agenda will be determined during the Agenda Review Session and considered in the ordinary course of business by City Council to be enacted by one motion.

I. **PUBLIC HEARING**

1. **AGRICULTURAL PRESERVATION PROGRAM (ARP)**
(Blackwater and Pungo Boroughs)

J. **ORDINANCES**

1. Ordinances to authorize the acquisition of **Agricultural Land Preservation Easements (ARP)** and the issuance by the City of its contract obligations:
 - a. John A., Wesley L., Marshall P. and Glenn Clark Baum; Jean Baum Brown and Charlotte Baum Ives - 101.35 Acres
Installment Purchase Agreement No. 1997-10 - \$128,103.00
(Blackwater Borough)
 - b. John A., Wesley L., Marshall P. and Glenn Clark Baum; Jean Baum Brown and Charlotte Baum Ives - 465.67 Acres
Installment Purchase Agreement No. 1997-11 - \$721,860.00
(Blackwater Borough)
 - c. Robert R. and Betty S. Lusk, Trustees of the Robert R. and Betty S. Lusk Family Trust - 304.66 Acres
Installment Purchase Agreement No. 1997-12 - \$587,626.00
(Pungo Borough)
 - d. Robert R. and Betty S. Lusk, Trustees of the Robert R. and Betty S. Lusk Family Trust - 47.98 Acres
Installment Purchase Agreement No. 1997-13 - \$ 67,898.00
(Pungo Borough)
 - e. Ernest Brown - 92.28 Acres
Installment Purchase Agreement No. 1997-14 - \$175,332.00
(Blackwater Borough)
2. Ordinance to **APPROPRIATE** \$38,500 from the General Fund Balance for a Grant to the **Creeds Volunteer Rescue Squad** re purchase of a **replacement squad truck**.
3. Ordinance to **ACCEPT** and **APPROPRIATE** a \$17,860 Federal Grant to the FY 1996-1997 Department of **Social Services** Operating Budget re the **Building a Better Bayside Through Juvenile Delinquency Prevention** program; and, increase estimated revenue accordingly.
4. Ordinance to **TRANSFER** Personnel and Operating Budget Spending Authority (not to exceed \$805,980) from the Virginia Beach Public Schools Reprographics Internal Service Fund to the City's FY 1997-1998 "**City/Schools Printing Services Internal Service Fund**"; and, transfer four FTE positions to the City pay plan, effective 1 July 1997.
5. Ordinance re a **Cooperative Agreement** between Virginia Beach City Council and the Virginia Beach **School Board** re FY 1997-1998 **legal services** to the Board by the Office of the **City Attorney**.
6. Ordinance to authorize the City Manager and the City Attorney acquire **public beach easements** for the **Sandbridge Beach Nourishment** project, either by agreement or by condemnation.

7. Ordinances to authorize temporary encroachments:

- a. A portion of the City's 300-foot drainage easement over London Bridge Creek (2580 Potters Road) by Dominion Building Company to construct and maintain a detention pond for stormwater management, including a storm drainage pipe and underground infiltration trench.
- b. A portion of the City's right-of-way of Indian Plantation Drive by Baymark Construction Corporation re construction and maintenance of an entrance feature, brick wall and columns.
- c. A portion of the City's right-of-way of Kempsville Road by Community United Methodist Church re construction and maintenance of two (2) church identification signs.

8. Ordinances to authorize:

- a. License Refunds: \$31,271.91.
- b. Tax Refunds: \$72,539.22.

K. PUBLIC HEARING - PLANNING

6:30 PM

PLANNING BY CONSENT - *To be determined during the Agenda Review Session.*

1. NO ACTION ITEM - DEFERRED BY PLANNING COMMISSION - 14 May 1997

- a. Application of WIDENER HOMES, LTD. for a Change of Zoning District Classification from R-7.5 Single Family District to Conditional A-12 Apartment District (527 North Witchduck Road, containing 2.2 acres (BAYSIDE BOROUGH)).

2. Ordinance for discontinuance, closure and abandonment in the Petition of LAWRENCE A.. SANCILIO, RACHEL V. SANCILIO, LENA SANCILIO, MAURICE STEINGOLD, LEWIS B. STEINGOLD and SIGNET BANK/VIRGINIA, Trustees under the Will of Israel Steingold, (LYNNHAVEN BOROUGH):

Phase 1

- a. Wagner Street - That portion of Wagner labeled "closed _____", consisting of 2,599 square feet, bounded on the South by the Northern right-of-way boundary of the Virginia Beach-Norfolk Expressway and extending in a Northerly direction a distance of 51.69 feet as more specifically shown on said plat.
- b. Avenue E - That portion of Avenue E, labeled "closed _____", consisting of 1,297 square feet, approximately twenty-five (25) feet in width, bounded on the South by the Northern right-of-way boundary of the Virginia Beach-Norfolk Expressway and extending in a Northerly direction an approximate distance of 52 feet as more specifically shown on said plat.

Recommendation:

FINAL APPROVAL

Phase 2

- a. Wagner Street - All that portion of Wagner Street not included in Phase 1 above, containing 10,044.31 square feet (10,096 square feet - 51.69 square feet).
- b. Avenue E - All that portion of Avenue E not included in Phase 1 above, containing 162.67 square feet (214.67 sq. ft. - 52 sq. ft.)
- c. First Street - Beginning at the Western Boundary of Avenue E and running in a Westerly direction a distance of 349.78 feet.

Recommendation:

ADDITIONAL 180-DAY DEFERRAL

3. Application of **C & C DEVELOPMENT, L.L.C.** for the discontinuance, closure and abandonment of a portion of the East side of Pleasure House Road, beginning 123.17 feet South of Andrew Jackson Lane and continuing 17.37 feet along the Northern property line, variable in width, containing 836 square feet (BAYSIDE BOROUGH).

Deferred for Compliance:

25 February 1997

Recommendation:

FINAL APPROVAL

4. Ordinance in the Petition of **BPP DEVELOPERS, INC., A VIRGINIA CORPORATION**, for the discontinuance, closure and abandonment of a portion of Lynnhaven Drive beginning at a point 151.6 feet East of Vista Drive and running in an Easterly direction a distance of 115 feet, variable in width and containing 3239 square feet (LYNNHAVEN BOROUGH).

Deferred for Compliance:

11 June 1996

Additional 180-Day Deferral:

17 December 1996

Recommendation:

ADDITIONAL 180-DAY DEFERRAL

5. Petition of **LIFENET, d/b/a LIFENET TRANSPLANT SERVICES**, for the discontinuance, closure and abandonment of a portion of Baker Road beginning at the Southwest corner of Baker Road and Ward Court and running 375.65 feet in a Southerly direction, containing 5,294.4 square feet (BAYSIDE BOROUGH).

Recommendation:

APPROVAL

6. Application of **STEVEN S. CLYMER** for a Variance to Section 4.4(b) of the Subdivision Ordinance which requires all lots created by subdivision meet all requirements of the City Zoning Ordinance on the North side of Winston-Salem Avenue, 105 feet East of Rudee Avenue re resubdivision of three non-conforming lots into two lots on a 9000 square foot parcel (VIRGINIA BEACH BOROUGH).

Recommendation:

DENIAL

7. Application of **JOSEPH OVERHOLT, TRUSTEE OVERHOLT TRUST**, for a Conditional Change of Zoning District Classification from R-10 Residential District to Conditional B-2 Community Business District at the Southwest corner of Lynnhaven Parkway and Salem Road re commercial land use, containing 15 acres (KEMPSVILLE BOROUGH).

Recommendation:

APPROVAL

8. Applications of **McGINNIS REALTY AND DEVELOPMENT COMPANY** on the West side of Princess Anne Road beginning at a point 1060 feet more or less South of Elson Green Avenue, containing 57.94 acres (PRINCESS ANNE BOROUGH):

- a. Change of Zoning District Classification from AG-1 and AG-2 Agricultural Districts to Conditional R-20 Residential District
- b. Conditional Use Permit for an open space promotion development option

Staff Recommendation:	DENIAL
Planning Commission	
Recommendation:	APPROVAL

9. Ordinances to **AMEND** the Code of the City of Virginia Beach:

- a. Chapter 21, Sections 2, 33.1, 116, 147, 150, 154, 191, 205, 207, 273, 318 and 371 re **motor vehicles**.
- b. Chapter 38, Section 1 re **concealed weapons**.

L. APPOINTMENTS

COMMUNITY SERVICES BOARD
SOCIAL SERVICES BOARD
YOUTH SERVICES COORDINATING COUNCIL

M. UNFINISHED BUSINESS

N. NEW BUSINESS

- 1. ABSTRACTS OF VOTES - Republican Primary Election 10 June 1997
 - a. ATTORNEY GENERAL
 - b. COMMISSIONER OF REVENUE

O. ADJOURNMENT

* * * * *

If you are **physically disabled** or **visually impaired** and need assistance at this meeting, please call the **CITY CLERK'S OFFICE** at 427-4303
Hearing impaired, call: TDD only 427-4305
(TDD - Telephonic Device for the Deaf)

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MINUTES

VIRGINIA BEACH CITY COUNCIL Virginia Beach, Virginia

June 24, 1997

*Vice Mayor William D. Sessoms, Jr called to order the **BRIEFINGS** in the Council Conference Room, City Hall Building, on Tuesday, June 24, 1997, at 2:30 P.M.*

Council Members Present:

John A. Baum, Linwood O. Branch, III, William W. Harrison, Jr., Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn

Council Members Absent:

Mayor Meyera E. Oberndorf

*[ATTENDING US CONFERENCE OF
MAYORS]*

Nancy K. Parker

[MOTHER UNDERGOING SURGERY]

CITY MANAGER'S BRIEFING

HAMPTON ROADS CROSSING

2:30 P.M.

ITEM # 42275

*Robert Matthias, Assistant City Manager, advised this informational briefing concerns the **Third Crossing**, which was authorized in the **ISTEA** funding in 1991. The **Third Crossing** has approximately **\$6-MILLION** in Federal funds expended with a 20% match from the State. Mr. Matthias introduced Phil Shucet, President - Baker Environmental.*

*With the utilization of overheads, Mr. Shucet referenced the consequences of not building the **Third Crossing**:*

*Potential for a 15+ minute delay every hour.
No mobility improvement
Crossing demands not addressed
No VOC reductions
No new/improved access to NIT, NNMT, or PMT
No connecting link to 4th marine terminal on Craney Island
No new/improved access to NBN, Naval Shipyard, Naval Hospital, or
Naval Supply Center
No ability to connect passenger rail across Hampton Roads.*

US 460 OPTION

*Only 7.5% of crossing trips begin or end outside region.
Only 1.0% begin and end outside region.
Peak tourist season adds 35,000 crossings/day
Forms total diversionary pool of 55,000 trips/day
US 460 could attract portion of diversionary pool
As an independent solution, US 460 option only reduces HRBT by 3%
Does not meet Purpose and Need of project
US 460 being studied as part of TransAmerica Corridor.*

*None of the options of the **Third Crossing** overload the **Oak Grove Connector** or the **Southeastern Parkway** and **Greenbelt**.*

CORRIDOR	2015 PROJECTED ADT
No-Build	109,000
Transportation Corridor 1	107,000
Transportation Corridor 2	105,000
Transportation Corridor 3	106,000
Transportation Corridor 4	110,000
Transportation Corridor 5	105,000
Transportation Corridor 6	107,000
Transportation Corridor 7	111,000
Transportation Corridor 8	105,000
Transportation Corridor 9	107,000
Transportation Corridor 10	106,000
Transportation Corridor 11	110,000

CITY MANAGER'S BRIEFING

HAMPTON ROADS CROSSING

ITEM # 42275 (Continued)

PENINSULA/SOUTHSIDE ACCESSIBILITY

	I-64	I-664 CORRIDOR					I-664 CORRIDOR				
		Improve I-664 on Peninsula					CSX Corridor				
Ports	TC1	TC2	TC3	TC4	TC8	TC9	TC5	TC6	TC7	TC10	TC11
<i>Provides New/Direct Access to Norfolk International Terminals (NIT)</i>		*	*		*	*	*	*		*	*
<i>Improves Access to NIT</i>	*	*	*		*	*	*	*		*	*
<i>Improves Access to Newport News Marine Terminal and Newport News Shipbuilding</i>		*	*	*	*	*	*	*	*	*	*
<i>Improves Access to Portsmouth Marine Terminal</i>			*			*		*			*
<i>Provides New Direct Access to Craney Island (Possible location of 4th Marine Terminal)</i>			*			*		*			*
Military											
<i>Provides New Direct Access to Naval Base Norfolk (NBN)</i>		*	*		*	*	*	*		*	*
<i>Improves Access to NBN</i>	*	*	*		*	*	*	*		*	*
<i>Improves Access from NBN to Naval Supply Center, Naval Hospital and Naval Shipyard</i>			*			*		*			*
Multimodal Component											
<i>Ability to Accommodate HOV Lanes, Busway, and/or Passenger Rail.</i>	*	*	*	*	*	*	*	*	*	*	*
<i>Planning Cost Estimate for Construction (in billions).</i>	\$1.5	\$1.9	\$2.1	\$1.6	\$2.2	\$2.4	\$2.6	\$2.8	\$2.2	\$3.2	\$3.3

Environmental concerns will become increasingly important as the project moves into the next phase. In terms of natural environment, biological environment, there are no fatal flaws or "showstoppers" as part of the Hampton Roads study. By far, the most dramatic impact is the potential to relocate individuals. The options range from a low of approximately 125 potential relocations to as high as 1500 depending on whether or not the CSX Corridor option is added on the Peninsula.

June 24, 1997

CITY MANAGER'S BRIEFING

HAMPTON ROADS CROSSING

ITEM # 42275 (Continued)

Under the CSX Corridor, there is a range from 900 to 1500 homes. In an effort to reduce the potential of 1500 relocations on the Peninsula, the staff reviewed the possibility of elevating the entire facility above the existing CSX Corridor. This would increase the cost of the project by \$350-MILLION, making the CSX Option approximately a \$1-BILLION project. However, because of the potential relocations on the southern tip of Newport News, the best option would be to reduce the relocations to approximately 900.

Mr. Shucet referenced two scenarios were identified, based on a cost of \$2.5-BILLION (the middle range of the option studies).

TOLLS AT \$1.00

Potential shortfall between \$57 and \$150-MILLION/per year depending on State and Federal Funding.

TOLLS AT \$2.00

Potential shortfall between \$35 and \$82-MILLION/per year depending on State and Federal Funding.

The Hampton Roads Planning District Commission's analysis indicates shortfall can be covered by a combination of gas tax (\$0.04/gallon to \$0.07/gallon) and sales tax (0.25% to 0.5%).

On July 2, 1997, a recommendation is supposed to be made to the Hampton Roads Planning District Commission and the Hampton Roads Crossing Study Coordinating Committee. On July 16, 1997, a recommendation of one single corridor will be made to the Metropolitan Planning Organization.

CITY MANAGER'S BRIEFING

TRANSAMERICA CORRIDOR

2:50 P.M.

ITEM # 42276

*Robert Matthias, Assistant City Manager, advised of City Council's interest in the **460 Corridor**. During the **ISTEA** process, a study of the **TRANSAMERICA CORRIDOR** was authorized. Originally the language was rather vague with the Corridor ending somewhere in Bowers Hill. Through the Congressional Committee, the language was amended to have the **Corridor** terminate in Hampton Roads with the thought to terminate at the ocean. A **Transamerica Corridor** should run from ocean to ocean. Within the next three weeks, the final EIS relative the **Southeastern Parkway and Greenbelt** will be distributed to City Council.*

*Mr. Matthias introduced Chris Lloyd, Planning Group Manager - Baker Environmental, who is working on a separate study and very supportive of including the **Southeastern Parkway and Greenbelt** as the eastern terminus.*

*Mr. Lloyd advised at this point the **TRANSAMERICA CORRIDOR** is a feasibility study. Currently Baker is charged with evaluating a **Corridor between Beckley, West Virginia and Virginia Beach**. The 1995 NHS Designation Act, which assisted in funding this study, advised the beginning of the **Corridor** will commence on the Atlantic Coast Baker will not be conducting multi-modal studies (rail, futuristic transportation systems). Baker will be concentrating on vehicular capacity issues (roadway concept). Alternatives will be limited to this roadway facet and will be focusing west to east, from Beckley on I-64 until Clifton Forge From Clifton Forge, Baker will be anticipating dropping down on US 220 to the Roanoke area and then picking up **460 Corridor** all the way to the east coast. Bypasses of certain localities will be evaluated. There is an interchange at I-81 and US 460-220 at Cloverdale, a potential bypass will be evaluated at this congested area. A potential bypass is also being reviewed at Crewe, Petersburg, Waverly, Wakefield and Windsor. The majority of the remainder of the alignment will stay on its existing location. This began as a nationwide project A corridor had been identified between I-70 and I-40 across the country. This **Corridor** was topically named I-66. It did adopt some of the old Route 66 alignment. From this came funding through **ISTEA** where the **I-66 Corridor** was identified as a high priority demonstration project. As a result of this, funding was provided to study the entire **Corridor**, to determine if it was feasible. From this **ISTEA** legislation funding, a **1994 Coast-to-Coast Feasibility Study** was developed. This study investigated four (4) types of transportation facilities (1) **upgraded highway Interstate system from coast-to-coast** (2) **upgraded rail facility** (3) **super highway and truckway facility with speeds up to 150 miles per hour; and, (4) high speed fixed guideway, monorail, etc.** None of these options proved to be feasible. However, there were recommendations that some components of this proposal could be feasible in certain states. **West Virginia and Virginia** were two of the states who elected to pursue the feasibility of the **TRANSAMERICA CORRIDOR** within their jurisdictions.*

*Out of the 1995 National Highway System Designation Act came funding to pursue the **TRANSAMERICA CORRIDOR**. This Act referenced the terminus of the Atlantic Coast, Hampton Roads, City of Lynchburg, Roanoke and Beckley, West Virginia There is only one corridor which ties the majority of these together and that is Rt. 460; therefore, efforts are concentrated in that area.*

*Mr. Lloyd identified the **Project Tasks**:*

Secondary Data Collection
Mapping and Geographic Information Systems (GIS)
Regional Interviews
Public Outreach
Conceptual Alternatives Development
Environmental Overview
Transportation/Traffic Evaluation
Economic Analysis/Financial Feasibility
Alternatives Screening
Recommendations
Project Coordination

June 24, 1997

CITY MANAGER'S BRIEFING

TRANSAMERICA CORRIDOR

ITEM # 42276 (Continued)

The project will be coordinated with VDOT and the district representatives throughout the length of the project. The Federal Highway Administration (FHWA) will also be included in coordination efforts as the project progresses.

*Mr. Lloyd advised the firm is now in the **data collection stage**. Interviews of the twenty jurisdictions should be completed within the next thirty days. At that point, information gathered will be integrated into a **public information program**. A mapping effort will commence and a design concept developed. An alternative analysis will be developed with a series of technical reports relative the traffic, environmental effort and economic development. At that point, a final report will be completed. Mr. Lloyd cited the questions at the back of City Council's "handout". All of the communities interviewed are requested to respond to these.*

*Mr. Matthias advised the MPO at its last meeting formally adopted a Resolution requesting VDOT perform a formal **Major Investment Study** on the **460 Corridor between the terminus at Bowers Hill and 295 close to Petersburg**. The improvements needed to I-64 will be in direct competition with **Third Crossing Funds**. Governor Allen's administration is basically suggesting tolls are the answer to many of the problems.*

CITY MANAGER'S BRIEFING

LIBRARY REFERENDUM OPTIONS

ITEM # 42277

3:10 P.M.

*Martha J. Sims, Director - Public Libraries, introduced the Members of the **Library Board**, who were in attendance:*

*Betty Bridges
Chairperson*

*Mary L. Denny
Susan Loughlin Goranson
Susan Shaw Hulbert
Heather M. Malaby
Rhonda G. Mealy
Jeffrey A. Sachs
Laura H. Tebault*

*Chair Betty Bridges advised on April 29, 1997, a **Plan** was outlined to City Council for new and modernized library facilities and enhanced services that would create the kind of **public library system** citizens want for the **twenty-first century**. The condition of the current services and facilities, with aging infrastructure, limited technology and under staffing is making it increasingly difficult to provide services to the citizens. City Council was requested to consider placing on the **November 1997 ballot a Referendum** to support this plan of new and modernized facilities and enhanced services at a cost of **six to seven cents on the tax rate**. Several options were offered that would reduce the amount of the tax rate increase, depending on the number of projects and the services included*

*City Council requested the Board consider several planning and funding alternatives. Marcy Sims and David Sullivan, Director of Information Technology, explored with the School's Technology Division and Media Center staff the issues raised concerning **shared use/purchasing of technology and electronic resources**. Marcy Sims has also pursued options and costs regarding public/private partnerships. The School's technology plan is classroom and curriculum based and all school libraries have been or are in the process of being automated using federal and state grant funds. The potential for cost savings in joint purchasing of electronic resources is being pursued. The Board is confident the **Public Library's new automated system can link effectively with Schools**. Marcy Sims has pursued options and costs regarding **public/private partnership**. These kinds of approaches will undoubtedly become a more familiar part of the strategy in the future. An opportunity can be created. However, at this moment, those opportunities are not clear enough to include in a planning document such as the one submitted. The Board has assumed publicly funded construction and ownership will support their **Plan**.*

*Mrs. Sims advised the **Plan** was based on eight public dialogue sessions. Mrs. Sims cited the **four (4) options**:*

Basic Library Services in an Electronic Environment

Construction

Modernization Windsor Woods, Great Neck, Pungo/Blackwater, Central Library, Kempsville

Replacement Bayside, Oceanfront

Services

Basic Service/Electronic Environment Personal Assistance/Instruction

Impact on Tax Rate	2 3 cents
Impact on Tax Rate Utilizing	
Year End Fund Balances	1 9 cents
Capital Costs	\$13,530,751
Operational Costs	
(First Full Year)	\$ 3,689,264

June 24, 1997

CITY MANAGER'S BRIEFING

LIBRARY REFERENDUM OPTIONS

ITEM # 42277 (Continued)

CIP Backlog Projects/Extended Hours

Construction

Backlog Princess Anne, Green Run/Salem

Modernization Windsor Woods, Great Neck, Pungo/Blackwater, Central Library, Kempsville

Replacement Bayside, Oceanfront

Services

Basic Service/Electronic Environment Personal Assistance/Instruction Sunday Hours at all locations

<i>Impact on Tax Rate</i>	<i>4 5 cents</i>
<i>Impact on Tax Rate Utilizing</i>	
<i>Year End Fund Balances</i>	<i>4 1 cents</i>
<i>Capital Costs</i>	<i>\$21,168,430</i>
<i>Operational Costs</i>	
<i>(First Full Year)</i>	<i>\$ 7,929,193</i>

Pre-School, Youth and Teen Programs/Services

Construction

Backlog Princess Anne, Green Run/Salem

Modernization Windsor Woods, Great Neck, Pungo/Blackwater, Central Library, Kempsville

Replacement Bayside, Oceanfront

Services

Basic Service/Electronic Environment Personal Assistance/Instruction Sunday Hours at all locations Youth Services

<i>Impact on Tax Rate</i>	<i>4 8 cents</i>
<i>Impact on Tax Rate Utilizing</i>	
<i>Year End Fund Balances</i>	<i>4 3 cents</i>
<i>Capital Costs</i>	<i>\$21,168,430</i>
<i>Operational Costs</i>	
<i>(First Full Year)</i>	<i>\$ 8,467,372</i>

Full Facilities and Services Proposal/Neighborhood Access

Construction

Backlog Princess Anne, Green Run/Salem

Modernization Windsor Woods, Great Neck, Pungo/Blackwater, Central Library, Kempsville

Neighborhood Libraries Bayfront, Centerville, Cypress Point, Little Neck

Replacement Bayside, Oceanfront

Services

Basic Service/Electronic Environment/Personal Assistance/Instruction Sunday Hours at all locations Youth Services

<i>Impact on Tax Rate</i>	<i>6 9 cents</i>
<i>Impact on Tax Rate Utilizing</i>	
<i>Year End Fund Balances</i>	<i>6 5 cents</i>
<i>Capital Costs</i>	<i>\$32,467,971</i>
<i>Operational Costs</i>	
<i>(First Full Year)</i>	<i>\$12,750,341</i>

CITY MANAGER'S BRIEFING

LIBRARY REFERENDUM OPTIONS

ITEM # 42277 (Continued)

E. Dean Block, Director - Management Services, presented the scope of two intermediate options which utilize the Capital Improvement Program as a funding mechanism.

CIP Only - Phased Construction

Scope/Level of Services:

*Construction - 5 modernization, 2 replacement, 2 CIP backlog
(Princess Anne & Green Run)*

Time Line:

*FY 97/98 - Initiate design work on two projects
FY 98/99 - FY 03/04 - Phased completion of all projects.*

Cost.

*Capital - \$23.2-MILLION
Operations, Maintenance & Staffing - \$4 1-MILLION by FY
04/05*

Funding:

*Capital - Charter bonds and/or ending balances, if available.
Debt ceiling maintained by multi-year phase-in of bonds for
construction General fund absorbs debt service
Staffing & Operations - 1.8 cents real estate tax increase, July 1999.*

CIP/Referendum Mix & Expanded Services

Scope/Level of Service:

*Construction - CIP - 5 modernization projects Referendum - 2
replacement, 2 CIP backlog*

*Services - Basic services (Electronic Access & Support) and
Sunday service, all libraries.*

Time Line.

*November 1997 Referendum
Eight projects complete and operational in FY 1999/2000.
Bayside complete and operational by FY 2000/2001*

Cost

*Capital - CIP - \$5.97-MILLION
Capital - Referendum - \$17.2-MILLION
Operations, Maintenance & Staffing - \$5.1-MILLION by FY
2001/2002.*

Funding:

*Capital - CIP - Charter Bonds and/or ending balance. Debt
service absorbed by general fund.
Capital - Referendum and staffing and operations costs 3.0
cents real estate tax increase, July 1, 1998.*

CITY MANAGER'S BRIEFING

LIBRARY REFERENDUM OPTIONS

ITEM # 42277 (Continued)

Mrs. Sims advised in order to SCHEDULE a Referendum, City Council must decide, at the latest, during their Session of August 26, 1997.

Mr. Block's second proposal differs from Marcy's No. 2 option as it involves an earlier time schedule. Mr. Block provided information relative same.

CITY MANAGER'S BRIEFING
GENERAL OBLIGATION BOND SALE

ITEM # 42278

3:43 P.M.

Patricia A. Phillips, Director - Finance, advised relative the Bond Sale of June 11, 1997, the City received seven bids on its \$56.7-MILLION General Obligation Public Improvement Bonds. The low bid was awarded to a syndicate led by First Union, with a true interest cost of 5.0876%. Mrs. Phillips advised Rich Dunford - Finance, managed the majority of the sale.

Mrs. Phillips displayed the chart depicting the Bond Buyer 11 - Bond G.O. Index January 1993 to Present. The index varies from a low of 5.10% in 1993 to a high in the Fall of 1994 at 6.94%. The average of the timeframe was approximately 5.76%.

This bond sale was rated AA by Standard & Poor's and Aa2 by Moody's Investors Service. In its rating review of Virginia Beach, Moody's cited several factors that contribute to the Aa2 rating:

Rating Factors

*Large and Well Performing Economy
Favorable Financial Performance
Moderate Debt Position
Completion of the Lake Gaston Pipeline expected later this
year will have a positive impact on City's Growth Prospects.*

The low bid was only seven basis points higher than bonds sold the day before by Arlington County, a "AAA" rated community (true interest cost of 5.0174%). In addition, it was 11.55 basis points less than received by Fairfax County on May 28, 1997, another "AAA" rated community.

The City of Chesapeake is rated Aa3 by Moody's (one rating below Virginia Beach); the City of Norfolk is rated A1 by Moody's (two ratings below Virginia Beach).

Other Cities' Ratings

City	S & P	Moody's
Virginia Beach	AA	Aa2
Chesapeake	AA	Aa3
Norfolk	AA	A1
Hampton	AA-	Aa
Newport News	AA-	Aa
Portsmouth	AA-	A
Suffolk	A	A1

AGENDA REVIEW SESSION

4:00 P.M.

ITEM # 42279

*Councilman Baum advised he would be **ABSTAINING**:*

ORDINANCES

*J.1 Ordinances to authorize the acquisition of **Agricultural Land Preservation Easements (ARP)** and the issuance by the City of its contract obligations:*

- a. John A., Wesley L., Marshall P. and Glenn Clark Baum; Jean Baum Brown and Charlotte Baum Ives - 101.35 Acres
Installment Purchase Agreement No. 1997-10 - \$128,103.00
(Blackwater Borough)*
- b. John A., Wesley L., Marshall P. and Glenn Clark Baum; Jean Baum Brown and Charlotte Baum Ives - 465.67 Acres
Installment Purchase Agreement No. 1997-11 - \$721,860.00
(Blackwater Borough)*

ITEM # 42280

Council Lady McClanan expressed concern relative:

*J7c Ordinance to authorize **temporary encroachment into a portion of the City's right-of-way of Kempsville Road by Community United Methodist Church** re construction and maintenance of **two (2) church identification signs**.*

Council Lady McClanan requested this item be deferred indefinitely. Church signs should not be attached to Virginia Power Company utility poles.

Council Lady Strayhorn believed a compromise might be reached.

ITEM # 42281

*Vice Mayor Sessoms advised this item was incorrectly placed under **PLANNING** and should be under **Ordinances**.*

*K.9 Ordinances to **AMEND** the Code of the City of Virginia Beach:*

- a. Chapter 21, Sections 2, 33 1, 116, 147, 150, 154, 191, 205, 207, 273, 318 and 371 re **motor vehicles**.*
- b. Chapter 38, Section 1 re **concealed weapons**.*

*Council Lady Henley cited an error in the Comment on page 14 of the Ordinance pertaining to **Motor Vehicles**. City Attorney Randy Blow advised the comment was incorrect; however, the comment will not be adopted within the Ordinance.*

AGENDA REVIEW SESSION

ITEM # 42282

The City Attorney advised the Sandbridge Ordinance had been revised and distributed copies:

- J.6 Ordinance to authorize the City Manager and the City Attorney acquire **public beach easements** for the **Sandbridge Beach Nourishment** project, either by agreement or by condemnation.*

ITEM # 42283

*BY CONSENSUS, the following items shall compose the **ORDINANCE CONSENT AGENDA**:*

ORDINANCES

- J.1 Ordinances to authorize the acquisition of **Agricultural Land Preservation Easements (ARP)** and the issuance by the City of its contract obligations:*
- a. John A , Wesley L , Marshall P and Glenn Clark Baum; Jean Baum Brown and Charlotte Baum Ives - 101.35 Acres
Installment Purchase Agreement No. 1997-10 - \$128,103.00
(Blackwater Borough)*
 - b. John A., Wesley L., Marshall P. and Glenn Clark Baum; Jean Baum Brown and Charlotte Baum Ives - 465 67 Acres
Installment Purchase Agreement No. 1997-11 - \$721,860.00
(Blackwater Borough)*
 - c. Robert R and Betty S. Lusk, Trustees of the Robert R. and Betty S. Lusk Family Trust - 304.66 Acres Installment Purchase Agreement No. 1997-12 - \$587,626.00 (Pungo Borough)*
 - d. Robert R. and Betty S. Lusk, Trustees of the Robert R. and Betty S Lusk Family Trust - 47.98 Acres Installment Purchase Agreement No. 1997-13 - \$ 67,898.00 (Pungo Borough)*
 - e. Ernest Brown - 92.28 Acres Installment Purchase Agreement No. 1997-14 - \$175,332.00 (Blackwater Borough)*
- J.2 Ordinance to **APPROPRIATE** \$38,500 from the General Fund Balance for a Grant to the **Creeds Volunteer Rescue Squad** re purchase of a replacement squad truck.*
- J.3 Ordinance to **ACCEPT** and **APPROPRIATE** a \$17,860 Federal Grant to the FY 1996-1997 Department of **Social Services** Operating Budget re the **Building a Better Bayside Through Juvenile Delinquency Prevention** program; and, increase estimated revenue accordingly.*
- J.4 Ordinance to **TRANSFER** Personnel and Operating Budget Spending Authority (not to exceed \$805,980) from the Virginia Beach Public Schools Reprographics Internal Service Fund to the City's FY 1997-1998 "**City/Schools Printing Services Internal Service Fund**"; and, transfer four FTE positions to the City pay plan, effective 1 July 1997.*

A G E N D A R E V I E W S E S S I O N

ITEM # 42283 (Continued)

- J.5 Ordinance re a Cooperative Agreement between Virginia Beach City Council and the Virginia Beach School Board re FY 1997-1998 legal services to the Board by the Office of the City Attorney.**
- J.6 Ordinance to authorize the City Manager and the City Attorney acquire public beach easements for the Sandbridge Beach Nourishment project, either by agreement or by condemnation.**
- J.7 Ordinances to authorize temporary encroachments:**
- a. A portion of the City's 300-foot drainage easement over London Bridge Creek (2580 Potters Road) by Dominion Building Company to construct and maintain a detention pond for stormwater management, including a storm drainage pipe and underground infiltration trench.**
 - b. A portion of the City's right-of-way of Indian Plantation Drive by Baymark Construction Corporation re construction and maintenance of an entrance feature, brick wall and columns.**
 - c. A portion of the City's right-of-way of Kempsville Road by Community United Methodist Church re construction and maintenance of two (2) church identification signs.**
- J.8 Ordinances to authorize:**
- a. License Refunds: \$31,271.91.**
 - b. Tax Refunds: \$72,539.22.**
- J.9 Ordinances to AMEND the Code of the City of Virginia Beach:**
- a. Chapter 21, Sections 2, 33 1, 116, 147, 150, 154, 191, 205, 207, 273, 318 and 371 re motor vehicles.**
 - b. Chapter 38, Section 1 re concealed weapons.**

Item J.7.c. will be DEFERRED INDEFINITELY BY CONSENT.

AGENDA REVIEW SESSION

ITEM # 42284

Councilman Harrison inquired if this Street Closure was related to the Contractors Paving Conditional Rezoning application scheduled for the City Council Session of July 8, 1997:

K.5 Ordinance for discontinuance, closure and abandonment in the Petition of **LAWRENCE A., SANCILIO, RACHEL V. SANCILIO, LENA SANCILIO, MAURICE STEINGOLD, LEWIS B. STEINGOLD and SIGNET BANK/VIRGINIA, Trustees under the Will of Israel Steingold, (LYNNHAVEN BOROUGH):**

Phase 1

- a. Wagner Street - That portion of Wagner labeled "closed _____", consisting of 2,599 square feet, bounded on the South by the Northern right-of-way boundary of the Virginia Beach-Norfolk Expressway and extending in a Northerly direction a distance of 51.69 feet as more specifically shown on said plat.**
- b. Avenue E - That portion of Avenue E, labeled "closed _____", consisting of 1,297 square feet, approximately twenty-five (25) feet in width, bounded on the South by the Northern right-of-way boundary of the Virginia Beach-Norfolk Expressway and extending in a Northerly direction an approximate distance of 52 feet as more specifically shown on said plat.**

Recommendation: FINAL APPROVAL

Phase 2

- a. Wagner Street - All that portion of Wagner Street not included in Phase 1 above, containing 10,044.31 square feet (10,096 square feet - 51.69 square feet).**
- b. Avenue E - All that portion of Avenue E not included in Phase 1 above, containing 162.67 square feet (214.67 sq. ft. - 52 sq. ft.)**
- c. First Street - Beginning at the Western Boundary of Avenue E and running in a Westerly direction a distance of 349.78 feet.**

Recommendation: ADDITIONAL 180-DAY DEFERRAL

Karen Laslie, Planning Co-Ordinator, advised this application is related to Contractors Paving. These applications do not have to be considered together. One of the proffers of the aforementioned application, the portion which is recommended for FINAL APPROVAL, is a buffer along the expressway. In order for them to legally proffer that buffer, they must own the property. Therefore the street closure must be finalized to consider the rezoning on July Eighth.

AGENDA REVIEW SESSION

ITEM # 42285

Councilman Harrison inquired relative the 180 deferral on December 17, 1996:

*K.5 Ordinance in the Petition of **BPP DEVELOPERS, INC., A VIRGINIA CORPORATION**, for the discontinuance, closure and abandonment of a portion of **Lynnhaven Drive** beginning at a point 151.6 feet East of Vista Drive and running in an Easterly direction a distance of 115 feet, variable in width and containing 3239 square feet (LYNNHAVEN BOROUGH)*

Karen Laslie advised all of the conditions had not been satisfied. The applicant has sold the condominiums and now all the separate owners and their lenders must sign off on the final plat, which will entail additional time; therefore, they are requesting another deferral.

ITEM # 42286

*BY CONSENSUS, the following items shall compose the **PLANNING BY CONSENT AGENDA**:*

*K2 Ordinance for discontinuance, closure and abandonment in the Petition of **LAWRENCE A. SANCILIO, RACHEL V. SANCILIO, LENA SANCILIO, MAURICE STEINGOLD, LEWIS B. STEINGOLD and SIGNET BANK/VIRGINIA**, Trustees under the Will of Israel Steingold, (LYNNHAVEN BOROUGH):*

Phase 1

- a. Wagner Street - That portion of Wagner labeled "closed _____", consisting of 2,599 square feet, bounded on the South by the Northern right-of-way boundary of the Virginia Beach-Norfolk Expressway and extending in a Northerly direction a distance of 51.69 feet as more specifically shown on said plat.*
- b. Avenue E - That portion of Avenue E, labeled "closed _____", consisting of 1,297 square feet, approximately twenty-five (25) feet in width, bounded on the South by the Northern right-of-way boundary of the Virginia Beach-Norfolk Expressway and extending in a Northerly direction an approximate distance of 52 feet as more specifically shown on said plat.*

Phase 2

- a. Wagner Street - All that portion of Wagner Street not included in Phase 1 above, containing 10,044.31 square feet (10,096 square feet - 51.69 square feet).*
- b. Avenue E - All that portion of Avenue E not included in Phase 1 above, containing 162 67 square feet (214.67 sq. ft. - 52 sq. ft.)*
- c. First Street - Beginning at the Western Boundary of Avenue E and running in a Westerly direction a distance of 349.78 feet.*

A G E N D A R E V I E W S E S S I O N

ITEM # 42286 (Continued)

- K3 Application of **C & C DEVELOPMENT, L.L.C.** for the discontinuance, closure and abandonment of a portion of the East side of **Pleasure House Road**, beginning 123 17 feet South of Andrew Jackson Lane and continuing 17 37 feet along the Northern property line, variable in width, containing 836 square feet (BAYSIDE BOROUGH).
- K4 Ordinance in the Petition of **BPP DEVELOPERS, INC., A VIRGINIA CORPORATION**, for the discontinuance, closure and abandonment of a portion of **Lynnhaven Drive** beginning at a point 151.6 feet East of Vista Drive and running in an Easterly direction a distance of 115 feet, variable in width and containing 3239 square feet (LYNNHAVEN BOROUGH).
- K5 Petition of **LIFENET, d/b/a LIFENET TRANSPLANT SERVICES**, for the discontinuance, closure and abandonment of a portion of **Baker Road** beginning at the Southwest corner of Baker Road and Ward Court and running 375.65 feet in a Southerly direction, containing 5,294.4 square feet (BAYSIDE BOROUGH).
- K6 Application of **STEVEN S. CLYMER** for a Variance to Section 4 4(b) of the Subdivision Ordinance which requires all lots created by subdivision meet all requirements of the City Zoning Ordinance on the North side of **Winston-Salem Avenue**, 105 feet East of **Rudee Avenue** re resubdivision of three non-conforming lots into two lots on a 9000 square foot parcel (VIRGINIA BEACH).
- K7 Application of **JOSEPH OVERHOLT, TRUSTEE OVERHOLT TRUST**, for a Conditional Change of Zoning District Classification from R-10 Residential District to Conditional B-2 Community Business District at the Southwest corner of Lynnhaven Parkway and Salem Road re commercial land use, containing 15 acres (KEMPSVILLE BOROUGH).
- K8 Applications of **McGINNIS REALTY AND DEVELOPMENT COMPANY** on the West side of Princess Anne Road beginning at a point 1060 feet more or less South of Elson Green Avenue, containing 57.94 acres (PRINCESS ANNE BOROUGH):
- a Change of Zoning District Classification from AG-1 and AG-2 Agricultural Districts to Conditional R-20 Residential District
 - b Conditional Use Permit for an open space promotion development option

CITY COUNCIL CONCERNS

4:15 P.M.

ITEM # 42287

On behalf of the entire City Council, Vice Mayor Sessoms congratulated Councilman Branch on his marriage to Robin in Bermuda June 17, 1997.

ITEM # 42288

*Council Lady McClanan inquired if anyone had received any complaints concerning last Tuesday's Amphitheater concert. Councilman Harrison advised he had received complaints relative "**Weezer and the Lunar Chicks**" which was a warmup Band for the "**No Doubt**" group. The language was very offensive. The audience should be notified if the concert is not suitable for the young people*

The City Manager will review.

ITEM # 42289

*Council Lady Henley relayed Council Lady Parker's comments relative the City Manager's response to **Dr. Timothy Jenney, Superintendent of Virginia Beach City Schools**. Council Lady Parker was pleased with his response and hoped his letter of June Sixteenth would be disseminated to the same list to which Dr. Jenney's letter was forwarded.*

*Councilman Heischober suggested this letter be published in **The Kaleidoscope**. Council Lady Henley suggested publication in **The Beach Advisory**. The City Manager will peruse these suggestions.*

ITEM # 42290

*Vice Mayor William D. Sessoms, Jr. called to order the **INFORMAL SESSION** of the **VIRGINIA BEACH CITY COUNCIL** in the City Council Conference Room, City Hall Building, on Tuesday, June 24, 1997, at 4:20 P.M.*

Council Members Present:

John A. Baum, Linwood O. Branch, III, William W. Harrison, Jr , Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan and Vice Mayor William D. Sessoms, Jr.

Council Members Absent:

Mayor Meyera E. Oberndorf, Nancy K. Parker and Louisa M. Strayhorn

June 24, 1997

ITEM # 42291

Vice Mayor William D. Sessoms, Jr., entertained a motion to permit City Council to conduct its EXECUTIVE SESSION, pursuant to Section 2.1-344, Code of Virginia, as amended, for the following purpose:

PERSONNEL MATTERS: *Discussion or consideration of or interviews of prospective candidates for employment, assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees pursuant to Section 2.1-344 (A) (1).*

To Wit: *Appointments - Boards and Commissions:
Community Services Board
Social Services Board
Youth Services Coordinating Council*

PUBLICLY-HELD PROPERTY: *Discussion or consideration of the condition, acquisition, or use of real property for public purpose, or of the disposition of publicly-held property, or of plans for the future of an institution which could affect the value of property owned or desirable for ownership by such institution pursuant to Section 2.1-344(A)(3).*

To-Wit: Acquisition/Disposition/Use of Public Property

*Southeastern Parkway and Greenbelt
Lynnhaven Borough
31st Street
Sandbridge Public Beach Easements*

LEGAL MATTERS: *Consultation with legal counsel or briefings by staff members, consultants, or attorneys pertaining to actual or probable litigation, or other specific legal matters requesting the provision of legal advice by counsel pursuant to Section 2.1-344(A)(7)*

To-Wit: *Sandbridge Public Beach Easements

Sandbridge Failed Bulkheads*

Upon motion by Councilman Baum, seconded by Councilman Jones, City Council voted to proceed into EXECUTIVE SESSION (4:25 P.M.)

Voting: *8-0*

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, William W. Harrison, Jr., Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan and Vice Mayor William D. Sessoms, Jr.

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, Nancy K. Parker and Louisa M. Strayhorn

FORMAL SESSION
VIRGINIA BEACH CITY COUNCIL

June 24, 1997

6:00 P.M.

*Vice Mayor William D. Sessoms, Jr. called to order the **FORMAL SESSION** of the **VIRGINIA BEACH CITY COUNCIL** in the Council Chamber, City Hall Building, on Tuesday, June 24, 1997, at 6:00 P.M.*

Council Members Present:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D Sessoms, Jr. and Louisa M. Strayhorn

Council Members Absent:

Mayor Meyera E. Oberndorf

*[ATTENDING US CONFERENCE OF
MAYORS]*

William W. Harrison, Jr.

Nancy K. Parker

[MOTHER UNDERGOING SURGERY]

INVOCATION: *The Reverend Mark Vender
Calvary Presbyterian Church*

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

Vice Mayor Sessoms, being a Corporate Officer of Central Fidelity Bank, ABSTAINED on Item K 2.a/b (Sancilio) and disclosed there were no other matters on the agenda in which he has a "personal interest", as defined in the Act, either individually or in his capacity as an officer of Central Fidelity Bank. The Vice Mayor regularly makes this Disclosure as he may or may not know of the Bank's interest in any application that may come before City Council. Vice Mayor Sessoms' letter of January 1, 1997, is hereby made a part of the record.

June 24, 1997

Item V-E.

**CERTIFICATION OF
EXECUTIVE SESSION**

ITEM # 42292

Upon motion by Councilman Heischober, seconded by Council Lady Parker, City Council CERTIFIED THE EXECUTIVE SESSION TO BE IN ACCORDANCE WITH THE MOTION TO RECESS.

Only public business matters lawfully exempted from Open Meeting requirements by Virginia law were discussed in Executive Session to which this certification resolution applies;

AND,

Only such public business matters as were identified in the motion convening the Executive Session were heard, discussed or considered by Virginia Beach City Council.

Voting: 8-0

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M Strayhorn

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

June 24, 1997



Resolution

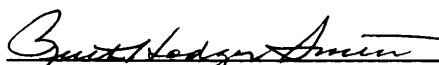
CERTIFICATION OF EXECUTIVE SESSION

VIRGINIA BEACH CITY COUNCIL

WHEREAS: The Virginia Beach City Council convened into **EXECUTIVE SESSION**, pursuant to the affirmative vote recorded in **ITEM # 42291** Page No. 20 and in accordance with the provisions of The **Virginia Freedom of Information Act**; and,

WHEREAS: Section 2.1-344. of the Code of Virginia requires a **certification** by the governing body that such Executive Session was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED: That the Virginia Beach City Council hereby certifies that, to the best of each member's knowledge, (a) only public business matters lawfully exempted from Open Meeting requirements by Virginia law were discussed in Executive Session to which this certification resolution applies; and, (b) only such public business matters as were identified in the motion convening this Executive Session were heard, discussed or considered by Virginia Beach City Council.


Ruth Hodges Smith, CMC/AAE
City Clerk

June 24, 1997

Item V-F.1.

MINUTES

ITEM # 42293

*Upon motion by Councilman Branch, seconded by Councilman Baum, City Council **APPROVED** the Minutes of the **INFORMAL AND FORMAL SESSIONS** of June 10, 1997.*

Voting: 8-0

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

June 24, 1997

Item V-G.

**ADOPT AGENDA
FOR FORMAL SESSION**

ITEM # 42294

BY CONSENSUS, City Council ADOPTED:

AGENDA FOR THE FORMAL SESSION

Item V-I.1.

PUBLIC HEARING

ITEM # 42295

Vice Mayor Sessoms DECLARED A PUBLIC HEARING:

AGRICULTURAL PRESERVATION PROGRAM (ARP)

(Blackwater and Pungo Boroughs)

There being no speakers, Vice Mayor Sessoms CLOSED THE PUBLIC HEARING.

Item V-J.

ORDINANCES

ITEM # 42296

*Upon motion by Councilman Jones, seconded by Councilman Branch, City Council **APPROVED BY CONSENT in ONE MOTION** Ordinances 1, 2, 3, 4, 5, 6, 7, 8 and 9*

*Item 7c was **DEFERRED INDEFINITELY BY CONSENT.***

*Item K.9 was **MOVED FORWARD** under Ordinances, as same was erroneously placed on the Planning Agenda.*

Voting: 8-0

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan**, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn*

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

Councilman Baum **DISCLOSED and ABSTAINED (re Item J.1.a.b.), pursuant to Section 2.1-639.14(E) of the Code of Virginia, he has an ownership interest exceeding \$10,000 in the properties which are the subject of the transactions. Councilman Baum wished to disclose this interest and declare he was able to participate in the ARP, he would be prohibited from participating in any discussion and vote by City Council regarding inclusion, in the ARP, of any property in which he has a personal interest. Councilman Baum's letter of June 20, 1997, is hereby made a part of the record*

***Council Lady McClanan voted a **VERBAL NAY** on Item J1.a.b.c.d.e.*

June 24, 1997



City of Virginia Beach

COUNCILMAN JOHN A. BAUM
BLACKWATER BOROUGH

June 19, 1997

6465 CRAGS CAUSEWAY
VIRGINIA BEACH VIRGINIA 23457
(804) 421-2652

The Honorable Meyera E. Oberndorf, Mayor
Members of City Council
Municipal Center
Virginia Beach, Virginia 23456

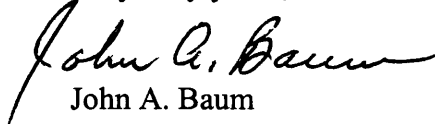
Dear Mayor Oberndorf and Members of Council:

On the agenda for our June 24th meeting are two ordinances entitled "An Ordinance Authorizing the Acquisition of an Agricultural Land Easement and the Issuance by the City of its Contract Obligations in the Maximum Principal Amount of \$128,103" and "An Ordinance Authorizing the Acquisition of an Agricultural Land Easement and the Issuance by the City of its Contract Obligations in the Maximum Principal Amount of \$721,860," both of which involve property in which I have an ownership interest exceeding \$10,000. In a January 23, 1996 opinion letter, written by the City Attorney and approved by the Commonwealth's Attorney, I was advised that the Conflict of Interests Act does not prohibit me from participating in the Agricultural Reserve Program ("ARP"). I was further advised, however, that I would be prohibited from participating in any discussion and vote by the Council regarding inclusion, in the ARP, of any property in which I have a personal interest.

I wanted to take this opportunity to let each of you know, in advance of Tuesday's meeting, that I intend to disclose my personal interest in these transactions in public during the formal session. I also intend to file a written disclosure of my personal interest in these transactions with the City Clerk requesting that a copy of the written disclosure, as well as a copy of this letter, be recorded in the official records of the Council.

As a final note, please be advised that I have excused myself, and will continue to excuse myself, from any meetings or discussions of the Council involving the ARP whenever property in which I have a personal interest is the subject of the meeting or discussion.

Very truly yours,


John A. Baum

JAB/lcb

cc: James K. Spore, City Manager
Ruth Hodges Smith, CMC/AEE, City Clerk
Leslie L. Lilley, City Attorney



COUNCILMAN JOHN A. BAUM
BLACKWATER BOROUGH

City of Virginia Beach

6465 CRAGS CAUSEWAY
VIRGINIA BEACH VIRGINIA 23457
(804) 421-2652

June 20, 1997

Mrs. Ruth Hodges Smith, CMC/AAE
City Clerk
Municipal Center
Virginia Beach, VA 23456

Re: Disclosure Pursuant to Section 2.1-639.14(E), Code of Virginia

Dear Mrs. Smith:

Pursuant to Section 2.1-639.14(E) of the State and Local Government Conflict of Interests Act, I hereby make the following disclosure:

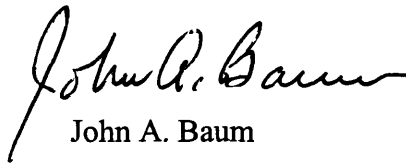
1. The transactions for which I am making this written disclosure are City Council's discussion and vote on "An Ordinance Authorizing the Acquisition of an Agricultural Land Easement and the Issuance by the City of its Contract Obligations in the Maximum Principal Amount of \$128,103" and "An Ordinance Authorizing the Acquisition of an Agricultural Land Easement and the Issuance by the City of its Contract Obligations in the Maximum Principal Amount of \$721,860," both of which are on City Council's agenda for the June 24, 1997 meeting.
2. The nature of my "personal interest" in the transactions is that I have an ownership interest exceeding \$10,000 in the properties which are the subject of the transactions.
3. In an opinion from the City Attorney dated January 23, 1996 (attached), I was advised that I would have a "personal interest in a contract" with the City of Virginia Beach to purchase the development rights, under the Agricultural Reserve Program ("ARP"), in property in which I have a personal interest. I was further advised,

however, that two exceptions to the "prohibited contracts" provisions of the Act would permit me to participate in the Program. And finally, I was advised that, although my participation in the ARP would be permitted, I would be prohibited from participating in any discussion and vote by City Council regarding inclusion, in the ARP, of any property in which I have a personal interest.

Accordingly, I respectfully request that you record this declaration, as well as the attached letter from me to the Mayor and Council regarding this same issue, in the official records of City Council.

Thank you for your assistance and cooperation in this matter.

Very truly yours,

A handwritten signature in cursive script, reading "John A. Baum". The signature is written in dark ink and is positioned above the printed name.

John A. Baum

JAB/lcb

Attachments

G:\USERS\LBABB\WP\WORK\BAUM RMB



LESLIE L. LILLEY
CITY ATTORNEY

City of Virginia Beach

MUNICIPAL CENTER
VIRGINIA BEACH VIRGINIA 23456 9004
(804) 427 4531
FAX (804) 426 5687
TDD (804) 427 4305

In Reply Refer To Our File No. OP-340

January 23, 1996

Councilmember John A. Baum
Municipal Center
Virginia Beach, Virginia 23456

Re: Request for Conflict of Interests Act Opinion

Dear Councilmember Baum:

I am writing in response to your request for an opinion as to whether or not the State and Local Government Conflict of Interests Act precludes you from participating in the City's Agricultural Reserve Program.

SUMMARY CONCLUSION

From my review of the Conflict of Interests Act (the "Act"), and the facts set forth herein, I am of the opinion that you would have a "personal interest in a contract" with the City of Virginia Beach to purchase the development rights of your property under the Agricultural Reserve Program. However, I am also of the opinion that, based upon two exceptions to the "prohibited contracts" provisions of the Act (discussed at length herein), you would be permitted to participate in the Program.

FACTS PRESENTED

By ordinance adopted May 9, 1995, City Council added a new Appendix J to the City Code establishing to the Agricultural Reserve Program ("ARP"). Under the ARP, the City may purchase preservation easements on parcels located south of the Green Line which meet

Re: Request for Conflict of Interests Act Opinion

designated eligibility criteria. In determining how much to offer for a preservation easement, the City Manager ascertains the value of the subject property's "development rights." This value is defined as the difference between the fair market value of the property without encumbrance by a preservation easement, and its fair market value so encumbered. Thereafter, the City Manager attempts to reach an agreement with the property owner as to the terms and conditions, including price, of the purchase of such a preservation easement. However, final approval of any such purchase, including approval of the purchase price, is vested solely in the City Council.

You have advised that your concern, and reason for requesting this opinion, is that you and your brothers and sisters own an undivided one-sixth interest in property located south of the Green Line which meets the eligibility criteria for consideration under the ARP. You have also advised that the value of your interest in the subject property exceeds \$10,000.00. Finally, you have advised that none of your brothers and sisters resides in your household or is dependent upon you for financial support, and that you do not depend upon any of your brothers or sisters for financial support.

Please review and verify the accuracy of the facts set forth herein as you may only rely upon this opinion if they are correct and complete.

ISSUE PRESENTED

Does the Conflict of Interests Act preclude you from participating in the City's Agricultural Reserve Program?

DISCUSSION

In order to respond to your inquiry, it is necessary to address the issue of whether or not your participation in the Agricultural Reserve Program would violate the "prohibited contracts" provisions of the Act.

I. Application of the Act's Definitions to the Facts Presented

The State and Local Government Conflict of Interests Act is set forth in §§ 2.1-639.1 *et seq.* of the Code of Virginia (1950), as amended. For purposes of this opinion, the following definitions, found in § 2.1-639.2 of the Act, must be applied to the particular facts of a given situation.

Re: Request for Conflict of Interests Act Opinion

A. *"Governmental agency"* means each component part of the legislative, executive or judicial branch of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties.

Comment: The Virginia Beach City Council is a governmental agency within the meaning of the Act.

B. *"Officer"* means any person appointed or elected to any governmental or advisory agency, whether or not he receives any compensation or other emolument of office.

Comment: As an elected governmental official, you are an officer as that term is defined in the Act.

C. *"Immediate family"* means (i) a spouse and (ii) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent. For purposes of the Act, *"dependent"* means a son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if such person receives from the officer or employee, or provides to the officer or employee, more than one-half of his financial support.

Comment: Under the facts presented, none of your brothers or sisters is a member of your "immediate family" as that term is defined in the Act.

D. *"Personal interest"* means a financial benefit or liability which accrues to an officer or employee, or to a member of his immediate family. The interest exists by reason of one of five categories specified therein as: 1) ownership in a business if the ownership interest exceeds 3% of the total equity of the business; 2) annual income from ownership in real or personal property or a business in excess of \$10,000.00; 3) salary from the use of property or paid by a business that exceeds \$10,000.00 annually; 4) ownership of real or personal property when the interest exceeds \$10,000.00 in value, exclusive of ownership in a business, or salary; and 5) personal liability incurred or assumed on behalf of a business which exceeds 3% of the asset value of the business.

Comment: You have a "personal interest" in the property you own by virtue of the fact that the value of your interest in said property exceeds \$10,000.00.

Re: Request for Conflict of Interests Act Opinion

E. *"Contract"* means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency which involves the payment of money appropriated by the General Assembly or a political subdivision thereof."

Comment: An agreement between you and the City for the purchase of a preservation easement on your property pursuant to the ARP would constitute a "contract" as that term is defined in the Act.

F. *"Personal interest in a contract"* means a personal interest which an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business which is a party to the contract.

Comment: You would have a "personal interest in a contract" with the City of Virginia Beach involving the City's purchase of a preservation easement in your property due to your being a party to the contract.

II. "Prohibited Contracts"

Section 2.1-639.7 of the Act provides, in pertinent part, that "[n]o person elected or appointed as a member of the governing body of a county, city or town shall have a personal interest in (i) any contract with his governing body...." Therefore, in the absence of an exception to this provision of the Act, you would be prohibited from entering into an agreement with the City for the purchase of a preservation easement on your property pursuant to the ARP.

III. Exceptions to "Prohibited Contracts" Provisions

Section 2.1-639.9 of the Act provides certain enumerated exceptions to the "prohibited contracts" provisions of the Act. Specifically, with respect to the facts presented herein, § 2.1-639.9 provides that --

[t]he provisions of §§ 2.1-639.6 through 2.1-639.8 shall not apply to:

1. The sale, lease or exchange of real property between an officer or employee and a governmental agency, provided the officer or employee does not participate in any way as such officer or employee in such sale, lease or exchange, and this fact is set forth as a matter of public record by the governing

Re: Request for Conflict of Interests Act Opinion

body of the governmental agency or by the administrative head thereof;

...

2. Grants or other payment under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency;

In this situation, the City's purchase of a preservation easement on your property pursuant to the ARP would constitute the "sale, lease or exchange of real property between an officer ... and a governmental agency...." Furthermore, because the ARP provides that the amount to be paid for preservation easements is subject to the final approval of City Council, the ARP constitutes a "program wherein...the amounts paid to all qualified applicants are established solely by the administering governmental agency...."

CONCLUSION

I have concluded that you would have a "personal interest in a contract" with the City of Virginia Beach to purchase the development rights of your property under the ARP. I have also concluded, however, that based upon the facts presented, there are two exceptions to the "prohibited contracts" provisions of the Act which would permit you to participate in the Program. Those exceptions involve (i) a contract for the sale, lease, or exchange of real property between an officer and a governmental agency, provided the officer does not participate in any way as an officer in such sale, lease, and exchange, and this fact is set forth as a matter of public record; and (ii) payment under any program wherein ... the amounts paid to all qualified applicants are established solely by the administering governmental agency.

Therefore, as long as you do not participate as a member of Council in the City's purchase of an interest in your property under the ARP, and set forth your non-participation as a matter of public record; and as long as the ARP continues to provide that the amount to be paid by the City for such interest shall be established solely by City Council, the Conflict of Interests Act would not prohibit you from participating in the Program. Please be advised, however, that if you choose to apply for participation in the ARP, and your property's inclusion in the ARP becomes the subject of discussion and a vote by the City Council, you would be disqualified from participating in such discussion and vote. This is based upon § 2.1-639.11(A)(1) of the Act which requires each officer and employee of any

January 23, 1996

Re: Request for Conflict of Interests Act Opinion

state or local governmental or advisory agency to disqualify himself from participating in any transaction which has application solely to property in which he has a personal interest.

*

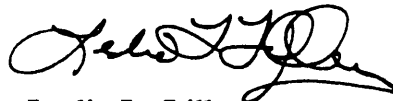
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As a final note, the Conflict of Interests Act deals with the types of influences upon a public officer's judgment which are clearly improper. The law does not, however, protect against all appearances of improper influence. In that respect, the Act places the burden on the individual officer to evaluate whether the facts presented create an appearance of impropriety which is unacceptable or which would affect the confidence of the public in the officer's ability to be impartial.

I trust that this letter has adequately addressed your concern. If you have any additional questions or concerns, please do not hesitate to call me.

Very truly yours,



Leslie L. Lilley
City Attorney

LLL/clb

Seen and Approved:



Robert J. Humphreys
Commonwealth's Attorney



COUNCILMAN JOHN A. BAUM
BLACKWATER BOROUGH

City of Virginia Beach

June 19, 1997

6465 CRAGS CAUSEWAY
VIRGINIA BEACH VIRGINIA 23457
(804) 421-2652

The Honorable Meyera E. Oberndorf, Mayor
Members of City Council
Municipal Center
Virginia Beach, Virginia 23456

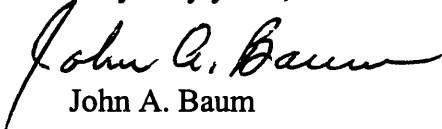
Dear Mayor Oberndorf and Members of Council:

On the agenda for our June 24th meeting are two ordinances entitled "An Ordinance Authorizing the Acquisition of an Agricultural Land Easement and the Issuance by the City of its Contract Obligations in the Maximum Principal Amount of \$128,103" and "An Ordinance Authorizing the Acquisition of an Agricultural Land Easement and the Issuance by the City of its Contract Obligations in the Maximum Principal Amount of \$721,860," both of which involve property in which I have an ownership interest exceeding \$10,000. In a January 23, 1996 opinion letter, written by the City Attorney and approved by the Commonwealth's Attorney, I was advised that the Conflict of Interests Act does not prohibit me from participating in the Agricultural Reserve Program ("ARP"). I was further advised, however, that I would be prohibited from participating in any discussion and vote by the Council regarding inclusion, in the ARP, of any property in which I have a personal interest.

I wanted to take this opportunity to let each of you know, in advance of Tuesday's meeting, that I intend to disclose my personal interest in these transactions in public during the formal session. I also intend to file a written disclosure of my personal interest in these transactions with the City Clerk requesting that a copy of the written disclosure, as well as a copy of this letter, be recorded in the official records of the Council.

As a final note, please be advised that I have excused myself, and will continue to excuse myself, from any meetings or discussions of the Council involving the ARP whenever property in which I have a personal interest is the subject of the meeting or discussion.

Very truly yours,


John A. Baum

JAB/lcb

cc: James K. Spore, City Manager
Ruth Hodges Smith, CMC/AEE, City Clerk
Leslie L. Lilley, City Attorney

Item V-J.1.a.b.

ORDINANCES

ITEM # 42297

*Upon motion by Councilman Jones, seconded by Councilman Branch, City Council **ADOPTED**:*

Ordinances to authorize the acquisition of Agricultural Land Preservation Easements (ARP) and the issuance by the City of its contract obligations:

- a. John A., Wesley L., Marshall P. and Glenn Clark Baum; Jean Baum Brown and Charlotte Baum Ives - 101.35 Acres
Installment Purchase Agreement No. 1997-10 - \$128,103.00
(Blackwater Borough)*
- b. John A., Wesley L., Marshall P. and Glenn Clark Baum; Jean Baum Brown and Charlotte Baum Ives - 465.67 Acres
Installment Purchase Agreement No. 1997-11 - \$721,860.00
(Blackwater Borough)*

Voting: 6-1 (By Consent)

Council Members Voting Aye:

Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn

Council Members Voting Nay:

Reba S. McClanan

Council Members Abstaining:

John A. Baum

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

****Councilman Baum DISCLOSED and ABSTAINED (re Item J.1.a.b.), pursuant to Section 2.1-639.14(E) of the Code of Virginia, he has an ownership interest exceeding \$10,000 in the properties which are the subject of the transactions. Councilman Baum wished to disclose this interest and declare he was able to participate in the ARP, he would be prohibited from participating in any discussion and vote by City Council regarding inclusion, in the ARP, of any property in which he has a personal interest. Councilman Baum's letter of June 20, 1997, is hereby made a part of the record.***

June 24, 1997

1 AN ORDINANCE AUTHORIZING THE ACQUISITION OF AN
2 AGRICULTURAL LAND PRESERVATION EASEMENT AND
3 THE ISSUANCE BY THE CITY OF ITS CONTRACT
4 OBLIGATIONS IN THE MAXIMUM PRINCIPAL AMOUNT OF
5 \$128,103

6 WHEREAS, pursuant to the Agricultural Lands Preservation
7 Ordinance (the "Ordinance"), Appendix J of the Code of the
8 City of Virginia Beach, there has been presented to the City
9 Council for approval an Installment Purchase Agreement for the
10 acquisition of the Development Rights (as defined in the
11 Installment Purchase Agreement, a true copy of which is hereto
12 affixed) on certain property located in the City and more
13 fully described in Exhibit B of the Installment Purchase
14 Agreement for a purchase price of \$128,103; and

15 WHEREAS, the aforesaid Development Rights shall be
16 acquired through the acquisition of a perpetual agricultural
17 land preservation easement, as defined in, and in compliance
18 with, the requirements of the Ordinance; and

19 WHEREAS, the City Council has reviewed the proposed terms
20 and conditions of the purchase as evidenced by the Installment
21 Purchase Agreement;

22 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
23 CITY OF VIRGINIA BEACH, VIRGINIA:

24 1. The City Council hereby determines and finds that
25 the proposed terms and conditions of the purchase of the
26 Development Rights pursuant to the Installment Purchase
27 Agreement, including the purchase price and manner of payment,
28 are fair and reasonable and in furtherance of the purposes of
29 the Ordinance, and the City Manager is hereby authorized to
30 approve, upon or before the execution and delivery of the
31 Installment Purchase Agreement, the rate of interest to accrue

on the unpaid principal balance of the purchase price set forth hereinabove as the greater of 6.0% per annum or the per annum rate which is equal to the yield on United States Treasury STRIPS purchased by the City to fund such unpaid principal balance; provided, however, that such rate of interest shall not exceed 7.50% unless the approval of the City Council by resolution duly adopted is first obtained.

2. The City Council hereby further determines that funding is available for the acquisition of the Development Rights pursuant to the Installment Purchase Agreement on the terms and conditions set forth therein.

3. The City Council hereby expressly approves the Installment Purchase Agreement in the form and substance presented at this meeting and, subject to the determination of the City Attorney that there are no defects in title to the property or other restrictions or encumbrances thereon which may, in the opinion of the City Attorney, adversely affect the City's interests, authorizes the City Manager to execute and deliver the Installment Purchase Agreement in substantially the same form and substance as presented at this meeting with such minor modifications, insertions, completions or omissions which do not materially alter the purchase price or manner of payment, as the City Manager shall approve. The City Council further directs the City Clerk to affix the seal of the City to, and attest same on, the Installment Purchase Agreement. The City Council expressly authorizes the incurrence of the indebtedness represented by the issuance and delivery of the Installment Purchase Agreement.

60 4. The City Council hereby elects to issue the
61 indebtedness under the Charter of the City rather than
62 pursuant to the Public Finance Act of 1991 and hereby
63 constitutes the indebtedness a contractual obligation bearing
64 the full faith and credit of the City.

65 Adopted by the Council of the City of Virginia Beach,
66 Virginia, on this 24TH day of JUNE, 1997.

67 Adoption requires an affirmative vote of a majority of
68 all members of the City Council.
69

70 CA-97-6685
71 wmm\arp\purchase\bauml.orn
72 R-1
73 June 10, 1997

74 APPROVED AS TO CONTENT:
75
76 Louis E. Culley
77 Agriculture Department

74 APPROVED AS TO LEGAL
75 SUFFICIENCY:
76 William M. Macchi
77 Law Department

78 CERTIFIED AS TO AVAILABILITY OF FUNDS:
79 Patricia A. Phillips
80 Director of Finance

JOHN A BAUM, WESLEY L. BAUM, MARSHALL P. BAUM,
GLENN CLARK BAUM, JEAN BAUM BROWN AND CHARLOTTE BAUM IVES,
the "Seller"

and

CITY OF VIRGINIA BEACH, VIRGINIA
the "City"

INSTALLMENT PURCHASE AGREEMENT
(Agreement No. 1997-10)

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(This Table of Contents is not part of the Installment Purchase Agreement and is only for convenience of reference)

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INSTALLMENT PURCHASE AGREEMENT
(Agreement No. 1997-10)

THIS INSTALLMENT PURCHASE AGREEMENT (this "Agreement") is made as of the ____ day of _____, 199_ between JOHN A. BAUM, WESLEY L. BAUM, MARSHALL P. BAUM, GLENN CLARK BAUM, JEAN BAUM BROWN and CHARLOTTE BAUM IVES (collectively, the "Seller") and CITY OF VIRGINIA BEACH, VIRGINIA, a body politic and corporate of the Commonwealth of Virginia (the "City").

RECITALS

A. Pursuant to the authority granted by the Open-Space Land Act, Chapter 17, Title 10.1 of the Code of Virginia of 1950, as amended (the "Act"), the City adopted the Ordinance (hereinafter defined in Section 1.1) to promote and encourage the preservation of agricultural land in designated areas within the southern portion of the City.

B In furtherance of the purposes of the Act and the Ordinance, the City has established the Agricultural Reserve Program of the City which provides for the acquisition of Development Rights (hereinafter defined in Section 1.1) through the purchase of agricultural land preservation easements with respect to property located in the portions of the City covered by the Ordinance.

C. The Seller is the owner in fee simple of Land (hereinafter defined in Section 1.1) which is located in that portion of the City subject to the Ordinance and meets the eligibility criteria of Section 7 of the Ordinance.

D The Seller has agreed to sell, and the City has agreed to purchase, Seller's Development Rights in the Land on and subject to the terms and conditions hereinafter set forth.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Seller and the City hereby agree as follows:

ARTICLE 1

DEFINITIONS

SECTION 1.1 Definitions. As used in this Agreement, the following terms have the following meanings, unless the context clearly indicates a different meaning:

"Agricultural Use" means (i) the bona fide production of crops, animal or fowl, including, but not limited to, the production of fruits, vegetables, honey, grains, meat, poultry and dairy products, the raising of livestock and poultry, and the production and harvest of products from horticultural, silvicultural or aquacultural activity, (ii) the repair, expansion or replacement of no more than one (1) bona fide dwelling occupied by the landowner or tenant as of the date of application for entry in the Agricultural Reserve Program and no more than one freestanding mobile home, as permitted by Section 19-19 of the Virginia Beach City Code, and (iii) accessory uses directly related to agricultural activities conducted on the same property, including the sale of agricultural products as permitted by Section 401 of the Virginia Beach City Zoning Ordinance. The term does not include the processing of agricultural, silvicultural, horticultural or aquacultural products, except as an accessory use.

"Business Day" or "business day" means a day on which (a) banks located in the City and in the city in which the principal office of the Registrar is located are not required or authorized by law or executive order to close for business, and (b) The New York Stock Exchange is not closed.

"City" means the City of Virginia Beach, Virginia, a body politic and corporate and a political subdivision created and existing under and by virtue of the Constitution and laws of the State, its successors and assigns.

"City Council" means the Council of the City.

"City Manager" means the City Manager of the City.

"Code" means the Internal Revenue Code of 1986, as amended. Each reference to the Code herein shall be deemed to include the United States Treasury Regulations in effect or proposed from time to time with respect thereto.

"Deed of Easement" means the Deed of Easement of even date herewith from the Seller to the City, which shall convey the Development Rights to the City in perpetuity. The Deed of Easement shall be substantially in the form attached hereto as **Exhibit A** and made a part hereof.

"Development Rights" mean the rights of the Seller in the Land to develop the Land for any use other than an Agricultural Use. Development Rights shall include, but not be limited to, the right to develop the Land for any commercial, industrial or residential use except as expressly permitted by the Ordinance.

"Enabling Legislation" means, collectively, (1) the Open Space Land Act, Chapter 17 of Title 10.1 of the Code of Virginia of 1950, as amended, and (2) the Ordinance.

"Estate Settlement Transfer" means the transfer by the legal representative of the estate of a deceased Seller of such Seller's rights in and to this Agreement in connection with the distribution of the deceased Seller's estate or other settlement of such decedent Seller's estate.

"Interest Payment Date" means June 1 and December 1 in each year, commencing _____, 199_.

"Land" means the tract or tracts of land located in Virginia Beach, Virginia, containing approximately _____ acres, and more particularly described in **Exhibit B** attached hereto and made a part hereof.

"Ordinance" means the Agricultural Lands Preservation Ordinance adopted by the City Council on May 9, 1995, as Appendix J to the City Code, as the same may be amended or modified from time to time.

"Permitted Encumbrances" mean the encumbrances listed on **Exhibit C** attached hereto and made a part hereof and any encumbrances on or with respect to the Land or any portion thereof hereafter approved, in writing, by the City.

"Person" or "person" means any natural person, firm, association, corporation, company, trust, partnership, public body or other entity.

"Purchase Price" means \$128,103, the purchase price to be paid by the City to the Registered Owner in accordance with this Agreement.

"Record Date" means the fifteenth (15th) day (whether or not a Business Day) of the calendar month immediately preceding each Interest Payment Date and the principal payment date.

"Registered Owner" means the registered owner of this Agreement as shown on the registration books maintained by the Registrar.

"Registrar" means First Union National Bank of Virginia or any other person hereafter appointed by the City to act as Registrar and paying agent for this Agreement.

"Seller" means, collectively, John A. Baum, Wesley L. Baum, Marshall P. Baum, Glenn Clark Baum, Jean Baum Brown and Charlotte Baum Ives

"State" means the Commonwealth of Virginia.

SECTION 1.2 Rules of Construction.

(a) The words "hereof," "herein," "hereunder," "hereto," and other words of similar import refer to this Agreement in its entirety.

(b) The terms "agree" and "agreements" contained herein are intended to include and mean "covenant" and "covenants."

(c) References to Articles, Sections, and other subdivisions of this Agreement are to the designated Articles, Sections, and other subdivisions of this Agreement.

(d) The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.

(e) All references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

ARTICLE 2

SALE AND PURCHASE OF DEVELOPMENT RIGHTS

SECTION 2.1 Agreement to Sell and Purchase Development Rights. The Seller agrees to sell the Development Rights in the Land to the City and the City agrees to purchase the Development Rights in the Land from the Seller on the date hereof for the Purchase Price.

SECTION 2.2 Delivery of Deed of Easement. In order to evidence the sale of the Development Rights to the City, the Seller shall execute and deliver to the City on the date hereof the Deed of Easement in the form attached hereto as **Exhibit A** and made a part hereof. The Deed of Easement shall be recorded in the Clerk's Office of the Circuit Court of the City.

ARTICLE 3

PAYMENT OF PURCHASE PRICE

SECTION 3.1 Payment of Purchase Price.

(a) The City shall pay the principal portion of the Purchase Price to the Registered Owner in a single installment on _____, 202_ [25-year maturity date]. The Purchase Price is \$128,103.

(b) Interest on the unpaid principal balance of the Purchase Price shall accrue from the date of recordation of the Deed of Easement and shall be payable to the Registered Owner on _____, 199_, and semiannually thereafter on June 1 and December 1 in each year to and including _____, 202_, at the rate of ___% per annum. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months.

(c) Both the single installment of principal of the Purchase Price and the interest on the unpaid balance thereof are payable in lawful money of the United States of America at the time of payment.

(d) Payment of interest on the unpaid balance of the Purchase Price shall be made by the City on each Interest Payment Date to the Registrar. The Registrar shall forward all such interest payments by check or draft mailed to the person(s) appearing on the registration books of the City maintained by the Registrar as the Registered Owner on the Record Date, at the address of such Registered Owner as it appears on such registration books. The single installment of principal of the Purchase Price shall be paid on the principal payment date set forth in Subsection (a) above by the Registrar to the Registered Owner as of the Record Date upon presentation and surrender of this Agreement at the office of the Registrar.

(e) The City's obligation to pay the Purchase Price hereunder and to pay interest on the unpaid balance of the Purchase Price is a general obligation of the City, and the full faith and credit and the unlimited taxing power of the City are irrevocably pledged to the punctual payment of the Purchase Price and the interest on the unpaid principal balance of the Purchase Price as and when the same respectively become due and payable.

SECTION 3.2 Registration and Transfer of this Agreement.

(a) Until the Purchase Price and all interest thereon have been paid in full, the City shall maintain and keep at the offices of the Registrar, registration books for the registration and transfer of this Agreement; and upon presentation of this Agreement for such purpose at the offices of the Registrar, the Registrar shall register or cause to be

registered on such registration books, and permit to be transferred thereon, under such reasonable regulations as the City or the Registrar may prescribe, the ownership of this Agreement. The Registrar, however, shall not be required to make any such registration and transfer during the period from the Record Date to the next succeeding Interest Payment Date or final principal payment date.

(b) Except for an Estate Settlement Transfer, this Agreement may not be transferred by the Registered Owner prior to the expiration of a one (1) year period from the date this Agreement has been fully executed, delivered and become effective, and any such attempted transfer shall be null and void. The Registrar shall be instructed not to make any such transfers (other than an Estate Settlement Transfer) on its registration books kept for the purpose of registering the transfer of this Agreement prior to the expiration of said one (1) year period.

(c) The Seller is the original Registered Owner. This Agreement shall be transferable only upon the books of the City maintained for such purpose by the Registrar, at the written request of the Registered Owner as then shown on such registration books or his attorney duly authorized in writing, upon presentation and surrender of this Agreement, together with a written instrument of transfer substantially in the form attached hereto as **Exhibit D**, or as may otherwise be satisfactory to and approved by the Registrar in writing, duly executed by the Registered Owner or his attorney duly authorized in writing. Upon the surrender for transfer of this Agreement, the Registrar shall complete the Schedule of Transferees attached hereto as **Exhibit E** with the name, address and tax identification number of the transferee Registered Owner, and the date of the transfer, provided, however, that if there is any conflict between the information set forth in **Exhibit E** hereto and the registration books maintained by the Registrar, the information shown on such registration books shall control.

The City and the Registrar may deem and treat the person in whose name this Agreement is registered upon the books of the City maintained by the Registrar as the absolute owner of this Agreement, whether any payments hereunder shall be overdue or not, for the purpose of receiving payment of, or on account of, the Purchase Price and interest thereon and for all other purposes, and all such payments so made to any such Registered Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon this Agreement to the extent of the sum or sums so paid, and neither the City nor the Registrar shall be affected by any notice to the contrary.

For every registration of transfer of this Agreement, the City or the Registrar may make a charge sufficient to reimburse themselves for any tax or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such transfer as a condition precedent to the exercise of the privilege of registering such transfer.

SECTION 3.3 Mutilated, Lost, Stolen or Destroyed Agreement. In the event that this Agreement is mutilated, lost, stolen or destroyed, the City and the Registered Owner (as then shown on the registration books maintained by the Registrar) shall execute and deliver a substitute agreement having the same terms and provisions as the mutilated, lost, stolen or destroyed Agreement; provided that, in the case of any mutilated Agreement, such mutilated Agreement shall first be surrendered to the Registrar, and, in the case of any lost, stolen or destroyed Agreement there shall be first furnished to the City and the Registrar evidence of such loss, theft or destruction satisfactory to the City and the Registrar, together with indemnity satisfactory to each of them in their sole discretion. The City and the Registrar may charge the Registered Owner requesting such new Agreement their expenses and reasonable fees, if any, in this connection. If after the delivery of such substitute Agreement, a bona fide purchaser of the original Agreement (in lieu of which such substitute Agreement was issued) presents for payment such original Agreement, the City and the Registrar shall be entitled to recover such substitute Agreement from the person to whom it was delivered or any other person who receives delivery thereof, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor or otherwise to the extent of any loss, damage, cost or expense incurred by the City and the Registrar in connection therewith.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

SECTION 4.1 Representations and Warranties of the City. The City makes the following representations and warranties:

(a) The City is a body politic and corporate and a political subdivision of the State.

(b) The City has the necessary power and authority to acquire the Development Rights, to enter into this Agreement, to perform and observe the covenants and agreements on its part contained in this Agreement and to carry out and consummate all transactions contemplated hereby. By proper action, the City has duly authorized the execution and delivery of this Agreement.

(c) This Agreement has been duly and properly authorized, executed, sealed and delivered by the City, constitutes the valid and legally binding obligation of the City, and is enforceable against the City in accordance with its terms.

(d) There are no proceedings pending or, to the knowledge of the City, threatened before any court or administrative agency which may affect the authority of the City to enter into this Agreement.

SECTION 4.2 Representations and Warranties of the Seller. The Seller makes the following representations and warranties:

(a) The Seller has full power and authority to execute and deliver this Agreement and the Deed of Easement, and to incur and perform the obligations provided for herein and therein. No consent or approval of any person or public authority or regulatory body is required as a condition to the validity or enforceability of this Agreement or the Deed of Easement, or, if required, the same has been duly obtained.

(b) This Agreement and the Deed of Easement have been duly and properly executed by the Seller, constitute valid and legally binding obligations of the Seller, and are fully enforceable against the Seller in accordance with their respective terms.

(c) There is no litigation or proceeding pending or, so far as the Seller knows, threatened before any court or administrative agency which, in the opinion of the Seller, will materially adversely affect the authority of the Seller to enter into, or the validity or enforceability of, this Agreement or the Deed of Easement.

(d) There is (i) no provision of any existing mortgage, indenture, contract or agreement binding on the Seller or affecting the Land, and (ii) to the knowledge of the Seller, no provision of law or order of court binding upon the Seller or affecting the Land, which would conflict with or in any way prevent the execution, delivery, or performance of the terms of this Agreement or the Deed of Easement, or which would be in default or violated as a result of such execution, delivery or performance, or for which adequate consents, waivers or, if necessary, releases or subordinations, have not been obtained.

(e) There exist no liens, security interests or other encumbrances on or with respect to the Land (other than Permitted Encumbrances), and at the time of execution and delivery of the Deed of Easement there will be no liens, security interests or other encumbrances of the Development Rights to be conveyed thereby.

(f) The Seller is not a nonresident alien of the United States of America for purposes of federal income taxation.

(g) The Social Security Numbers of the Seller are 229-30-5288 (for John A. Baum), 229-30-1919 (for Wesley L. Baum), 231-34-2086 (for Marshall P. Baum), 224-44-9106 (for Glenn Clark Baum), 226-54-7738 (for Jean Baum Brown) and 224-38-6800 (for Charlotte Baum Ives).

The representations in subsections (f) and (g) above are made under penalties of perjury and the information contained therein may be disclosed by the City to the Internal Revenue

Service. The Seller acknowledges that any false statement in such subsections could be punished by fine, imprisonment or both.

(h) To the best of the knowledge, information and belief of the Seller, the Land has not been used for the manufacture, storage, treatment, disposal or release of any hazardous waste or substance.

ARTICLE 5

PROVISIONS RELATING TO EXCLUSION OF INTEREST FROM INCOME FOR FEDERAL INCOME TAXATION

SECTION 5.1 Intent of City and Tax Covenant of City. The City intends that the interest payable under this Agreement shall not be includable in the gross income of the Registered Owner for purposes of federal income taxation pursuant to Section 103 of the Code. Accordingly, the City shall not knowingly take or permit to be taken any other action or actions or omit or fail to take any action, which would cause this Agreement to be an "arbitrage bond" within the meaning of Section 148 of the Code, or which would otherwise cause interest payable under this Agreement to become includable in the gross income of any Registered Owner for purposes of federal income taxation.

SECTION 5.2 Acknowledgment of Seller with Regard to Tax Consequences of Transaction. The Seller has received an opinion from Kaufman & Canoles, P.C., Bond Counsel, dated the date hereof, to the effect that under existing laws, regulations, rulings and decisions, interest payable under this Agreement is not includable in the gross income of the Seller for federal income tax purposes, which opinion assumes continuous compliance with certain covenants in the Tax Certificate and Compliance Agreement to be executed and delivered by the City on the date of delivery of this Agreement and is otherwise limited in accordance with its terms. The Seller acknowledges that Seller has made Seller's own independent investigation and has consulted with such attorneys, accountants and others as the Seller shall have selected in the Seller's sole discretion to advise the Seller with respect to all other tax considerations related to the transaction contemplated hereby (including, but not limited to, installment sales treatment under Section 453 of the Code, charitable contribution deductions under Section 170 of the Code, and federal estate tax implications); and the Seller certifies that the Seller has not looked to or relied upon the City or any of its officials, agents or employees, or to Bond Counsel, with respect to any of such matters.

ARTICLE 6

THE REGISTRAR

SECTION 6.1 Appointment of Registrar. First Union National Bank of Virginia is hereby designated and appointed to act as Registrar for this Agreement.

SECTION 6.2 Ownership of Agreement. The Registrar, in its individual capacity or as trustee for holders of participation interests in this Agreement, may in good faith buy, sell, own and hold this Agreement, and may join in any action which any Registered owner may be entitled to take with like effect as if it did not act as Registrar hereunder. The Registrar, in its individual capacity, either as principal or agent, may also engage, or have an interest, in any financial or other transaction with the City, and may act as depository, trustee or agent for other obligations of the City as freely as if it did not act in any capacity hereunder.

SECTION 6.3 Removal of Registrar and Appointment of Successor Registrar. The City shall have the right, subject to the terms of any agreement with the Registrar, to remove the Registrar any time by filing with such Registrar to be removed, and with the Registered Owner, an instrument in writing. Notwithstanding the foregoing, such removal shall not be effective until a successor Registrar has assumed the Registrar's duties hereunder. The City shall have the sole right to select a successor Registrar.

SECTION 6.4 Qualifications of Successor Registrar. Any successor Registrar shall be either (a) the Department of Finance of the City, (b) an officer or employee of the City, or (c) a bank, trust company or other financial institution duly organized under the laws of the United States or any state or territory thereof which is authorized by law and permitted under the laws of the State to perform all the duties imposed upon it as Registrar by this Agreement.

SECTION 6.5 Successor by Merger or Consolidation. If the Registrar is a bank, trust company or other financial institution, any institution or corporation into which the Registrar hereunder may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Registrar hereunder shall be a party or any institution or corporation succeeding to the corporate trust business (if any) of the Registrar, shall be the successor Registrar under this Agreement, without the execution or filing of any paper or any further act on the part of the parties hereto, anything in this Agreement to the contrary notwithstanding.

ARTICLE 7

MISCELLANEOUS

SECTION 7.1 Successors of City. In the event of the dissolution of the City, all the covenants, stipulations, promises and agreements in this Agreement contained, by or on behalf of, or for the benefit of, the City, the Seller, any other Registered Owner and the Registrar, shall bind or inure to the benefit of the successors of the City from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the City shall be transferred.

SECTION 7.2 Parties in Interest. Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation, other than the City, the Seller, any other Registered Owner and the Registrar, any right, remedy or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the City, the Seller, any other Registered Owner from time to time of this Agreement and the Registrar.

SECTION 7.3 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns, including, without limitation, all Registered Owners from time to time of this Agreement.

SECTION 7.4 Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein or therein.

SECTION 7.5 Prior Agreements Cancelled; No Merger. This Agreement shall completely and fully supersede all other prior agreements, both written and oral, between the City and the Seller relating to the acquisition of the Development Rights. Neither the City nor the Seller shall hereafter have any rights under such prior agreements but shall look solely to this Agreement and the Deed of Easement for definitions and determination of all of their respective rights, liabilities and responsibilities relating to the Land, the Development Rights and the payment for the Development Rights. In addition, this Agreement shall survive the execution and recording of the Deed of Easement in all respects and shall not be merged therein.

SECTION 7.6 Amendments, Changes and Modifications. This Agreement may not be amended, changed, modified, altered or terminated except by an agreement in writing between the City and the then Registered Owner. An executed counterpart of any

such amendment shall be attached to this Agreement and shall be binding upon such Registered Owner and all successor Registered Owners.

SECTION 7.7 No Personal Liability of City Officials. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, officer, agent or employee of the City in his or her individual capacity, and neither the officers or employees of the City nor any official executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 7.8 Governing Law. The laws of the State shall govern the construction and enforcement of this Agreement.

SECTION 7.9 Notices. Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals, certificates or other communications required under this Agreement to be in writing shall be sufficiently given and shall be deemed to have been properly given three Business Days after the same is mailed by certified mail, postage prepaid, return receipt requested, addressed to the person to whom any such notice, demand, request, approval, certificate or other communication is to be given, at the address for such person designated below:

City:	City Manager Municipal Center Virginia Beach, VA 23456
with a copy to:	City Attorney Municipal Center Virginia Beach, VA 23456

Seller: John A. Baum
6465 Craggs Causeway
Virginia Beach, Virginia 23457

Wesley L. Baum
115 Brumsey Road
Moyock, North Carolina 27958-9218

Marshall P. Baum
9 Ridgeway Drive
Chillicothe, Ohio 45601

Charlotte Baum Ives
3217 Colonial Avenue, S.W.
Roanoke, Virginia

Glenn Clark Baum
4604 Vineyard Lane
Virginia Beach, Virginia 23455

Jean Baum Brown
111 Lee Avenue
Lexington, Virginia 24450

Registrar: First Union National Bank of Virginia
Corporate Trust Department
2nd Floor
901 East Cary Street
Richmond, Virginia 23219

Any of the foregoing may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, demands, requests, consents, approvals, certificates or other communications shall be sent hereunder.

SECTION 7.10 Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Agreement, shall not be a Business Day, such payment may, unless otherwise provided in this Agreement, be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Agreement, and in the case of payment no interest shall accrue for the period after such nominal date.

WITNESS the signatures and seals of the parties hereto as of the date first above written.

CITY:

[CITY'S SEAL]

CITY OF VIRGINIA BEACH, VIRGINIA

ATTEST:

By: _____
James K. Spore, City Manager

City Clerk

SELLER:

_____(SEAL)

_____(SEAL)

Approved as to Legal
Sufficiency:

Approved as to Sufficiency of
Funds:

Deputy City Attorney

Director, Department of Finance

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 19____, by James K. Spore, City Manager of the City of Virginia Beach, Virginia, and attested to by _____, City Clerk of the City of Virginia Beach, Virginia, on its behalf.

Notary Public

(SEAL)
My Commission Expires:

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of _____, Virginia, this _____ day of _____, 19____, by _____.

Notary Public

(SEAL)
My Commission Expires:

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of _____, Virginia, this _____ day of _____, 19____, by _____.

Notary Public

(SEAL)
My Commission Expires:

FORM OF DEED OF EASEMENT

[SEE ATTACHED]

DESCRIPTION OF LAND

[SEE ATTACHED]

PERMITTED ENCUMBRANCES

[SEE ATTACHED]

ASSIGNMENT

FOR VALUE RECEIVED, _____ and _____
([collectively,] the "Registered Owner") hereby sell[s], assign[s] and transfer[s] unto
_____, without recourse, all of the Registered Owner's
right, title and interest in and to the Installment Purchase Agreement to which this
Assignment is attached; and the Registered Owner hereby irrevocably directs the Registrar
(as defined in such Agreement) to transfer such Agreement on the books kept for
registration thereof. The Registered Owner hereby represents, warrants and certifies that
there have been no amendments to such Agreement [except _____].

Date: _____

Signature guaranteed:

NOTICE: Signature must be
guaranteed by a member firm
of the New York Stock
Exchange or a commercial
bank or trust company.

NOTICE: The signature on this
Assignment must correspond with
the name of the Registered Owner
as it appears on the registration
books for the Installment Purchase
Agreement referred to herein in every
particular, without alteration or
enlargement or any change whatever.

This instrument was prepared by
Virginia Beach City Attorney's Office

EXHIBIT A

Exemption Claimed: § 58.1-811(A)(3)
§ 58.1-811(C)(4)

DEED OF EASEMENT

THIS DEED OF EASEMENT is made this ____ day of _____, 1997, by and between JOHN A. BAUM and ____ *{marital status}* his wife; CHARLOTTE BAUM IVES and ____ *{marital status}* her husband, WESLEY L. BAUM and ____ *{marital status}* his wife, GLENN CLARK BAUM and ____ *{marital status}* his wife, MARSHALL P. BAUM and ____ *{marital status}* his wife, JEAN BAUM BROWN and ____ *{marital status}* her husband (collectively, the "Grantor"), and CITY OF VIRGINIA BEACH, VIRGINIA, a body politic and corporate of the Commonwealth of Virginia (the "City") whose address is Municipal Center, Virginia Beach, Virginia 23456, Grantee.

RECITALS

WHEREAS, pursuant to the authority granted by the Open-Space Land Act, Chapter 17, Title 10.1 of the Code of Virginia of 1950, as amended (the "Act"), the City adopted the Agricultural Lands Preservation Ordinance (the "Ordinance") as Appendix J to the Code of the City of Virginia Beach, Virginia, as amended (the "City Code"), to promote and encourage the preservation of agricultural land in designated areas within the southern portion of the City; and

WHEREAS, in furtherance of the purposes of the Act and the Ordinance, the City has established the Agricultural Reserve Program of the City which provides for the acquisition of development rights through the purchase of agricultural land preservation easements with respect to property located in the portions of the City covered by the Ordinance; and

WHEREAS, the Grantor is the owner in fee simple of certain agricultural real property located in the City and more particularly described in **Exhibit A** hereto (the "Land"); and

WHEREAS, the Land is located in that portion of the City subject to the Ordinance and meets the eligibility criteria of Section 7 of the Ordinance; and

WHEREAS, the Grantor has agreed to sell to the City the Grantor's Development Rights (hereinafter defined) in the Land by executing and delivering this Deed of Easement and thereby restrict the use of the Land as described herein; and

WHEREAS, the City has agreed to purchase the Grantor's Development Rights in the Land to fulfill the policy and purposes of the City as set forth in the Act and the Ordinance; and

WHEREAS, the transfer by the Grantor of the Development Rights in the Land shall be in perpetuity; and

WHEREAS, in order to provide for the payment of the purchase price for the rights in the Land created hereby, the Grantor and the City have entered into an Installment Purchase Agreement of even date herewith (the "Installment Purchase Agreement");

GRANT

NOW, THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00), the covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor, for Grantor, Grantor's heirs, personal representatives, devisees, successors and assigns, and for any subsequent owner of the Land does hereby grant and convey, with general warranty and English covenants of title, unto the City, and its successors and assigns, forever and in perpetuity, an agricultural land preservation easement in, on, over and with respect to the Land restricting the Land to Agricultural Use and in furtherance thereof, does hereby grant and convey, with general warranty and English covenants of title, to the City, and its successors and assigns, forever and in perpetuity, all of the Development Rights with respect to the Land.

TERMS, COVENANTS, CONDITIONS AND AGREEMENTS

A. The Grantor for Grantor, Grantor's heirs, personal representatives, devisees, successors and assigns covenants with the City, (1) to refrain from engaging in any act or activity, or permitting to occur or suffering to exist any act or activity upon the Land which would constitute the exercise of a Development Right or a use other than an Agricultural Use, it being the intention of the parties that the Land shall be preserved for Agricultural Use in accordance with the provisions of the Ordinance; and (2) that this Deed of Easement shall create a perpetual easement, running with the Land and all portions thereof as an incorporeal and nonpossessory interest therein, enforceable against the Grantor and upon any purchaser, grantee, lessee, owner or other transferee of all or any portion of the Land and any other person or entity having any right, title or interest therein and upon their respective heirs, personal representatives, devisees, successors and assigns; and (3) that the covenants, conditions, limitations and restrictions contained herein are intended to limit the use of the Land as herein set forth.

B. The parties, for themselves, their heirs, personal representatives, devisees, successors and assigns, further covenant and agree as follows:

(1) As used in this Deed of Easement the term "Development Rights" shall mean the right to develop the Land for any use, including without limitation, any commercial, industrial or residential use, other than for Agricultural Use.

(2) As used in this Deed of Easement the term "Agricultural Use" means (i) the bona fide production of crops, animal or fowl, including, but not limited to, the production of fruits, vegetables, honey, grains, meat, poultry and dairy products, the raising of livestock and poultry, and the production and harvest of products from horticultural, silvicultural or aquacultural activity, (ii) the repair, expansion or replacement of no more than one (1) bona fide dwelling occupied by the landowner or tenant as of the date of application for entry in the Agricultural Reserve Program and no more than one freestanding mobile home, as permitted by Section 19-19 of the City Code, and (iii) accessory uses directly related to agricultural activities conducted on the same property, including the sale of agricultural products as permitted by Section 401 of the City Zoning Ordinance. The term does not include the processing of agricultural, silvicultural, horticultural or aquacultural products, except as an accessory use.

(3) This Deed of Easement does not grant the public any right of entry or access or any rights of use of the Land.

(4) THIS EASEMENT SHALL EXIST IN PERPETUITY AND RUN WITH THE ENTIRE ACREAGE OF THE LAND.

(5) The purpose of this Deed of Easement shall be to (i) promote and encourage the preservation of farmland, and promote and enhance agriculture as an important industry within the City, (ii) preserve the rural character of the southern part of the City, (iii) conserve and protect environmentally sensitive lands, waters and other resources, (iv) reduce and defer the need for major infrastructure improvements in the southern part of the City and the expenditure of public funds for such improvements, (v) preserve open spaces, and (vi) assist in shaping the character, direction and timing of community development.

(6) In the event of a violation or attempted violation of any of the provisions hereof, the City and its successors and assigns, may institute and prosecute any proceeding at law or in equity to enforce the provisions hereof or to abate, prevent or enjoin any such violation or attempted violation.

WITNESS, the hand and seal of the Grantor as of the date first above written.
#{NOTE-USE IF GRANTOR IS MARRIED BUT SPOUSE IS NOT ON DEED--Anything herein to the contrary notwithstanding, _____ AND _____, execute(s) this Deed of Easement for the sole purpose of consenting to the conveyance of and releasing any marital or augmented estate interest in the easement and rights set forth herein.

GRANTOR:

_____(SEAL)
JOHN A. BAUM

_____(SEAL)

_____(SEAL)
CHARLOTTE BAUM IVES

_____(SEAL)

_____(SEAL)
WESLEY L. BAUM

_____(SEAL)

_____(SEAL)
GLENN CLARK BAUM

_____(SEAL)

_____(SEAL)
MARSHALL P. BAUM

_____(SEAL)

_____(SEAL)
JEAN BAUM BROWN

_____(SEAL)

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 1997, by John A. Baum and _____, his wife, Grantor.

Notary Public

(SEAL)

My Commission Expires: _____

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 1997, by Charlotte Baum Ives and _____, her husband, Grantor.

Notary Public

(SEAL)

My Commission Expires: _____

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 1997, by Wesley L. Baum and _____, his wife, Grantor.

Notary Public

(SEAL)

My Commission Expires: _____

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 1997, by Glenn Clark Baum and _____, his wife, Grantor.

Notary Public

(SEAL)

My Commission Expires: _____

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 1997, by Marshall P. Baum and _____, his wife, Grantor.

Notary Public

(SEAL)

My Commission Expires: _____

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 1997, by Jean Baum Brown and _____, her husband, Grantor.

Notary Public

(SEAL)

My Commission Expires: _____

EXHIBIT A

ALL THAT certain tract of land, situate mostly in Blackwater Borough, Virginia Beach, Virginia, and partly in Currituck County, North Carolina, and containing an area of 116.57 acres, same being designated and shown as "Area = 116.57 Acres" on that certain plat entitled "SURVEY OF WOODLANDS OF F. O. BAUM", (formerly western part of S. E. Creekmore Tract) Blackwater District, City of Virginia Beach (formerly Princess Anne County), Virginia", Scale 1" = 400 ft. dated December, 1946, and made by Alonzo L. Cherry, Certified Land Surveyor, a copy of which is recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 20, at page 29, and in the Office of the *Registrar of Deeds of Currituck County, North Carolina, in Map Book 2, at page 60, with the notation "8.25 Acres - Area within State of North Carolina" being only on the plat recorded in Map Book 2, at page 60, in Currituck County, North Carolina.

LESS AND EXCEPT a 0.9731 Ac. parcel conveyed to John A. Baum in Deed Book 3530, at page 1152.

LESS AND EXCEPT all portions of the above-described property, if any, which contain any of the following soil types: (1) Back Bay Mucky Peat; (2) Dorovan Mucky Peat; (3) Nawney Silt Loam; or (4) Pamlico Mucky Peat, Ponded.

[LESS AND EXCEPT that certain tract, piece or parcel being a portion of the above described property designated and described as "#" as shown on that certain plat entitled: "#", Scale #" = #", dated #, prepared by #, which plat is attached hereto and recorded simultaneously herewith.]

IT BEING a portion of the same property conveyed to the Grantors, from John A. Baum, Trustee, by deed, dated May 11, 1993, duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Deed Book 3227, at page 531.

EXHIBIT B

ALL THAT certain tract of land, situate mostly in Blackwater Borough, Virginia Beach, Virginia, and partly in Currituck County, North Carolina, and containing an area of 116.57 acres, same being designated and shown as "Area = 116.57 Acres" on that certain plat entitled "SURVEY OF WOODLANDS OF F. O. BAUM", (formerly western part of S. E. Creekmore Tract) Blackwater District, City of Virginia Beach (formerly Princess Anne County), Virginia", Scale 1" = 400 ft. dated December, 1946, and made by Alonzo L. Cherry, Certified Land Surveyor, a copy of which is recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 20, at page 29, and in the Office of the *Registrar of Deeds of Currituck County, North Carolina, in Map Book 2, at page 60, with the notation "8.25 Acres - Area within State of North Carolina" being only on the plat recorded in Map Book 2, at page 60, in Currituck County, North Carolina.

LESS AND EXCEPT a 0.9731 Ac. parcel conveyed to John A. Baum in Deed Book 3530, at page 1152.

LESS AND EXCEPT all portions of the above-described property, if any, which contain any of the following soil types: (1) Back Bay Mucky Peat; (2) Dorovan Mucky Peat; (3) Nawney Silt Loam; or (4) Pamlico Mucky Peat, Ponded.

[LESS AND EXCEPT that certain tract, piece or parcel being a portion of the above described property designated and described as "#" as shown on that certain plat entitled: "#", Scale #" = #', dated #, prepared by #, which plat is attached hereto and recorded simultaneously herewith.]

IT BEING a portion of the same property conveyed to the Grantors, from John A. Baum, Trustee, by deed, dated May 11, 1993, duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Deed Book 3227, at page 531.

EXHIBIT "C"

PERMITTED ENCUMBRANCES

1. Taxes for the 2nd half of the fiscal year 1996/1997 and any/all Stormwater fees, which are liens not yet due and payable, and taxes and stormwater fees for all subsequent billing periods.
2. Roll Back Taxes.
3. Easement granted Virginia Electric and Power Company, as established by instrument recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 285, at page 486 and as shown in Map Book 28, at page 3, of unspecified width along Route 611..
4. Easement granted Virginia Electric and Power Company, as established by instrument recorded in the aforesaid Clerk's Office in Deed Book 237, at page 421 and as shown in Map Book 18, at page 25.
5. Easement to Norfolk & Carolina Telephone & Telegraph Co. recorded in the aforesaid Clerk's Office in Deed Book 283, at page 189.
6. Reference to quantity of acreage is for descriptive purposes only, and the policy will not insure as to quantity of acreage nor to the accuracy of the computation thereof.
10. Such other restrictions and encumbrances which, in the opinion of the City Attorney, do not adversely affect the interest of the City of Virginia Beach in and to the agricultural land preservation easement and the rights granted to the City in the Deed of Easement.

1 AN ORDINANCE AUTHORIZING THE ACQUISITION OF AN
2 AGRICULTURAL LAND PRESERVATION EASEMENT AND
3 THE ISSUANCE BY THE CITY OF ITS CONTRACT
4 OBLIGATIONS IN THE MAXIMUM PRINCIPAL AMOUNT OF
5 \$721,860.

6 WHEREAS, pursuant to the Agricultural Lands Preservation
7 Ordinance (the "Ordinance"), Appendix J of the Code of the
8 City of Virginia Beach, there has been presented to the City
9 Council for approval an Installment Purchase Agreement for the
10 acquisition of the Development Rights (as defined in the
11 Installment Purchase Agreement, a true copy of which is hereto
12 affixed) on certain property located in the City and more
13 fully described in Exhibit B of the Installment Purchase
14 Agreement for a purchase price of \$721,860; and

15 WHEREAS, the aforesaid Development Rights shall be
16 acquired through the acquisition of a perpetual agricultural
17 land preservation easement, as defined in, and in compliance
18 with, the requirements of the Ordinance; and

19 WHEREAS, the City Council has reviewed the proposed terms
20 and conditions of the purchase as evidenced by the Installment
21 Purchase Agreement;

22 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
23 CITY OF VIRGINIA BEACH, VIRGINIA:

24 1. The City Council hereby determines and finds that
25 the proposed terms and conditions of the purchase of the
26 Development Rights pursuant to the Installment Purchase
27 Agreement, including the purchase price and manner of payment,
28 are fair and reasonable and in furtherance of the purposes of
29 the Ordinance, and the City Manager is hereby authorized to
30 approve, upon or before the execution and delivery of the
31 Installment Purchase Agreement, the rate of interest to accrue

on the unpaid principal balance of the purchase price set forth hereinabove as the greater of 6.0% per annum or the per annum rate which is equal to the yield on United States Treasury STRIPS purchased by the City to fund such unpaid principal balance; provided, however, that such rate of interest shall not exceed 7.50% unless the approval of the City Council by resolution duly adopted is first obtained.

2. The City Council hereby further determines that funding is available for the acquisition of the Development Rights pursuant to the Installment Purchase Agreement on the terms and conditions set forth therein.

3. The City Council hereby expressly approves the Installment Purchase Agreement in the form and substance presented at this meeting and, subject to the determination of the City Attorney that there are no defects in title to the property or other restrictions or encumbrances thereon which may, in the opinion of the City Attorney, adversely affect the City's interests, authorizes the City Manager to execute and deliver the Installment Purchase Agreement in substantially the same form and substance as presented at this meeting with such minor modifications, insertions, completions or omissions which do not materially alter the purchase price or manner of payment, as the City Manager shall approve. The City Council further directs the City Clerk to affix the seal of the City to, and attest same on, the Installment Purchase Agreement. The City Council expressly authorizes the incurrence of the indebtedness represented by the issuance and delivery of the Installment Purchase Agreement.

60 4. The City Council hereby elects to issue the
61 indebtedness under the Charter of the City rather than
62 pursuant to the Public Finance Act of 1991 and hereby
63 constitutes the indebtedness a contractual obligation bearing
64 the full faith and credit of the City.

65 Adopted by the Council of the City of Virginia Beach,
66 Virginia, on this 24TH day of JUNE, 1997.

67 Adoption requires an affirmative vote of a majority of
68 all members of the City Council.
69

70 CA-97-6686
71 wmm\ordres\baum2.orn
72 R-1
73 June 10, 1997

74 APPROVED AS TO CONTENT:

75
76 *James E. Culligan*
77 Agriculture Department

APPROVED AS TO LEGAL
SUFFICIENCY:

William M. Macal
Law Department

78 CERTIFIED AS TO AVAILABILITY OF FUNDS:

79 *Patricia A. Phillips*
80 Director of Finance

JOHN A. BAUM, WESLEY L. BAUM, MARSHALL P. BAUM.
GLENN CLARK BAUM, JEAN BAUM BROWN AND CHARLOTTE BAUM IVES
the "Seller"

and

CITY OF VIRGINIA BEACH, VIRGINIA
the "City"

INSTALLMENT PURCHASE AGREEMENT
(Agreement No. 1997-11)

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INSTALLMENT PURCHASE AGREEMENT
(Agreement No. 1997-11)

THIS INSTALLMENT PURCHASE AGREEMENT (this "Agreement") is made as of the ____ day of _____, 199_ between JOHN A. BAUM, WESLEY L. BAUM, MARSHALL P. BAUM, GLENN CLARK BAUM, JEAN BAUM BROWN and CHARLOTTE BAUM IVES (collectively, the "Seller") and CITY OF VIRGINIA BEACH, VIRGINIA, a body politic and corporate of the Commonwealth of Virginia (the "City").

RECITALS

A. Pursuant to the authority granted by the Open-Space Land Act, Chapter 17, Title 10.1 of the Code of Virginia of 1950, as amended (the "Act"), the City adopted the Ordinance (hereinafter defined in Section 1.1) to promote and encourage the preservation of agricultural land in designated areas within the southern portion of the City.

B. In furtherance of the purposes of the Act and the Ordinance, the City has established the Agricultural Reserve Program of the City which provides for the acquisition of Development Rights (hereinafter defined in Section 1.1) through the purchase of agricultural land preservation easements with respect to property located in the portions of the City covered by the Ordinance.

C. The Seller is the owner in fee simple of Land (hereinafter defined in Section 1.1) which is located in that portion of the City subject to the Ordinance and meets the eligibility criteria of Section 7 of the Ordinance.

D. The Seller has agreed to sell, and the City has agreed to purchase, Seller's Development Rights in the Land on and subject to the terms and conditions hereinafter set forth.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Seller and the City hereby agree as follows.

ARTICLE 1

DEFINITIONS

SECTION 1.1 Definitions. As used in this Agreement, the following terms have the following meanings, unless the context clearly indicates a different meaning

"Agricultural Use" means (i) the bona fide production of crops, animal or fowl, including, but not limited to, the production of fruits, vegetables, honey, grains, meat, poultry and dairy products, the raising of livestock and poultry, and the production and harvest of products from horticultural, silvicultural or aquacultural activity, (ii) the repair, expansion or replacement of no more than one (1) bona fide dwelling occupied by the landowner or tenant as of the date of application for entry in the Agricultural Reserve Program and no more than one freestanding mobile home, as permitted by Section 19-19 of the Virginia Beach City Code, and (iii) accessory uses directly related to agricultural activities conducted on the same property, including the sale of agricultural products as permitted by Section 401 of the Virginia Beach City Zoning Ordinance. The term does not include the processing of agricultural, silvicultural, horticultural or aquacultural products, except as an accessory use.

"Business Day" or "business day" means a day on which (a) banks located in the City and in the city in which the principal office of the Registrar is located are not required or authorized by law or executive order to close for business, and (b) The New York Stock Exchange is not closed.

"City" means the City of Virginia Beach, Virginia, a body politic and corporate and a political subdivision created and existing under and by virtue of the Constitution and laws of the State, its successors and assigns.

"City Council" means the Council of the City.

"City Manager" means the City Manager of the City.

"Code" means the Internal Revenue Code of 1986, as amended. Each reference to the Code herein shall be deemed to include the United States Treasury Regulations in effect or proposed from time to time with respect thereto.

"Deed of Easement" means the Deed of Easement of even date herewith from the Seller to the City, which shall convey the Development Rights to the City in perpetuity. The Deed of Easement shall be substantially in the form attached hereto as **Exhibit A** and made a part hereof

"Development Rights" mean the rights of the Seller in the Land to develop the Land for any use other than an Agricultural Use. Development Rights shall include, but not be limited to, the right to develop the Land for any commercial, industrial or residential use except as expressly permitted by the Ordinance.

"Enabling Legislation" means, collectively, (1) the Open Space Land Act, Chapter 17 of Title 10.1 of the Code of Virginia of 1950, as amended, and (2) the Ordinance.

"Estate Settlement Transfer" means the transfer by the legal representative of the estate of a deceased Seller of such Seller's rights in and to this Agreement in connection with the distribution of the deceased Seller's estate or other settlement of such decedent Seller's estate.

"Interest Payment Date" means June 1 and December 1 in each year, commencing _____, 199_.

"Land" means the tract or tracts of land located in Virginia Beach, Virginia, containing approximately _____ acres, and more particularly described in **Exhibit B** attached hereto and made a part hereof.

"Ordinance" means the Agricultural Lands Preservation Ordinance adopted by the City Council on May 9, 1995, as Appendix J to the City Code, as the same may be amended or modified from time to time.

"Permitted Encumbrances" mean the encumbrances listed on **Exhibit C** attached hereto and made a part hereof and any encumbrances on or with respect to the Land or any portion thereof hereafter approved, in writing, by the City.

"Person" or "person" means any natural person, firm, association, corporation, company, trust, partnership, public body or other entity.

"Purchase Price" means \$721,860, the purchase price to be paid by the City to the Registered Owner in accordance with this Agreement.

"Record Date" means the fifteenth (15th) day (whether or not a Business Day) of the calendar month immediately preceding each Interest Payment Date and the principal payment date.

"Registered Owner" means the registered owner of this Agreement as shown on the registration books maintained by the Registrar.

"Registrar" means First Union National Bank of Virginia or any other person hereafter appointed by the City to act as Registrar and paying agent for this Agreement.

"Seller" means, collectively, John A. Baum, Wesley L. Baum, Marshall P. Baum, Glenn Clark Baum, Jean Baum Brown and Charlotte Baum Ives

"State" means the Commonwealth of Virginia.

SECTION 1.2 Rules of Construction.

(a) The words "hereof," "herein," "hereunder," "hereto," and other words of similar import refer to this Agreement in its entirety.

(b) The terms "agree" and "agreements" contained herein are intended to include and mean "covenant" and "covenants."

(c) References to Articles, Sections, and other subdivisions of this Agreement are to the designated Articles, Sections, and other subdivisions of this Agreement.

(d) The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.

(e) All references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

ARTICLE 2

SALE AND PURCHASE OF DEVELOPMENT RIGHTS

SECTION 2.1 Agreement to Sell and Purchase Development Rights. The Seller agrees to sell the Development Rights in the Land to the City and the City agrees to purchase the Development Rights in the Land from the Seller on the date hereof for the Purchase Price.

SECTION 2.2 Delivery of Deed of Easement. In order to evidence the sale of the Development Rights to the City, the Seller shall execute and deliver to the City on the date hereof the Deed of Easement in the form attached hereto as **Exhibit A** and made a part hereof. The Deed of Easement shall be recorded in the Clerk's Office of the Circuit Court of the City.

ARTICLE 3

PAYMENT OF PURCHASE PRICE

SECTION 3.1 Payment of Purchase Price.

(a) The City shall pay the principal portion of the Purchase Price to the Registered Owner in a single installment on _____, 202_ [25-year maturity date]. The Purchase Price is \$721,860.

(b) Interest on the unpaid principal balance of the Purchase Price shall accrue from the date of recordation of the Deed of Easement and shall be payable to the Registered Owner on _____, 199_, and semiannually thereafter on June 1 and December 1 in each year to and including _____, 202_, at the rate of ___% per annum. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months.

(c) Both the single installment of principal of the Purchase Price and the interest on the unpaid balance thereof are payable in lawful money of the United States of America at the time of payment.

(d) Payment of interest on the unpaid balance of the Purchase Price shall be made by the City on each Interest Payment Date to the Registrar. The Registrar shall forward all such interest payments by check or draft mailed to the person(s) appearing on the registration books of the City maintained by the Registrar as the Registered Owner on the Record Date, at the address of such Registered Owner as it appears on such registration books. The single installment of principal of the Purchase Price shall be paid on the principal payment date set forth in Subsection (a) above by the Registrar to the Registered Owner as of the Record Date upon presentation and surrender of this Agreement at the office of the Registrar.

(e) The City's obligation to pay the Purchase Price hereunder and to pay interest on the unpaid balance of the Purchase Price is a general obligation of the City, and the full faith and credit and the unlimited taxing power of the City are irrevocably pledged to the punctual payment of the Purchase Price and the interest on the unpaid principal balance of the Purchase Price as and when the same respectively become due and payable.

SECTION 3.2 Registration and Transfer of this Agreement.

(a) Until the Purchase Price and all interest thereon have been paid in full, the City shall maintain and keep at the offices of the Registrar, registration books for the registration and transfer of this Agreement; and upon presentation of this Agreement for such purpose at the offices of the Registrar, the Registrar shall register or cause to be

registered on such registration books, and permit to be transferred thereon, under such reasonable regulations as the City or the Registrar may prescribe, the ownership of this Agreement. The Registrar, however, shall not be required to make any such registration and transfer during the period from the Record Date to the next succeeding Interest Payment Date or final principal payment date.

(b) Except for an Estate Settlement Transfer, this Agreement may not be transferred by the Registered Owner prior to the expiration of a one (1) year period from the date this Agreement has been fully executed, delivered and become effective, and any such attempted transfer shall be null and void. The Registrar shall be instructed not to make any such transfers (other than an Estate Settlement Transfer) on its registration books kept for the purpose of registering the transfer of this Agreement prior to the expiration of said one (1) year period.

(c) The Seller is the original Registered Owner. This Agreement shall be transferable only upon the books of the City maintained for such purpose by the Registrar, at the written request of the Registered Owner as then shown on such registration books or his attorney duly authorized in writing, upon presentation and surrender of this Agreement, together with a written instrument of transfer substantially in the form attached hereto as **Exhibit D**, or as may otherwise be satisfactory to and approved by the Registrar in writing, duly executed by the Registered Owner or his attorney duly authorized in writing. Upon the surrender for transfer of this Agreement, the Registrar shall complete the Schedule of Transferees attached hereto as **Exhibit E** with the name, address and tax identification number of the transferee Registered Owner, and the date of the transfer; provided, however, that if there is any conflict between the information set forth in **Exhibit E** hereto and the registration books maintained by the Registrar, the information shown on such registration books shall control.

The City and the Registrar may deem and treat the person in whose name this Agreement is registered upon the books of the City maintained by the Registrar as the absolute owner of this Agreement, whether any payments hereunder shall be overdue or not, for the purpose of receiving payment of, or on account of, the Purchase Price and interest thereon and for all other purposes, and all such payments so made to any such Registered Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon this Agreement to the extent of the sum or sums so paid, and neither the City nor the Registrar shall be affected by any notice to the contrary.

For every registration of transfer of this Agreement, the City or the Registrar may make a charge sufficient to reimburse themselves for any tax or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such transfer as a condition precedent to the exercise of the privilege of registering such transfer.

SECTION 3.3 Mutilated, Lost, Stolen or Destroyed Agreement. In the event that this Agreement is mutilated, lost, stolen or destroyed, the City and the Registered Owner (as then shown on the registration books maintained by the Registrar) shall execute and deliver a substitute agreement having the same terms and provisions as the mutilated, lost, stolen or destroyed Agreement; provided that, in the case of any mutilated Agreement, such mutilated Agreement shall first be surrendered to the Registrar, and, in the case of any lost, stolen or destroyed Agreement there shall be first furnished to the City and the Registrar evidence of such loss, theft or destruction satisfactory to the City and the Registrar, together with indemnity satisfactory to each of them in their sole discretion. The City and the Registrar may charge the Registered Owner requesting such new Agreement their expenses and reasonable fees, if any, in this connection. If after the delivery of such substitute Agreement, a bona fide purchaser of the original Agreement (in lieu of which such substitute Agreement was issued) presents for payment such original Agreement, the City and the Registrar shall be entitled to recover such substitute Agreement from the person to whom it was delivered or any other person who receives delivery thereof, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor or otherwise to the extent of any loss, damage, cost or expense incurred by the City and the Registrar in connection therewith.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

SECTION 4.1 Representations and Warranties of the City. The City makes the following representations and warranties:

- (a) The City is a body politic and corporate and a political subdivision of the State.
- (b) The City has the necessary power and authority to acquire the Development Rights, to enter into this Agreement, to perform and observe the covenants and agreements on its part contained in this Agreement and to carry out and consummate all transactions contemplated hereby. By proper action, the City has duly authorized the execution and delivery of this Agreement.
- (c) This Agreement has been duly and properly authorized, executed, sealed and delivered by the City, constitutes the valid and legally binding obligation of the City, and is enforceable against the City in accordance with its terms.
- (d) There are no proceedings pending or, to the knowledge of the City, threatened before any court or administrative agency which may affect the authority of the City to enter into this Agreement.

SECTION 4.2 Representations and Warranties of the Seller. The Seller makes the following representations and warranties:

(a) The Seller has full power and authority to execute and deliver this Agreement and the Deed of Easement, and to incur and perform the obligations provided for herein and therein. No consent or approval of any person or public authority or regulatory body is required as a condition to the validity or enforceability of this Agreement or the Deed of Easement, or, if required, the same has been duly obtained.

(b) This Agreement and the Deed of Easement have been duly and properly executed by the Seller, constitute valid and legally binding obligations of the Seller, and are fully enforceable against the Seller in accordance with their respective terms.

(c) There is no litigation or proceeding pending or, so far as the Seller knows, threatened before any court or administrative agency which, in the opinion of the Seller, will materially adversely affect the authority of the Seller to enter into, or the validity or enforceability of, this Agreement or the Deed of Easement.

(d) There is (i) no provision of any existing mortgage, indenture, contract or agreement binding on the Seller or affecting the Land, and (ii) to the knowledge of the Seller, no provision of law or order of court binding upon the Seller or affecting the Land, which would conflict with or in any way prevent the execution, delivery, or performance of the terms of this Agreement or the Deed of Easement, or which would be in default or violated as a result of such execution, delivery or performance, or for which adequate consents, waivers or, if necessary, releases or subordinations, have not been obtained.

(e) There exist no liens, security interests or other encumbrances on or with respect to the Land (other than Permitted Encumbrances), and at the time of execution and delivery of the Deed of Easement there will be no liens, security interests or other encumbrances of the Development Rights to be conveyed thereby.

(f) The Seller is not a nonresident alien of the United States of America for purposes of federal income taxation.

(g) The Social Security Numbers of the Seller are 229-30-5288 (for John A. Baum), 229-30-1919 (for Wesley L. Baum), 231-34-2086 (for Marshall P. Baum), 224-44-9106 (for Glenn Clark Baum), 226-54-7738 (for Jean Baum Brown) and 224-38-6800 (for Charlotte Baum Ives).

The representations in subsections (f) and (g) above are made under penalties of perjury and the information contained therein may be disclosed by the City to the Internal Revenue

Service. The Seller acknowledges that any false statement in such subsections could be punished by fine, imprisonment or both.

(h) To the best of the knowledge, information and belief of the Seller, the Land has not been used for the manufacture, storage, treatment, disposal or release of any hazardous waste or substance.

ARTICLE 5

PROVISIONS RELATING TO EXCLUSION OF INTEREST FROM INCOME FOR FEDERAL INCOME TAXATION

SECTION 5.1 Intent of City and Tax Covenant of City. The City intends that the interest payable under this Agreement shall not be includable in the gross income of the Registered Owner for purposes of federal income taxation pursuant to Section 103 of the Code. Accordingly, the City shall not knowingly take or permit to be taken any other action or actions or omit or fail to take any action, which would cause this Agreement to be an "arbitrage bond" within the meaning of Section 148 of the Code, or which would otherwise cause interest payable under this Agreement to become includable in the gross income of any Registered Owner for purposes of federal income taxation.

SECTION 5.2 Acknowledgment of Seller with Regard to Tax Consequences of Transaction. The Seller has received an opinion from Kaufman & Canoles, P.C., Bond Counsel, dated the date hereof, to the effect that under existing laws, regulations, rulings and decisions, interest payable under this Agreement is not includable in the gross income of the Seller for federal income tax purposes, which opinion assumes continuous compliance with certain covenants in the Tax Certificate and Compliance Agreement to be executed and delivered by the City on the date of delivery of this Agreement and is otherwise limited in accordance with its terms. The Seller acknowledges that Seller has made Seller's own independent investigation and has consulted with such attorneys, accountants and others as the Seller shall have selected in the Seller's sole discretion to advise the Seller with respect to all other tax considerations related to the transaction contemplated hereby (including, but not limited to, installment sales treatment under Section 453 of the Code, charitable contribution deductions under Section 170 of the Code, and federal estate tax implications); and the Seller certifies that the Seller has not looked to or relied upon the City or any of its officials, agents or employees, or to Bond Counsel, with respect to any of such matters.

ARTICLE 6

THE REGISTRAR

SECTION 6.1 Appointment of Registrar. First Union National Bank of Virginia is hereby designated and appointed to act as Registrar for this Agreement.

SECTION 6.2 Ownership of Agreement. The Registrar, in its individual capacity or as trustee for holders of participation interests in this Agreement, may in good faith buy, sell, own and hold this Agreement, and may join in any action which any Registered owner may be entitled to take with like effect as if it did not act as Registrar hereunder. The Registrar, in its individual capacity, either as principal or agent, may also engage, or have an interest, in any financial or other transaction with the City, and may act as depository, trustee or agent for other obligations of the City as freely as if it did not act in any capacity hereunder.

SECTION 6.3 Removal of Registrar and Appointment of Successor Registrar. The City shall have the right, subject to the terms of any agreement with the Registrar, to remove the Registrar any time by filing with such Registrar to be removed, and with the Registered Owner, an instrument in writing. Notwithstanding the foregoing, such removal shall not be effective until a successor Registrar has assumed the Registrar's duties hereunder. The City shall have the sole right to select a successor Registrar.

SECTION 6.4 Qualifications of Successor Registrar. Any successor Registrar shall be either (a) the Department of Finance of the City, (b) an officer or employee of the City, or (c) a bank, trust company or other financial institution duly organized under the laws of the United States or any state or territory thereof which is authorized by law and permitted under the laws of the State to perform all the duties imposed upon it as Registrar by this Agreement.

SECTION 6.5 Successor by Merger or Consolidation. If the Registrar is a bank, trust company or other financial institution, any institution or corporation into which the Registrar hereunder may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Registrar hereunder shall be a party or any institution or corporation succeeding to the corporate trust business (if any) of the Registrar, shall be the successor Registrar under this Agreement, without the execution or filing of any paper or any further act on the part of the parties hereto, anything in this Agreement to the contrary notwithstanding.

ARTICLE 7

MISCELLANEOUS

SECTION 7.1 **Successors of City.** In the event of the dissolution of the City, all the covenants, stipulations, promises and agreements in this Agreement contained, by or on behalf of, or for the benefit of, the City, the Seller, any other Registered Owner and the Registrar, shall bind or inure to the benefit of the successors of the City from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the City shall be transferred.

SECTION 7.2 **Parties in Interest.** Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation, other than the City, the Seller, any other Registered Owner and the Registrar, any right, remedy or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the City, the Seller, any other Registered Owner from time to time of this Agreement and the Registrar.

SECTION 7.3 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns, including, without limitation, all Registered Owners from time to time of this Agreement.

SECTION 7.4 **Severability.** In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein or therein.

SECTION 7.5 **Prior Agreements Cancelled; No Merger.** This Agreement shall completely and fully supersede all other prior agreements, both written and oral, between the City and the Seller relating to the acquisition of the Development Rights. Neither the City nor the Seller shall hereafter have any rights under such prior agreements but shall look solely to this Agreement and the Deed of Easement for definitions and determination of all of their respective rights, liabilities and responsibilities relating to the Land, the Development Rights and the payment for the Development Rights. In addition, this Agreement shall survive the execution and recording of the Deed of Easement in all respects and shall not be merged therein.

SECTION 7.6 **Amendments, Changes and Modifications.** This Agreement may not be amended, changed, modified, altered or terminated except by an agreement in writing between the City and the then Registered Owner. An executed counterpart of any

such amendment shall be attached to this Agreement and shall be binding upon such Registered Owner and all successor Registered Owners.

SECTION 7.7 No Personal Liability of City Officials. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, officer, agent or employee of the City in his or her individual capacity, and neither the officers or employees of the City nor any official executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 7.8 Governing Law. The laws of the State shall govern the construction and enforcement of this Agreement.

SECTION 7.9 Notices. Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals, certificates or other communications required under this Agreement to be in writing shall be sufficiently given and shall be deemed to have been properly given three Business Days after the same is mailed by certified mail, postage prepaid, return receipt requested, addressed to the person to whom any such notice, demand, request, approval, certificate or other communication is to be given, at the address for such person designated below:

City: City Manager
 Municipal Center
 Virginia Beach, VA 23456

with a copy to: City Attorney
 Municipal Center
 Virginia Beach, VA 23456

Seller: John A. Baum
6465 Craggs Causeway
Virginia Beach, Virginia 23457

Wesley L. Baum
115 Brumsey Road
Moyock, North Carolina 27958-9218

Marshall P. Baum
9 Ridgeway Drive
Chillicothe, Ohio 45601

Charlotte Baum Ives
3217 Colonial Avenue, S.W.
Roanoke, Virginia

Glenn Clark Baum
4604 Vineyard Lane
Virginia Beach, Virginia 23455

Jean Baum Brown
111 Lee Avenue
Lexington, Virginia 24450

Registrar: First Union National Bank of Virginia
Corporate Trust Department
2nd Floor
901 East Cary Street
Richmond, Virginia 23219

Any of the foregoing may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, demands, requests, consents, approvals, certificates or other communications shall be sent hereunder.

SECTION 7.10 Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Agreement, shall not be a Business Day, such payment may, unless otherwise provided in this Agreement, be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Agreement, and in the case of payment no interest shall accrue for the period after such nominal date.

WITNESS the signatures and seals of the parties hereto as of the date first above written.

CITY:

[CITY'S SEAL]

CITY OF VIRGINIA BEACH, VIRGINIA

ATTEST:

By: _____
James K. Spore, City Manager

City Clerk

SELLER:

_____(SEAL)

_____(SEAL)

Approved as to Legal
Sufficiency:

Deputy City Attorney

Approved as to Sufficiency of
Funds:

Director, Department of Finance

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 19____, by James K. Spore, City Manager of the City of Virginia Beach, Virginia, and attested to by _____, City Clerk of the City of Virginia Beach, Virginia, on its behalf.

Notary Public

(SEAL)
My Commission Expires:

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of _____, Virginia, this _____ day of _____, 19____, by _____.

Notary Public

(SEAL)
My Commission Expires.

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of _____, Virginia, this _____ day of _____, 19____, by _____.

Notary Public

(SEAL)
My Commission Expires:

FORM OF DEED OF EASEMENT

[SEE ATTACHED]

DESCRIPTION OF LAND

[SEE ATTACHED]

PERMITTED ENCUMBRANCES

[SEE ATTACHED]

ASSIGNMENT

FOR VALUE RECEIVED, _____ and _____
 ([collectively,] the "Registered Owner") hereby sell[s], assign[s] and transfer[s] unto
 _____, without recourse, all of the Registered Owner's
 right, title and interest in and to the Installment Purchase Agreement to which this
 Assignment is attached; and the Registered Owner hereby irrevocably directs the Registrar
 (as defined in such Agreement) to transfer such Agreement on the books kept for
 registration thereof. The Registered Owner hereby represents, warrants and certifies that
 there have been no amendments to such Agreement [except _____].

Date: _____

Signature guaranteed:

 NOTICE: Signature must be
 guaranteed by a member firm
 of the New York Stock
 Exchange or a commercial
 bank or trust company.

 NOTICE: The signature on this
 Assignment must correspond with
 the name of the Registered Owner
 as it appears on the registration
 books for the Installment Purchase
 Agreement referred to herein in every
 particular, without alteration or
 enlargement or any change whatever.

TRANSFER OF AGREEMENT - SCHEDULE OF TRANSFEREES

The transfer of this Installment Purchase Agreement may be registered only by the Registered Owner under such Agreement in person or by its duly authorized officer or attorney upon presentation hereof to the Registrar, who shall make note thereof in the books kept for such purpose and in the registration blank below.

Date of Registration of Transfer	Name and Address of Transferee Registered Seller	Tax I.D. No. of Transferee	Signature of Registrar
1			
2			
3			
4			
5			
6			

This instrument was prepared by
Virginia Beach City Attorney's Office

EXHIBIT A

Exemption Claimed: § 58.1-811(A)(3)
§ 58.1-811(C)(4)

DEED OF EASEMENT

THIS DEED OF EASEMENT is made this ____ day of _____, 1997, by and between JOHN A. BAUM and ____ *{marital status}* his wife; CHARLOTTE BAUM IVES and ____ *{marital status}* her husband, WESLEY L. BAUM and ____ *{marital status}* his wife, GLENN CLARK BAUM and ____ *{marital status}* his wife, MARSHALL P. BAUM and ____ *{marital status}* his wife, JEAN BAUM BROWN and ____ *{marital status}* her husband (collectively, the "Grantor"), and CITY OF VIRGINIA BEACH, VIRGINIA, a body politic and corporate of the Commonwealth of Virginia (the "City") whose address is Municipal Center, Virginia Beach, Virginia 23456, Grantee.

RECITALS

WHEREAS, pursuant to the authority granted by the Open-Space Land Act, Chapter 17, Title 10.1 of the Code of Virginia of 1950, as amended (the "Act"), the City adopted the Agricultural Lands Preservation Ordinance (the "Ordinance") as Appendix J to the Code of the City of Virginia Beach, Virginia, as amended (the "City Code"), to promote and encourage the preservation of agricultural land in designated areas within the southern portion of the City; and

WHEREAS, in furtherance of the purposes of the Act and the Ordinance, the City has established the Agricultural Reserve Program of the City which provides for the acquisition of development rights through the purchase of agricultural land preservation easements with respect to property located in the portions of the City covered by the Ordinance; and

WHEREAS, the Grantor is the owner in fee simple of certain agricultural real property located in the City and more particularly described in **Exhibit A** hereto (the "Land"); and

WHEREAS, the Land is located in that portion of the City subject to the Ordinance and meets the eligibility criteria of Section 7 of the Ordinance; and

WHEREAS, the Grantor has agreed to sell to the City the Grantor's Development Rights (hereinafter defined) in the Land by executing and delivering this Deed of Easement and thereby restrict the use of the Land as described herein; and

WHEREAS, the City has agreed to purchase the Grantor's Development Rights in the Land to fulfill the policy and purposes of the City as set forth in the Act and the Ordinance; and

WHEREAS, the transfer by the Grantor of the Development Rights in the Land shall be in perpetuity; and

WHEREAS, in order to provide for the payment of the purchase price for the rights in the Land created hereby, the Grantor and the City have entered into an Installment Purchase Agreement of even date herewith (the "Installment Purchase Agreement");

GRANT

NOW, THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00), the covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor, for Grantor, Grantor's heirs, personal representatives, devisees, successors and assigns, and for any subsequent owner of the Land does hereby grant and convey, with general warranty and English covenants of title, unto the City, and its successors and assigns, forever and in perpetuity, an agricultural land preservation easement in, on, over and with respect to the Land restricting the Land to Agricultural Use and in furtherance thereof, does hereby grant and convey, with general warranty and English covenants of title, to the City, and its successors and assigns, forever and in perpetuity, all of the Development Rights with respect to the Land.

TERMS, COVENANTS, CONDITIONS AND AGREEMENTS

A. The Grantor for Grantor, Grantor's heirs, personal representatives, devisees, successors and assigns covenants with the City, (1) to refrain from engaging in any act or activity, or permitting to occur or suffering to exist any act or activity upon the Land which would constitute the exercise of a Development Right or a use other than an Agricultural Use, it being the intention of the parties that the Land shall be preserved for Agricultural Use in accordance with the provisions of the Ordinance; and (2) that this Deed of Easement shall create a perpetual easement, running with the Land and all portions thereof as an incorporeal and nonpossessory interest therein, enforceable against the Grantor and upon any purchaser, grantee, lessee, owner or other transferee of all or any portion of the Land and any other person or entity having any right, title or interest therein and upon their respective heirs, personal representatives, devisees, successors and assigns; and (3) that the covenants, conditions, limitations and restrictions contained herein are intended to limit the use of the Land as herein set forth.

B. The parties, for themselves, their heirs, personal representatives, devisees, successors and assigns, further covenant and agree as follows:

(1) As used in this Deed of Easement the term "Development Rights" shall mean the right to develop the Land for any use, including without limitation, any commercial, industrial or residential use, other than for Agricultural Use.

(2) As used in this Deed of Easement the term "Agricultural Use" means (i) the bona fide production of crops, animal or fowl, including, but not limited to, the production of fruits, vegetables, honey, grains, meat, poultry and dairy products, the raising of livestock and poultry, and the production and harvest of products from horticultural, silvicultural or aquacultural activity, (ii) the repair, expansion or replacement of no more than one (1) bona fide dwelling occupied by the landowner or tenant as of the date of application for entry in the Agricultural Reserve Program and no more than one freestanding mobile home, as permitted by Section 19-19 of the City Code, and (iii) accessory uses directly related to agricultural activities conducted on the same property, including the sale of agricultural products as permitted by Section 401 of the City Zoning Ordinance. The term does not include the processing of agricultural, silvicultural, horticultural or aquacultural products, except as an accessory use.

(3) This Deed of Easement does not grant the public any right of entry or access or any rights of use of the Land.

(4) THIS EASEMENT SHALL EXIST IN PERPETUITY AND RUN WITH THE ENTIRE ACREAGE OF THE LAND.

(5) The purpose of this Deed of Easement shall be to (i) promote and encourage the preservation of farmland, and promote and enhance agriculture as an important industry within the City, (ii) preserve the rural character of the southern part of the City, (iii) conserve and protect environmentally sensitive lands, waters and other resources, (iv) reduce and defer the need for major infrastructure improvements in the southern part of the City and the expenditure of public funds for such improvements, (v) preserve open spaces, and (vi) assist in shaping the character, direction and timing of community development.

(6) In the event of a violation or attempted violation of any of the provisions hereof, the City and its successors and assigns, may institute and prosecute any proceeding at law or in equity to enforce the provisions hereof or to abate, prevent or enjoin any such violation or attempted violation.

WITNESS, the hand and seal of the Grantor as of the date first above written.
#(NOTE-USE IF GRANTOR IS MARRIED BUT SPOUSE IS NOT ON DEED--Anything herein to the contrary notwithstanding, _____ AND _____, execute(s) this Deed of Easement for the sole purpose of consenting to the conveyance of and releasing any marital or augmented estate interest in the easement and rights set forth herein.

GRANTOR:

_____(SEAL)
JOHN A. BAUM

_____(SEAL)

_____(SEAL)
CHARLOTTE BAUM IVES

_____(SEAL)

_____(SEAL)
WESLEY L. BAUM

_____(SEAL)

_____(SEAL)
GLENN CLARK BAUM

_____(SEAL)

_____(SEAL)
MARSHALL P. BAUM

_____(SEAL)

_____(SEAL)
JEAN BAUM BROWN

_____(SEAL)

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 1997, by John A. Baum and _____, his wife, Grantor.

Notary Public

(SEAL)

My Commission Expires: _____

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 1997, by Charlotte Baum Ives and _____, her husband, Grantor.

Notary Public

(SEAL)

My Commission Expires: _____

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 1997, by Wesley L. Baum and _____, his wife, Grantor.

Notary Public

(SEAL)

My Commission Expires: _____

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 1997, by Glenn Clark Baum and _____, his wife, Grantor.

Notary Public

(SEAL)

My Commission Expires: _____

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 1997, by Marshall P. Baum and _____, his wife, Grantor.

Notary Public

(SEAL)

My Commission Expires: _____

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 1997, by Jean Baum Brown and _____, her husband, Grantor.

Notary Public

(SEAL)

My Commission Expires: _____

EXHIBIT A

ALL THAT certain tract of land, with the buildings and improvements thereon and the rights, privileges and appurtenances therunto belonging, situate in Blackwater Borough in the City of Virginia Beach, Virginia, now containing 473.9126 Ac., and shown as 473.9126 Ac. on a plat thereof entitled "SURVEY OF BAUM PROPERTY AS SHOWN ON MAP OF A. O. BAUM'S WOOD AND MARSHLAND IN PRINCESS ANNE AND NORFOLK COUNTIES, VIRGINIA, MAP BOOK 94, PAGE 24, BLACKWATER BOROUGH - VIRGINIA BEACH, VIRGINIA", dated January 1984, made by Mel Smith & Associates, Consulting Engineers, Surveyors, Planning, recorded in the Clerk's office of the Circuit Court of the City of Virginia Beach, Virginia in Map Book 175, at page 23.

LESS AND EXCEPT all portions of the above-described property, if any, which contain any of the following soil types: (1) Back Bay Mucky Peat; (2) Dorovan Mucky Peat; (3) Nawney Silt Loam; or (4) Pamlico Mucky Peat, Ponded.

[LESS AND EXCEPT that certain tract, piece or parcel being a portion of the above described property designated and described as "#" as shown on that certain plat entitled: "#", Scale #" = #", dated #, prepared by #, which plat is attached hereto and recorded simultaneously herewith.]

IT BEING the same property conveyed to the Grantors, from John A. Baum, Trustee, by deed, dated May 11, 1993, duly recorded in the aforesaid Clerk's Office in Deed Book 3227, at page 529.

EXHIBIT B

ALL THAT certain tract of land, with the buildings and improvements thereon and the rights, privileges and appurtenances therunto belonging, situate in Blackwater Borough in the City of Virginia Beach, Virginia, now containing 473.9126 Ac., and shown as 473.9126 Ac. on a plat thereof entitled "SURVEY OF BAUM PROPERTY AS SHOWN ON MAP OF A. O. BAUM'S WOOD AND MARSHLAND IN PRINCESS ANNE AND NORFOLK COUNTIES, VIRGINIA, MAP BOOK 94, PAGE 24, BLACKWATER BOROUGH - VIRGINIA BEACH, VIRGINIA", dated January 1984, made by Mel Smith & Associates, Consulting Engineers, Surveyors, Planning, recorded in the Clerk's office of the Circuit Court of the City of Virginia Beach, Virginia in Map Book 175, at page 23.

LESS AND EXCEPT all portions of the above-described property, if any, which contain any of the following soil types: (1) Back Bay Mucky Peat; (2) Dorovan Mucky Peat; (3) Nawney Silt Loam; or (4) Pamlico Mucky Peat, Pondered.

[LESS AND EXCEPT that certain tract, piece or parcel being a portion of the above described property designated and described as "#" as shown on that certain plat entitled: "#", Scale #" = #", dated #, prepared by #, which plat is attached hereto and recorded simultaneously herewith.]

IT BEING the same property conveyed to the Grantors, from John A. Baum, Trustee, by deed, dated May 11, 1993, duly recorded in the aforesaid Clerk's Office in Deed Book 3227, at page 529.

EXHIBIT "C"

PERMITTED ENCUMBRANCES

1. Taxes for the 2nd half of the fiscal year 1996/1997 and any/all Stormwater fees, which are liens not yet due and payable, and taxes and stormwater fees for all subsequent billing periods.
2. Roll Back Taxes.
3. Easement granted Virginia Electric and Power Company, as established by instrument recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 437, at page 172, of unspecified width along lane perpendicular to Baum Road.
4. Easement granted Virginia Electric and Power Company, as established by instrument recorded in the aforesaid Clerk's Office in Deed Book 237, at page 399 and as shown in Map Book 18, at page 22, along Baum Road.
5. Agreement regarding ditches recorded in the aforesaid Clerk's Office in Deed Book 147, at page 230.
6. Reference to quantity of acreage is for descriptive purposes only, and the policy will not insure as to quantity of acreage nor to the accuracy of the computation thereof.
7. Such other restrictions and encumbrances which, in the opinion of the City Attorney, do not adversely affect the interest of the City of Virginia Beach in and to the agricultural land preservation easement and the rights granted to the City in the Deed of Easement.

Item V-J.1.c.d/e

ORDINANCES

ITEM # 42298

*Upon motion by Councilman Jones, seconded by Councilman Branch, City Council **ADOPTED:***

Ordinances to authorize the acquisition of Agricultural Land Preservation Easements (ARP) and the issuance by the City of its contract obligations:

- c. Robert R. and Betty S. Lusk, Trustees of the Robert R. and Betty S. Lusk Family Trust - 304.66 Acres Installment Purchase Agreement No. 1997-12 - \$587,626.00 (Pungo Borough)*
- d. Robert R. and Betty S. Lusk, Trustees of the Robert R. and Betty S. Lusk Family Trust - 47 98 Acres Installment Purchase Agreement No. 1997-13 - \$ 67,898.00 (Pungo Borough)*
- e. Ernest Brown - 92.28 Acres Installment Purchase Agreement No. 1997-14 - \$175,332.00 (Blackwater Borough)*

Voting: 7-1 (By Consent)

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn

Council Members Voting Nay:

Reba S. McClanan

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

June 24, 1997

1 AN ORDINANCE AUTHORIZING THE ACQUISITION OF AN
2 AGRICULTURAL LAND PRESERVATION EASEMENT AND
3 THE ISSUANCE BY THE CITY OF ITS CONTRACT
4 OBLIGATIONS IN THE MAXIMUM PRINCIPAL AMOUNT OF
5 \$587,626.

6 WHEREAS, pursuant to the Agricultural Lands Preservation
7 Ordinance (the "Ordinance"), Appendix J of the Code of the
8 City of Virginia Beach, there has been presented to the City
9 Council for approval an Installment Purchase Agreement for the
10 acquisition of the Development Rights (as defined in the
11 Installment Purchase Agreement, a true copy of which is hereto
12 affixed) on certain property located in the City and more
13 fully described in Exhibit B of the Installment Purchase
14 Agreement for a purchase price of \$587,626; and

15 WHEREAS, the aforesaid Development Rights shall be
16 acquired through the acquisition of a perpetual agricultural
17 land preservation easement, as defined in, and in compliance
18 with, the requirements of the Ordinance; and

19 WHEREAS, the City Council has reviewed the proposed terms
20 and conditions of the purchase as evidenced by the Installment
21 Purchase Agreement;

22 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
23 CITY OF VIRGINIA BEACH, VIRGINIA:

24 1. The City Council hereby determines and finds that
25 the proposed terms and conditions of the purchase of the
26 Development Rights pursuant to the Installment Purchase
27 Agreement, including the purchase price and manner of payment,
28 are fair and reasonable and in furtherance of the purposes of
29 the Ordinance, and the City Manager is hereby authorized to
30 approve, upon or before the execution and delivery of the
31 Installment Purchase Agreement, the rate of interest to accrue

on the unpaid principal balance of the purchase price set forth hereinabove as the greater of 6.0% per annum or the per annum rate which is equal to the yield on United States Treasury STRIPS purchased by the City to fund such unpaid principal balance; provided, however, that such rate of interest shall not exceed 7.50% unless the approval of the City Council by resolution duly adopted is first obtained.

2. The City Council hereby further determines that funding is available for the acquisition of the Development Rights pursuant to the Installment Purchase Agreement on the terms and conditions set forth therein.

3. The City Council hereby expressly approves the Installment Purchase Agreement in the form and substance presented at this meeting and, subject to the determination of the City Attorney that there are no defects in title to the property or other restrictions or encumbrances thereon which may, in the opinion of the City Attorney, adversely affect the City's interests, authorizes the City Manager to execute and deliver the Installment Purchase Agreement in substantially the same form and substance as presented at this meeting with such minor modifications, insertions, completions or omissions which do not materially alter the purchase price or manner of payment, as the City Manager shall approve. The City Council further directs the City Clerk to affix the seal of the City to, and attest same on, the Installment Purchase Agreement. The City Council expressly authorizes the incurrence of the indebtedness represented by the issuance and delivery of the Installment Purchase Agreement.

60 4. The City Council hereby elects to issue the
61 indebtedness under the Charter of the City rather than
62 pursuant to the Public Finance Act of 1991 and hereby
63 constitutes the indebtedness a contractual obligation bearing
64 the full faith and credit of the City.

65 Adopted by the Council of the City of Virginia Beach,
66 Virginia, on this 24TH day of JUNE, 1997.

67 Adoption requires an affirmative vote of a majority of
68 all members of the City Council.
69

70 CA-97-6687
71 wmm\arp\purchase\lusktr\lusktr1.orn
72 R-1
73 June 10, 1997

74 APPROVED AS TO CONTENT:
75
76 *Jamie E. Celligher*
77 Agriculture Department

 APPROVED AS TO LEGAL
 SUFFICIENCY:
 William M. Macal
 Law Department

78 CERTIFIED AS TO AVAILABILITY OF FUNDS:
79 *Patricia A. Phillips*
80 Director of Finance

ROBERT R. LUSK AND BETTY S. LUSK, TRUSTEES
OF THE ROBERT R. AND BETTY S. LUSK FAMILY TRUST,
the "Seller"

and

CITY OF VIRGINIA BEACH, VIRGINIA
the "City"

INSTALLMENT PURCHASE AGREEMENT
(Agreement No. 1997-12)

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(This Table of Contents is not part of the Installment Purchase Agreement and is only for convenience of reference)

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INSTALLMENT PURCHASE AGREEMENT
(Agreement No. 1997-12)

THIS INSTALLMENT PURCHASE AGREEMENT (this "Agreement") is made as of the ____ day of _____, 199_ between ROBERT R. LUSK and BETTY S. LUSK, TRUSTEES OF THE ROBERT R. AND BETTY S. LUSK FAMILY TRUST (collectively, the "Seller") and CITY OF VIRGINIA BEACH, VIRGINIA, a body politic and corporate of the Commonwealth of Virginia (the "City").

RECITALS

A. Pursuant to the authority granted by the Open-Space Land Act, Chapter 17, Title 10.1 of the Code of Virginia of 1950, as amended (the "Act"), the City adopted the Ordinance (hereinafter defined in Section 1.1) to promote and encourage the preservation of agricultural land in designated areas within the southern portion of the City.

B. In furtherance of the purposes of the Act and the Ordinance, the City has established the Agricultural Reserve Program of the City which provides for the acquisition of Development Rights (hereinafter defined in Section 1.1) through the purchase of agricultural land preservation easements with respect to property located in the portions of the City covered by the Ordinance.

C. The Seller is the owner in fee simple of Land (hereinafter defined in Section 1.1) which is located in that portion of the City subject to the Ordinance and meets the eligibility criteria of Section 7 of the Ordinance.

D. The Seller has agreed to sell, and the City has agreed to purchase, Seller's Development Rights in the Land on and subject to the terms and conditions hereinafter set forth.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Seller and the City hereby agree as follows:

ARTICLE 1

DEFINITIONS

SECTION 1.1 Definitions As used in this Agreement, the following terms have the following meanings, unless the context clearly indicates a different meaning

"Agricultural Use" means (i) the bona fide production of crops, animal or fowl, including, but not limited to, the production of fruits, vegetables, honey, grains, meat, poultry and dairy products, the raising of livestock and poultry, and the production and harvest of products from horticultural, silvicultural or aquacultural activity, (ii) the repair, expansion or replacement of no more than one (1) bona fide dwelling occupied by the landowner or tenant as of the date of application for entry in the Agricultural Reserve Program and no more than one freestanding mobile home, as permitted by Section 19-19 of the Virginia Beach City Code, and (iii) accessory uses directly related to agricultural activities conducted on the same property, including the sale of agricultural products as permitted by Section 401 of the Virginia Beach City Zoning Ordinance. The term does not include the processing of agricultural, silvicultural, horticultural or aquacultural products, except as an accessory use

"Business Day" or "business day" means a day on which (a) banks located in the City and in the city in which the principal office of the Registrar is located are not required or authorized by law or executive order to close for business, and (b) The New York Stock Exchange is not closed

"City" means the City of Virginia Beach, Virginia, a body politic and corporate and a political subdivision created and existing under and by virtue of the Constitution and laws of the State, its successors and assigns

"City Council" means the Council of the City

"City Manager" means the City Manager of the City

"Code" means the Internal Revenue Code of 1986, as amended. Each reference to the Code herein shall be deemed to include the United States Treasury Regulations in effect or proposed from time to time with respect thereto

"Deed of Easement" means the Deed of Easement of even date herewith from the Seller to the City, which shall convey the Development Rights to the City in perpetuity. The Deed of Easement shall be substantially in the form attached hereto as **Exhibit A** and made a part hereof

"Development Rights" mean the rights of the Seller in the Land to develop the Land for any use other than an Agricultural Use. Development Rights shall include, but not be limited to, the right to develop the Land for any commercial, industrial or residential use except as expressly permitted by the Ordinance.

"Enabling Legislation" means, collectively, (1) the Open Space Land Act, Chapter 17 of Title 10.1 of the Code of Virginia of 1950, as amended, and (2) the Ordinance.

"Estate Settlement Transfer" means the transfer by the legal representative of the estate of a deceased Seller of such Seller's rights in and to this Agreement in connection with the distribution of the deceased Seller's estate or other settlement of such decedent Seller's estate.

"Interest Payment Date" means June 1 and December 1 in each year, commencing _____, 199_.

"Land" means the tract or tracts of land located in Virginia Beach, Virginia, containing approximately _____ acres, and more particularly described in **Exhibit B** attached hereto and made a part hereof.

"Ordinance" means the Agricultural Lands Preservation Ordinance adopted by the City Council on May 9, 1995, as Appendix J to the City Code, as the same may be amended or modified from time to time.

"Permitted Encumbrances" mean the encumbrances listed on **Exhibit C** attached hereto and made a part hereof and any encumbrances on or with respect to the Land or any portion thereof hereafter approved, in writing, by the City.

"Person" or "person" means any natural person, firm, association, corporation, company, trust, partnership, public body or other entity.

"Purchase Price" means \$587,626, the purchase price to be paid by the City to the Registered Owner in accordance with this Agreement.

"Record Date" means the fifteenth (15th) day (whether or not a Business Day) of the calendar month immediately preceding each Interest Payment Date and the principal payment date.

"Registered Owner" means the registered owner of this Agreement as shown on the registration books maintained by the Registrar.

"Registrar" means First Union National Bank of Virginia or any other person hereafter appointed by the City to act as Registrar and paying agent for this Agreement

"Seller" means, collectively, Robert R Lusk and Betty S Lusk, Trustees of the Robert R and Betty S Lusk Family Trust

"State" means the Commonwealth of Virginia

SECTION 1.2 Rules of Construction

(a) The words "hereof," "herein," "hereunder," "hereto," and other words of similar import refer to this Agreement in its entirety

(b) The terms "agree" and "agreements" contained herein are intended to include and mean "covenant" and "covenants "

(c) References to Articles, Sections, and other subdivisions of this Agreement are to the designated Articles, Sections, and other subdivisions of this Agreement

(d) The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof

(e) All references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well

ARTICLE 2

SALE AND PURCHASE OF DEVELOPMENT RIGHTS

SECTION 2.1 Agreement to Sell and Purchase Development Rights The Seller agrees to sell the Development Rights in the Land to the City and the City agrees to purchase the Development Rights in the Land from the Seller on the date hereof for the Purchase Price

SECTION 2.2 Delivery of Deed of Easement In order to evidence the sale of the Development Rights to the City, the Seller shall execute and deliver to the City on the date hereof the Deed of Easement in the form attached hereto as **Exhibit A** and made a part hereof. The Deed of Easement shall be recorded in the Clerk's Office of the Circuit Court of the City

ARTICLE 3

PAYMENT OF PURCHASE PRICE

SECTION 3 1 Payment of Purchase Price

(a) The City shall pay the principal portion of the Purchase Price to the Registered Owner in a single installment on _____, 202__ [25-year maturity date] The Purchase Price is \$587,626.

(b) Interest on the unpaid principal balance of the Purchase Price shall accrue from the date of recordation of the Deed of Easement and shall be payable to the Registered Owner on _____, 199_, and semiannually thereafter on June 1 and December 1 in each year to and including _____, 202_, at the rate of ___% per annum Interest shall be calculated on the basis of a 360-day year of twelve 30-day months

(c) Both the single installment of principal of the Purchase Price and the interest on the unpaid balance thereof are payable in lawful money of the United States of America at the time of payment

(d) Payment of interest on the unpaid balance of the Purchase Price shall be made by the City on each Interest Payment Date to the Registrar The Registrar shall forward all such interest payments by check or draft mailed to the person(s) appearing on the registration books of the City maintained by the Registrar as the Registered Owner on the Record Date, at the address of such Registered Owner as it appears on such registration books The single installment of principal of the Purchase Price shall be paid on the principal payment date set forth in Subsection (a) above by the Registrar to the Registered Owner as of the Record Date upon presentation and surrender of this Agreement at the office of the Registrar

(e) The City's obligation to pay the Purchase Price hereunder and to pay interest on the unpaid balance of the Purchase Price is a general obligation of the City, and the full faith and credit and the unlimited taxing power of the City are irrevocably pledged to the punctual payment of the Purchase Price and the interest on the unpaid principal balance of the Purchase Price as and when the same respectively become due and payable

SECTION 3 2 Registration and Transfer of this Agreement

(a) Until the Purchase Price and all interest thereon have been paid in full, the City shall maintain and keep at the offices of the Registrar, registration books for the registration and transfer of this Agreement, and upon presentation of this Agreement for such purpose at the offices of the Registrar, the Registrar shall register or cause to be

registered on such registration books, and permit to be transferred thereon, under such reasonable regulations as the City or the Registrar may prescribe, the ownership of this Agreement. The Registrar, however, shall not be required to make any such registration and transfer during the period from the Record Date to the next succeeding Interest Payment Date or final principal payment date.

(b) Except for an Estate Settlement Transfer, this Agreement may not be transferred by the Registered Owner prior to the expiration of a one (1) year period from the date this Agreement has been fully executed, delivered and become effective, and any such attempted transfer shall be null and void. The Registrar shall be instructed not to make any such transfers (other than an Estate Settlement Transfer) on its registration books kept for the purpose of registering the transfer of this Agreement prior to the expiration of said one (1) year period.

(c) The Seller is the original Registered Owner. This Agreement shall be transferable only upon the books of the City maintained for such purpose by the Registrar, at the written request of the Registered Owner as then shown on such registration books or his attorney duly authorized in writing, upon presentation and surrender of this Agreement, together with a written instrument of transfer substantially in the form attached hereto as **Exhibit D**, or as may otherwise be satisfactory to and approved by the Registrar in writing, duly executed by the Registered Owner or his attorney duly authorized in writing. Upon the surrender for transfer of this Agreement, the Registrar shall complete the Schedule of Transferees attached hereto as **Exhibit E** with the name, address and tax identification number of the transferee Registered Owner, and the date of the transfer; provided, however, that if there is any conflict between the information set forth in **Exhibit E** hereto and the registration books maintained by the Registrar, the information shown on such registration books shall control.

The City and the Registrar may deem and treat the person in whose name this Agreement is registered upon the books of the City maintained by the Registrar as the absolute owner of this Agreement, whether any payments hereunder shall be overdue or not, for the purpose of receiving payment of, or on account of, the Purchase Price and interest thereon and for all other purposes, and all such payments so made to any such Registered Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon this Agreement to the extent of the sum or sums so paid, and neither the City nor the Registrar shall be affected by any notice to the contrary.

For every registration of transfer of this Agreement, the City or the Registrar may make a charge sufficient to reimburse themselves for any tax or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such transfer as a condition precedent to the exercise of the privilege of registering such transfer.

SECTION 3.3 Mutilated, Lost, Stolen or Destroyed Agreement. In the event that this Agreement is mutilated, lost, stolen or destroyed, the City and the Registered Owner (as then shown on the registration books maintained by the Registrar) shall execute and deliver a substitute agreement having the same terms and provisions as the mutilated, lost, stolen or destroyed Agreement; provided that, in the case of any mutilated Agreement, such mutilated Agreement shall first be surrendered to the Registrar, and, in the case of any lost, stolen or destroyed Agreement there shall be first furnished to the City and the Registrar evidence of such loss, theft or destruction satisfactory to the City and the Registrar, together with indemnity satisfactory to each of them in their sole discretion. The City and the Registrar may charge the Registered Owner requesting such new Agreement their expenses and reasonable fees, if any, in this connection. If after the delivery of such substitute Agreement, a bona fide purchaser of the original Agreement (in lieu of which such substitute Agreement was issued) presents for payment such original Agreement, the City and the Registrar shall be entitled to recover such substitute Agreement from the person to whom it was delivered or any other person who receives delivery thereof, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor or otherwise to the extent of any loss, damage, cost or expense incurred by the City and the Registrar in connection therewith.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

SECTION 4.1 Representations and Warranties of the City. The City makes the following representations and warranties:

- (a) The City is a body politic and corporate and a political subdivision of the State.
- (b) The City has the necessary power and authority to acquire the Development Rights, to enter into this Agreement, to perform and observe the covenants and agreements on its part contained in this Agreement and to carry out and consummate all transactions contemplated hereby. By proper action, the City has duly authorized the execution and delivery of this Agreement.
- (c) This Agreement has been duly and properly authorized, executed, sealed and delivered by the City, constitutes the valid and legally binding obligation of the City, and is enforceable against the City in accordance with its terms.
- (d) There are no proceedings pending or, to the knowledge of the City, threatened before any court or administrative agency which may affect the authority of the City to enter into this Agreement.

SECTION 4.2 Representations and Warranties of the Seller. The Seller makes the following representations and warranties:

(a) The Seller has full power and authority to execute and deliver this Agreement and the Deed of Easement, and to incur and perform the obligations provided for herein and therein. No consent or approval of any person or public authority or regulatory body is required as a condition to the validity or enforceability of this Agreement or the Deed of Easement, or, if required, the same has been duly obtained.

(b) This Agreement and the Deed of Easement have been duly and properly executed by the Seller, constitute valid and legally binding obligations of the Seller, and are fully enforceable against the Seller in accordance with their respective terms.

(c) There is no litigation or proceeding pending or, so far as the Seller knows, threatened before any court or administrative agency which, in the opinion of the Seller, will materially adversely affect the authority of the Seller to enter into, or the validity or enforceability of, this Agreement or the Deed of Easement.

(d) There is (i) no provision of any existing mortgage, indenture, contract or agreement binding on the Seller or affecting the Land, and (ii) to the knowledge of the Seller, no provision of law or order of court binding upon the Seller or affecting the Land, which would conflict with or in any way prevent the execution, delivery, or performance of the terms of this Agreement or the Deed of Easement, or which would be in default or violated as a result of such execution, delivery or performance, or for which adequate consents, waivers or, if necessary, releases or subordinations, have not been obtained.

(e) There exist no liens, security interests or other encumbrances on or with respect to the Land (other than Permitted Encumbrances), and at the time of execution and delivery of the Deed of Easement there will be no liens, security interests or other encumbrances of the Development Rights to be conveyed thereby.

(f) The Seller is not a nonresident alien of the United States of America for purposes of federal income taxation.

(g) The Social Security Numbers of the Seller are 539-22-1845 (for Robert R. Lusk) and 224-40-1989 (for Betty S. Lusk).

The representations in subsections (f) and (g) above are made under penalties of perjury and the information contained therein may be disclosed by the City to the Internal Revenue Service. The Seller acknowledges that any false statement in such subsections could be punished by fine, imprisonment or both.

(h) To the best of the knowledge, information and belief of the Seller, the Land has not been used for the manufacture, storage, treatment, disposal or release of any hazardous waste or substance.

ARTICLE 5

PROVISIONS RELATING TO EXCLUSION OF INTEREST FROM INCOME FOR FEDERAL INCOME TAXATION

SECTION 5.1 Intent of City and Tax Covenant of City. The City intends that the interest payable under this Agreement shall not be includable in the gross income of the Registered Owner for purposes of federal income taxation pursuant to Section 103 of the Code. Accordingly, the City shall not knowingly take or permit to be taken any other action or actions or omit or fail to take any action, which would cause this Agreement to be an "arbitrage bond" within the meaning of Section 148 of the Code, or which would otherwise cause interest payable under this Agreement to become includable in the gross income of any Registered Owner for purposes of federal income taxation.

SECTION 5.2 Acknowledgment of Seller with Regard to Tax Consequences of Transaction. The Seller has received an opinion from Kaufman & Canoles, P.C., Bond Counsel, dated the date hereof, to the effect that under existing laws, regulations, rulings and decisions, interest payable under this Agreement is not includable in the gross income of the Seller for federal income tax purposes, which opinion assumes continuous compliance with certain covenants in the Tax Certificate and Compliance Agreement to be executed and delivered by the City on the date of delivery of this Agreement and is otherwise limited in accordance with its terms. The Seller acknowledges that Seller has made Seller's own independent investigation and has consulted with such attorneys, accountants and others as the Seller shall have selected in the Seller's sole discretion to advise the Seller with respect to all other tax considerations related to the transaction contemplated hereby (including, but not limited to, installment sales treatment under Section 453 of the Code, charitable contribution deductions under Section 170 of the Code, and federal estate tax implications); and the Seller certifies that the Seller has not looked to or relied upon the City or any of its officials, agents or employees, or to Bond Counsel, with respect to any of such matters.

ARTICLE 6

THE REGISTRAR

SECTION 6.1 Appointment of Registrar. First Union National Bank of Virginia is hereby designated and appointed to act as Registrar for this Agreement.

SECTION 6.2 Ownership of Agreement. The Registrar, in its individual capacity or as trustee for holders of participation interests in this Agreement, may in good faith buy, sell, own and hold this Agreement, and may join in any action which any Registered owner may be entitled to take with like effect as if it did not act as Registrar hereunder. The Registrar, in its individual capacity, either as principal or agent, may also engage, or have an interest, in any financial or other transaction with the City, and may act as depository, trustee or agent for other obligations of the City as freely as if it did not act in any capacity hereunder.

SECTION 6.3 Removal of Registrar and Appointment of Successor Registrar. The City shall have the right, subject to the terms of any agreement with the Registrar, to remove the Registrar any time by filing with such Registrar to be removed, and with the Registered Owner, an instrument in writing. Notwithstanding the foregoing, such removal shall not be effective until a successor Registrar has assumed the Registrar's duties hereunder. The City shall have the sole right to select a successor Registrar.

SECTION 6.4 Qualifications of Successor Registrar. Any successor Registrar shall be either (a) the Department of Finance of the City, (b) an officer or employee of the City, or (c) a bank, trust company or other financial institution duly organized under the laws of the United States or any state or territory thereof which is authorized by law and permitted under the laws of the State to perform all the duties imposed upon it as Registrar by this Agreement.

SECTION 6.5 Successor by Merger or Consolidation. If the Registrar is a bank, trust company or other financial institution, any institution or corporation into which the Registrar hereunder may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Registrar hereunder shall be a party or any institution or corporation succeeding to the corporate trust business (if any) of the Registrar, shall be the successor Registrar under this Agreement, without the execution or filing of any paper or any further act on the part of the parties hereto, anything in this Agreement to the contrary notwithstanding.

ARTICLE 7

MISCELLANEOUS

SECTION 7.1 Successors of City. In the event of the dissolution of the City, all the covenants, stipulations, promises and agreements in this Agreement contained, by or on behalf of, or for the benefit of, the City, the Seller, any other Registered Owner and the Registrar, shall bind or inure to the benefit of the successors of the City from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the City shall be transferred.

SECTION 7.2 **Parties in Interest.** Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation, other than the City, the Seller, any other Registered Owner and the Registrar, any right, remedy or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the City, the Seller, any other Registered Owner from time to time of this Agreement and the Registrar.

SECTION 7.3 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns, including, without limitation, all Registered Owners from time to time of this Agreement.

SECTION 7.4 **Severability.** In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein or therein.

SECTION 7.5 **Prior Agreements Cancelled; No Merger.** This Agreement shall completely and fully supersede all other prior agreements, both written and oral, between the City and the Seller relating to the acquisition of the Development Rights. Neither the City nor the Seller shall hereafter have any rights under such prior agreements but shall look solely to this Agreement and the Deed of Easement for definitions and determination of all of their respective rights, liabilities and responsibilities relating to the Land, the Development Rights and the payment for the Development Rights. In addition, this Agreement shall survive the execution and recording of the Deed of Easement in all respects and shall not be merged therein.

SECTION 7.6 **Amendments, Changes and Modifications.** This Agreement may not be amended, changed, modified, altered or terminated except by an agreement in writing between the City and the then Registered Owner. An executed counterpart of any such amendment shall be attached to this Agreement and shall be binding upon such Registered Owner and all successor Registered Owners.

SECTION 7.7 **No Personal Liability of City Officials.** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, officer, agent or employee of the City in his or her individual capacity, and neither the officers or employees of the City nor any official executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 7.8 Governing Law. The laws of the State shall govern the construction and enforcement of this Agreement.

SECTION 7.9 Notices. Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals, certificates or other communications required under this Agreement to be in writing shall be sufficiently given and shall be deemed to have been properly given three Business Days after the same is mailed by certified mail, postage prepaid, return receipt requested, addressed to the person to whom any such notice, demand, request, approval, certificate or other communication is to be given, at the address for such person designated below:

City: City Manager
Municipal Center
Virginia Beach, VA 23456

with a copy to: City Attorney
Municipal Center
Virginia Beach, VA 23456

Seller: Robert R. and Betty S. Lusk,
Trustees of the Robert R. and Betty S. Lusk Family Trust
4275 Harbor View Drive
Coeur d'Alene, Idaho 83814

Registrar: First Union National Bank of Virginia
Corporate Trust Department
2nd Floor
901 East Cary Street
Richmond, Virginia 23219

Any of the foregoing may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, demands, requests, consents, approvals, certificates or other communications shall be sent hereunder.

SECTION 7.10 Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Agreement, shall not be a Business Day, such payment may, unless otherwise provided in this Agreement, be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Agreement, and in the case of payment no interest shall accrue for the period after such nominal date.

WITNESS the signatures and seals of the parties hereto as of the date first above written.

CITY:

[CITY'S SEAL]

CITY OF VIRGINIA BEACH, VIRGINIA

ATTEST:

By: _____
James K. Spore, City Manager

City Clerk

SELLER:

_____(SEAL)

_____(SEAL)

Approved as to Legal
Sufficiency:

Approved as to Sufficiency of
Funds:

Deputy City Attorney

Director, Department of Finance

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 19____, by James K. Spore, City Manager of the City of Virginia Beach, Virginia, and attested to by _____, City Clerk of the City of Virginia Beach, Virginia, on its behalf.

Notary Public

(SEAL)
My Commission Expires:

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of _____, Virginia, this _____ day of _____, 19____, by _____.

Notary Public

(SEAL)
My Commission Expires:

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of _____, Virginia, this _____ day of _____, 19____, by _____.

Notary Public

(SEAL)
My Commission Expires:

FORM OF DEED OF EASEMENT

[SEE ATTACHED]

DESCRIPTION OF LAND

[SEE ATTACHED]

PERMITTED ENCUMBRANCES

[SEE ATTACHED]

ASSIGNMENT

FOR VALUE RECEIVED, _____ and _____
([collectively,] the "Registered Owner") hereby sell[s], assign[s] and transfer[s] unto
_____, without recourse, all of the Registered Owner's
right, title and interest in and to the Installment Purchase Agreement to which this
Assignment is attached; and the Registered Owner hereby irrevocably directs the Registrar
(as defined in such Agreement) to transfer such Agreement on the books kept for
registration thereof. The Registered Owner hereby represents, warrants and certifies that
there have been no amendments to such Agreement [except _____].

Date: _____

Signature guaranteed:

NOTICE: Signature must be
guaranteed by a member firm
of the New York Stock
Exchange or a commercial
bank or trust company.

NOTICE: The signature on this
Assignment must correspond with
the name of the Registered Owner
as it appears on the registration
books for the Installment Purchase
Agreement referred to herein in every
particular, without alteration or
enlargement or any change whatever.

TRANSFER OF AGREEMENT - SCHEDULE OF TRANSFEREES

The transfer of this Installment Purchase Agreement may be registered only by the Registered Owner under such Agreement in person or by its duly authorized officer or attorney upon presentation hereof to the Registrar, who shall make note thereof in the books kept for such purpose and in the registration blank below.

Date of Registration of Transfer	Name and Address of Transferee Registered Seller	Tax I.D. No. of Transferee	Signature of Registrar
1. _____	_____	_____	_____
	_____	_____	
	_____	_____	
2 _____	_____	_____	_____
	_____	_____	
	_____	_____	
3 _____	_____	_____	_____
	_____	_____	
	_____	_____	
4. _____	_____	_____	_____
	_____	_____	
	_____	_____	
5. _____	_____	_____	_____
	_____	_____	
	_____	_____	
6 _____	_____	_____	_____
	_____	_____	
	_____	_____	

This instrument was prepared by
Virginia Beach City Attorney's Office

EXHIBIT A

Exemption Claimed: § 58.1-811(A)(3)
§ 58.1-811(C)(4)

DEED OF EASEMENT

THIS DEED OF EASEMENT is made this ____ day of _____, 1997, by and between ROBERT R. LUSK and BETTY S. LUSK TRUSTEES OF THE ROBERT R. AND BETTY S. LUSK FAMILY TRUST (collectively, the "Grantor"), and CITY OF VIRGINIA BEACH, VIRGINIA, a body politic and corporate of the Commonwealth of Virginia (the "City") whose address is Municipal Center, Virginia Beach, Virginia 23456, Grantee.

RECITALS

WHEREAS, pursuant to the authority granted by the Open-Space Land Act, Chapter 17, Title 10.1 of the Code of Virginia of 1950, as amended (the "Act"), the City adopted the Agricultural Lands Preservation Ordinance (the "Ordinance") as Appendix J to the Code of the City of Virginia Beach, Virginia, as amended (the "City Code"), to promote and encourage the preservation of agricultural land in designated areas within the southern portion of the City; and

WHEREAS, in furtherance of the purposes of the Act and the Ordinance, the City has established the Agricultural Reserve Program of the City which provides for the acquisition of development rights through the purchase of agricultural land preservation easements with respect to property located in the portions of the City covered by the Ordinance; and

WHEREAS, the Grantor is the owner in fee simple of certain agricultural real property located in the City and more particularly described in **Exhibit A** hereto (the "Land"); and

WHEREAS, the Land is located in that portion of the City subject to the Ordinance and meets the eligibility criteria of Section 7 of the Ordinance; and

WHEREAS, the Grantor has agreed to sell to the City the Grantor's Development Rights (hereinafter defined) in the Land by executing and delivering this Deed of Easement and thereby restrict the use of the Land as described herein; and

GPIN 2318-37-9111, 2318-46-1320, 2318-35-7902, 2318-75-2690, 2318-75-4150, 2318-45-0030, 2318-56-4380, 2318-76-2269 and 2318-86-7351

WHEREAS, the City has agreed to purchase the Grantor's Development Rights in the Land to fulfill the policy and purposes of the City as set forth in the Act and the Ordinance; and

WHEREAS, the transfer by the Grantor of the Development Rights in the Land shall be in perpetuity; and

WHEREAS, in order to provide for the payment of the purchase price for the rights in the Land created hereby, the Grantor and the City have entered into an Installment Purchase Agreement of even date herewith (the "Installment Purchase Agreement");

GRANT

NOW, THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00), the covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor, for Grantor, Grantor's heirs, personal representatives, devisees, successors and assigns, and for any subsequent owner of the Land does hereby grant and convey, with general warranty and English covenants of title, unto the City, and its successors and assigns, forever and in perpetuity, an agricultural land preservation easement in, on, over and with respect to the Land restricting the Land to Agricultural Use and in furtherance thereof, does hereby grant and convey, with general warranty and English covenants of title, to the City, and its successors and assigns, forever and in perpetuity, all of the Development Rights with respect to the Land.

TERMS, COVENANTS, CONDITIONS AND AGREEMENTS

A. The Grantor for Grantor, Grantor's heirs, personal representatives, devisees, successors and assigns covenants with the City, (1) to refrain from engaging in any act or activity, or permitting to occur or suffering to exist any act or activity upon the Land which would constitute the exercise of a Development Right or a use other than an Agricultural Use, it being the intention of the parties that the Land shall be preserved for Agricultural Use in accordance with the provisions of the Ordinance; and (2) that this Deed of Easement shall create a perpetual easement, running with the Land and all portions thereof as an incorporeal and nonpossessory interest therein, enforceable against the Grantor and upon any purchaser, grantee, lessee, owner or other transferee of all or any portion of the Land and any other person or entity having any right, title or interest therein and upon their respective heirs, personal representatives, devisees, successors and assigns; and (3) that the covenants, conditions, limitations and restrictions contained herein are intended to limit the use of the Land as herein set forth.

B. The parties, for themselves, their heirs, personal representatives, devisees, successors and assigns, further covenant and agree as follows:

(1) As used in this Deed of Easement the term "Development Rights" shall mean the right to develop the Land for any use, including without limitation, any commercial, industrial or residential use, other than for Agricultural Use.

(2) As used in this Deed of Easement the term "Agricultural Use" means (i) the bona fide production of crops, animal or fowl, including, but not limited to, the production of fruits, vegetables, honey, grains, meat, poultry and dairy products, the raising of livestock and poultry, and the production and harvest of products from horticultural, silvicultural or aquacultural activity, (ii) the repair, expansion or replacement of no more than one (1) bona fide dwelling occupied by the landowner or tenant as of the date of application for entry in the Agricultural Reserve Program and no more than one freestanding mobile home, as permitted by Section 19-19 of the City Code, and (iii) accessory uses directly related to agricultural activities conducted on the same property, including the sale of agricultural products as permitted by Section 401 of the City Zoning Ordinance. The term does not include the processing of agricultural, silvicultural, horticultural or aquacultural products, except as an accessory use.

(3) This Deed of Easement does not grant the public any right of entry or access or any rights of use of the Land.

(4) THIS EASEMENT SHALL EXIST IN PERPETUITY AND RUN WITH THE ENTIRE ACREAGE OF THE LAND.

(5) The purpose of this Deed of Easement shall be to (i) promote and encourage the preservation of farmland, and promote and enhance agriculture as an important industry within the City, (ii) preserve the rural character of the southern part of the City, (iii) conserve and protect environmentally sensitive lands, waters and other resources, (iv) reduce and defer the need for major infrastructure improvements in the southern part of the City and the expenditure of public funds for such improvements, (v) preserve open spaces, and (vi) assist in shaping the character, direction and timing of community development.

(6) In the event of a violation or attempted violation of any of the provisions hereof, the City and its successors and assigns, may institute and prosecute any proceeding at law or in equity to enforce the provisions hereof or to abate, prevent or enjoin any such violation or attempted violation.

WITNESS, the hand and seal of the Grantor as of the date first above written.
#{NOTE-USE IF GRANTOR IS MARRIED BUT SPOUSE IS NOT ON DEED--Anything herein to the contrary notwithstanding, _____ AND _____, execute(s) this Deed of Easement for the sole purpose of consenting to the conveyance of and releasing any marital or augmented estate interest in the easement and rights set forth herein.

GRANTOR:

_____(SEAL)
Robert R. Lusk, Trustee of the Robert R. and
Betty S. Lusk Family Trust

_____(SEAL)
Betty S. Lusk, Trustee of the Robert R. and
Betty S. Lusk Family Trust

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 1997, by Robert R. Lusk and Betty S. Lusk, Trustees of the Robert R. and Betty S. Lusk Family Trust, Grantor.

Notary Public

(SEAL)

My Commission Expires: _____

EXHIBIT A

PARCEL ONE

ALL THAT certain tract, piece or parcel of land, with the buildings and improvements thereon, situate in the City of Virginia Beach (formerly Pungo Magisterial District, Princess Anne County), Virginia, and bounded and described as follows:

BEGINNING at a concrete post, a corner of the lands of J. D. Salmons and M. C. Carroll, thence running in a westerly direction by the property formerly Max Rossger's to a ditch; thence down said ditch in a westerly direction to end of said ditch; thence continuing in a westerly direction in a straight line to a lead ditch; thence turning and running in a westerly direction in a straight line across the field to the main Public Road; thence turning and running in a Southern direction down said road Two hundred and fifty-three yards to Williams Ackiss land; thence in a easterly down a lead ditch by said William Ackiss land to the property of the Granby Street Realty Corporation and thence down said ditch to what was formerly a corner of J. J. Drewry's land, now owned by O. J. Spann; thence turning and running in a northerly direction in a straight line to the point of beginning and containing Fifty (50) acres, more or less.

PARCEL TWO

ALL THAT certain tract or parcel of land, lying in Morris' Mack, {Neck??} the City of Virginia Beach (formerly Pungo Magisterial District, Princess Anne County), Virginia, and containing eighty (80) acres, more or less, and bounded and described as follows:

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of Mahaley Grimstead, thence turning East to a point where the lands of J. W. Bright intersect and bound{ed??} on the North by the lands of J. W. Bright, thence running South to the oak, aforesaid, the place of beginning, and bounded on the East of J. W. Bright.

PARCEL 3

ALL OF THAT certain tract, piece or parcel of land, with the improvements thereon, situated in Back Bay, in the City of Virginia Beach (formerly Pungo District, Princess Anne County), Virginia, and bounded as follows: On the North by the land belonging to the estate of Thos. Campbell, deceased, on the West by the land belonging to the estate of Bennet Randolph, deceased, and the land of Robert H. Dudley; on the South by the lands of the said Dudley and D. Salmons and on the East by Walke's Marsh, containing Forty-seven (47) acres, more or less.

PARCEL 4

ALL THAT certain tract and parcel of land, with the buildings and improvements thereon, situated in the City of Virginia Beach (formerly Pungo Magisterial District, Princess Anne County), Virginia, containing Thirty-seven and eight-tenths (37.8 acres, more or less, as shown on a plat and survey thereof made by W. B. Gallup, C. E., March 28, 1934, and recorded in Map Book No. 10, page 78, in the Clerk's Office of the Circuit Court of the City of Virginia Beach (formerly Princess Anne County), Virginia.

PARCEL 5

ALL THAT certain tract and parcel of land, with the buildings and improvements thereon, situated in the City of Virginia Beach (formerly Pungo Magisterial District, Princess Anne County), Virginia, containing 66 acres, more or less, bounded as shown by the deed from Samuel Doudge and wife to Delaware Salmons, dated March 9, 1850, recorded in Deed Book 43, page 550, in the Clerk's Office of said City, as follows: Beginning at a pine in the marsh and running Westwardly binding the land of William Carroll and Thomas

Grimstead to a corner in Robert H. Dudley's line; thence Northwardly, binding said Dudley to a corner in Thos. Campbell, Sr.'s line; thence Eastwardly binding said Thos. Campbell Sr.'s line to the marsh, and thence Southwardly down a line of marked trees to the first station.

PARCEL 6

ALL THAT certain piece or parcel of land lying and being in the City of Virginia Beach (formerly Pungo Magisterial District, Princess Anne County), Virginia, and bounded and described as follows: on the North by the lands of T. A. Williams, formerly Junius W. Bright; on the East by the lands of Guy M. Salmons, formerly J. J. Drewery; on the South by the lands of Claudius D. Ackiss and on the West by the lands of J. W. Whitehurst, containing Eight (8) acres, more or less.

PARCEL 7

ALL OF THAT certain tract, piece or parcel of land, including riparian rights and the appurtenances thereunto belonging, situate, lying and being in the City of Virginia Beach (formerly Pungo Magisterial District, Princess Anne County), Virginia; the same being a triangular shaped parcel of land and being more particularly bounded and described as follows:

ON THE North by the lands now or formerly belong to T. Williams; on the East by the land now or formerly belonging to Claud Ackiss, and on the South by the North side of a road which separates this parcel of land from the remaining land of Max Rossger; the apex of said triangle being an oak between the land of Max Rossger and T. Williams.

THIS LAND is subject to a right of way reserved by J. J. Drewrey in a deed from J. J. Drewrey to V. H. Kellam, duly of record in the Clerk's Office of the Circuit Court of the City of Virginia Beach (formerly Princess Anne County).

LESS AND EXCEPT a portion of the above property reserved unto Hattie James Lawrence and George Lawrence,

her husband, starting at a point in the Northern line of State Route #759, where such road intersects the Eastern line of State Route #663, and from said point measuring thence in an Easterly direction along the Northern line of State Route #759, 831'; thence continuing along the Northern line of Salmons Road, South $57^{\circ} 30'$ East, 1028' to a point, the POINT OF BEGINNING; thence North 25° East, 210' to a pipe; thence South $57^{\circ} 30'$ East, 105' to a pipe; thence South 25° West, 210' to the Northern side of Salmons Road; thence North $57^{\circ} 30'$ West, along the Northern side of Salmons Road, 105' to a pipe, the point of beginning; the said piece or parcel of land containing 0.5 acres of land, more or less.

PARCEL 8

BEGINNING at a gum, a corner with J. W. Bright, George Smith and this tract thence South $78\text{-}3/4^{\circ}$ E. 1.08 chains to a pine; thence S. $70\text{-}1/2^{\circ}$ E. 2.31 chains to a holly, thence S. $75\text{-}3/4^{\circ}$ E. 5.20 chains to an oak, thence 79° E. 3.05 chains to a gum, thence S. $79\text{-}3/4^{\circ}$ E. 1.88 {chains??} to a pine, thence N. $87\text{-}3/4^{\circ}$ E. 16.12 chains to a station in the center of Devil Cree {k???}, thence S. $76\text{-}1/4^{\circ}$ E. 19.69 chains to a corner with J. W. Bright, Edward Whitehurst & W. T. Munden, and this tract, thence S. $13\text{-}1/4^{\circ}$ E. 11 chains to a post corner with William N. Ackiss, Edward Whitehurst, William T. Munden and this tract, thence N. $76\text{-}1/4^{\circ}$ W. 1.78 chains to a pine, thence N. $76\text{-}1/4^{\circ}$ W. 14.73 chains, thence N. $76\text{-}1/4^{\circ}$ W. 1.84 chains to a pine, in the edge of the marsh, thence N. $76\text{-}1/2^{\circ}$ W. 11.58 chains to a gum in the edge of the marsh, thence N. $77\text{-}1/4^{\circ}$ W. 1.74 chains to a gum, thence N. 80° W. .94 chains to a gum, thence N. $76\text{-}3/4^{\circ}$ W. 1.65 chains to a gum on the North side of William N. Ackiss' North ditch, thence N. $80\text{-}1/4^{\circ}$ W. 4.47 chains to a post on the south side of William N. Ackiss North ditch and corner with said Ackiss, George Smith and this tract, thence N. $11\text{-}3/4^{\circ}$ E. .92 chains to a gum, thence N. $10\text{-}3/4^{\circ}$ E. 2.70 chains to a pine, thence N. 11° E. 1.82 chains to a pine, and thence North 7° E. 1.82 chains to a pine, and thence North 7° E. .38 chains to a gum, the point of beginning, said tract containing 40 acres, 2 rods and 35 poles; it being the same property conveyed to J. J. Drewrey by B. D. White, Special Commissioner, by his deed dated March 26th, 1906, and duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia

Beach (formerly County of Princess Anne), State of Virginia
in Deed Book 77, at page 157.

LESS AND EXCEPT all portions of the above-described
property, if any, which contain any of the following soil
types: (1) Back Bay Mucky Peat; (2) Dorovan Mucky Peat;
(3) Nawney Silt Loam; or (4) Pamlico Mucky Peat, Pondered.

[LESS AND EXCEPT that certain tract, piece or parcel being
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Office in Deed Book 2801, at page 32.

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EXHIBIT "C"

PERMITTED ENCUMBRANCES

1. Taxes for the second half of the fiscal year 1996/1997 and any/all Stormwater fees, which are liens not yet due and payable, and taxes and stormwater fees for all subsequent billing periods.
2. Roll Back Taxes.
3. Easement granted Virginia Electric and Power Company, as established by instrument recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 204, at page 221. (affects Parcels 1, 2 & 7)
4. Easement granted Virginia Electric and Power Company, as established by instrument recorded in the aforesaid Clerk's Office in Deed Book 222, at page 411. (affects Parcels 1, 2 & 7)
5. Easement granted Virginia Electric and Power Company, as established by instrument recorded in the aforesaid Clerk's Office in Deed Book 259, at page 216 (affects Parcel 2)
6. Easement granted Virginia Electric and Power Company, as established by instrument recorded in the aforesaid Clerk's Office in Deed Book 286, at page 111 (affects Parcel 5)
7. Easement granted Virginia Electric and Power Company, as established by instrument recorded in the aforesaid Clerk's Office in Deed Book 333, at page 147 (affects Parcel 2 & 4)
8. Rights of others entitled thereto in and to the portion of property deemed Salmons Road as shown in Deed Book 672, at page 210.
9. Riparian rights and those public easements and rights for commerce, navigation, and fisheries. Any right, title or interest of the public up to the mean high water mark and those portions of described property created by artificial means including accretions thereto.
10. Rights of the United States of America and the Commonwealth of Virginia to regulate that portion of the property which may be deemed wetlands.
11. Such other restrictions and encumbrances which, in the opinion of the City Attorney, do not adversely affect the interest of the City of Virginia Beach in and to the agricultural land preservation easement and the rights granted to the City in the Deed of Easement.

1 AN ORDINANCE AUTHORIZING THE ACQUISITION OF AN
2 AGRICULTURAL LAND PRESERVATION EASEMENT AND
3 THE ISSUANCE BY THE CITY OF ITS CONTRACT
4 OBLIGATIONS IN THE MAXIMUM PRINCIPAL AMOUNT OF
5 \$67,898

6 WHEREAS, pursuant to the Agricultural Lands Preservation
7 Ordinance (the "Ordinance"), Appendix J of the Code of the
8 City of Virginia Beach, there has been presented to the City
9 Council for approval an Installment Purchase Agreement for the
10 acquisition of the Development Rights (as defined in the
11 Installment Purchase Agreement, a true copy of which is hereto
12 affixed) on certain property located in the City and more
13 fully described in Exhibit B of the Installment Purchase
14 Agreement for a purchase price of \$67,898; and

15 WHEREAS, the aforesaid Development Rights shall be
16 acquired through the acquisition of a perpetual agricultural
17 land preservation easement, as defined in, and in compliance
18 with, the requirements of the Ordinance; and

19 WHEREAS, the City Council has reviewed the proposed terms
20 and conditions of the purchase as evidenced by the Installment
21 Purchase Agreement;

22 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
23 CITY OF VIRGINIA BEACH, VIRGINIA:

24 1. The City Council hereby determines and finds that
25 the proposed terms and conditions of the purchase of the
26 Development Rights pursuant to the Installment Purchase
27 Agreement, including the purchase price and manner of payment,
28 are fair and reasonable and in furtherance of the purposes of
29 the Ordinance, and the City Manager is hereby authorized to
30 approve, upon or before the execution and delivery of the
31 Installment Purchase Agreement, the rate of interest to accrue

on the unpaid principal balance of the purchase price set forth hereinabove as the greater of 6.0% per annum or the per annum rate which is equal to the yield on United States Treasury STRIPS purchased by the City to fund such unpaid principal balance; provided, however, that such rate of interest shall not exceed 7.50% unless the approval of the City Council by resolution duly adopted is first obtained.

2. The City Council hereby further determines that funding is available for the acquisition of the Development Rights pursuant to the Installment Purchase Agreement on the terms and conditions set forth therein.

3. The City Council hereby expressly approves the Installment Purchase Agreement in the form and substance presented at this meeting and, subject to the determination of the City Attorney that there are no defects in title to the property or other restrictions or encumbrances thereon which may, in the opinion of the City Attorney, adversely affect the City's interests, authorizes the City Manager to execute and deliver the Installment Purchase Agreement in substantially the same form and substance as presented at this meeting with such minor modifications, insertions, completions or omissions which do not materially alter the purchase price or manner of payment, as the City Manager shall approve. The City Council further directs the City Clerk to affix the seal of the City to, and attest same on, the Installment Purchase Agreement. The City Council expressly authorizes the incurrence of the indebtedness represented by the issuance and delivery of the Installment Purchase Agreement.

60 4. The City Council hereby elects to issue the
61 indebtedness under the Charter of the City rather than
62 pursuant to the Public Finance Act of 1991 and hereby
63 constitutes the indebtedness a contractual obligation bearing
64 the full faith and credit of the City.

65 Adopted by the Council of the City of Virginia Beach,
66 Virginia, on this 24TH day of JUNE, 1997.

67 Adoption requires an affirmative vote of a majority of
68 all members of the City Council.
69

70 CA-97-6688
71 wmm\arp\purchase\lusktr\lusktr2.orn
72 R-1
73 June 10, 1997

74 APPROVED AS TO CONTENT:

75
76 Louis E. Cullipker
77 Agriculture Department

APPROVED AS TO LEGAL
SUFFICIENCY:

William M. Macal
Law Department

78 CERTIFIED AS TO AVAILABILITY OF FUNDS:

79 Patricia A. Phillips
80 Director of Finance

ROBERT R. LUSK AND BETTY S. LUSK, TRUSTEES
OF THE ROBERT R. AND BETTY S. LUSK FAMILY TRUST,
the "Seller"

and

CITY OF VIRGINIA BEACH, VIRGINIA
the "City"

INSTALLMENT PURCHASE AGREEMENT
(Agreement No. 1997-13)

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(This Table of Contents is not part of the Installment Purchase Agreement and is only for convenience of reference)

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INSTALLMENT PURCHASE AGREEMENT

(Agreement No. 1997-12)

THIS INSTALLMENT PURCHASE AGREEMENT (this "Agreement") is made as of the ____ day of _____, 199_ between ROBERT R. LUSK and BETTY S. LUSK, TRUSTEES OF THE ROBERT R. AND BETTY S. LUSK FAMILY TRUST (collectively, the "Seller") and CITY OF VIRGINIA BEACH, VIRGINIA, a body politic and corporate of the Commonwealth of Virginia (the "City").

RECITALS

A. Pursuant to the authority granted by the Open-Space Land Act, Chapter 17, Title 10.1 of the Code of Virginia of 1950, as amended (the "Act"), the City adopted the Ordinance (hereinafter defined in Section 1.1) to promote and encourage the preservation of agricultural land in designated areas within the southern portion of the City.

B. In furtherance of the purposes of the Act and the Ordinance, the City has established the Agricultural Reserve Program of the City which provides for the acquisition of Development Rights (hereinafter defined in Section 1.1) through the purchase of agricultural land preservation easements with respect to property located in the portions of the City covered by the Ordinance.

C. The Seller is the owner in fee simple of Land (hereinafter defined in Section 1.1) which is located in that portion of the City subject to the Ordinance and meets the eligibility criteria of Section 7 of the Ordinance.

D. The Seller has agreed to sell, and the City has agreed to purchase, Seller's Development Rights in the Land on and subject to the terms and conditions hereinafter set forth.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Seller and the City hereby agree as follows:

ARTICLE 1

DEFINITIONS

SECTION 1.1 Definitions. As used in this Agreement, the following terms have the following meanings, unless the context clearly indicates a different meaning:

"Agricultural Use" means (i) the bona fide production of crops, animal or fowl, including, but not limited to, the production of fruits, vegetables, honey, grains, meat, poultry and dairy products, the raising of livestock and poultry, and the production and harvest of products from horticultural, silvicultural or aquacultural activity, (ii) the repair, expansion or replacement of no more than one (1) bona fide dwelling occupied by the landowner or tenant as of the date of application for entry in the Agricultural Reserve Program and no more than one freestanding mobile home, as permitted by Section 19-19 of the Virginia Beach City Code, and (iii) accessory uses directly related to agricultural activities conducted on the same property, including the sale of agricultural products as permitted by Section 401 of the Virginia Beach City Zoning Ordinance. The term does not include the processing of agricultural, silvicultural, horticultural or aquacultural products, except as an accessory use.

"Business Day" or "business day" means a day on which (a) banks located in the City and in the city in which the principal office of the Registrar is located are not required or authorized by law or executive order to close for business, and (b) The New York Stock Exchange is not closed.

"City" means the City of Virginia Beach, Virginia, a body politic and corporate and a political subdivision created and existing under and by virtue of the Constitution and laws of the State, its successors and assigns.

"City Council" means the Council of the City.

"City Manager" means the City Manager of the City.

"Code" means the Internal Revenue Code of 1986, as amended. Each reference to the Code herein shall be deemed to include the United States Treasury Regulations in effect or proposed from time to time with respect thereto.

"Deed of Easement" means the Deed of Easement of even date herewith from the Seller to the City, which shall convey the Development Rights to the City in perpetuity. The Deed of Easement shall be substantially in the form attached hereto as **Exhibit A** and made a part hereof.

"Development Rights" mean the rights of the Seller in the Land to develop the Land for any use other than an Agricultural Use. Development Rights shall include, but not be limited to, the right to develop the Land for any commercial, industrial or residential use except as expressly permitted by the Ordinance.

"Enabling Legislation" means, collectively, (1) the Open Space Land Act, Chapter 17 of Title 10.1 of the Code of Virginia of 1950, as amended, and (2) the Ordinance.

"Estate Settlement Transfer" means the transfer by the legal representative of the estate of a deceased Seller of such Seller's rights in and to this Agreement in connection with the distribution of the deceased Seller's estate or other settlement of such decedent Seller's estate.

"Interest Payment Date" means June 1 and December 1 in each year, commencing _____, 199_.

"Land" means the tract or tracts of land located in Virginia Beach, Virginia, containing approximately _____ acres, and more particularly described in **Exhibit B** attached hereto and made a part hereof.

"Ordinance" means the Agricultural Lands Preservation Ordinance adopted by the City Council on May 9, 1995, as Appendix J to the City Code, as the same may be amended or modified from time to time.

"Permitted Encumbrances" mean the encumbrances listed on **Exhibit C** attached hereto and made a part hereof and any encumbrances on or with respect to the Land or any portion thereof hereafter approved, in writing, by the City.

"Person" or "person" means any natural person, firm, association, corporation, company, trust, partnership, public body or other entity.

"Purchase Price" means \$67,898, the purchase price to be paid by the City to the Registered Owner in accordance with this Agreement.

"Record Date" means the fifteenth (15th) day (whether or not a Business Day) of the calendar month immediately preceding each Interest Payment Date and the principal payment date.

"Registered Owner" means the registered owner of this Agreement as shown on the registration books maintained by the Registrar.

"Registrar" means First Union National Bank of Virginia or any other person hereafter appointed by the City to act as Registrar and paying agent for this Agreement.

"Seller" means, collectively, Robert R. Lusk and Betty S. Lusk, Trustees of the Robert R. and Betty S. Lusk Family Trust .

"State" means the Commonwealth of Virginia.

SECTION 1.2 Rules of Construction.

(a) The words "hereof," "herein," "hereunder," "hereto," and other words of similar import refer to this Agreement in its entirety.

(b) The terms "agree" and "agreements" contained herein are intended to include and mean "covenant" and "covenants."

(c) References to Articles, Sections, and other subdivisions of this Agreement are to the designated Articles, Sections, and other subdivisions of this Agreement.

(d) The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.

(e) All references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

ARTICLE 2

SALE AND PURCHASE OF DEVELOPMENT RIGHTS

SECTION 2.1 Agreement to Sell and Purchase Development Rights. The Seller agrees to sell the Development Rights in the Land to the City and the City agrees to purchase the Development Rights in the Land from the Seller on the date hereof for the Purchase Price.

SECTION 2.2 Delivery of Deed of Easement. In order to evidence the sale of the Development Rights to the City, the Seller shall execute and deliver to the City on the date hereof the Deed of Easement in the form attached hereto as **Exhibit A** and made a part hereof. The Deed of Easement shall be recorded in the Clerk's Office of the Circuit Court of the City.

ARTICLE 3

PAYMENT OF PURCHASE PRICE

SECTION 3.1 Payment of Purchase Price.

(a) The City shall pay the principal portion of the Purchase Price to the Registered Owner in a single installment on _____, 202_ [25-year maturity date]. The Purchase Price is \$67,898.

(b) Interest on the unpaid principal balance of the Purchase Price shall accrue from the date of recordation of the Deed of Easement and shall be payable to the Registered Owner on _____, 199_, and semiannually thereafter on June 1 and December 1 in each year to and including _____, 202_, at the rate of ___% per annum. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months.

(c) Both the single installment of principal of the Purchase Price and the interest on the unpaid balance thereof are payable in lawful money of the United States of America at the time of payment.

(d) Payment of interest on the unpaid balance of the Purchase Price shall be made by the City on each Interest Payment Date to the Registrar. The Registrar shall forward all such interest payments by check or draft mailed to the person(s) appearing on the registration books of the City maintained by the Registrar as the Registered Owner on the Record Date, at the address of such Registered Owner as it appears on such registration books. The single installment of principal of the Purchase Price shall be paid on the principal payment date set forth in Subsection (a) above by the Registrar to the Registered Owner as of the Record Date upon presentation and surrender of this Agreement at the office of the Registrar.

(e) The City's obligation to pay the Purchase Price hereunder and to pay interest on the unpaid balance of the Purchase Price is a general obligation of the City, and the full faith and credit and the unlimited taxing power of the City are irrevocably pledged to the punctual payment of the Purchase Price and the interest on the unpaid principal balance of the Purchase Price as and when the same respectively become due and payable.

SECTION 3.2 Registration and Transfer of this Agreement.

(a) Until the Purchase Price and all interest thereon have been paid in full, the City shall maintain and keep at the offices of the Registrar, registration books for the registration and transfer of this Agreement; and upon presentation of this Agreement for such purpose at the offices of the Registrar, the Registrar shall register or cause to be

registered on such registration books, and permit to be transferred thereon, under such reasonable regulations as the City or the Registrar may prescribe, the ownership of this Agreement. The Registrar, however, shall not be required to make any such registration and transfer during the period from the Record Date to the next succeeding Interest Payment Date or final principal payment date.

(b) Except for an Estate Settlement Transfer, this Agreement may not be transferred by the Registered Owner prior to the expiration of a one (1) year period from the date this Agreement has been fully executed, delivered and become effective, and any such attempted transfer shall be null and void. The Registrar shall be instructed not to make any such transfers (other than an Estate Settlement Transfer) on its registration books kept for the purpose of registering the transfer of this Agreement prior to the expiration of said one (1) year period.

(c) The Seller is the original Registered Owner. This Agreement shall be transferable only upon the books of the City maintained for such purpose by the Registrar, at the written request of the Registered Owner as then shown on such registration books or his attorney duly authorized in writing, upon presentation and surrender of this Agreement, together with a written instrument of transfer substantially in the form attached hereto as **Exhibit D**, or as may otherwise be satisfactory to and approved by the Registrar in writing, duly executed by the Registered Owner or his attorney duly authorized in writing. Upon the surrender for transfer of this Agreement, the Registrar shall complete the Schedule of Transferees attached hereto as **Exhibit E** with the name, address and tax identification number of the transferee Registered Owner, and the date of the transfer; provided, however, that if there is any conflict between the information set forth in **Exhibit E** hereto and the registration books maintained by the Registrar, the information shown on such registration books shall control.

The City and the Registrar may deem and treat the person in whose name this Agreement is registered upon the books of the City maintained by the Registrar as the absolute owner of this Agreement, whether any payments hereunder shall be overdue or not, for the purpose of receiving payment of, or on account of, the Purchase Price and interest thereon and for all other purposes, and all such payments so made to any such Registered Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon this Agreement to the extent of the sum or sums so paid, and neither the City nor the Registrar shall be affected by any notice to the contrary.

For every registration of transfer of this Agreement, the City or the Registrar may make a charge sufficient to reimburse themselves for any tax or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such transfer as a condition precedent to the exercise of the privilege of registering such transfer.

SECTION 3.3 Mutilated, Lost, Stolen or Destroyed Agreement. In the event that this Agreement is mutilated, lost, stolen or destroyed, the City and the Registered Owner (as then shown on the registration books maintained by the Registrar) shall execute and deliver a substitute agreement having the same terms and provisions as the mutilated, lost, stolen or destroyed Agreement; provided that, in the case of any mutilated Agreement, such mutilated Agreement shall first be surrendered to the Registrar, and, in the case of any lost, stolen or destroyed Agreement there shall be first furnished to the City and the Registrar evidence of such loss, theft or destruction satisfactory to the City and the Registrar, together with indemnity satisfactory to each of them in their sole discretion. The City and the Registrar may charge the Registered Owner requesting such new Agreement their expenses and reasonable fees, if any, in this connection. If after the delivery of such substitute Agreement, a bona fide purchaser of the original Agreement (in lieu of which such substitute Agreement was issued) presents for payment such original Agreement, the City and the Registrar shall be entitled to recover such substitute Agreement from the person to whom it was delivered or any other person who receives delivery thereof, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor or otherwise to the extent of any loss, damage, cost or expense incurred by the City and the Registrar in connection therewith.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

SECTION 4.1 Representations and Warranties of the City. The City makes the following representations and warranties.

(a) The City is a body politic and corporate and a political subdivision of the State.

(b) The City has the necessary power and authority to acquire the Development Rights, to enter into this Agreement, to perform and observe the covenants and agreements on its part contained in this Agreement and to carry out and consummate all transactions contemplated hereby. By proper action, the City has duly authorized the execution and delivery of this Agreement.

(c) This Agreement has been duly and properly authorized, executed, sealed and delivered by the City, constitutes the valid and legally binding obligation of the City, and is enforceable against the City in accordance with its terms.

(d) There are no proceedings pending or, to the knowledge of the City, threatened before any court or administrative agency which may affect the authority of the City to enter into this Agreement.

SECTION 4.2 Representations and Warranties of the Seller. The Seller makes the following representations and warranties:

(a) The Seller has full power and authority to execute and deliver this Agreement and the Deed of Easement, and to incur and perform the obligations provided for herein and therein. No consent or approval of any person or public authority or regulatory body is required as a condition to the validity or enforceability of this Agreement or the Deed of Easement, or, if required, the same has been duly obtained.

(b) This Agreement and the Deed of Easement have been duly and properly executed by the Seller, constitute valid and legally binding obligations of the Seller, and are fully enforceable against the Seller in accordance with their respective terms.

(c) There is no litigation or proceeding pending or, so far as the Seller knows, threatened before any court or administrative agency which, in the opinion of the Seller, will materially adversely affect the authority of the Seller to enter into, or the validity or enforceability of, this Agreement or the Deed of Easement.

(d) There is (i) no provision of any existing mortgage, indenture, contract or agreement binding on the Seller or affecting the Land, and (ii) to the knowledge of the Seller, no provision of law or order of court binding upon the Seller or affecting the Land, which would conflict with or in any way prevent the execution, delivery, or performance of the terms of this Agreement or the Deed of Easement, or which would be in default or violated as a result of such execution, delivery or performance, or for which adequate consents, waivers or, if necessary, releases or subordinations, have not been obtained.

(e) There exist no liens, security interests or other encumbrances on or with respect to the Land (other than Permitted Encumbrances), and at the time of execution and delivery of the Deed of Easement there will be no liens, security interests or other encumbrances of the Development Rights to be conveyed thereby.

(f) The Seller is not a nonresident alien of the United States of America for purposes of federal income taxation.

(g) The Social Security Numbers of the Seller are 539-22-1845 (for Robert R. Lusk) and 224-40-1989 (for Betty S. Lusk).

The representations in subsections (f) and (g) above are made under penalties of perjury and the information contained therein may be disclosed by the City to the Internal Revenue Service. The Seller acknowledges that any false statement in such subsections could be punished by fine, imprisonment or both.

(h) To the best of the knowledge, information and belief of the Seller, the Land has not been used for the manufacture, storage, treatment, disposal or release of any hazardous waste or substance.

ARTICLE 5

PROVISIONS RELATING TO EXCLUSION OF INTEREST FROM INCOME FOR FEDERAL INCOME TAXATION

SECTION 5.1 Intent of City and Tax Covenant of City. The City intends that the interest payable under this Agreement shall not be includable in the gross income of the Registered Owner for purposes of federal income taxation pursuant to Section 103 of the Code. Accordingly, the City shall not knowingly take or permit to be taken any other action or actions or omit or fail to take any action, which would cause this Agreement to be an "arbitrage bond" within the meaning of Section 148 of the Code, or which would otherwise cause interest payable under this Agreement to become includable in the gross income of any Registered Owner for purposes of federal income taxation.

SECTION 5.2 Acknowledgment of Seller with Regard to Tax Consequences of Transaction. The Seller has received an opinion from Kaufman & Canoles, P.C., Bond Counsel, dated the date hereof, to the effect that under existing laws, regulations, rulings and decisions, interest payable under this Agreement is not includable in the gross income of the Seller for federal income tax purposes, which opinion assumes continuous compliance with certain covenants in the Tax Certificate and Compliance Agreement to be executed and delivered by the City on the date of delivery of this Agreement and is otherwise limited in accordance with its terms. The Seller acknowledges that Seller has made Seller's own independent investigation and has consulted with such attorneys, accountants and others as the Seller shall have selected in the Seller's sole discretion to advise the Seller with respect to all other tax considerations related to the transaction contemplated hereby (including, but not limited to, installment sales treatment under Section 453 of the Code, charitable contribution deductions under Section 170 of the Code, and federal estate tax implications); and the Seller certifies that the Seller has not looked to or relied upon the City or any of its officials, agents or employees, or to Bond Counsel, with respect to any of such matters.

ARTICLE 6

THE REGISTRAR

SECTION 6.1 Appointment of Registrar. First Union National Bank of Virginia is hereby designated and appointed to act as Registrar for this Agreement.

SECTION 6.2 Ownership of Agreement. The Registrar, in its individual capacity or as trustee for holders of participation interests in this Agreement, may in good faith buy, sell, own and hold this Agreement, and may join in any action which any Registered owner may be entitled to take with like effect as if it did not act as Registrar hereunder. The Registrar, in its individual capacity, either as principal or agent, may also engage, or have an interest, in any financial or other transaction with the City, and may act as depository, trustee or agent for other obligations of the City as freely as if it did not act in any capacity hereunder.

SECTION 6.3 Removal of Registrar and Appointment of Successor Registrar. The City shall have the right, subject to the terms of any agreement with the Registrar, to remove the Registrar any time by filing with such Registrar to be removed, and with the Registered Owner, an instrument in writing. Notwithstanding the foregoing, such removal shall not be effective until a successor Registrar has assumed the Registrar's duties hereunder. The City shall have the sole right to select a successor Registrar.

SECTION 6.4 Qualifications of Successor Registrar. Any successor Registrar shall be either (a) the Department of Finance of the City, (b) an officer or employee of the City, or (c) a bank, trust company or other financial institution duly organized under the laws of the United States or any state or territory thereof which is authorized by law and permitted under the laws of the State to perform all the duties imposed upon it as Registrar by this Agreement.

SECTION 6.5 Successor by Merger or Consolidation. If the Registrar is a bank, trust company or other financial institution, any institution or corporation into which the Registrar hereunder may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Registrar hereunder shall be a party or any institution or corporation succeeding to the corporate trust business (if any) of the Registrar, shall be the successor Registrar under this Agreement, without the execution or filing of any paper or any further act on the part of the parties hereto, anything in this Agreement to the contrary notwithstanding.

ARTICLE 7

MISCELLANEOUS

SECTION 7.1 Successors of City. In the event of the dissolution of the City, all the covenants, stipulations, promises and agreements in this Agreement contained, by or on behalf of, or for the benefit of, the City, the Seller, any other Registered Owner and the Registrar, shall bind or inure to the benefit of the successors of the City from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the City shall be transferred.

SECTION 7.2 Parties in Interest. Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation, other than the City, the Seller, any other Registered Owner and the Registrar, any right, remedy or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the City, the Seller, any other Registered Owner from time to time of this Agreement and the Registrar.

SECTION 7.3 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns, including, without limitation, all Registered Owners from time to time of this Agreement.

SECTION 7.4 Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein or therein.

SECTION 7.5 Prior Agreements Cancelled; No Merger. This Agreement shall completely and fully supersede all other prior agreements, both written and oral, between the City and the Seller relating to the acquisition of the Development Rights. Neither the City nor the Seller shall hereafter have any rights under such prior agreements but shall look solely to this Agreement and the Deed of Easement for definitions and determination of all of their respective rights, liabilities and responsibilities relating to the Land, the Development Rights and the payment for the Development Rights. In addition, this Agreement shall survive the execution and recording of the Deed of Easement in all respects and shall not be merged therein.

SECTION 7.6 Amendments, Changes and Modifications. This Agreement may not be amended, changed, modified, altered or terminated except by an agreement in writing between the City and the then Registered Owner. An executed counterpart of any such amendment shall be attached to this Agreement and shall be binding upon such Registered Owner and all successor Registered Owners.

SECTION 7.7 No Personal Liability of City Officials. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, officer, agent or employee of the City in his or her individual capacity, and neither the officers or employees of the City nor any official executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 7.8 Governing Law. The laws of the State shall govern the construction and enforcement of this Agreement.

SECTION 7.9 Notices. Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals, certificates or other communications required under this Agreement to be in writing shall be sufficiently given and shall be deemed to have been properly given three Business Days after the same is mailed by certified mail, postage prepaid, return receipt requested, addressed to the person to whom any such notice, demand, request, approval, certificate or other communication is to be given, at the address for such person designated below:

City: City Manager
 Municipal Center
 Virginia Beach, VA 23456

with a copy to City Attorney
 Municipal Center
 Virginia Beach, VA 23456

Seller: Robert R. and Betty S. Lusk,
 Trustees of the Robert R. and Betty S Lusk Family Trust
 4275 Harbor View Drive
 Coeur d'Alene, Idaho 83814

Registrar: First Union National Bank of Virginia
 Corporate Trust Department
 2nd Floor
 901 East Cary Street
 Richmond, Virginia 23219

Any of the foregoing may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, demands, requests, consents, approvals, certificates or other communications shall be sent hereunder.

SECTION 7.10 Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Agreement, shall not be a Business Day, such payment may, unless otherwise provided in this Agreement, be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Agreement, and in the case of payment no interest shall accrue for the period after such nominal date.

WITNESS the signatures and seals of the parties hereto as of the date first above written.

CITY:

[CITY'S SEAL]

CITY OF VIRGINIA BEACH, VIRGINIA

ATTEST:

By: _____
James K. Spore, City Manager

City Clerk

SELLER:

_____(SEAL)

_____(SEAL)

Approved as to Legal
Sufficiency:

Deputy City Attorney

Approved as to Sufficiency of
Funds:

Director, Department of Finance

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 19____, by James K. Spore, City Manager of the City of Virginia Beach, Virginia, and attested to by _____, City Clerk of the City of Virginia Beach, Virginia, on its behalf.

Notary Public

(SEAL)
My Commission Expires.

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of _____, Virginia, this _____ day of _____, 19____, by _____.

Notary Public

(SEAL)
My Commission Expires:

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of _____, Virginia, this _____ day of _____, 19____, by _____.

Notary Public

(SEAL)
My Commission Expires.

FORM OF DEED OF EASEMENT

[SEE ATTACHED]

DESCRIPTION OF LAND

[SEE ATTACHED]

PERMITTED ENCUMBRANCES

[SEE ATTACHED]

ASSIGNMENT

FOR VALUE RECEIVED, _____ and _____
([collectively,] the "Registered Owner") hereby sell[s], assign[s] and transfer[s] unto
_____, without recourse, all of the Registered Owner's
right, title and interest in and to the Installment Purchase Agreement to which this
Assignment is attached; and the Registered Owner hereby irrevocably directs the Registrar
(as defined in such Agreement) to transfer such Agreement on the books kept for
registration thereof. The Registered Owner hereby represents, warrants and certifies that
there have been no amendments to such Agreement [except _____].

Date: _____

Signature guaranteed:

NOTICE: Signature must be
guaranteed by a member firm
of the New York Stock
Exchange or a commercial
bank or trust company.

NOTICE: The signature on this
Assignment must correspond with
the name of the Registered Owner
as it appears on the registration
books for the Installment Purchase
Agreement referred to herein in every
particular, without alteration or
enlargement or any change whatever.

TRANSFER OF AGREEMENT - SCHEDULE OF TRANSFEREES

The transfer of this Installment Purchase Agreement may be registered only by the Registered Owner under such Agreement in person or by its duly authorized officer or attorney upon presentation hereof to the Registrar, who shall make note thereof in the books kept for such purpose and in the registration blank below.

Date of Registration of Transfer	Name and Address of Transferee Registered Seller	Tax I.D. No. of Transferee	Signature of Registrar
1			
2			
3			
4			
5			
6			

TRANSFER OF AGREEMENT - SCHEDULE OF TRANSFEREES

The transfer of this Installment Purchase Agreement may be registered only by the Registered Owner under such Agreement in person or by its duly authorized officer or attorney upon presentation hereof to the Registrar, who shall make note thereof in the books kept for such purpose and in the registration blank below.

Date of Registration of Transfer	Name and Address of Transferee Registered Seller	Tax I.D. No. of Transferee	Signature of Registrar
1			
2			
3			
4			
5			
6			

This instrument was prepared by
Virginia Beach City Attorney's Office

EXHIBIT A

Exemption Claimed: § 58.1-811(A)(3)
§ 58.1-811(C)(4)

DEED OF EASEMENT

THIS DEED OF EASEMENT is made this ____ day of _____, 1997, by and between ROBERT R. LUSK and BETTY S. LUSK TRUSTEES OF THE ROBERT R. AND BETTY S. LUSK FAMILY TRUST (collectively, the "Grantor"), and CITY OF VIRGINIA BEACH, VIRGINIA, a body politic and corporate of the Commonwealth of Virginia (the "City") whose address is Municipal Center, Virginia Beach, Virginia 23456, Grantee.

RECITALS

WHEREAS, pursuant to the authority granted by the Open-Space Land Act, Chapter 17, Title 10.1 of the Code of Virginia of 1950, as amended (the "Act"), the City adopted the Agricultural Lands Preservation Ordinance (the "Ordinance") as Appendix J to the Code of the City of Virginia Beach, Virginia, as amended (the "City Code"), to promote and encourage the preservation of agricultural land in designated areas within the southern portion of the City; and

WHEREAS, in furtherance of the purposes of the Act and the Ordinance, the City has established the Agricultural Reserve Program of the City which provides for the acquisition of development rights through the purchase of agricultural land preservation easements with respect to property located in the portions of the City covered by the Ordinance; and

WHEREAS, the Grantor is the owner in fee simple of certain agricultural real property located in the City and more particularly described in **Exhibit A** hereto (the "Land"); and

WHEREAS, the Land is located in that portion of the City subject to the Ordinance and meets the eligibility criteria of Section 7 of the Ordinance; and

WHEREAS, the Grantor has agreed to sell to the City the Grantor's Development Rights (hereinafter defined) in the Land by executing and delivering this Deed of Easement and thereby restrict the use of the Land as described herein; and

WHEREAS, the City has agreed to purchase the Grantor's Development Rights in the Land to fulfill the policy and purposes of the City as set forth in the Act and the Ordinance; and

WHEREAS, the transfer by the Grantor of the Development Rights in the Land shall be in perpetuity; and

WHEREAS, in order to provide for the payment of the purchase price for the rights in the Land created hereby, the Grantor and the City have entered into an Installment Purchase Agreement of even date herewith (the "Installment Purchase Agreement");

GRANT

NOW, THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00), the covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor, for Grantor, Grantor's heirs, personal representatives, devisees, successors and assigns, and for any subsequent owner of the Land does hereby grant and convey, with general warranty and English covenants of title, unto the City, and its successors and assigns, forever and in perpetuity, an agricultural land preservation easement in, on, over and with respect to the Land restricting the Land to Agricultural Use and in furtherance thereof, does hereby grant and convey, with general warranty and English covenants of title, to the City, and its successors and assigns, forever and in perpetuity, all of the Development Rights with respect to the Land.

TERMS, COVENANTS, CONDITIONS AND AGREEMENTS

A. The Grantor for Grantor, Grantor's heirs, personal representatives, devisees, successors and assigns covenants with the City, (1) to refrain from engaging in any act or activity, or permitting to occur or suffering to exist any act or activity upon the Land which would constitute the exercise of a Development Right or a use other than an Agricultural Use, it being the intention of the parties that the Land shall be preserved for Agricultural Use in accordance with the provisions of the Ordinance; and (2) that this Deed of Easement shall create a perpetual easement, running with the Land and all portions thereof as an incorporeal and nonpossessory interest therein, enforceable against the Grantor and upon any purchaser, grantee, lessee, owner or other transferee of all or any portion of the Land and any other person or entity having any right, title or interest therein and upon their respective heirs, personal representatives, devisees, successors and assigns; and (3) that the covenants, conditions, limitations and restrictions contained herein are intended to limit the use of the Land as herein set forth.

B. The parties, for themselves, their heirs, personal representatives, devisees, successors and assigns, further covenant and agree as follows:

(1) As used in this Deed of Easement the term "Development Rights" shall mean the right to develop the Land for any use, including without limitation, any commercial, industrial or residential use, other than for Agricultural Use.

(2) As used in this Deed of Easement the term "Agricultural Use" means (i) the bona fide production of crops, animal or fowl, including, but not limited to, the production of fruits, vegetables, honey, grains, meat, poultry and dairy products, the raising of livestock and poultry, and the production and harvest of products from horticultural, silvicultural or aquacultural activity, (ii) the repair, expansion or replacement of no more than one (1) bona fide dwelling occupied by the landowner or tenant as of the date of application for entry in the Agricultural Reserve Program and no more than one freestanding mobile home, as permitted by Section 19-19 of the City Code, and (iii) accessory uses directly related to agricultural activities conducted on the same property, including the sale of agricultural products as permitted by Section 401 of the City Zoning Ordinance. The term does not include the processing of agricultural, silvicultural, horticultural or aquacultural products, except as an accessory use.

(3) This Deed of Easement does not grant the public any right of entry or access or any rights of use of the Land.

(4) THIS EASEMENT SHALL EXIST IN PERPETUITY AND RUN WITH THE ENTIRE ACREAGE OF THE LAND.

(5) The purpose of this Deed of Easement shall be to (i) promote and encourage the preservation of farmland, and promote and enhance agriculture as an important industry within the City, (ii) preserve the rural character of the southern part of the City, (iii) conserve and protect environmentally sensitive lands, waters and other resources, (iv) reduce and defer the need for major infrastructure improvements in the southern part of the City and the expenditure of public funds for such improvements, (v) preserve open spaces, and (vi) assist in shaping the character, direction and timing of community development.

(6) In the event of a violation or attempted violation of any of the provisions hereof, the City and its successors and assigns, may institute and prosecute any proceeding at law or in equity to enforce the provisions hereof or to abate, prevent or enjoin any such violation or attempted violation.

WITNESS, the hand and seal of the Grantor as of the date first above written.
#{NOTE-USE IF GRANTOR IS MARRIED BUT SPOUSE IS NOT ON DEED--Anything herein to the contrary notwithstanding, _____ AND _____, execute(s) this Deed of Easement for the sole purpose of consenting to the conveyance of and releasing any marital or augmented estate interest in the easement and rights set forth herein.

GRANTOR:

_____(SEAL)
Robert R. Lusk, Trustee of the Robert R. and
Betty S. Lusk Family Trust

_____(SEAL)
Betty S. Lusk, Trustee of the Robert R. and
Betty S. Lusk Family Trust

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 1997, by Robert R. Lusk and Betty S. Lusk, Trustees of the Robert R. and Betty S. Lusk Family Trust, Grantor.

Notary Public

(SEAL)

My Commission Expires: _____

EXHIBIT A

ALL THAT certain lot, piece or parcel of land, with the buildings and improvements thereon, lying, situate and being in the City of Virginia Beach, Virginia and being known, numbered and desingated as 62.878 acres, GPIN 2318-72-7730, as shown on that certain plat entitled "Plat of Property of Robert R. and Betty Salmons Lusk Family Trust", which said plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Map Book 239, at page 85.

IT BEING the same property conveyed to the Grantors from Betty Salmons Lusk by deed dated December 9, 1988 recorded in the aforesaid Clerk's Office in Deed Book 2801, at page 35.

LESS AND EXCEPT all portions of the above-described property, if any, which contain any of the following soil types: (1) Back Bay Mucky Peat; (2) Dorovan Mucky Peat; (3) Nawney Silt Loam; or (4) Pamlico Mucky Peat, Ponded.

[LESS AND EXCEPT that certain tract, piece or parcel being a portion of the above described property designated and described as "#" as shown on that certain plat entitled: "#", Scale #" = #", dated #, prepared by #, which plat is attached hereto and recorded simultaneously herewith.]

EXHIBIT B

ALL THAT certain lot, piece or parcel of land, with the buildings and improvements thereon, lying, situate and being in the City of Virginia Beach, Virginia and being known, numbered and desingated as 62.878 acres, GPIN 2318-72-7730, as shown on that certain plat entitled "Plat of Property of Robert R. and Betty Salmons Lusk Family Trust", which said plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Map Book 239, at page 85.

IT BEING the same property conveyed to the Grantors from Betty Salmons Lusk by deed dated December 9, 1988 recorded in the aforesaid Clerk's Office in Deed Book 2801, at page 35.

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[LESS AND EXCEPT that certain tract, piece or parcel being a portion of the above described property designated and described as "#" as shown on that certain plat entitled: "#", Scale #" = #", dated #, prepared by #, which plat is attached hereto and recorded simultaneously herewith.]

EXHIBIT "C"

PERMITTED ENCUMBRANCES

1. Taxes for the second half of the fiscal year 1996/1997 and any/all Stormwater fees, which are liens not yet due and payable, and taxes and stormwater fees for all subsequent billing periods.
2. Roll Back Taxes.
3. Easement granted Virginia Electric and Power Company, as established by instrument recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 234, at page 454-P-1, of unspecified width and location.
4. Easement granted Virginia Electric and Power Company, as established by instrument recorded in the aforesaid Clerk's Office in Deed Book 286, at page 111, of unspecified width along northern lot line.
5. Rights of the United States of America and the Commonwealth of Virginia to regulate that portion of the property which may be deemed wetlands.
6. Terms and conditions of the Robert R. and Betty S. Lusk Family Trust, dated August 5, 1988.
7. Such other restrictions and encumbrances which, in the opinion of the City Attorney, do not adversely affect the interest of the City of Virginia Beach in and to the agricultural land preservation easement and the rights granted to the City in the Deed of Easement.

1 AN ORDINANCE AUTHORIZING THE ACQUISITION OF AN
2 AGRICULTURAL LAND PRESERVATION EASEMENT AND
3 THE ISSUANCE BY THE CITY OF ITS CONTRACT
4 OBLIGATIONS IN THE MAXIMUM PRINCIPAL AMOUNT OF
5 \$175,332

6 WHEREAS, pursuant to the Agricultural Lands Preservation
7 Ordinance (the "Ordinance"), Appendix J of the Code of the
8 City of Virginia Beach, there has been presented to the City
9 Council for approval an Installment Purchase Agreement for the
10 acquisition of the Development Rights (as defined in the
11 Installment Purchase Agreement, a true copy of which is hereto
12 affixed) on certain property located in the City and more
13 fully described in Exhibit B of the Installment Purchase
14 Agreement for a purchase price of \$175,332; and

15 WHEREAS, the aforesaid Development Rights shall be
16 acquired through the acquisition of a perpetual agricultural
17 land preservation easement, as defined in, and in compliance
18 with, the requirements of the Ordinance; and

19 WHEREAS, the City Council has reviewed the proposed terms
20 and conditions of the purchase as evidenced by the Installment
21 Purchase Agreement;

22 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
23 CITY OF VIRGINIA BEACH, VIRGINIA:

24 1. The City Council hereby determines and finds that
25 the proposed terms and conditions of the purchase of the
26 Development Rights pursuant to the Installment Purchase
27 Agreement, including the purchase price and manner of payment,
28 are fair and reasonable and in furtherance of the purposes of
29 the Ordinance, and the City Manager is hereby authorized to
30 approve, upon or before the execution and delivery of the
31 Installment Purchase Agreement, the rate of interest to accrue

on the unpaid principal balance of the purchase price set forth hereinabove as the greater of 6.0% per annum or the per annum rate which is equal to the yield on United States Treasury STRIPS purchased by the City to fund such unpaid principal balance; provided, however, that such rate of interest shall not exceed 7.50% unless the approval of the City Council by resolution duly adopted is first obtained.

2. The City Council hereby further determines that funding is available for the acquisition of the Development Rights pursuant to the Installment Purchase Agreement on the terms and conditions set forth therein.

3. The City Council hereby expressly approves the Installment Purchase Agreement in the form and substance presented at this meeting and, subject to the determination of the City Attorney that there are no defects in title to the property or other restrictions or encumbrances thereon which may, in the opinion of the City Attorney, adversely affect the City's interests, authorizes the City Manager to execute and deliver the Installment Purchase Agreement in substantially the same form and substance as presented at this meeting with such minor modifications, insertions, completions or omissions which do not materially alter the purchase price or manner of payment, as the City Manager shall approve. The City Council further directs the City Clerk to affix the seal of the City to, and attest same on, the Installment Purchase Agreement. The City Council expressly authorizes the incurrence of the indebtedness represented by the issuance and delivery of the Installment Purchase Agreement.

60 4. The City Council hereby elects to issue the
61 indebtedness under the Charter of the City rather than
62 pursuant to the Public Finance Act of 1991 and hereby
63 constitutes the indebtedness a contractual obligation bearing
64 the full faith and credit of the City.

65 Adopted by the Council of the City of Virginia Beach,
66 Virginia, on this 24TH day of JUNE, 1997.

67 Adoption requires an affirmative vote of a majority of
68 all members of the City Council.
69

70 CA-97-6689
71 wmm\arp\purchase\brown\brown.orn
72 R-1
73 June 10, 1997

74 APPROVED AS TO CONTENT:

75
76 Louis E. Cullipster
77 Agriculture Department

 APPROVED AS TO LEGAL
 SUFFICIENCY:

William M. Macal
 Law Department

78 CERTIFIED AS TO AVAILABILITY OF FUNDS:

79 Patricia A. Phillips
80 Director of Finance

ERNEST BROWN
the "Seller"

and

CITY OF VIRGINIA BEACH, VIRGINIA
the "City"

INSTALLMENT PURCHASE AGREEMENT
(Agreement No. 1997-14)

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INSTALLMENT PURCHASE AGREEMENT
(Agreement No. 1997-14)

THIS INSTALLMENT PURCHASE AGREEMENT (this "Agreement") is made as of the ____ day of _____, 199_ between ERNEST BROWN (the "Seller") and CITY OF VIRGINIA BEACH, VIRGINIA, a body politic and corporate of the Commonwealth of Virginia (the "City").

RECITALS

A. Pursuant to the authority granted by the Open-Space Land Act, Chapter 17, Title 10.1 of the Code of Virginia of 1950, as amended (the "Act"), the City adopted the Ordinance (hereinafter defined in Section 1.1) to promote and encourage the preservation of agricultural land in designated areas within the southern portion of the City.

B. In furtherance of the purposes of the Act and the Ordinance, the City has established the Agricultural Reserve Program of the City which provides for the acquisition of Development Rights (hereinafter defined in Section 1.1) through the purchase of agricultural land preservation easements with respect to property located in the portions of the City covered by the Ordinance.

C. The Seller is the owner in fee simple of Land (hereinafter defined in Section 1.1) which is located in that portion of the City subject to the Ordinance and meets the eligibility criteria of Section 7 of the Ordinance.

D. The Seller has agreed to sell, and the City has agreed to purchase, Seller's Development Rights in the Land on and subject to the terms and conditions hereinafter set forth.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Seller and the City hereby agree as follows:

ARTICLE 1

DEFINITIONS

SECTION 1.1 Definitions. As used in this Agreement, the following terms have the following meanings, unless the context clearly indicates a different meaning:

"Agricultural Use" means (i) the bona fide production of crops, animal or fowl, including, but not limited to, the production of fruits, vegetables, honey, grains, meat, poultry and dairy products, the raising of livestock and poultry, and the production and harvest of products from horticultural, silvicultural or aquacultural activity, (ii) the repair, expansion or replacement of no more than one (1) bona fide dwelling occupied by the landowner or tenant as of the date of application for entry in the Agricultural Reserve Program and no more than one freestanding mobile home, as permitted by Section 19-19 of the Virginia Beach City Code, and (iii) accessory uses directly related to agricultural activities conducted on the same property, including the sale of agricultural products as permitted by Section 401 of the Virginia Beach City Zoning Ordinance. The term does not include the processing of agricultural, silvicultural, horticultural or aquacultural products, except as an accessory use.

"Business Day" or "business day" means a day on which (a) banks located in the City and in the city in which the principal office of the Registrar is located are not required or authorized by law or executive order to close for business, and (b) The New York Stock Exchange is not closed.

"City" means the City of Virginia Beach, Virginia, a body politic and corporate and a political subdivision created and existing under and by virtue of the Constitution and laws of the State, its successors and assigns.

"City Council" means the Council of the City.

"City Manager" means the City Manager of the City.

"Code" means the Internal Revenue Code of 1986, as amended. Each reference to the Code herein shall be deemed to include the United States Treasury Regulations in effect or proposed from time to time with respect thereto.

"Deed of Easement" means the Deed of Easement of even date herewith from the Seller to the City, which shall convey the Development Rights to the City in perpetuity. The Deed of Easement shall be substantially in the form attached hereto as **Exhibit A** and made a part hereof.

"Development Rights" mean the rights of the Seller in the Land to develop the Land for any use other than an Agricultural Use. Development Rights shall include, but not be limited to, the right to develop the Land for any commercial, industrial or residential use except as expressly permitted by the Ordinance.

"Enabling Legislation" means, collectively, (1) the Open Space Land Act, Chapter 17 of Title 10.1 of the Code of Virginia of 1950, as amended, and (2) the Ordinance.

"Estate Settlement Transfer" means the transfer by the legal representative of the estate of a deceased Seller of such Seller's rights in and to this Agreement in connection with the distribution of the deceased Seller's estate or other settlement of such decedent Seller's estate.

"Interest Payment Date" means June 1 and December 1 in each year, commencing _____, 199__.

"Land" means the tract or tracts of land located in Virginia Beach, Virginia, containing approximately _____ acres, and more particularly described in **Exhibit B** attached hereto and made a part hereof.

"Ordinance" means the Agricultural Lands Preservation Ordinance adopted by the City Council on May 9, 1995, as Appendix J to the City Code, as the same may be amended or modified from time to time.

"Permitted Encumbrances" mean the encumbrances listed on **Exhibit C** attached hereto and made a part hereof and any encumbrances on or with respect to the Land or any portion thereof hereafter approved, in writing, by the City.

"Person" or "person" means any natural person, firm, association, corporation, company, trust, partnership, public body or other entity.

"Purchase Price" means \$175,332, the purchase price to be paid by the City to the Registered Owner in accordance with this Agreement.

"Record Date" means the fifteenth (15th) day (whether or not a Business Day) of the calendar month immediately preceding each Interest Payment Date and the principal payment date.

"Registered Owner" means the registered owner of this Agreement as shown on the registration books maintained by the Registrar.

"Registrar" means First Union National Bank of Virginia or any other person hereafter appointed by the City to act as Registrar and paying agent for this Agreement.

"Seller" means Ernest Brown..

"State" means the Commonwealth of Virginia.

SECTION 1.2 Rules of Construction.

(a) The words "hereof," "herein," "hereunder," "hereto," and other words of similar import refer to this Agreement in its entirety.

(b) The terms "agree" and "agreements" contained herein are intended to include and mean "covenant" and "covenants."

(c) References to Articles, Sections, and other subdivisions of this Agreement are to the designated Articles, Sections, and other subdivisions of this Agreement.

(d) The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.

(e) All references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

ARTICLE 2

SALE AND PURCHASE OF DEVELOPMENT RIGHTS

SECTION 2.1 Agreement to Sell and Purchase Development Rights. The Seller agrees to sell the Development Rights in the Land to the City and the City agrees to purchase the Development Rights in the Land from the Seller on the date hereof for the Purchase Price.

SECTION 2.2 Delivery of Deed of Easement. In order to evidence the sale of the Development Rights to the City, the Seller shall execute and deliver to the City on the date hereof the Deed of Easement in the form attached hereto as **Exhibit A** and made a part hereof. The Deed of Easement shall be recorded in the Clerk's Office of the Circuit Court of the City.

ARTICLE 3

PAYMENT OF PURCHASE PRICE

SECTION 3.1 Payment of Purchase Price.

(a) The City shall pay the principal portion of the Purchase Price to the Registered Owner in a single installment on _____, 202_ [25-year maturity date]. The Purchase Price is \$175,332.

(b) Interest on the unpaid principal balance of the Purchase Price shall accrue from the date of recordation of the Deed of Easement and shall be payable to the Registered Owner on _____, 199_, and semiannually thereafter on June 1 and December 1 in each year to and including _____, 202_, at the rate of ___% per annum. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months.

(c) Both the single installment of principal of the Purchase Price and the interest on the unpaid balance thereof are payable in lawful money of the United States of America at the time of payment.

(d) Payment of interest on the unpaid balance of the Purchase Price shall be made by the City on each Interest Payment Date to the Registrar. The Registrar shall forward all such interest payments by check or draft mailed to the person(s) appearing on the registration books of the City maintained by the Registrar as the Registered Owner on the Record Date, at the address of such Registered Owner as it appears on such registration books. The single installment of principal of the Purchase Price shall be paid on the principal payment date set forth in Subsection (a) above by the Registrar to the Registered Owner as of the Record Date upon presentation and surrender of this Agreement at the office of the Registrar.

(e) The City's obligation to pay the Purchase Price hereunder and to pay interest on the unpaid balance of the Purchase Price is a general obligation of the City, and the full faith and credit and the unlimited taxing power of the City are irrevocably pledged to the punctual payment of the Purchase Price and the interest on the unpaid principal balance of the Purchase Price as and when the same respectively become due and payable.

SECTION 3.2 Registration and Transfer of this Agreement.

(a) Until the Purchase Price and all interest thereon have been paid in full, the City shall maintain and keep at the offices of the Registrar, registration books for the registration and transfer of this Agreement; and upon presentation of this Agreement for such purpose at the offices of the Registrar, the Registrar shall register or cause to be

registered on such registration books, and permit to be transferred thereon, under such reasonable regulations as the City or the Registrar may prescribe, the ownership of this Agreement. The Registrar, however, shall not be required to make any such registration and transfer during the period from the Record Date to the next succeeding Interest Payment Date or final principal payment date.

(b) Except for an Estate Settlement Transfer, this Agreement may not be transferred by the Registered Owner prior to the expiration of a one (1) year period from the date this Agreement has been fully executed, delivered and become effective, and any such attempted transfer shall be null and void. The Registrar shall be instructed not to make any such transfers (other than an Estate Settlement Transfer) on its registration books kept for the purpose of registering the transfer of this Agreement prior to the expiration of said one (1) year period.

(c) The Seller is the original Registered Owner. This Agreement shall be transferable only upon the books of the City maintained for such purpose by the Registrar, at the written request of the Registered Owner as then shown on such registration books or his attorney duly authorized in writing, upon presentation and surrender of this Agreement, together with a written instrument of transfer substantially in the form attached hereto as **Exhibit D**, or as may otherwise be satisfactory to and approved by the Registrar in writing, duly executed by the Registered Owner or his attorney duly authorized in writing. Upon the surrender for transfer of this Agreement, the Registrar shall complete the Schedule of Transferees attached hereto as **Exhibit E** with the name, address and tax identification number of the transferee Registered Owner, and the date of the transfer, provided, however, that if there is any conflict between the information set forth in **Exhibit E** hereto and the registration books maintained by the Registrar, the information shown on such registration books shall control.

The City and the Registrar may deem and treat the person in whose name this Agreement is registered upon the books of the City maintained by the Registrar as the absolute owner of this Agreement, whether any payments hereunder shall be overdue or not, for the purpose of receiving payment of, or on account of, the Purchase Price and interest thereon and for all other purposes, and all such payments so made to any such Registered Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon this Agreement to the extent of the sum or sums so paid, and neither the City nor the Registrar shall be affected by any notice to the contrary.

For every registration of transfer of this Agreement, the City or the Registrar may make a charge sufficient to reimburse themselves for any tax or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such transfer as a condition precedent to the exercise of the privilege of registering such transfer.

SECTION 3.3 **Mutilated, Lost, Stolen or Destroyed Agreement.** In the event that this Agreement is mutilated, lost, stolen or destroyed, the City and the Registered Owner (as then shown on the registration books maintained by the Registrar) shall execute and deliver a substitute agreement having the same terms and provisions as the mutilated, lost, stolen or destroyed Agreement; provided that, in the case of any mutilated Agreement, such mutilated Agreement shall first be surrendered to the Registrar, and, in the case of any lost, stolen or destroyed Agreement there shall be first furnished to the City and the Registrar evidence of such loss, theft or destruction satisfactory to the City and the Registrar, together with indemnity satisfactory to each of them in their sole discretion. The City and the Registrar may charge the Registered Owner requesting such new Agreement their expenses and reasonable fees, if any, in this connection. If after the delivery of such substitute Agreement, a bona fide purchaser of the original Agreement (in lieu of which such substitute Agreement was issued) presents for payment such original Agreement, the City and the Registrar shall be entitled to recover such substitute Agreement from the person to whom it was delivered or any other person who receives delivery thereof, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor or otherwise to the extent of any loss, damage, cost or expense incurred by the City and the Registrar in connection therewith.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

SECTION 4.1 **Representations and Warranties of the City.** The City makes the following representations and warranties:

(a) The City is a body politic and corporate and a political subdivision of the State.

(b) The City has the necessary power and authority to acquire the Development Rights, to enter into this Agreement, to perform and observe the covenants and agreements on its part contained in this Agreement and to carry out and consummate all transactions contemplated hereby. By proper action, the City has duly authorized the execution and delivery of this Agreement.

(c) This Agreement has been duly and properly authorized, executed, sealed and delivered by the City, constitutes the valid and legally binding obligation of the City, and is enforceable against the City in accordance with its terms.

(d) There are no proceedings pending or, to the knowledge of the City, threatened before any court or administrative agency which may affect the authority of the City to enter into this Agreement.

SECTION 4.2 Representations and Warranties of the Seller. The Seller makes the following representations and warranties:

(a) The Seller has full power and authority to execute and deliver this Agreement and the Deed of Easement, and to incur and perform the obligations provided for herein and therein. No consent or approval of any person or public authority or regulatory body is required as a condition to the validity or enforceability of this Agreement or the Deed of Easement, or, if required, the same has been duly obtained.

(b) This Agreement and the Deed of Easement have been duly and properly executed by the Seller, constitute valid and legally binding obligations of the Seller, and are fully enforceable against the Seller in accordance with their respective terms.

(c) There is no litigation or proceeding pending or, so far as the Seller knows, threatened before any court or administrative agency which, in the opinion of the Seller, will materially adversely affect the authority of the Seller to enter into, or the validity or enforceability of, this Agreement or the Deed of Easement.

(d) There is (i) no provision of any existing mortgage, indenture, contract or agreement binding on the Seller or affecting the Land, and (ii) to the knowledge of the Seller, no provision of law or order of court binding upon the Seller or affecting the Land, which would conflict with or in any way prevent the execution, delivery, or performance of the terms of this Agreement or the Deed of Easement, or which would be in default or violated as a result of such execution, delivery or performance, or for which adequate consents, waivers or, if necessary, releases or subordinations, have not been obtained.

(e) There exist no liens, security interests or other encumbrances on or with respect to the Land (other than Permitted Encumbrances), and at the time of execution and delivery of the Deed of Easement there will be no liens, security interests or other encumbrances of the Development Rights to be conveyed thereby.

(f) The Seller is not a nonresident alien of the United States of America for purposes of federal income taxation.

(g) The Social Security Number of the Seller is 228-12-5290.

The representations in subsections (f) and (g) above are made under penalties of perjury and the information contained therein may be disclosed by the City to the Internal Revenue Service. The Seller acknowledges that any false statement in such subsections could be punished by fine, imprisonment or both.

(h) To the best of the knowledge, information and belief of the Seller, the Land has not been used for the manufacture, storage, treatment, disposal or release of any hazardous waste or substance.

ARTICLE 5

PROVISIONS RELATING TO EXCLUSION OF INTEREST FROM INCOME FOR FEDERAL INCOME TAXATION

SECTION 5.1 Intent of City and Tax Covenant of City. The City intends that the interest payable under this Agreement shall not be includable in the gross income of the Registered Owner for purposes of federal income taxation pursuant to Section 103 of the Code. Accordingly, the City shall not knowingly take or permit to be taken any other action or actions or omit or fail to take any action, which would cause this Agreement to be an "arbitrage bond" within the meaning of Section 148 of the Code, or which would otherwise cause interest payable under this Agreement to become includable in the gross income of any Registered Owner for purposes of federal income taxation.

SECTION 5.2 Acknowledgment of Seller with Regard to Tax Consequences of Transaction. The Seller has received an opinion from Kaufman & Canoles, P.C., Bond Counsel, dated the date hereof, to the effect that under existing laws, regulations, rulings and decisions, interest payable under this Agreement is not includable in the gross income of the Seller for federal income tax purposes, which opinion assumes continuous compliance with certain covenants in the Tax Certificate and Compliance Agreement to be executed and delivered by the City on the date of delivery of this Agreement and is otherwise limited in accordance with its terms. The Seller acknowledges that Seller has made Seller's own independent investigation and has consulted with such attorneys, accountants and others as the Seller shall have selected in the Seller's sole discretion to advise the Seller with respect to all other tax considerations related to the transaction contemplated hereby (including, but not limited to, installment sales treatment under Section 453 of the Code, charitable contribution deductions under Section 170 of the Code, and federal estate tax implications); and the Seller certifies that the Seller has not looked to or relied upon the City or any of its officials, agents or employees, or to Bond Counsel, with respect to any of such matters.

ARTICLE 6

THE REGISTRAR

SECTION 6.1 Appointment of Registrar. First Union National Bank of Virginia is hereby designated and appointed to act as Registrar for this Agreement.

SECTION 6.2 Ownership of Agreement. The Registrar, in its individual capacity or as trustee for holders of participation interests in this Agreement, may in good faith buy, sell, own and hold this Agreement, and may join in any action which any Registered owner may be entitled to take with like effect as if it did not act as Registrar hereunder. The Registrar, in its individual capacity, either as principal or agent, may also engage, or have an interest, in any financial or other transaction with the City, and may act as depository, trustee or agent for other obligations of the City as freely as if it did not act in any capacity hereunder.

SECTION 6.3 Removal of Registrar and Appointment of Successor Registrar. The City shall have the right, subject to the terms of any agreement with the Registrar, to remove the Registrar any time by filing with such Registrar to be removed, and with the Registered Owner, an instrument in writing. Notwithstanding the foregoing, such removal shall not be effective until a successor Registrar has assumed the Registrar's duties hereunder. The City shall have the sole right to select a successor Registrar.

SECTION 6.4 Qualifications of Successor Registrar. Any successor Registrar shall be either (a) the Department of Finance of the City, (b) an officer or employee of the City, or (c) a bank, trust company or other financial institution duly organized under the laws of the United States or any state or territory thereof which is authorized by law and permitted under the laws of the State to perform all the duties imposed upon it as Registrar by this Agreement.

SECTION 6.5 Successor by Merger or Consolidation. If the Registrar is a bank, trust company or other financial institution, any institution or corporation into which the Registrar hereunder may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Registrar hereunder shall be a party or any institution or corporation succeeding to the corporate trust business (if any) of the Registrar, shall be the successor Registrar under this Agreement, without the execution or filing of any paper or any further act on the part of the parties hereto, anything in this Agreement to the contrary notwithstanding.

ARTICLE 7

MISCELLANEOUS

SECTION 7.1 Successors of City. In the event of the dissolution of the City, all the covenants, stipulations, promises and agreements in this Agreement contained, by or on behalf of, or for the benefit of, the City, the Seller, any other Registered Owner and the Registrar, shall bind or inure to the benefit of the successors of the City from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the City shall be transferred.

SECTION 7.2 Parties in Interest. Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation, other than the City, the Seller, any other Registered Owner and the Registrar, any right, remedy or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the City, the Seller, any other Registered Owner from time to time of this Agreement and the Registrar.

SECTION 7.3 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns, including, without limitation, all Registered Owners from time to time of this Agreement.

SECTION 7.4 Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein or therein.

SECTION 7.5 Prior Agreements Cancelled; No Merger. This Agreement shall completely and fully supersede all other prior agreements, both written and oral, between the City and the Seller relating to the acquisition of the Development Rights. Neither the City nor the Seller shall hereafter have any rights under such prior agreements but shall look solely to this Agreement and the Deed of Easement for definitions and determination of all of their respective rights, liabilities and responsibilities relating to the Land, the Development Rights and the payment for the Development Rights. In addition, this Agreement shall survive the execution and recording of the Deed of Easement in all respects and shall not be merged therein.

SECTION 7.6 Amendments, Changes and Modifications. This Agreement may not be amended, changed, modified, altered or terminated except by an agreement in writing between the City and the then Registered Owner. An executed counterpart of any such amendment shall be attached to this Agreement and shall be binding upon such Registered Owner and all successor Registered Owners.

SECTION 7.7 No Personal Liability of City Officials. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, officer, agent or employee of the City in his or her individual capacity, and neither the officers or employees of the City nor any official executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 7.8 Governing Law. The laws of the State shall govern the construction and enforcement of this Agreement.

SECTION 7.9 Notices. Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals, certificates or other communications required under this Agreement to be in writing shall be sufficiently given and shall be deemed to have been properly given three Business Days after the same is mailed by certified mail, postage prepaid, return receipt requested, addressed to the person to whom any such notice, demand, request, approval, certificate or other communication is to be given, at the address for such person designated below:

City:	City Manager Municipal Center Virginia Beach, VA 23456
with a copy to:	City Attorney Municipal Center Virginia Beach, VA 23456
Seller:	Ernest Brown 2248 Princess Anne Road Virginia Beach, Virginia 23456
Registrar:	First Union National Bank of Virginia Corporate Trust Department 2nd Floor 901 East Cary Street Richmond, Virginia 23219

Any of the foregoing may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, demands, requests, consents, approvals, certificates or other communications shall be sent hereunder.

SECTION 7.10 Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Agreement, shall not be a Business Day, such payment may, unless otherwise provided in this Agreement, be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Agreement, and in the case of payment no interest shall accrue for the period after such nominal date.

WITNESS the signatures and seals of the parties hereto as of the date first above written.

CITY:

[CITY'S SEAL]

CITY OF VIRGINIA BEACH, VIRGINIA

ATTEST:

By: _____
James K. Spore, City Manager

City Clerk

SELLER:

_____(SEAL)

Approved as to Legal
Sufficiency:

Approved as to Sufficiency of
Funds:

Deputy City Attorney

Director, Department of Finance

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 19____, by James K. Spore, City Manager of the City of Virginia Beach, Virginia, and attested to by _____, City Clerk of the City of Virginia Beach, Virginia, on its behalf.

Notary Public

(SEAL)
My Commission Expires:

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of _____, Virginia, this _____ day of _____, 19____, by _____.

Notary Public

(SEAL)
My Commission Expires:

FORM OF DEED OF EASEMENT

[SEE ATTACHED]

DESCRIPTION OF LAND

[SEE ATTACHED]

PERMITTED ENCUMBRANCES

[SEE ATTACHED]

ASSIGNMENT

FOR VALUE RECEIVED, _____ and _____
 ([collectively,] the "Registered Owner") hereby sell[s], assign[s] and transfer[s] unto
 _____, without recourse, all of the Registered Owner's
 right, title and interest in and to the Installment Purchase Agreement to which this
 Assignment is attached; and the Registered Owner hereby irrevocably directs the Registrar
 (as defined in such Agreement) to transfer such Agreement on the books kept for
 registration thereof. The Registered Owner hereby represents, warrants and certifies that
 there have been no amendments to such Agreement [except _____].

Date: _____

Signature guaranteed:

 NOTICE: Signature must be
 guaranteed by a member firm
 of the New York Stock
 Exchange or a commercial
 bank or trust company.

 NOTICE: The signature on this
 Assignment must correspond with
 the name of the Registered Owner
 as it appears on the registration
 books for the Installment Purchase
 Agreement referred to herein in every
 particular, without alteration or
 enlargement or any change whatever.

TRANSFER OF AGREEMENT - SCHEDULE OF TRANSFEREES

The transfer of this Installment Purchase Agreement may be registered only by the Registered Owner under such Agreement in person or by its duly authorized officer or attorney upon presentation hereof to the Registrar, who shall make note thereof in the books kept for such purpose and in the registration blank below.

Date of Registration of Transfer	Name and Address of Transferee Registered Seller	Tax I.D. No. of Transferee	Signature of Registrar
1. _____	_____	_____	_____
	_____	_____	
	_____	_____	
2. _____	_____	_____	_____
	_____	_____	
	_____	_____	
3. _____	_____	_____	_____
	_____	_____	
	_____	_____	
4. _____	_____	_____	_____
	_____	_____	
	_____	_____	
5. _____	_____	_____	_____
	_____	_____	
	_____	_____	
6. _____	_____	_____	_____
	_____	_____	
	_____	_____	

EXHIBIT A

ALL THAT certain tract or parcel of land, lying and being in Blackwater District, City of Virginia Beach, State of Virginia and more particularly described as follows:

BEGINNING on the South side of the Head River Road at the Northwest corner of the Smith Property and the Northeast corner of the land herein conveyed, said Point of Beginning being identified on the map hereinafter referred to by the Figure "1"; running thence from said Beginning Point South 14 degrees 45 minutes West 7.83 chains; thence South 31 degrees 45 minutes East 6.80 chains; thence South 9 degrees East 0.76 chains; thence South 7 degrees 30 minutes West 2.46 chains to an iron pipe; thence North 77 degrees 45 minutes East 9.53 chains; thence North 77 degrees 30 minutes East 2.81 chains; thence North 82 degrees East 6.65 chains to the run of a swamp; thence with the run of the swamp following courses and distances: South 20 degrees 15 minutes East 2.84 chains; South 12 degrees West 9.83 chains; South 23 degrees East 1.73 chains; South 39 degrees 45 minutes West 1.40 chains; South 4 degrees 10 minutes East 0.87 chains; South 51 degrees 40 minutes West 5.23 chains; South 37 degrees West 1.12 chains; South 57 degrees 15 minutes West 2.73 chains; South 77 degrees 45 minutes West 0.90 Chains; South 61 degrees West 3.00 chains; South 41 degrees West 1.39 chains to a creek; thence down the creek the following courses and distances: North 81 degrees 15 minutes West 2.56 chains; thence South 79 degrees 45 minutes West 4.14 chains; South 46 degrees West 1.35 chains; South 14 degrees 45 minutes East 5.77 chains; South 4 degrees 45 minutes East 5.80 chains; South 25 degrees West 1.73 chains; South 33 degrees East 6.43 chains; South 29 degrees 45 minutes West 3.17 chains; South 57 degrees West 3.16 chains to a branch of Blackwater River; thence with said branch of Blackwater River North 60 degrees West 13.51 chains; North 77 degrees 30 minutes West 2.00 chains; North 43 degrees 15 minutes West 2.17 chains; North 30 degrees 30 minutes West 3.49 chains; North 10 degrees 30 minutes West 3.90 chains; North 36 degrees East 2.49 chains; North 7 degrees 40 minutes West 3.75 chains; North 21

degrees West 1.45 chains; North 18 degrees 20 minutes East 2.00 chains; North 38 degrees 45 minutes West 2.38 chains; North 25 degrees 30 minutes East 2.18 chains; North 82 degrees 45 minutes West 1.21 chains; North 19 degrees 30 minutes West 2.42 chains; North 74 degrees West 1.41 chains to the center of a ditch; thence with said ditch North 43 degrees 30 minutes East 14.59 chains; thence continuing with said ditch North 39 degrees West 10.29 chains to an iron pin; thence North 40 degrees East 4.37 chains; thence South 14 degrees 15 minutes West 5.36 chains; thence South 74 degrees 30 minutes East 6.54 chains; thence North 13 degrees 45 minutes East 0.15 chains; thence South 74 degrees 30 minutes East 4.85 chains to an iron pipe; thence North 13 degrees 45 minutes East 16.57 chains to an axle on the South side of Head River Road thence with said road South 75 degrees 10 minutes East 0.42 chains to the Point of Beginning, containing 115.3 acres, more or less.

LESS AND EXCEPT all portions of the above-described property, if any, which contain any of the following soil types: (1) Back Bay Mucky Peat; (2) Dorovan Mucky Peat; (3) Nawney Silt Loam; or (4) Pamlico Mucky Peat, Pondered.

[LESS AND EXCEPT that certain tract, piece or parcel being a portion of the above described property designated and described as "#" as shown on that certain plat entitled: "#", Scale #" = #', dated #, prepared by #, which plat is attached hereto and recorded simultaneously herewith.]

IT BEING the same property conveyed to the grantor from Weyerhaeuser Real Estate Company, a Washington Corp. authorized to do business in North Carolina by deed dated February 1, 1984 and recorded in the Clerk's Office of the Circuit Court of the City Virginia Beach in Deed Book 2326, at page 1398, subject to a mineral reservation in Deed Book 2326, at page 1398 and in Deed Book 2082, at page 132.

EXHIBIT B

ALL THAT certain tract or parcel of land, lying and being in Blackwater District, City of Virginia Beach, State of Virginia and more particularly described as follows:

BEGINNING on the South side of the Head River Road at the Northwest corner of the Smith Property and the Northeast corner of the land herein conveyed, said Point of Beginning being identified on the map hereinafter referred to by the Figure "1"; running thence from said Beginning Point South 14 degrees 45 minutes West 7.83 chains; thence South 31 degrees 45 minutes East 6.80 chains; thence South 9 degrees East 0.76 chains; thence South 7 degrees 30 minutes West 2.46 chains to an iron pipe; thence North 77 degrees 45 minutes East 9.53 chains; thence North 77 degrees 30 minutes East 2.81 chains; thence North 82 degrees East 6.65 chains to the run of a swamp; thence with the run of the swamp following courses and distances: South 20 degrees 15 minutes East 2.84 chains; South 12 degrees West 9.83 chains; South 23 degrees East 1.73 chains; South 39 degrees 45 minutes West 1.40 chains; South 4 degrees 10 minutes East 0.87 chains; South 51 degrees 40 minutes West 5.23 chains; South 37 degrees West 1.12 chains; South 57 degrees 15 minutes West 2.73 chains; South 77 degrees 45 minutes West 0.90 Chains; South 61 degrees West 3.00 chains; South 41 degrees West 1.39 chains to a creek; thence down the creek the following courses and distances: North 81 degrees 15 minutes West 2.56 chains; thence South 79 degrees 45 minutes West 4.14 chains; South 46 degrees West 1.35 chains; South 14 degrees 45 minutes East 5.77 chains; South 4 degrees 45 minutes East 5.80 chains; South 25 degrees West 1.73 chains; South 33 degrees East 6.43 chains; South 29 degrees 45 minutes West 3.17 chains; South 57 degrees West 3.16 chains to a branch of Blackwater River; thence with said branch of Blackwater River North 60 degrees West 13.51 chains; North 77 degrees 30 minutes West 2.00 chains; North 43 degrees 15 minutes West 2.17 chains; North 30 degrees 30 minutes West 3.49 chains; North 10 degrees 30 minutes West 3.90 chains; North 36 degrees East 2.49 chains; North 7 degrees 40 minutes West 3.75 chains; North 21 degrees West 1.45 chains; North 18 degrees 20 minutes East 2.00 chains; North 38 degrees 45 minutes West 2.38 chains; North 25 degrees 30 minutes East 2.18 chains; North 82 degrees 45 minutes West 1.21 chains; North 19 degrees 30 minutes West 2.42 chains; North 74 degrees West 1.41 chains to the center of a ditch; thence with

said ditch North 43 degrees 30 minutes East 14.59 chains; thence continuing with said ditch North 39 degrees West 10.29 chains to an iron pin; thence North 40 degrees East 4.37 chains; thence South 14 degrees 15 minutes West 5.36 chains; thence South 74 degrees 30 minutes East 6.54 chains; thence North 13 degrees 45 minutes East 0.15 chains; thence South 74 degrees 30 minutes East 4.85 chains to an iron pipe; thence North 13 degrees 45 minutes East 16.57 chains to an axle on the South side of Head River Road thence with said road South 75 degrees 10 minutes East 0.42 chains to the Point of Beginning, containing 115.3 acres, more or less.

LESS AND EXCEPT all portions of the above-described property, if any, which contain any of the following soil types: (1) Back Bay Mucky Peat; (2) Dorovan Mucky Peat; (3) Nawney Silt Loam; or (4) Pamlico Mucky Peat, Ponded.

[LESS AND EXCEPT that certain tract, piece or parcel being a portion of the above described property designated and described as "#" as shown on that certain plat entitled: "#", Scale #" = #", dated #, prepared by #, which plat is attached hereto and recorded simultaneously herewith.]

IT BEING the same property conveyed to the grantor from Weyerhaeuser Real Estate Company, a Washington Corp. authorized to do business in North Carolina by deed dated February 1, 1984 and recorded in the Clerk's Office of the Circuit Court of the City Virginia Beach in Deed Book 2326, at page 1398, subject to a mineral reservation in Deed Book 2326, at page 1398 and in Deed Book 2082, at page 132.

EXHIBIT "C"

PERMITTED ENCUMBRANCES

1. Taxes for the second half of the fiscal year 1996/1997 and any/all Stormwater fees, which are liens not yet due and payable, and taxes and stormwater fees for all subsequent billing periods.
2. Roll Back Taxes.
3. Land Management Agreement with the City of Virginia Beach as recorded in the aforesaid Clerk's Office in Deed Book 3701, at page 9 and shown in Map Book 256, at page 94.
4. Reservation of Mineral Rights recorded in the aforesaid Clerk's office in Deed Book 2326 at page 1398 and in Deed Book 2082, at page 132.
5. Rights to the United States of America and the Commonwealth of Virginia to regulate that portion of the property which may be deemed wetlands.
6. Riparian rights and those public easements and rights for commerce, navigation, and fisheries. Any right, title, or interest of the public up to the mean high water mark and those portions of described property created by artificial means including accretions thereto.
7. Rights of others entitled thereto in and to the ditches.
8. Such other restrictions and encumbrances which, in the opinion of the City Attorney, do not adversely affect the interest of the City of Virginia Beach in and to the agricultural land preservation easement and the rights granted to the City in the Deed of Easement.

This instrument was prepared by
Virginia Beach City Attorney's Office

EXHIBIT A

Exemption Claimed: § 58.1-811(A)(3)
§ 58.1-811(C)(4)

DEED OF EASEMENT

THIS DEED OF EASEMENT is made this ____ day of _____, 1997, by and between H. ERNEST BROWN and {marital status}, his wife (collectively, the "Grantor"), and CITY OF VIRGINIA BEACH, VIRGINIA, a body politic and corporate of the Commonwealth of Virginia (the "City") whose address is Municipal Center, Virginia Beach, Virginia 23456, Grantee.

RECITALS

WHEREAS, pursuant to the authority granted by the Open-Space Land Act, Chapter 17, Title 10.1 of the Code of Virginia of 1950, as amended (the "Act"), the City adopted the Agricultural Lands Preservation Ordinance (the "Ordinance") as Appendix J to the Code of the City of Virginia Beach, Virginia, as amended (the "City Code"), to promote and encourage the preservation of agricultural land in designated areas within the southern portion of the City; and

WHEREAS, in furtherance of the purposes of the Act and the Ordinance, the City has established the Agricultural Reserve Program of the City which provides for the acquisition of development rights through the purchase of agricultural land preservation easements with respect to property located in the portions of the City covered by the Ordinance; and

WHEREAS, the Grantor is the owner in fee simple of certain agricultural real property located in the City and more particularly described in **Exhibit A** hereto (the "Land"); and

WHEREAS, the Land is located in that portion of the City subject to the Ordinance and meets the eligibility criteria of Section 7 of the Ordinance; and

WHEREAS, the Grantor has agreed to sell to the City the Grantor's Development Rights (hereinafter defined) in the Land by executing and delivering this Deed of Easement and thereby restrict the use of the Land as described herein; and

GPIN 1389-41-7157

WHEREAS, the City has agreed to purchase the Grantor's Development Rights in the Land to fulfill the policy and purposes of the City as set forth in the Act and the Ordinance; and

WHEREAS, the transfer by the Grantor of the Development Rights in the Land shall be in perpetuity; and

WHEREAS, in order to provide for the payment of the purchase price for the rights in the Land created hereby, the Grantor and the City have entered into an Installment Purchase Agreement of even date herewith (the "Installment Purchase Agreement");

GRANT

NOW, THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00), the covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor, for Grantor, Grantor's heirs, personal representatives, devisees, successors and assigns, and for any subsequent owner of the Land does hereby grant and convey, with general warranty and English covenants of title, unto the City, and its successors and assigns, forever and in perpetuity, an agricultural land preservation easement in, on, over and with respect to the Land restricting the Land to Agricultural Use and in furtherance thereof, does hereby grant and convey, with general warranty and English covenants of title, to the City, and its successors and assigns, forever and in perpetuity, all of the Development Rights with respect to the Land.

TERMS, COVENANTS, CONDITIONS AND AGREEMENTS

A. The Grantor for Grantor, Grantor's heirs, personal representatives, devisees, successors and assigns covenants with the City, (1) to refrain from engaging in any act or activity, or permitting to occur or suffering to exist any act or activity upon the Land which would constitute the exercise of a Development Right or a use other than an Agricultural Use, it being the intention of the parties that the Land shall be preserved for Agricultural Use in accordance with the provisions of the Ordinance; and (2) that this Deed of Easement shall create a perpetual easement, running with the Land and all portions thereof as an incorporeal and nonpossessory interest therein, enforceable against the Grantor and upon any purchaser, grantee, lessee, owner or other transferee of all or any portion of the Land and any other person or entity having any right, title or interest therein and upon their respective heirs, personal representatives, devisees, successors and assigns; and (3) that the covenants, conditions, limitations and restrictions contained herein are intended to limit the use of the Land as herein set forth.

B. The parties, for themselves, their heirs, personal representatives, devisees, successors and assigns, further covenant and agree as follows:

(1) As used in this Deed of Easement the term "Development Rights" shall mean the right to develop the Land for any use, including without limitation, any commercial, industrial or residential use, other than for Agricultural Use.

(2) As used in this Deed of Easement the term "Agricultural Use" means (i) the bona fide production of crops, animal or fowl, including, but not limited to, the production of fruits, vegetables, honey, grains, meat, poultry and dairy products, the raising of livestock and poultry, and the production and harvest of products from horticultural, silvicultural or aquacultural activity, (ii) the repair, expansion or replacement of no more than one (1) bona fide dwelling occupied by the landowner or tenant as of the date of application for entry in the Agricultural Reserve Program and no more than one freestanding mobile home, as permitted by Section 19-19 of the City Code, and (iii) accessory uses directly related to agricultural activities conducted on the same property, including the sale of agricultural products as permitted by Section 401 of the City Zoning Ordinance. The term does not include the processing of agricultural, silvicultural, horticultural or aquacultural products, except as an accessory use.

(3) This Deed of Easement does not grant the public any right of entry or access or any rights of use of the Land.

(4) THIS EASEMENT SHALL EXIST IN PERPETUITY AND RUN WITH THE ENTIRE ACREAGE OF THE LAND.

(5) The purpose of this Deed of Easement shall be to (i) promote and encourage the preservation of farmland, and promote and enhance agriculture as an important industry within the City, (ii) preserve the rural character of the southern part of the City, (iii) conserve and protect environmentally sensitive lands, waters and other resources, (iv) reduce and defer the need for major infrastructure improvements in the southern part of the City and the expenditure of public funds for such improvements, (v) preserve open spaces, and (vi) assist in shaping the character, direction and timing of community development.

(6) In the event of a violation or attempted violation of any of the provisions hereof, the City and its successors and assigns, may institute and prosecute any proceeding at law or in equity to enforce the provisions hereof or to abate, prevent or enjoin any such violation or attempted violation.

WITNESS, the hand and seal of the Grantor as of the date first above written.
#{NOTE-USE IF GRANTOR IS MARRIED BUT SPOUSE IS NOT ON DEED--Anything herein to the contrary notwithstanding, _____ AND _____, execute(s) this Deed of Easement for the sole purpose of consenting to the conveyance of and releasing any marital or augmented estate interest in the easement and rights set forth herein.

GRANTOR:

_____(SEAL)
H. ERNEST BROWN

_____(SEAL)

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City of Virginia Beach, Virginia, this _____ day of _____, 1997, by H. Ernest Brown and _____, his wife, Grantor.

Notary Public

(SEAL)

My Commission Expires: _____

Item V-J.2.

ORDINANCES

ITEM # 42299

*Upon motion by Councilman Jones, seconded by Councilman Branch, City Council **ADOPTED:***

*Ordinance to **APPROPRIATE** \$38,500 from the General Fund Balance for a Grant to the **Creeds Volunteer Rescue Squad** re purchase of a replacement squad truck.*

Voting: 8-0 (By Consent)

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

June 24, 1997

**AN ORDINANCE TO APPROPRIATE \$38,500 FROM THE GENERAL FUND, FUND BALANCE
FOR THE PURPOSE OF PROVIDING A GRANT TO THE CREEDS VOLUNTEER
RESCUE SQUAD FOR THE PURCHASE OF A REPLACEMENT SQUAD TRUCK**

WHEREAS, the Creeds Volunteer Rescue Squad has determined that the current squad truck has
a high maintenance liability and has often experienced service failures,

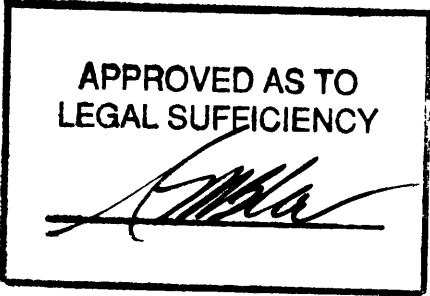
WHEREAS, the Creeds Volunteer Rescue Squad applied for and received a State Rescue Squad
Assistance Grant in the amount of \$70,000, which equals 50% of the \$140,000 replacement cost of the squad
truck,

WHEREAS, the Creeds Volunteer Rescue Squad has raised a total of \$31,750 towards the
necessary matching funds, however, because of the smaller donor base of the Creeds area and because of other
future replacement needs for ambulances, Creeds Volunteer Rescue Squad does not have the fund-raising ability
to repay a loan, and

WHEREAS, the City Council has established a grant program as well as an interest-free loan
program to provide funding for replacement needs of volunteer rescue squads

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VIRGINIA
BEACH, VIRGINIA**, that \$38,500 from the General Fund, fund balance be appropriated as a grant to the Creeds
Volunteer Rescue Squad for the purpose of purchasing a replacement squad truck

Adopted by the Council of the City of Virginia Beach, Virginia on the 24TH day of JUNE, 1997



Approved as to Content

Department of Management and Budget

Item V-J.3.

ORDINANCES

ITEM # 42300

*Upon motion by Councilman Jones, seconded by Councilman Branch, City Council **ADOPTED:***

*Ordinance to **ACCEPT** and **APPROPRIATE** a \$17,860 Federal Grant to the FY 1996-1997 Department of **Social Services** Operating Budget re the **Building a Better Bayside Through Juvenile Delinquency Prevention** program; and, increase estimated revenue accordingly.*

Voting: 8-0 (By Consent)

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

June 24, 1997

1 **AN ORDINANCE TO ACCEPT AND APPROPRIATE AN ADDITIONAL \$17,860 IN**
2 **FEDERAL GRANT FUNDING TO THE FY 1996-97 DEPARTMENT OF SOCIAL**
3 **SERVICES OPERATING BUDGET**

4 **WHEREAS**, the in April 1995, the Department of Social Services was awarded a
5 grant funded through the Virginia Department of Criminal Justice Services for the
6 *Building a Better Bayside Through Juvenile Delinquency Prevention* program,

7 **WHEREAS**, the grant has been designed to provide interventions at Bayside
8 Middle School and Bayside High School which will assist students in developing
9 alternative methods of resolving disputes, provide support to improve their self-esteem,
10 and provide information about a variety of issues which are affecting our young people;

11 **WHEREAS**, the Department has been awarded \$17,860 for a third year of the
12 grant funding for the *Building a Better Bayside Through Juvenile Delinquency*
13 *Prevention* program; and

14 **WHEREAS**, the required match funding of \$14,625 will be provided through in-
15 kind (not cash) services provided through the Virginia Beach Public Schools

16 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
17 **VIRGINIA**, that \$17,860 in grant funding be appropriated to the Department of Social
18 Services FY 1996-97 Operating Budget,

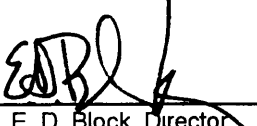
19 **BE IT FURTHER ORDAINED**, that estimated revenue from grant funding be increased
20 by \$17,860

21 Adopted by the City Council of the City of Virginia Beach, Virginia, on the

22 _____ 24TH _____, day of _____ JUNE _____, 1996.

This ordinance shall be effective from the date of its adoption.

APPROVED AS TO CONTENT



E. D. Block, Director
Department of Management Services

Item V-J.4.

ORDINANCES

ITEM # 42301

*Upon motion by Councilman Jones, seconded by Councilman Branch, City Council **ADOPTED:***

*Ordinance to **TRANSFER** Personnel and Operating Budget Spending Authority (not to exceed \$805,980) from the Virginia Beach Public Schools Reprographics Internal Service Fund to the City's FY 1997-1998 "City/Schools Printing Services Internal Service Fund"; and, transfer four FTE positions to the City pay plan, effective 1 July 1997.*

Voting: 8-0 (By Consent)

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

June 24, 1997

1 **AN ORDINANCE TO TRANSFER PERSONNEL AND OPERATING BUDGET**
2 **SPENDING AUTHORITY FROM THE VIRGINIA BEACH CITY PUBLIC SCHOOLS**
3 **REPROGRAPHICS INTERNAL SERVICE FUND TO THE**
4 **CITY'S "CITY/SCHOOLS PRINTING SERVICES INTERNAL SERVICE FUND"**

5 WHEREAS, on June 3, 1997, the School Board of the Virginia Beach Public Schools approved the consolidation
6 of the Virginia Beach Public Schools Reprographics Shop and the City's Print Shop into the "City/Schools Printing Services
7 Internal Service Fund",

8 WHEREAS, the Council of the City of Virginia Beach adopted an ordinance on June 10, 1997 authorizing the City
9 Manager to execute an agreement for the consolidation of two internal service fund agencies including the Virginia Beach
10 Public Schools Reprographics Shop and the City's Print Shop into the "City/Schools Printing Services Internal Service
11 Fund",

12 WHEREAS, this agreement called for the Schools Reprographics personnel and budget to be combined with the
13 City Print Shop Internal Service Fund personnel and budget to be effective July 1, 1997, and

14 WHEREAS, the agreement called for the School Reprographics personnel to be transferred to and established in
15 the City pay plan, and for position titles and pay to be adjusted accordingly

16 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VIRGINIA BEACH,
17 VIRGINIA, that expenditure authority to spend funding not to exceed \$805,980 be transferred from the Schools
18 Reprographics Internal Service Fund to the "City/Schools Printing Services Internal Service Fund" for the FY 1997-98
19 Operating Budget

20 BE IT FURTHER ORDAINED that the four full-time equivalent positions from the Schools Reprographics Internal
21 Service Fund be transferred to the City pay plan and established in the "City/Schools Printing Services Internal Service
22 Fund" effective July 1, 1997

23 This ordinance shall be effective from the date of adoption

24 Adopted by the Council of the City of Virginia Beach, Virginia on the 24TH day of
25 JUNE, 1997

26 APPROVED AS TO CONTENT

APPROVED AS TO LEGAL SUFFICIENCY AND FORM

27 

28 

DEPARTMENT OF MANAGEMENT SERVICES

CITY ATTORNEY

Item V-J.5.

ORDINANCES

ITEM # 42302

*Upon motion by Councilman Jones, seconded by Councilman Branch, City Council **ADOPTED:***

*Ordinance re a **Cooperative Agreement** between Virginia Beach City Council and the Virginia Beach School Board re FY 1997-1998 legal services to the Board by the Office of the City Attorney.*

Voting: 8-0 (By Consent)

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

June 24, 1997

1 AN ORDINANCE APPROVING A
2 COOPERATIVE AGREEMENT
3 BETWEEN CITY COUNCIL AND THE
4 VIRGINIA BEACH SCHOOL BOARD
5 PERTAINING TO THE PROVISION
6 OF LEGAL SERVICES TO THE
7 BOARD BY THE OFFICE OF THE
8 CITY ATTORNEY IN FISCAL YEAR
9 1997-98

10 WHEREAS, the Office of the City Attorney provided legal
11 services to the Virginia Beach School Board and School
12 Administration in FY 1996-97 pursuant to a "Cooperative Agreement"
13 which was approved by the Board on November 5, 1996, and by City
14 Council on November 26, 1996;

15 WHEREAS, the "Cooperative Agreement" for FY 1996-97,
16 which expires on June 30, 1997, provides that "[t]his Cooperative
17 Agreement ... may be revised, as necessary, and renewed each fiscal
18 year ...;

19 WHEREAS, a "Cooperative Agreement" for FY 1997-98, which
20 includes minor revisions to the FY 1996-97 Agreement primarily
21 intended to clarify the relationship of the parties and the
22 responsibilities of the City Attorney, was approved by the School
23 Board at its meeting of June 17, 1997; and

24 WHEREAS, City Council agrees that it is in the best
25 interests of the City and the School Board for the Office of the
26 City Attorney to continue to provide legal services to the School
27 Board pursuant to the revised "Cooperative Agreement" for FY 1997-
28 98.

29 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY
30 OF VIRGINIA BEACH, VIRGINIA:

31 1. That City Council hereby approves the Cooperative
32 Agreement which is attached hereto; and

33 2. That the Mayor is hereby authorized to execute the
34 Cooperative Agreement on behalf of the City Council.

35 Adopted by the Council of the City of Virginia Beach,
36 Virginia, on the 24TH day of JUNE, 1997.

37 CA-6704
38 ORDIN\NONCODE\LEGALSERV2.ORD
39 R-1
40 PREPARED: 06/18/97

41 APROVED AS TO LEGAL
42 SUFFICIENCY

43 
44 Department of Law

**COOPERATIVE AGREEMENT BETWEEN THE CITY COUNCIL
AND THE SCHOOL BOARD OF THE CITY OF VIRGINIA BEACH
PERTAINING TO LEGAL SERVICES TO BE PROVIDED TO THE
SCHOOL BOARD AND SCHOOL ADMINISTRATION
BY THE OFFICE OF THE CITY ATTORNEY
IN FISCAL YEAR ~~1996-1997~~ 1997-98**

Factual Background:

1. Chapter 9 of the Charter of the City of Virginia Beach, Virginia ("City Charter") provides that the City Attorney shall be the chief legal advisor of the City Council, the City Manager, and of all departments, boards, commissions and agencies of the City in all matters affecting the interests of the City, and that he shall have such powers and duties as may be assigned by the Council.
2. The City Charter also provides that the City Attorney is appointed by the City Council and serves at its pleasure.
3. The School Board is established by the Virginia Constitution, the City Charter, and provisions of general law, and is a body corporate vested with all of the powers and duties of local school boards conferred by law, including the right to contract and be contracted with, to sue and be sued, and to purchase, take, hold, lease, and convey school property both real and personal.
4. The School Board is authorized by Section 22.1-82 of the Code of Virginia (1950), as amended, to employ counsel to advise it, and to pay for such advice out of funds appropriated to the School Board.

5. Since the inception of the City and its School Board, the Office of the City Attorney has provided legal services to the School Board and School Administration in certain matters with the consent of both bodies.

6. Both the City Council and the School Board ~~have long recognized the cost advantage and savings to taxpayers as the prime reason for sharing services of the City Attorney's Office.~~ recognized that the reasons for sharing services of the City Attorney's Office include potential savings to taxpayers, expertise of the City Attorney's Office in City and School Board matters, corporate history, and the ability of the City Attorney's Office to provide a wide range of legal services to the Board based upon the expertise of the attorneys in numerous specialized areas of the law.

7. Generally, the Office of the City Attorney has provided day-to-day legal services to the School Board with respect to real estate matters, representation of the Board on personnel matters, general administrative and procedural issues, and minor litigation, and the School Board has employed independent legal counsel in matters involving special education, representation of School Administration on personnel issues, and most litigation, especially where the Board is indemnified by insurance.

8. Prior to FY ~~1994~~ 1993-94, the Office of the City Attorney ~~historically~~ allocated approximately one-third of an attorney's time (500 hours) annually to school matters; however, this allocation, funded 100% by the City, was routinely exceeded.

9. In Cooperative Agreements entered into by and between the City Council and the School Board for FY 1994-95 and FY 1995-96, it was recognized that, at a minimum, the

equivalent of one full-time attorney position of approximately 1650 hours with staff support was necessary to adequately perform the level of service historically provided to the Board, and that new issues would continue to evolve with the advent of an elected School Board which might alter or enlarge the amount of legal services that the School Board would want to be provided by the Office of the City Attorney.

10. ~~The School Board has recognized a need for the Office of the City Attorney to provide an expanded level of legal services, and, therefore, has requested the~~ The Office of the City Attorney to will provide the equivalent of two (2) full-time attorney positions (or 3300 hours per year) and one (1) secretarial position beginning January ~~July 1, 1997, or as soon thereafter as possible.~~

11. The Virginia Code of Professional Responsibility for the Legal Profession requires the independent professional judgment of the Office of the City Attorney on behalf of its clients.

12. The City Council and the School Board recognize that the potential for conflicting interests between the Council and the Board may arise, and that, in such cases, the City Attorney must refrain from representation of interests which may conflict.

13. The City Council and the School Board also recognize that they must work together and with the City Attorney to identify any real or perceived potential for conflict at the earliest possible time, advise each other and the City Attorney of any such conflict as soon as it arises so as not to compromise the interests of the City Council or the School Board, and

assist the City Attorney in avoiding any violation or appearance of violation of the Code of Professional Responsibility.

14. The City Council and the School Board further recognize that it remains in the best interest of the taxpayers of the City for the School Board to continue to use the legal services of the Office of the City Attorney to the extent that no real or perceived conflict is present, and to the extent the City Attorney is budgeted and staffed to handle assigned legal business of the Board.

Objectives:

The objective of this Cooperative Agreement is to define the scope and nature of the relationship between the City Attorney's Office and the School Board, to provide for the delivery of designated legal services to the School Board, and to avoid any real or perceived conflict in the delivery of those services.

Agreement:

NOW, THEREFORE, the City Council and the School Board hereby agree as follows:

1. The Office of the City Attorney will dedicate one full-time attorney at a minimum of the Attorney IV level, or as otherwise mutually agreed. ~~who~~ The dedicated attorney will be located in the School Administration Building and will devote all of his/her time (*i e.*, 1650 hours per year) to the provision of legal services to the School Board and School Administration.

2. During the term of this Agreement, the dedicated attorney shall be John F. Newhard, Jr., subject to reassignment in the judgment of the City Attorney; provided,

however, that selection of the dedicated attorney shall be mutually agreed upon. Additionally, if a majority of the members of the Board express dissatisfaction with the legal services provided by the ~~assigned~~ dedicated attorney, or by any other attorney ~~assigned to represent~~ providing services to the Board, the City Attorney will meet with the Board to discuss and evaluate its concerns. Furthermore, if the Board and the City Attorney agree that the most reasonable way to address the Board's concerns is to assign another attorney to represent the Board, the City Attorney will use his best efforts to make such an assignment as soon as possible.

3. The Office of the City Attorney will also provide an additional 1650 hours per year of legal services to the School Board and School Administration. These services will be provided by the other attorneys in the Office based upon their various areas of expertise with school-related legal issues. ~~These hours of additional services will be offset by the City Attorney's employment of a new attorney up to the level of an Attorney II.~~

4. The Office of the City Attorney will provide day-to-day legal services to the School Board and School Administration with respect to real estate matters, representation of the School Administration in personnel matters, general administrative and procedural issues, and general litigation, and, with the exception of special education issues, will endeavor to handle as many other legal matters in-house as it is capable of handling subject to the provisions of this Agreement.

5. Throughout the term of this Agreement, the Office of the City Attorney will maintain an open line of communication with the Board and the Division Superintendent, and

will keep them apprised, on a regular basis, of the status of all legal matters being handled on behalf of the School Board and School Administration; provided, however, that the Office of the City Attorney shall not communicate with the Division Superintendent concerning those matters being handled on a confidential basis for the School Board or for individual Board members in accordance with applicable Board policies and applicable provisions of the Superintendent's contract. Additionally, the Office of the City Attorney will provide the Superintendent and the School Board a quarterly report of the legal services and attorney hours provided pursuant to this Agreement and, upon request of the Board, the Board Chairman, or the Superintendent, will identify the amount of attorney hours expended in response to inquiries from individual Board members.

56. The City Council and the School Board recognize and understand that the School Board shall be responsible for the management of its legal matters; that, to the extent contemplated by this Agreement, the City Attorney shall be designated as the chief legal advisor of the Board and the School Administration, and shall assist the Board and Administration in the management of the Board's legal matters; and that the City Attorney shall report to the Board concerning those matters he has been assigned by the Board to manage and/or handle on its behalf.

~~6. The School Board agrees to transfer, to the City Attorney's budget, funds in the amount shown on Exhibit A (attached) for two (2) full-time attorney positions and necessary secretarial support.~~

~~7. Based upon this transfer, the City Council agrees to increase position allocations in the Office of the City Attorney to allow for the employment of one additional full-time attorney, effective January 1, 1997, or as soon thereafter as possible.~~

87. The City Council and the School Board recognize the potential for real or perceived conflicts in the provision of legal services by the City Attorney, and agree to be vigilant in advising the City Attorney of such issues as they arise. Additionally, the City Council and the School Board understand that in such cases, the City Attorney will refrain from participation on behalf of the School Board but, to the extent ethically permissible, will continue representation of the City Council.

98. The City Council and the School Board further recognize that the ability of the City Attorney's Office to provide legal services to the School Board is limited by the attorney hours allocated pursuant to this Agreement, the other provisions of this Agreement, and ethical constraints as they may arise. In the event it is anticipated that the attorney hours needed by the School Board and School Administration during FY 1997-98 will exceed the hours allocated pursuant to this Agreement, the City Attorney's Office will provide reasonable notice to the School Board, and the cost of such additional hours shall be negotiated.

109. The parties agree that this Cooperative Agreement is not a contract to be enforced by either party but is rather an agreement setting forth the understanding of the parties regarding the parameters within which the Office of the City Attorney will provide legal services to the School Board and School Administration.

~~11~~10. As indicated herein, it is not contemplated that the City Attorney's Office will provide more than 3300 hours of legal services under this Agreement in FY 1997-98.

11. On July 1, 1997, or as soon thereafter as possible, the School Board shall transfer funds in the amount of \$168,000 from its FY 1997-98 Operating Budget to the FY 1997-98 Operating Budget of the Office of the City Attorney to fund the annual salaries, benefits, and certain administrative costs of one (1) Senior Attorney, one (1) Attorney II, and one (1) Secretary II.

12. This Cooperative Agreement shall commence with the fiscal year of the parties which ~~commenced begins~~ July 1, ~~1996~~ 1997, and ~~expires ends~~ June 30, ~~1997~~ 1998, and may be revised, as necessary, and renewed each fiscal year thereafter; provided, however, that each party shall give the other party notice of any intention to revise or not to renew the Agreement within ninety (90) days of the date of expiration of this Agreement, or any renewal hereof, in order that the other party will have the opportunity to make appropriate budget and staffing adjustments.

13. This Agreement shall be submitted to, and approved by, the City Council and the School Board, ~~and shall become effective retroactive prior~~ to July 1, ~~1996~~ 1997.

SCHOOL BOARD OF CITY OF VIRGINIA BEACH

By: _____
Robert F. Hagans, Jr., Chairman

CITY COUNCIL, CITY OF VIRGINIA BEACH

By: _____
Meyera E. Oberndorf, Mayor

School Board of the City of Virginia Beach:

This Cooperative Agreement was approved by majority vote of the School Board of the City of Virginia Beach, Virginia on ~~November 5, 1996~~ June 17, 1997.

By: _____
Secretary of the School Board

City Council of the City of Virginia Beach:

This Cooperative Agreement was approved by majority vote of the City Council of the City of Virginia Beach, Virginia on ~~November 26, 1996~~ June 24, 1997.

By: _____
City Clerk

cb/work/COOP3 AGM

Item V-J.6.

ORDINANCES

ITEM # 42303

*Upon motion by Councilman Jones, seconded by Councilman Branch, City Council **ADOPTED:***

*Ordinance to authorize the City Manager and the City Attorney acquire **public beach easements** for the **Sandbridge Beach Nourishment** project, either by agreement or by condemnation.*

Voting: 8-0 (By Consent)

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn

Council Members Voting Nay:

None

Council Members Absent:

*Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker**

Council Lady Parker, when advising of her Mother's surgery and her need to be with her, requested the City Clerk state -- for the record -- that were she present, she would vote NAY on this item.

June 24, 1997

1 AN ORDINANCE AUTHORIZING THE
2 CITY MANAGER AND THE CITY
3 ATTORNEY TO ACQUIRE PUBLIC
4 BEACH EASEMENTS FOR SANDBRIDGE
5 BEACH NOURISHMENT PROJECT,
6 EITHER BY AGREEMENT OR BY
7 CONDEMNATION

8 WHEREAS, erosion is rapidly destroying the beach in the
9 Sandbridge Beach area of the City of Virginia Beach ("City") and
10 threatening residential structures and City infrastructure therein;

11 WHEREAS, the City has pursued and continues to pursue long-
12 term federal cost participation in a beach replenishment program
13 for Sandbridge Beach;

14 WHEREAS, by Resolution No. R94-02312 adopted by the City
15 Council on June 7, 1994, the City Council endorsed the concept
16 adopted by the 1994 General Assembly for funding a federal beach
17 nourishment and hurricane protection project for the Sandbridge
18 area of the City and agreed to be the local sponsor of the project
19 subject to, among other things, the dedication by Sandbridge
20 oceanfront landowners of easements or other documents sufficient to
21 ensure a public beach along the entire Project area;

22 WHEREAS, by Resolution No. RES 96-02507 adopted by the City
23 Council on December 17, 1996, the City Council endorsed the concept
24 of a one-time, City funded, federally sponsored emergency beach
25 nourishment project at Sandbridge Beach (the "Project") subject to
26 negotiation of a Project Cooperation Agreement with the Army Corps
27 of Engineers;

28 WHEREAS, the Project Cooperation Agreement is conditioned upon
29 the City providing satisfactory evidence to the Army Corps of
30 Engineers that there are sufficient public property interests in
31 the beach of Sandbridge to enable the Project Cooperation Agreement
32 to be executed and the Project to begin.

WHEREAS, for more than two years the City Attorney has pursued the acquisition of dedicated Public Beach Easements from the owners of oceanfront lots in Sandbridge, and as a result, all but 15 of the 242 oceanfront lots at Sandbridge have voluntarily dedicated Public Beach Easements to the City in the form of Public Recreation and Construction Easements attached hereto as Exhibits A and B;

WHEREAS, in the absence of the Project, it is expected that the Sandbridge beach will continue to suffer erosion as a result of direct wave attack, and residential structures and city infrastructure will suffer damage or be destroyed, and through restoration and nourishment of the beach at Sandbridge, the Project will provide a significantly wider sandy beach along the oceanfront properties, protect the oceanfront structures and city infrastructure, and maintain a recreational amenity as well as enhance the quality of life for residents in the Sandbridge community and for members of the public who will enjoy the beach; and

WHEREAS, in the opinion of the Council of the City of Virginia Beach, Virginia, a public necessity exists for the restoration and nourishment of the beach in Sandbridge for the preservation of the safety, health, peace, good order, comfort, convenience, and for the welfare of the people in the City of Virginia Beach.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VIRGINIA BEACH, VIRGINIA:

Section 1. That the City Council authorizes the acquisition by purchase or by condemnation, if deemed necessary by the City Attorney, pursuant to Sections 15.1-31, 15.1-271, 15.1-275, 15.1-277, 15.1-898, Title 25-46.1 et seq., Code of Virginia of 1950, as amended, all those certain Public Beach Easements as shown on the

individual plats entitled "PLAT SHOWING PUBLIC BEACH EASEMENT DEDICATION FROM" the following: "JOANNE S. WYMAN", "ROBERT P. YODER, SR. & LINDA K. YODER", "STEPHEN A. & JUDY K. PFOUTS", "W. B. MEREDITH, II", "DONALD G. MAYES", "EARL W. WALKER, JR. & MELBA BYRD WALKER", "MICHAEL D. & MARY FOWLKES VAUGHAN", "JAMES F. MACLIN, JR. & GAIL P. MACLIN", "STEPHEN W. & BARBARA A. MCCARTHY", "MILTON & JOSEPH MUNKEBY", "MYRON R. & REBECCA A. KINDLEY", "HELEN ETHERIDGE MCDONALD", "DAVID C. COMBEST", "RICHARD J. FERRIS, TRUSTEE", and "ZEHMER ENTERPRISES, INC.", these plats being on file in the Office of Public Works, Mapping Division, Virginia Beach, Virginia. Subject to Section 2, such acquisitions shall be consistent with the Public Recreation and Construction Easements attached hereto as Exhibits A and B and as shown on "Plans for Beach Nourishment, Beach Erosion Control and Hurricane Protection Project, Sandbridge Beach, Virginia Beach, Virginia" prepared by the Department of the Army, Norfolk District, Corps of Engineers, Norfolk, Virginia, August 1996, and other Project surveys, plans and drawings on file in the Department of Public Works, Office of Beach Management, in the Operations Building, Municipal Center, Virginia Beach, Virginia (collectively, the "Project Plans").

Section 2. That the City Council authorizes the acquisition by purchase or condemnation pursuant to Sections 15.1-31, 15.1-271, 15.1-275, 15.1-277, 15.1-898, Title 25-46.1 et seq., Code of Virginia of 1950, as amended, all other property interests, if any, within the Sandbridge area in accordance with the Project Plans, which are necessary in the opinion of the City Attorney to satisfy the Army Corps of Engineers that there are sufficient public

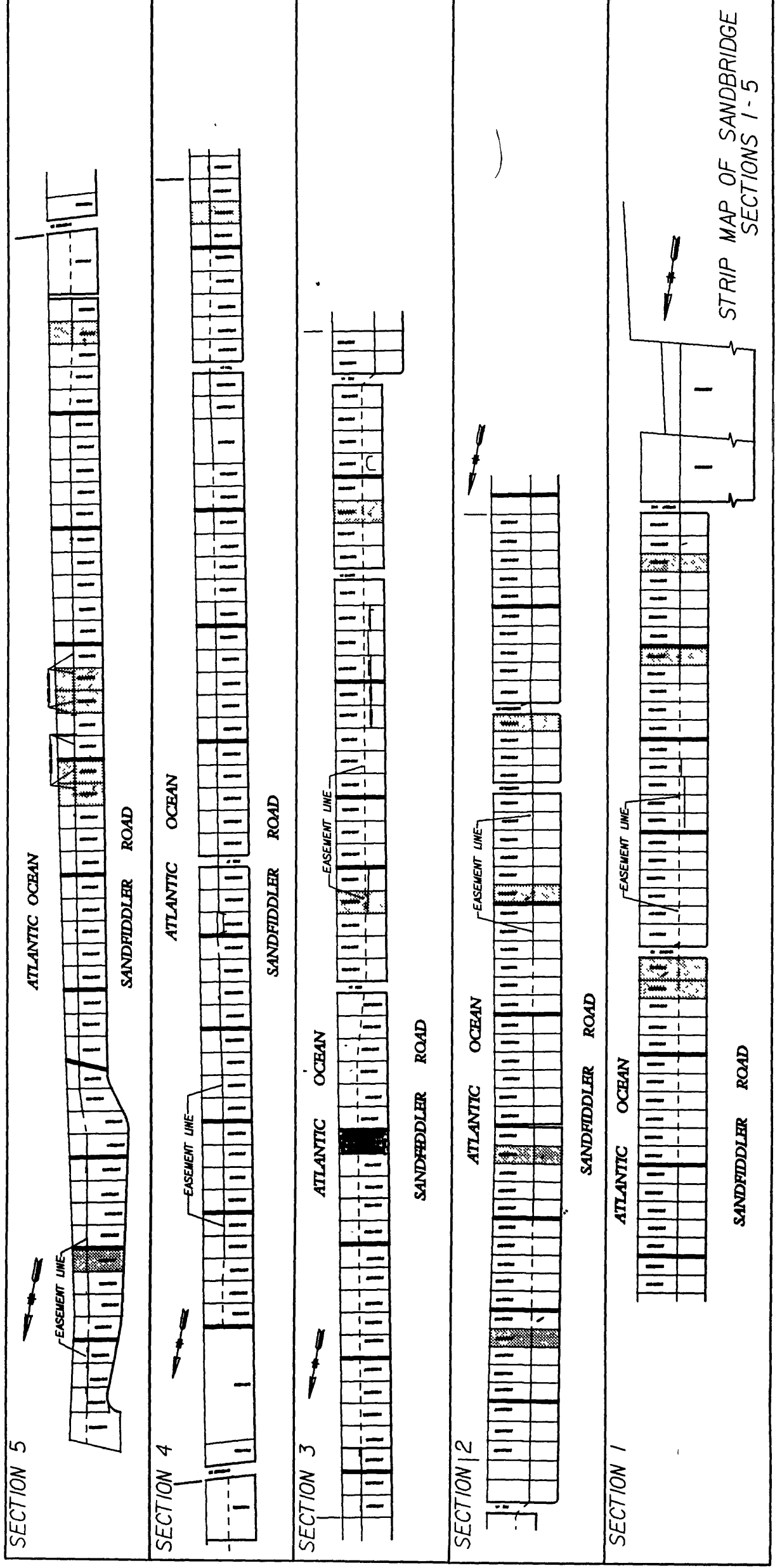
property interests in the beach of Sandbridge to enable the Project Cooperation Agreement to be executed and the Project to begin.

Section 3. That the City Manager is hereby authorized to make or cause to be made on behalf of the City of Virginia Beach, to the extent that it is reasonable and practical under the circumstances and to the extent funds are available, a reasonable offer to the owners or persons having an interest in said property. If refused, the City Attorney is hereby authorized to institute proceedings to condemn said property interests, if any. The source of any such funds expended shall be the funds accumulated in the Sandbridge Special Service District Special Revenue Fund, and such expenditures shall be charged as a cost of the Project thereby reducing the funds available for beach nourishment.

Section 4. Nothing herein shall be interpreted as restricting or limiting the authority of the City Attorney to assert and/or establish any right, title or interest the City or public may possess to any property as shown on the Project Plans which may be needed or required to undertake the Project, by Court action or otherwise, which does not utilize the power of eminent domain in condemnation.

Adopted by the Council of the City of Virginia Beach, Virginia, on the 24 day of June, 1997.

CA-6681
6/24/97
G:\DATA\ORDIN\NONCODE\CA6681.OR2
R-3



PUBLIC RECREATION EASEMENT

THIS DEED OF EASEMENT is made this 10th day of June, 1995, by and between #, (the Grantor, even though more than one), and the CITY OF VIRGINIA BEACH, a municipal corporation of the Commonwealth of Virginia, (the Grantee).

WITNESSETH:

WHEREAS, the Grantor is the record owner of a tract or parcel of land situate in the City of Virginia Beach, Virginia more particularly described as:

"PUBLIC BEACH EASEMENT DEDICATED TO THE CITY OF VIRGINIA BEACH," as shown on that certain plat entitled: "PLAT SHOWING PUBLIC BEACH EASEMENT DEDICATION FROM # LOT #, BLOCK #, SECTION #, SANDBRIDGE BEACH M.B. 51, PG. 25 PRINCESS ANNE BOROUGH -- VIRGINIA BEACH, VIRGINIA SURVEY BUREAU ENGINEERING DIVISION DEPARTMENT OF PUBLIC WORKS CITY OF VIRGINIA BEACH, VIRGINIA DATE: # SCALE: #." Said plat is recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Map Book ____ at page ____; and

It being a part of the same property conveyed to the Grantor by Deed of #, dated #, and recorded in the aforesaid Clerk's Office in Deed Book #, at page #.

WHEREAS, the parties desire to provide for outdoor recreational use by the general public over and upon a portion of the above-described tract or parcel of land; and

WHEREAS, the Grantor has conveyed unto the Grantee a construction easement over and upon a portion of Grantor's property; and

WHEREAS, the Grantor desires to preserve certain rights to construct, reconstruct, repair, replace and maintain an approved protective structure and/or toe protection as hereinafter defined.

NOW, THEREFORE, in recognition of the foregoing and in consideration of the Grantee's efforts to implement a beach and shoreline management and restoration project along

GPIN #

the Atlantic Ocean in Sandbridge and other valuable consideration including the mutual covenants herein recited and the acceptance hereof by Grantee, the Grantor, subject to those rights herein

reserved and pursuant to the conditions hereof, does hereby grant and convey unto the Grantee, a perpetual easement for the benefit of the people of the City, the Commonwealth of Virginia, and the general public, to enter upon, and use the easement area for recreational purposes. This "Recreation Easement," granted for the purpose of giving access, passage and public recreation use, shall be located upon that portion of the Grantor's property located east of the Easement Line. The Easement Line will be established generally in a north to south alignment contiguous to, or seaward of, the exposed exterior surface of each individual existing bulkhead on properties with bulkheads, and in the case of properties with no bulkheads, the line will be established no further landward than the face of the most landward bulkhead nearest the lot, whether to the north or south. Said Recreation Easement and Easement Line are more particularly described and shown on the attached Plat prepared by Grantee which plat has been acknowledged by the Grantor's signature thereon and made a part hereof marked "Exhibit A." Said easement is granted upon and includes all lands owned by Grantor lying east of the aforementioned Easement Line and any contiguous lands located east of the easternmost boundary of the property described herein, to which Grantor may hold an interest.

It is expressly understood and agreed that the Grantor reserves unto himself, his successors or assigns, the rights, within the Recreation Easement: (1) to build or repair, replace and maintain approved protective structures constructed at or west of the Easement Line, or in the event of failure of an existing protective structure, to reconstruct a protective structure seaward of but immediately adjacent to the original base of the existing failed structure, or, if necessary, immediately adjacent to the Easement Line; (2) to construct and maintain private access steps which shall not extend eastward more than five (5) feet from a protective structure, permitting access from a protective structure to the Recreation Easement; (3) to construct and maintain a deck(s) which shall not extend more than five (5) feet into the easement area, may only be constructed as a second story deck(s), may not interfere with the public's use of the easement area, and may not have support located upon the sand within the permanent easement area; and (4) subject to written

approval of the type, size, configuration and design by the City Manager or his designee, to construct toe protection within fifteen feet (15) seaward of the Easement Line.

For the purposes of this Deed, an approved protective structure shall be defined as a bulkhead, seawall, revetment, or equivalent structural improvements. Toe protection shall be defined, for the purpose of this Deed, as subsurface improvements constructed within fifteen feet (15) seaward of the Easement Line for the purpose of protecting existing structures against erosion or scour. The City of Virginia Beach shall be responsible for approval of all structures and toe protection subject to applicable federal, state and local laws and regulations.

Grantor acknowledges and agrees that no other encroachment or use shall be permitted in the Recreation Easement except as provided herein. Grantor further acknowledges that all structures or referenced activities are subject to all federal, state and local laws and regulations and may require separate permits.

Grantor reserves the right to push up sand within the easement subject and pursuant to Sections 62.1-13.5:3 and 62.1-13.25:1 of the Code of Virginia, 1950, As Amended, until the commencement of construction of a beach and shoreline management and restoration project along the Atlantic Ocean in Sandbridge by Grantee, the Commonwealth of Virginia, or the United States of America. Thereafter, Grantor and all successors in title specifically relinquish those rights enumerated in the Acts of Assembly of 1984, c. 518 (Virginia Code Sections 62.1-13.5:3 and 62.1-13.25:1) for the duration of a beach and shoreline management and restoration project along the Atlantic Ocean in Sandbridge.

The Recreation Easement and its western boundary line shall never be interpreted or construed to have moved westward from the Easement Line as shown on the above-referenced Plat, nor shall the Easement Line ever be defined or measured in relation to the location of any mean high water mark or mean low water mark.

The parties hereto agree that in the event the Grantee determines it to be in the public interest to regulate the placement of aquatic recreational craft within the Recreation

Easement, Grantee agrees that the Grantor, or his successors in title, shall be entitled, without fee, to one (1) permit for the placement of an aquatic recreational craft on the beach within twenty (20) feet of the Easement Line. The rights obtained pursuant to any such contemplated permit(s) shall be subject to suspension when construction activities are being performed or in instances where the public health, safety, and welfare require restrictions on all access to the beach.

It is understood and agreed that the granting of the easement herein described is solely for the recreational purposes described above and the Grantor is not conveying any other rights or privileges. It is further expressly provided and understood that the location of the Recreation Easement dedicated herein is established in a fixed location in accordance with the attached plat and neither the Recreation Easement nor the Easement Line shall ever be interpreted or construed to have moved from the location depicted thereon, nor shall the Easement Line ever be defined or measured in relation to the location of any mean high water mark or mean low water mark.

It is further agreed, upon the vesting of the Easement herein conveyed, that the Grantee, to the extent permitted by law, shall indemnify and hold harmless the Grantor, his agents, heirs, executors, successors, and assigns, from and against any and all damages, injury, liability, losses or expenses, including attorney's fees and court costs arising out of or resulting from any negligence of the Grantee, its agents, employees, or contractors upon the easement dedicated herein; and shall defend and hold them harmless from and against any and all claims, demands and actions threatened or brought against them for personal injury, wrongful death, or property damage associated with, arising out of or resulting from any negligence of the Grantee, its agents, employees, or contractors upon the easement dedicated herein.

It is expressly agreed that, upon the vesting of the Easement herein conveyed and to the extent permitted by law, Grantee will be liable for and shall repair within a reasonable time any damage to protective structures, dwellings, septic systems, or other structures located at or west of the Easement Line and belonging to Grantor, if such damage is a result of any negligence of the

Grantee, its agents, employees, or contractors upon the easement dedicated herein while entering upon, occupying and using the surface and subsurface of the easement pursuant to the terms of the Construction Easement.

It is expressly understood and agreed that the conveyance of this easement by the Grantor will not impose any additional restrictions on the Grantor's use of the remainder of his property. It is agreed that Grantor retains unrestricted access from the Grantor's property to the easement herein conveyed, except when construction activities are being performed or in instances where the public health, safety, and welfare require restrictions on all access to the beach.

It is expressly understood by the Grantor and Grantee that this conveyance is in anticipation of a beach and shoreline management and restoration project along the Atlantic Ocean in Sandbridge to be constructed in the easement area, but is not conditioned upon Grantee's present or subsequent maintenance of said easement.

This easement shall vest upon the City entering into a "Project Cooperation Agreement" with the United States Army Corps of Engineers for a beach and shoreline management and restoration project along the Atlantic Ocean in Sandbridge. Notwithstanding the above, the restrictions set forth herein for the construction or replacement of an approved protective structure, toe protection or other encroachments shall be effective upon execution of this instrument.

It is further understood and agreed by the parties that Grantee, by execution of this Deed and/or acceptance of this easement does not relinquish any rights, the Grantee or the public may possess including any claim by Grantee or the public to land east of the Easement Line, nor is Grantor or Grantee creating any duties or responsibilities now or in the future except as defined herein.

This conveyance is subject to all existing duly recorded liens as same may lawfully apply to the easement hereby conveyed or parts thereof. Grantor, his heirs, successors and assigns agree to assist Grantee in obtaining the subordination of any such existing liens. Grantor acknowledges that failure to obtain the subordination of such existing liens will prevent the

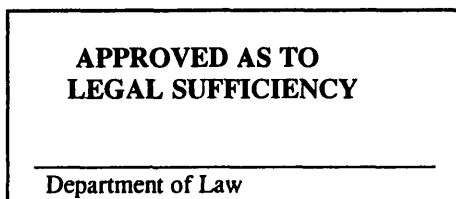
construction of a beach and shoreline management and restoration project along the Atlantic Ocean in Sandbridge in the easement area.

Both Deeds of Easement and attached plats shall be recorded simultaneously in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia and all recording and plat preparation costs arising from and associated with the conveyance of these easements are to be performed and paid by the Grantee. Further, Grantee agrees to furnish Grantor a copy of the fully executed and acknowledged Deeds of Easement with attached plats as recorded and certified by the Clerk of Court.

WITNESS the following signatures and seals:

_____(SEAL)
#

_____(SEAL)
#



CITY OF VIRGINIA BEACH,
a municipal corporation of the
Commonwealth of Virginia

By: _____
City Manager/Authorized
Designee of the City Manager

(SEAL)
ATTEST:

Ruth Hodges Smith
City Clerk

STATE OF _____
CITY OF _____, to-wit:

I, _____, a Notary Public in and for the City and State
aforesaid, do hereby certify that #, whose name#s are signed to the foregoing writing, bearing date
the 10th day of June, 1995, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 1996.

Notary Public

My commission expires: _____

STATE OF _____
CITY OF _____, to- wit:

I, _____, a Notary Public in and for the City and State
aforesaid, do hereby certify that JAMES K. SPORE, City Manager, or his authorized designee as
executed above, on behalf of the City of Virginia Beach, Virginia, whose name is signed to the
foregoing writing, bearing date the 10th day of June, 1995, has acknowledged the same before me
in my City and State aforesaid.

Given under my hand this _____ day of _____, 1996.

Notary Public

My commission expires: _____

STATE OF _____
CITY OF _____, to-wit:

I, _____, a Notary Public in and for the City and State
aforesaid, do hereby certify that RUTH HODGES SMITH, City Clerk, on behalf of the City of
Virginia Beach, Virginia, whose name is signed to the foregoing writing, bearing date the 10th day
of June, 1995, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 1996.

Notary Public

My commission expires: _____

CONSTRUCTION EASEMENT

THIS DEED OF EASEMENT is made this 24th day of February, 1996, by and between #, (the Grantor, even though more than one), and the CITY OF VIRGINIA BEACH, a municipal corporation of the Commonwealth of Virginia, (the Grantee).

WITNESSETH:

WHEREAS, the Grantor is the record owner of a tract or parcel of land situate in the City of Virginia Beach, Virginia more particularly described as:

"PUBLIC BEACH EASEMENT DEDICATED TO THE CITY OF VIRGINIA BEACH," as shown on that certain plat entitled: "PLAT SHOWING PUBLIC BEACH EASEMENT DEDICATION FROM #, LOT #, TRACT #, SECTION #, SANDBRIDGE BEACH M.B. #, PG. #, PRINCESS ANNE BOROUGH -- VIRGINIA BEACH, VIRGINIA SURVEY BUREAU ENGINEERING DIVISION DEPARTMENT OF PUBLIC WORKS CITY OF VIRGINIA BEACH, VIRGINIA DATE: # SCALE: 1"=30' ". Said plat is recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Map Book ____ at page ____; and

It being a part of the same property conveyed to the Grantor by Deed of # dated #, and recorded in the aforesaid Clerk's Office in Deed Book #, at page #.

WHEREAS, the Grantor has conveyed unto the Grantee a Public Recreation Easement over and upon a portion of Grantor's property; and

WHEREAS, the Grantor desires to permit certain construction associated with a beach and shoreline management and restoration project along the Atlantic Ocean in Sandbridge that may be performed upon a portion of the parcel, as hereinafter described; and

WHEREAS, the Grantor desires to preserve certain rights pursuant to the terms of the Public Recreation Easement to construct, reconstruct, repair, replace and maintain an approved protective structure and/or toe protection as hereinafter defined.

GPIN #

NOW, THEREFORE, in recognition of the foregoing and in consideration of the Grantee's efforts to implement a beach and shoreline management and restoration project along the Atlantic Ocean in Sandbridge and other valuable consideration including the mutual covenants herein recited and the acceptance hereof by Grantee, the Grantor, subject to those rights herein reserved and pursuant to the conditions hereof, does hereby grant and convey unto the Grantee and its assigns, a perpetual easement to enter upon, occupy and use the surface and subsurface of a portion of the Grantor's property as hereinafter described ("Construction Easement") for the following purposes:

1. To design, survey, engineer, construct or maintain a beach and shoreline management and restoration project along the Atlantic Ocean in Sandbridge. The rights granted herein shall not be construed to authorize Grantee to reduce the amount of sand existing in the easement.
2. To place dredged or excavated material upon any portion of the easement.
3. Ingress and egress for contractors and workers, their vehicles, equipment, machinery, and pipelines involved in the design, engineering, construction or maintenance of a beach and shoreline management and restoration project along the Atlantic Ocean in Sandbridge.
4. To temporarily construct, erect or place any structures as may be necessary to aid in confining the dredged or excavated material, or for any other purpose necessary to implement a beach and shoreline management and restoration project along the Atlantic Ocean in Sandbridge. Everything constructed, erected or placed on said easement by the Grantee, with the exception of the dredged or excavated material, shall be and remain the property of Grantee. Unless reasonably required under the plans for such project, temporary structures placed upon the easement by Grantee, its agents, employees or contractors shall be removed in a timely fashion by Grantee upon completion of any storm damage protection, hurricane protection and/or sand replenishment project implementation.

The Construction Easement shall be located upon a portion of the Grantor's property located east of the "Easement Line." The Easement Line will be established generally in a north to south alignment contiguous to, or seaward of, the exposed exterior surface of each individual existing bulkhead on properties with bulkheads, and in the case of properties with no bulkheads, the line will be established no further landward than the face of the most landward bulkhead nearest the lot, whether to the north or south. Said Construction Easement and Easement Line are more particularly described and shown on the attached Plat prepared by Grantee which plat has been acknowledged by the Grantor's signature thereon and made a part hereof marked "Exhibit A." Said easement is granted upon and includes all lands owned by Grantor lying east of the aforementioned Easement Line and any contiguous lands located east of the easternmost boundary of the property described herein, to which Grantor may hold an interest. It being the same property described as "Public Recreation Easement" in a Deed of Easement of even date recorded simultaneously herewith.

It is expressly understood and agreed that the Grantor reserves unto himself, his successors or assigns, the rights, within the Recreation Easement: (1) to build or repair, replace and maintain approved protective structures constructed at or west of the Easement Line, or in the event of failure of an existing protective structure, to reconstruct a protective structure seaward of but immediately adjacent to the original base of the existing failed structure, or, if necessary, immediately adjacent to the Easement Line; (2) to construct and maintain private access steps which shall not extend eastward more than five (5) feet from a protective structure, permitting access from a protective structure to the Recreation Easement; (3) to construct and maintain a deck(s) which shall not extend more than five (5) feet into the easement area, may only be constructed as a second story deck(s), may not interfere with the public's use of the easement area, and may not have support located upon the sand within the permanent easement area; and (4) subject to written approval of the type, size, configuration and design by the City Manager or his designee, to construct toe protection within fifteen feet (15) seaward of the Easement Line.

For the purposes of this Deed, an approved protective structure shall be defined as a bulkhead, seawall, revetment, or equivalent structural improvements. Toe protection shall be defined, for the purpose of this Deed, as subsurface improvements constructed within fifteen feet (15) seaward of the Easement Line for the purpose of protecting existing structures against erosion or scour. The City of Virginia Beach shall be responsible for approval of all structures and toe protection subject to applicable federal, state and local laws and regulations.

Grantor acknowledges and agrees that no other encroachment or use shall be permitted in the Recreation Easement except as provided herein and as referenced in the Public Recreation Easement. Grantor further acknowledges that all structures or referenced activities are subject to all federal, state and local laws and regulations and may require separate permits.

Grantor reserves the right to push up sand within the easement subject and pursuant to Sections 62.1-13.5:3 and 62.1-13.25:1 of the Code of Virginia, 1950, as amended, until the commencement of construction of a beach and shoreline management and restoration project along the Atlantic Ocean in Sandbridge by Grantee, the Commonwealth of Virginia, or the United States of America. Thereafter, Grantor and all successors in title specifically relinquish those rights enumerated in Virginia Code Sections 62.1-13.5:3 and 62.1-13.25:1 for the duration of any storm damage protection, hurricane protection and/or sand replenishment project.

The Construction Easement and its western boundary line shall never be interpreted or construed to have moved westward from the Easement Line as shown on the above-referenced Plat, nor shall the Easement Line ever be defined or measured in relation to the location of any mean high water mark or mean low water mark.

The parties hereto agree that in the event the Grantee determines it to be in the public interest to regulate the placement of aquatic recreational craft within the Recreation Easement, Grantee agrees that the Grantor, or his successors in title, shall be entitled, without fee, to one (1) permit for the placement of an aquatic recreational craft on the beach within twenty (20) feet of the Easement Line. The rights obtained pursuant to any such contemplated permit(s) shall be subject

to suspension when construction activities are being performed or in instances where the public health, safety, and welfare require restrictions on all access to the beach.

It is understood and agreed that the granting of the easement herein described is solely for the purposes described above and the Grantor is not conveying any other rights or privileges. It is further expressly provided and understood that the location of the Construction Easement dedicated herein is established in a fixed location in accordance with the attached plat and neither the Construction Easement nor the Easement Line shall ever be interpreted or construed to have moved from the location depicted thereon, nor shall the Easement Line ever be defined or measured in relation to the location of any mean high water mark or mean low water mark.

It is further agreed, upon the vesting of the Easement herein conveyed, that the Grantee, to the extent permitted by law, shall indemnify and hold harmless the Grantor, his agents, heirs, executors, successors, and assigns, from and against any and all damages, injury, liability, losses or expenses, including attorney's fees and court costs arising out of or resulting from any negligence of the Grantee, its agents, employees, or contractors upon the easement dedicated herein; and shall defend and hold them harmless from and against any and all claims, demands and actions threatened or brought against them for personal injury, wrongful death, or property damage associated with, arising out of or resulting from any negligence of the Grantee, its agents, employees, or contractors upon the easement dedicated herein.

It is expressly agreed that, upon the vesting of the Easement herein conveyed and to the extent permitted by law, Grantee will be liable for and shall repair within a reasonable time any damage to protective structures, dwellings, septic systems, or other structures located at or west of the Easement Line and belonging to Grantor, if such damage is a result of any negligence of the Grantee, its agents, employees, or contractors upon the easement dedicated herein while entering upon, occupying and using the surface and subsurface of the easement pursuant to the terms hereof.

It is expressly understood and agreed that the conveyance of this easement by the Grantor will not impose any additional restrictions on the Grantor's use of the remainder of his

property. It is agreed that Grantor retains unrestricted access from the Grantor's property to the easement herein conveyed, except when construction activities are being performed or in instances where the public health, safety, and welfare require restrictions on all access to the beach.

It is expressly understood by the Grantor and Grantee that this conveyance is in anticipation of a beach and shoreline management and restoration project along the Atlantic Ocean in Sandbridge to be constructed in the easement area, but is not conditioned upon Grantee's present or subsequent maintenance of said easement. This easement shall vest upon the City entering into a "Project Cooperation Agreement" with the United States Army Corps of Engineers for a beach and shoreline management and restoration project along the Atlantic Ocean in Sandbridge. Notwithstanding the above, the restrictions set forth herein for the construction or replacement of an approved protective structure, toe protection or other encroachments shall be effective upon execution of this instrument.

It is further understood and agreed by the parties that Grantee, by execution of this Deed and/or acceptance of this easement does not relinquish any rights, the Grantee or the public may possess including any claim by Grantee or the public to land east of the Easement Line, nor is Grantor or Grantee creating any duties or responsibilities now or in the future except as defined herein.

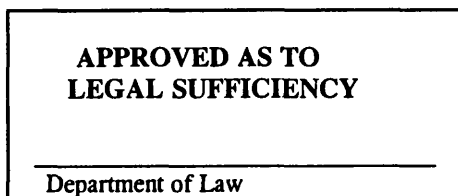
This conveyance is subject to all existing duly recorded liens as same may lawfully apply to the easement hereby conveyed or parts thereof. Grantor, his heirs, successors and assigns agree to assist Grantee in obtaining the subordination of any such existing liens. Grantor acknowledges that failure to obtain the subordination of such existing liens will prevent the construction of a beach and shoreline management and restoration project along the Atlantic Ocean in Sandbridge in the easement area.

Both Deeds of Easement and attached plats shall be recorded simultaneously in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia and all recording and plat preparation costs arising from and associated with the conveyance of these easements are to be performed and paid by the Grantee. Further, Grantee agrees to furnish Grantor a copy of the fully executed and acknowledged Deeds of Easement with attached plats as recorded and certified by the Clerk of Court.

WITNESS the following signatures and seals:

_____(SEAL)
#

_____(SEAL)
#



CITY OF VIRGINIA BEACH,
a municipal corporation of the
Commonwealth of Virginia

By: _____
City Manager/Authorized
Designee of the City Manager

(SEAL)
ATTEST:

Ruth Hodges Smith
City Clerk

STATE OF _____
CITY/COUNTY OF _____, to-wit:

I, _____, a Notary Public in and for the City/County
and State aforesaid, do hereby certify that #, whose

names are signed to the foregoing writing, bearing date the 24th of February, 1996, have acknowledged the same before me in my City/County and State aforesaid.

Given under my hand this _____ day of _____, 1996.

Notary Public

My commission expires: _____

STATE OF _____
CITY OF _____, to- wit:

I, _____, a Notary Public in and for the City and State aforesaid, do hereby certify that JAMES K. SPORE, City Manager, or his authorized designee as executed above, on behalf of the City of Virginia Beach, Virginia, whose name is signed to the foregoing writing, bearing date the 24th day of February, 1996, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 1996.

Notary Public

My commission expires: _____

STATE OF _____
CITY OF _____, to-wit:

I, _____, a Notary Public in and for the City and State aforesaid, do hereby certify that RUTH HODGES SMITH, City Clerk, on behalf of the City of Virginia Beach, Virginia, whose name is signed to the foregoing writing, bearing date the 24th day of February, 1996, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 1996.

Notary Public

My commission expires: _____

Item V-J.7.a.

ORDINANCES

ITEM # 42304

*Upon motion by Councilman Jones, seconded by Councilman Branch, City Council **ADOPTED:***

Ordinance to authorize a temporary encroachment into a portion of the City's 300-foot drainage easement over London Bridge Creek (2580 Potters Road) by Dominion Building Company to construct and maintain a detention pond for stormwater management, including a storm drainage pipe and underground infiltration trench.

The following conditions shall be required:

- 1. That said temporary encroachment will be constructed and maintained in accordance with the laws of the Commonwealth of Virginia and the City of Virginia Beach and in accordance with the City of Virginia Beach Public Works Department's specifications and approval as to size, alignment and location.*
- 2. This temporary encroachment shall terminate upon notice by the City of Virginia Beach to the applicant; and, within thirty (30) days after such notice is given, such temporary encroachment shall be removed from the City's drainage easement over London Bridge Creek by the applicant and the applicant shall bear all costs and expenses of such removal.*
- 3. The applicant shall indemnify and hold harmless the City of Virginia Beach, its agents and employees from and against all claims, damages, losses and expenses including reasonable attorney's fees in case it shall be necessary to file or defend an action arising out of the location or existence of such temporary encroachment.*
- 4. No permission or authority is given to the applicant to permit the maintenance or construction of any encroachment other than that specified herein and to the limited extent specified, herein, nor to permit the maintenance and construction of any encroachment by anyone other than the applicant.*
- 5. The applicant agrees to maintain said encroachment so as not to become unsightly or a hazard.*
- 6. The applicant must obtain a permit from either the Development Services Center or Waterfront Operations, whichever is applicable, prior to commencing any construction within the City's drainage easement.*
- 7. Prior to issuance of a permit, the applicant must post a performance bond in accordance with the engineer's cost estimate.*

Item V-J.7.a.

ORDINANCES

ITEM # 42304 (Continued)

8. *It is expressly understood and agreed that the City, upon revocation of authority and permission so granted, may remove any such encroachment and charge the cost thereof to the applicant and collect the cost in any manner provided by law for the collection of local or state taxes; may require the applicant to remove such encroachment; and pending such removal, may charge the applicant compensation for the use of such portion of the City's real property tax upon the land so occupied if it were owned by the applicant; and if such removal shall not be made within the time ordered hereinabove by this Agreement, the City shall impose a penalty in the sum of One Hundred Dollars (\$100.00) per day for each and every day that such encroachment is allowed to continue thereafter, and shall collect such compensation and penalties in any manner provided by law for the collection of local or state taxes.*

Voting: 8-0 (By Consent)

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

June 24, 1997

1 Requested by Department of Public Works

2 AN ORDINANCE TO AUTHORIZE
3 TEMPORARY ENCROACHMENTS INTO
4 A PORTION OF THE CITY'S 300'
5 DRAINAGE EASEMENT OVER
6 LONDON BRIDGE CREEK BY
7 DOMINION BUILDING COMPANY,
8 ITS HEIRS, ASSIGNS AND
9 SUCCESSORS IN TITLE

10 WHEREAS, Dominion Building Company, desires to construct
11 and maintain a storm drainage pipe and underground infiltration
12 trench into the City's drainage easement located at 2580 Potters
13 Road.

14 WHEREAS, City Council is authorized pursuant to §§ 15.1-
15 316 and 15.1-893, Code of Virginia, 1950, as amended, to authorize
16 a temporary encroachment into the City's drainage easement subject
17 to such terms and conditions as Council may prescribe.

18 NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY
19 OF VIRGINIA BEACH, VIRGINIA:

20 That pursuant to the authority and to the extent thereof
21 contained in §§ 15.1-316 and 15.1-893, Code of Virginia, 1950, as
22 amended Dominion Building Company its heirs, assigns and successors
23 in title is authorized to construct and maintain a temporary
24 encroachment for a storm drainage pipe and underground infiltration
25 trench in the City's drainage easement as shown on the map
26 entitled: "ENCROACHMENT PLAT SHOWING 18" STORM PIPE & UNDERGROUND
27 INFILTRATION TRENCH (30" X 30") WITHIN CITY OF VA. BEACH DRAINAGE
28 EASEMENT ON PARCEL B LOCATED AT 2580 POTTERS ROAD LYNNHAVEN BOROUGH
29 - VIRGINIA BEACH, VIRGINIA SCALE: 1"=80' MAR. 7, 1997 BY SITE
30 IMPROVEMENT ASSOCIATES, INC," a copy of which is on file in the
31 Department of Public Works and to which reference is made for a
32 more particular description; and

33 BE IT FURTHER ORDAINED, that the temporary encroachments
34 are expressly subject to those terms, conditions and criteria

34 contained in the Agreement between the City of Virginia Beach and
35 Dominion Building Company, (the "Agreement") which is attached
36 hereto and incorporated by reference; and

37 BE IT FURTHER ORDAINED that the City Manager or his
38 authorized designee is hereby authorized to execute the Agreement.

39 BE IT FURTHER ORDAINED, that this Ordinance shall not be
40 in effect until such time as Dominion Building Company and the City
41 Manager or his authorized designee execute the Agreement.

42 Adopted by the Council of the City of Virginia Beach,
43 Virginia, on the 24TH day of JUNE, 1997.

44 CA-#6662
45 \KENNEDY\DOMINION.ORD
46 R-1
47 PREPARED: 5/28/97

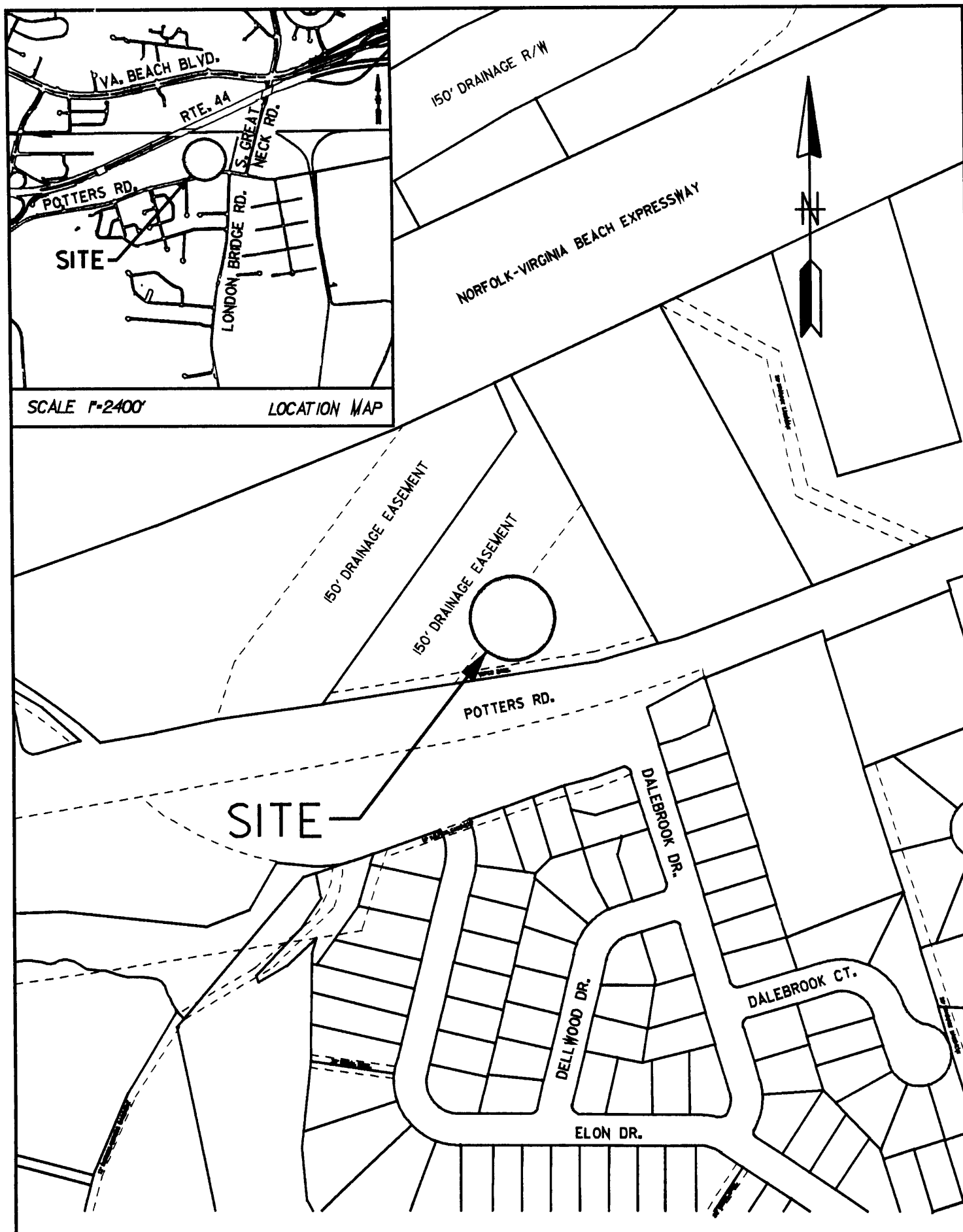
APPROVED AS TO CONTENTS

TX James C. Faulson
SIGNATURE

Public Works Real Estate
DEPARTMENT

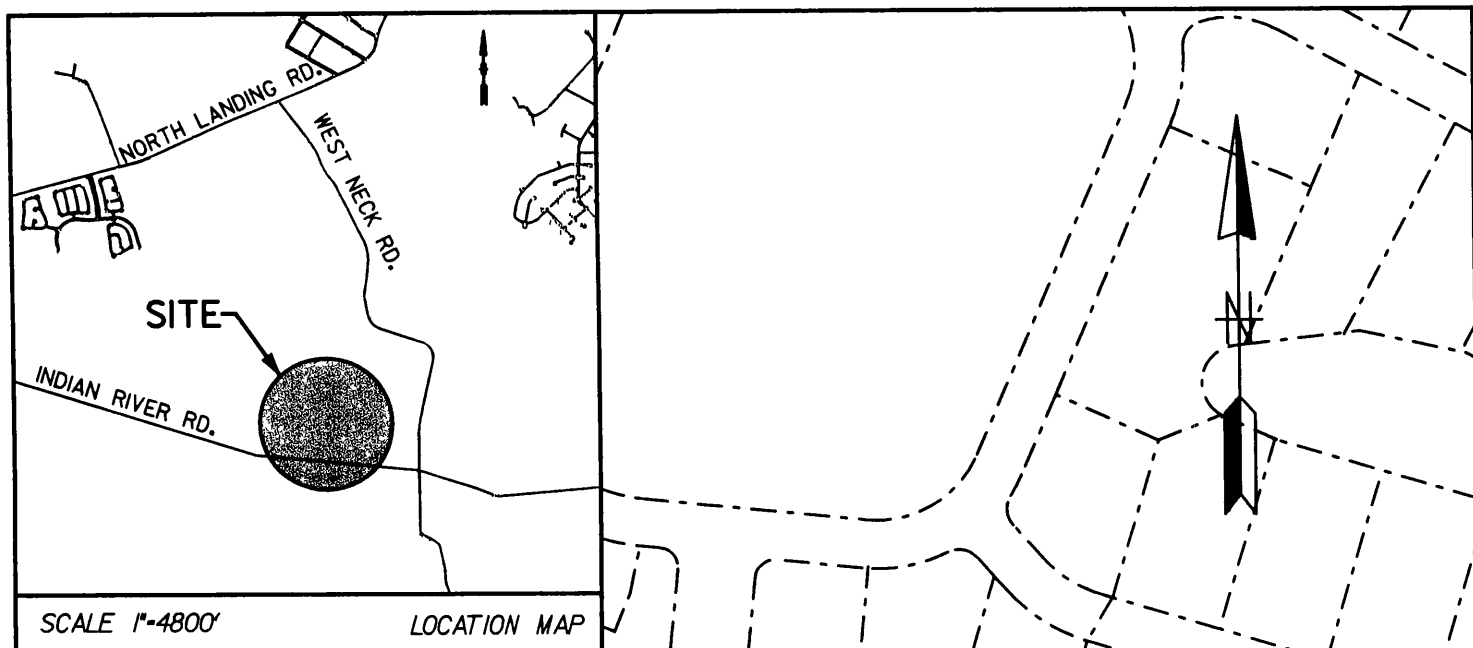
APPROVED AS TO LEGAL
SUFFICIENCY AND FORM

David A. 6-4-97
CITY ATTORNEY

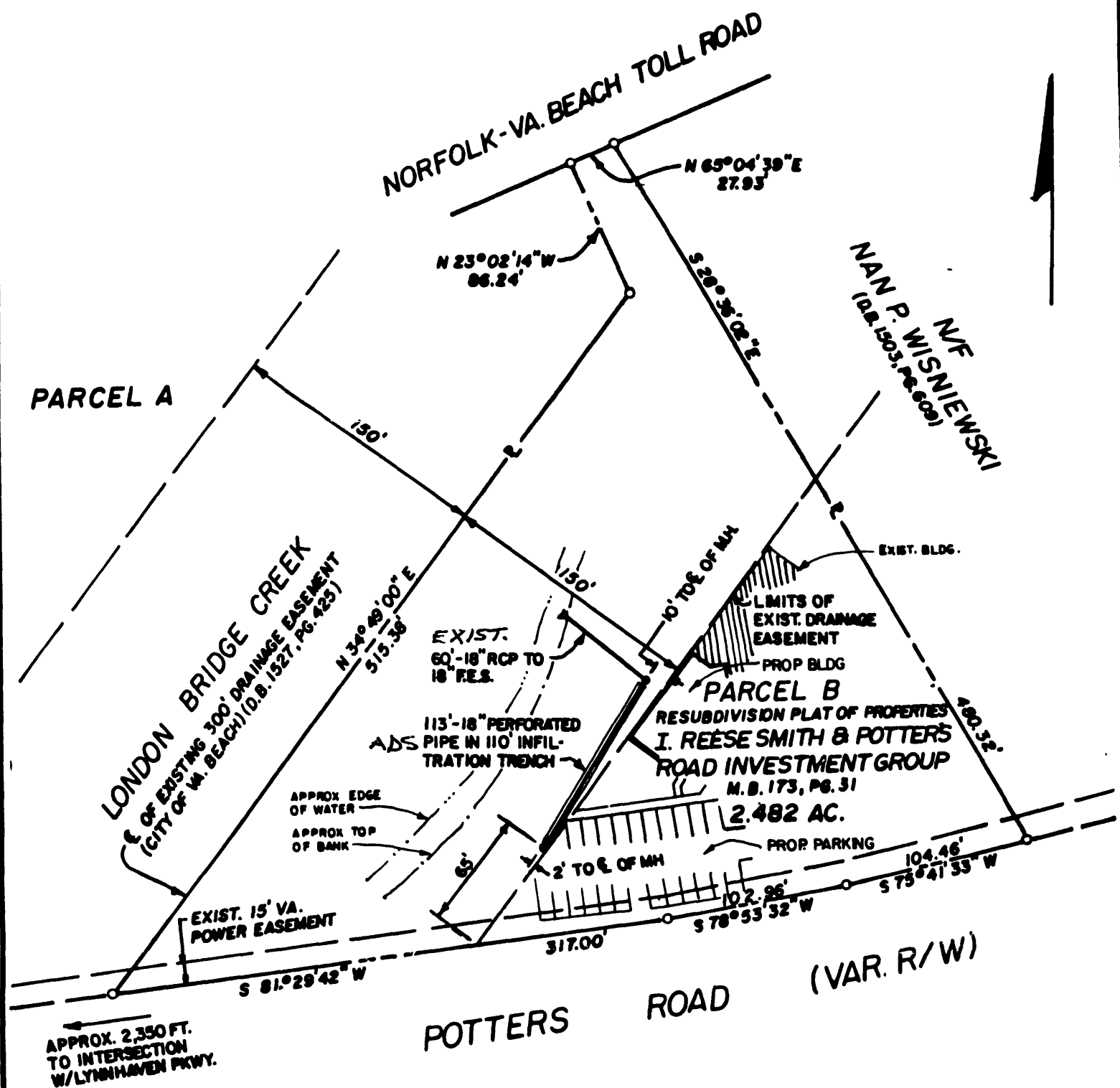


**LOCATION MAP SHOWING PROPOSED
ENCROACHMENT INTO CITY DRAINAGE
EASEMENT OVER LONDON BRIDGE
CREEK FOR 18" DRAINAGE PIPE AND
UNDERGROUND INFILTRATION TRENCH
@ 2580 POTTERS RD. FOR DOMINION
BUILDING COMPANY**

SCALE: 1" = 200'



LOCATION MAP SHOWING PROPOSED
ENCROACHMENT INTO CITY RIGHT OF
WAY AT INDIAN PLANTATION DR. FOR
ENTRANCE FEATURE, BRICK WALL,
& COLUMNS FOR BAYMARK
CONSTRUCTION CO.



ENCROACHMENT PLAT SHOWING 18" STORM PIPE & UNDERGROUND INFILTRATION TRENCH (30'x30') WITHIN CITY OF VA. BEACH DRAINAGE EASEMENT ON PARCEL B

**LOCATED AT 2580 POTTERS ROAD
LYNNHAVEN BOROUGH - VIRGINIA BEACH, VIRGINIA**

SCALE: 1" = 80' MAR. 7, 1997

SITE IMPROVEMENT ASSOCIATES, INC.

**PLANNING - ENGINEERING - CONSTRUCTION
5204 BROCKIE STREET
VIRGINIA BEACH, VIRGINIA 23464**

PH# (757) 479-1341 FAX# (757) 479-8810

EXHIBIT "A"

PREPARED BY VIRGINIA BEACH CITY ATTORNEY'S OFFICE

EXEMPTED FROM RECORDATION TAXES
UNDER SECTIONS 58.1-811(a)(3) AND 58.1-811(c)(4)
REIMBURSEMENT AUTHORIZED UNDER SECTION 25-249

THIS AGREEMENT, made this 27th day of MAY,
1997, by and between the CITY OF VIRGINIA BEACH, VIRGINIA, a
municipal corporation, Grantor, party of the first part, and
DOMINION BUILDING COMPANY, a Virginia general partnership, ITS
HEIRS, ASSIGNS AND SUCCESSORS IN TITLE, Grantee, party of the
second part.

W I T N E S S E T H:

That, WHEREAS, it is proposed by the party of the
second part to construct and maintain a detention pond for storm
water management including an 18" drainage pipe and underground
infiltration trench, hereinafter referred to as the "Facilities,"
in the City of Virginia Beach; and

WHEREAS, in constructing and maintaining such
Facilities, it is necessary that the said party of the second
part encroach into a portion of an existing City drainage
easement over London Bridge Creek; and said party of the second
part has requested that the party of the first part grant a
temporary encroachment to facilitate such Facilities within a
portion of the City's drainage easement over London Bridge Creek.

NOW, THEREFORE, for and in consideration of the
premises and of the benefits accruing or to accrue to the party
of the second part and for the further consideration of One
Dollar (\$1.00), in hand paid, to the said party of the first

GPIN 1497-73-1072

part, receipt of which is hereby acknowledged, the party of the first part doth grant to the party of the second part a temporary encroachment to use a portion of the City's drainage easement over London Bridge Creek for the purpose of constructing and maintaining such Facilities.

It is expressly understood and agreed that such temporary encroachment will be constructed and maintained in accordance with the laws of the Commonwealth of Virginia and the City of Virginia Beach, and in accordance with the City of Virginia Beach Public Works Department's specifications and approval as to size, alignment and location and is more particularly described as follows, to wit:

An area of encroachment into a portion of the City's drainage easement over London Bridge Creek described as 113'- 18" perforated ADS pipe in 110' infiltration trench as shown on that certain plat entitled: "ENCROACHMENT PLAT SHOWING 18" STORM PIPE & UNDERGROUND INFILTRATION TRENCH (30" x 30") WITHIN CITY OF VA. BEACH DRAINAGE EASEMENT ON PARCEL B LOCATED AT 2580 POTTERS ROAD LYNNHAVEN BOROUGH - VIRGINIA BEACH, VIRGINIA," dated 3-7-97 and prepared by Site Improvement Associates, Inc., a copy of which is attached hereto as Exhibit "A" and to which reference is made for a more particular description.

It is further expressly understood and agreed that the temporary encroachment herein authorized shall terminate upon notice by the City of Virginia Beach to the party of the second part, and that within thirty (30) days after such notice is given, such temporary encroachment shall be removed from the City's drainage easement over London Bridge Creek by the party of

the second part; and that the party of the second part shall bear all costs and expenses of such removal.

It is further expressly understood and agreed that the party of the second part shall indemnify and hold harmless the City of Virginia Beach, its agents and employees, from and against all claims, damages, losses and expenses including reasonable attorney's fees in case it shall be necessary to file or defend an action arising out of the location or existence of such temporary encroachment.

It is further expressly understood and agreed that nothing herein contained shall be construed to enlarge such permission and authority to permit the maintenance or construction of any encroachment other than that specified herein and to the limited extent specified herein, nor to permit the maintenance and construction of any encroachment by anyone other than the party of the second part.

It is further expressly understood and agreed that the party of the second part agrees to maintain said encroachment so as not to become unsightly or a hazard.

It is further expressly understood and agreed that the party of the second part must obtain a permit from either the Development Services Center or Waterfront Operations, whichever is applicable, prior to commencing any construction within the City's drainage easement.

It is further expressly understood and agreed that prior to issuance of a permit, the party of the second part must

post a Performance Bond in accordance with the engineer's cost estimate.

It is further expressly understood and agreed that the party of the first part, upon revocation of such authority and permission so granted, may remove any such encroachment and charge the cost thereof to the party of the second part, and collect the cost in any manner provided by law for the collection of local or state taxes; may require the party of the second part to remove such temporary encroachment; and if such removal shall not be made within the time ordered hereinabove by this Agreement, the City shall impose a penalty in the sum of One Hundred Dollars (\$100.00) per day for each and every day that such encroachment is allowed to continue thereafter, and shall collect such compensation and penalties in any manner provided by law for the collection of local or state taxes.

IN WITNESS WHEREOF, DOMINION BUILDING COMPANY, a Virginia general partnership, has caused this Agreement to be executed in its name on its behalf by Robert E. Mitchell, Jr., M.D., Managing Partner, with due authority to bind said entity. Further, that the City of Virginia Beach has caused this Agreement to be executed in its name and on its behalf by its City Manager and its seal be hereunto affixed and attested by its City Clerk.

CITY OF VIRGINIA BEACH

By _____
City Manager/Authorized
Designee of the City Manager

(SEAL)
ATTEST:

City Clerk

DOMINION BUILDING COMPANY, a
Virginia general partnership

By Robert E. Mitchell, Jr.
Robert E. Mitchell, Jr., M.D.
Managing Partner

STATE OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

The foregoing instrument was acknowledged before me
this _____ day of _____, 19_____, by
_____, CITY MANAGER/AUTHORIZED DESIGNEE OF THE
CITY MANAGER.

Notary Public

My Commission Expires:

STATE OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

The foregoing instrument was acknowledged before me
this ____ day of _____, 19____, by RUTH HODGES
SMITH, City Clerk for the CITY OF VIRGINIA BEACH.

Notary Public

My Commission Expires:

STATE OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

The foregoing instrument was acknowledged before me
this 27th day of May, 1997, by Robert E.
Mitchell, Jr., M.D., Managing Partner, on behalf of DOMINION
BUILDING COMPANY, a Virginia general partnership.

Martha Pennington
Notary Public

My Commission Expires:

2-28-2000

TK

APPROVED AS TO CONTENT

James C. Gausman
SIGNATURE
Public Works & Real Estate
DEPARTMENT

APPROVED AS TO
LEGAL SUFFICIENCY

DAVID H. G.

5-27-97

Item V-J.7.b

ORDINANCES

ITEM # 42305

*Upon motion by Councilman Jones, seconded by Councilman Branch, City Council **ADOPTED:***

*Ordinance to authorize a temporary encroachment into a portion of the City's right-of-way of **Indian Plantation Drive** by **Baymark Construction Corporation** re construction and maintenance of an entrance feature, brick wall and columns.*

The following conditions shall be required:

- 1. That said temporary encroachment will be constructed and maintained in accordance with the laws of the Commonwealth of Virginia and the City of Virginia Beach and in accordance with the City of Virginia Beach Public Works Department's specifications and approval as to size, alignment and location.*
- 2 This temporary encroachment shall terminate upon notice by the City of Virginia Beach to the party of the second part and that within thirty (30) days after such notice is given, such temporary encroachment shall be removed from the City's right-of-way known as Indian Plantation Drive at Indian River Road by the applicant and the applicant shall bear all costs and expenses of such removal.*
- 3. The applicant shall indemnify and hold harmless the City of Virginia Beach, its agents and employees from and against all claims, damages, losses and expenses including reasonable attorney's fees in case it shall be necessary to file or defend an action arising out of the location or existence of such temporary encroachment.*
- 4. The applicant agrees to obtain and keep in force all Risk Property Insurance and General Liability or such insurance as is deemed necessary by the party of the first part and all insurance policies must name the City as additional named insured or loss payee, as applicable. The party of the second part agrees to carry Comprehensive General Liability Insurance in an amount not less than \$500,000, combined single limits of such insurance policy or policies. The party of the second part will provide endorsements providing at least thirty (30) days written notice to the City prior to the cancellation or termination of, or material change to, any of the insurance policies. The applicant assumes all responsibilities and liabilities, vested or contingent, with relation to the encroachment.*
- 5. No permission or authority is given to the applicants to permit the maintenance or construction other than that specified herein and to the limited extent specified herein, nor to permit the maintenance and construction of any encroachment by anyone other than the applicant.*
- 6. The applicant agrees to maintain the temporary encroachment so as not to become unsightly or a hazard.*

June 24, 1997

Item V-J.7.b.

ORDINANCES

ITEM # 42305 (Continued)

7. *The applicant must submit and have approved a traffic control plan before commencing work in the City's right-of-way.*
8. *The applicant must obtain a permit from the Development Services Center prior to commencing any construction within the City's right-of-way.*
9. *The applicant, prior to issuance of a Highway permit, must post a Performance Bond and show proof of public liability insurance of a minimum of Five Hundred Thousand Dollars (\$500,000.)*
10. *Any above-ground encroachments shall conform to the minimum setback requirements, as established by the City Traffic Engineer's Office.*
11. *No open cut of the public roadway shall be allowed except under extreme circumstances. Such exceptions shall be submitted to the Highway Division, Public Works, for final approval.*
12. *It is expressly understood and agreed that the City, upon revocation of authority and permission so granted, may remove any such encroachment and charge the cost thereof to the applicant and collect the cost in any manner provided by law for the collection of local or state taxes; may require the applicant to remove such encroachment; and pending such removal, may charge the applicant compensation for the use of such portion of the City's real property tax upon the land so occupied if it were owned by the applicant; and if such removal shall not be made within the time ordered hereinabove by this Agreement, the City shall impose a penalty in the sum of One Hundred Dollars (\$100.00) per day for each and every day that such encroachment is allowed to continue thereafter, and shall collect such compensation and penalties in any manner provided by law for the collection of local or state taxes.*

Voting: 8-0 (By Consent)

Council Members Voting Aye.

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn

Council Members Voting Nay.

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

June 24, 1997

1 Requested by Department of Public Works

2 AN ORDINANCE TO AUTHORIZE
3 TEMPORARY ENCROACHMENTS INTO
4 A PORTION OF THE
5 RIGHT-OF-WAY OF INDIAN
6 PLANTATION DRIVE BY BAYMARK
7 CONSTRUCTION CORPORATION,
8 ITS HEIRS, ASSIGNS AND
9 SUCCESSORS IN TITLE

10 WHEREAS, Baymark Construction Corporation, desires to
11 construct and maintain an entrance feature, brick wall and columns
12 into the City's right-of-way located at Indian Plantation Drive.

13 WHEREAS, City Council is authorized pursuant to §§ 15.1-
14 316 and 15.1-893, Code of Virginia, 1950, as amended, to authorize
15 temporary encroachments upon the City's right-of-way subject to
16 such terms and conditions as Council may prescribe.

17 NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY
18 OF VIRGINIA BEACH, VIRGINIA:

19 That pursuant to the authority and to the extent thereof
20 contained in §§ 15.1-316 and 15.1-893, Code of Virginia, 1950, as
21 amended Baymark Construction Corporation its heirs, assigns and
22 successors in title is authorized to construct and maintain a
23 temporary encroachment for an entrance feature, brick wall and
24 columns in the City's right-of-way as shown on the map entitled:
25 "ENCROACHMENT EXHIBIT INDIAN RIVER PLANTATION FOR BAYMARK" dated 1-
26 28-97 (Revised 5-27-97), and prepared by the TAF Group, a copy of
27 which is on file in the Department of Public Works and to which
28 reference is made for a more particular description; and

29 BE IT FURTHER ORDAINED, that the temporary encroachments
30 are expressly subject to those terms, conditions and criteria
31 contained in the Agreement between the City of Virginia Beach and
32 Baymark Construction Corporation, (the "Agreement") which is
33 attached hereto and incorporated by reference; and

34 BE IT FURTHER ORDAINED that the City Manager or his
35 authorized designee is hereby authorized to execute the Agreement.

36 BE IT FURTHER ORDAINED, that this Ordinance shall not be
37 in effect until such time as Baymark Construction Corporation and
38 the City Manager or his authorized designee execute the Agreement.

39 Adopted by the Council of the City of Virginia Beach,
40 Virginia, on the 24TH day of JUNE, 1997.

41 CA-#**6661**
42 \KENNEDY\BAYMARK.ORD
43 R-1
44 PREPARED: 5/29/97

APPROVED AS TO CONTENTS

TX James C. Dawson
SIGNATURE
Public Works Real Estate
DEPARTMENT

APPROVED AS TO LEGAL
SUFFICIENCY AND FORM

David Gray 6-4-97
CITY ATTORNEY

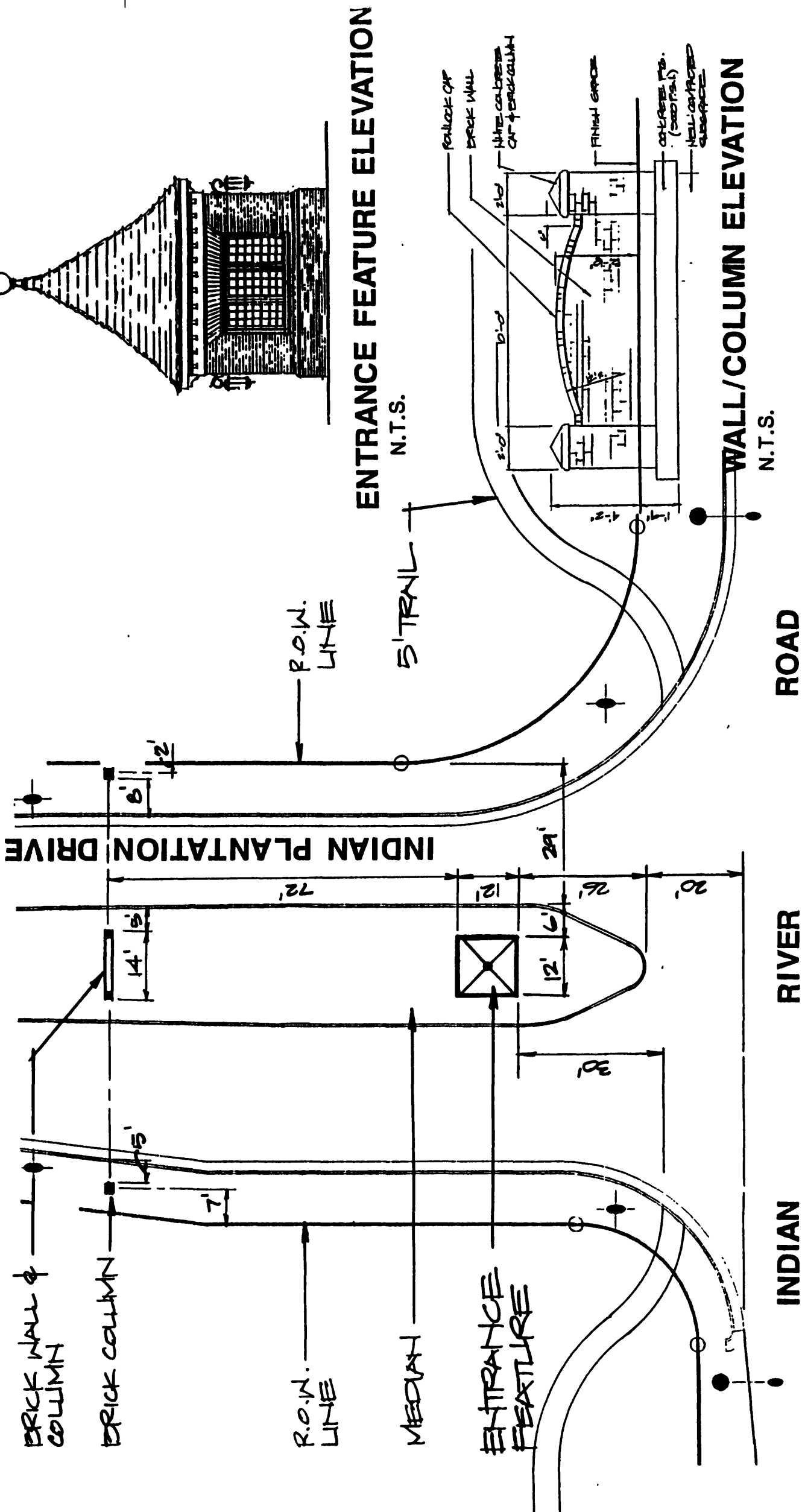
1337

ENCROACHMENT EXHIBIT INDIAN RIVER PLANTATION

EXHIBIT "A"
for BAYMARK



Drawn: PST	Date: 1-28-97	Scale: 6"=1'	Checked:	Project No. 941226	Rev. No. 941226



PLAN
1"=25'

REV.: 5.27.97

EXEMPTED FROM RECORDATION TAXES
UNDER SECTIONS 58.1-811(a)(3) AND 58.1-811(c)(4)
REIMBURSEMENT AUTHORIZED UNDER SECTION 25-249

PREPARED BY VIRGINIA BEACH CITY ATTORNEY'S OFFICE

THIS AGREEMENT, made this 29th day of MAY,
1997, by and between the CITY OF VIRGINIA BEACH, VIRGINIA, a
municipal corporation, GRANTOR, party of the first part, and
BAYMARK CONSTRUCTION CORPORATION, a Virginia corporation, ITS
HEIRS, ASSIGNS AND SUCCESSORS IN TITLE, GRANTEE, party of the
second part.

W I T N E S S E T H:

That, WHEREAS, it is proposed by the party of the
second part to construct and maintain an entrance feature, brick
wall and brick columns in the City of Virginia Beach; and

WHEREAS, in constructing and maintaining such entrance
feature, brick wall and brick columns, it is necessary that the
said party of the second part encroach into a portion of an
existing City right of way known as Indian Plantation Drive at
Indian River Road; and said party of the second part has
requested that the party of the first part grant a temporary
encroachment to facilitate such entrance feature, brick wall and
brick columns within a portion of the City's right of way known
as Indian Plantation Drive at Indian River Road.

NOW, THEREFORE, for and in consideration of the
premises and of the benefits accruing or to accrue to the party
of the second part and for the further consideration of One
Dollar (\$1.00), in hand paid, to the said party of the first

part, receipt of which is hereby acknowledged, the party of the first part doth grant to the party of the second part a temporary encroachment to use a portion of the City's right of way known as Indian Plantation Drive at Indian River Road for the purpose of constructing and maintaining such entrance feature, brick wall and brick columns.

It is expressly understood and agreed that such temporary encroachment will be constructed and maintained in accordance with the laws of the Commonwealth of Virginia and the City of Virginia Beach, and in accordance with the City of Virginia Beach Public Works Department's specifications and approval as to size, alignment and location and is more particularly described as follows, to wit:

An area of encroachment into a portion of the City's right of way known as Indian Plantation Drive at Indian River Road described as Entrance Feature, Brick Column and Brick Wall & Column, as shown on that certain plat entitled: "ENCROACHMENT EXHIBIT INDIAN RIVER PLANTATION FOR BAYMARK" dated 1-28-97 (Revised 5-27-97), and prepared by the TAF Group, a copy of which is attached hereto as Exhibit "A" and to which reference is made for a more particular description.

It is further expressly understood and agreed that the temporary encroachment herein authorized shall terminate upon notice by the City of Virginia Beach to the party of the second part, and that within thirty (30) days after such notice is given, such temporary encroachment shall be removed from the City's right of way known as Indian Plantation Drive at Indian River Road by the party of the second part; and that the party of

the second part shall bear all costs and expenses of such removal.

It is further expressly understood and agreed that the party of the second part shall indemnify and hold harmless the City of Virginia Beach, its agents and employees, from and against all claims, damages, losses and expenses including reasonable attorney's fees in case it shall be necessary to file or defend an action arising out of the location or existence of such temporary encroachment.

The party of the second part agrees to obtain and keep in force All Risk Property Insurance and General Liability or such insurance as is deemed necessary by the party of the first part, and all insurance policies must name the party of the first part as additional named insured or loss payee, as applicable. The party of the second part agrees to carry Comprehensive General Liability Insurance in an amount not less than \$500,000.00, combined single limits of such insurance policy or policies. The party of the second part will provide endorsements providing at least thirty (30) days written notice to the party of the first part prior to the cancellation or termination of, or material change to, any of the insurance policies. The party of the second part assumes all responsibilities and liabilities, vested or contingent, with relation to the encroachment.

It is further expressly understood and agreed that nothing herein contained shall be construed to enlarge such permission and authority to permit the maintenance or

construction of any encroachment other than that specified herein and to the limited extent specified herein, nor to permit the maintenance and construction of any encroachment by anyone other than the party of the second part.

It is further expressly understood and agreed that the party of the second part agrees to maintain said encroachment so as not to become unsightly or a hazard.

It is further expressly understood and agreed that the party of the second part must submit and have approved a traffic control plan before commencing work in the City's right of way.

It is further expressly understood and agreed that the party of the second part agrees that no open cut of the public roadway shall be allowed except under extreme circumstances. Such exceptions shall be submitted to the Highway Division, Department of Public Works, for final approval.

It is further expressly understood and agreed that the party of the second part must obtain a permit from the Development Services Center prior to commencing any construction within the City's right of way.

It is further expressly understood and agreed that prior to issuance of a Highway permit the party of the second part must post a Performance Bond and show proof of public liability insurance of a minimum of Five Hundred Thousand Dollars (\$500,000.00).

It is further expressly understood and agreed that any above ground encroachments shall conform to the minimum setback

requirements, as established by the City Traffic Engineer's Office.

It is further expressly understood and agreed that the party of the first part, upon revocation of such authority and permission so granted, may remove any such encroachment and charge the cost thereof to the party of the second part, and collect the cost in any manner provided by law for the collection of local or state taxes; may require the party of the second part to remove such temporary encroachment; and pending such removal, the party of the first part may charge the party of the second part compensation for the use of such portion of the City's right of way encroached upon the equivalent of what would be the real property tax upon the land so occupied if it were owned by the party of the second part; and if such removal shall not be made within the time ordered hereinabove by this Agreement, the City shall impose a penalty in the sum of One Hundred Dollars (\$100.00) per day for each and every day that such encroachment is allowed to continue thereafter, and shall collect such compensation and penalties in any manner provided by law for the collection of local or state taxes.

IN WITNESS WHEREOF, the said BAYMARK CONSTRUCTION CORPORATION, a Virginia corporation, has caused this Agreement to be executed in its corporate name and on its behalf by its president, and its corporate seal to be hereto affixed and duly attested by its corporate secretary with due authority by its board of directors. Further, that the City of Virginia Beach has

caused this Agreement to be executed in its name and on its behalf by its City Manager and its seal be hereunto affixed and attested by its City Clerk.

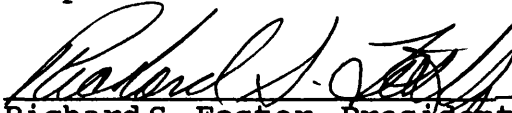
CITY OF VIRGINIA BEACH

By _____
City Manager/Authorized
Designee of the City Manager

(SEAL)
ATTEST:

City Clerk

BAYMARK CONSTRUCTION
CORPORATION, a Virginia
corporation

By 
Richard S. Foster, President

STATE OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

I, _____, a Notary
Public in and for the City and State aforesaid, do hereby certify
that _____, CITY MANAGER/AUTHORIZED DESIGNEE OF
THE CITY MANAGER, whose name is signed to the foregoing Agreement
bearing date on the ____ day of _____, 19____, has
acknowledged the same before me in my City and State aforesaid.

GIVEN under my hand this ____ day of _____,
19____.

Notary Public

My Commission Expires:

STATE OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

I, _____, a Notary Public
in and for the City and State aforesaid, do hereby certify that
RUTH HODGES SMITH, City Clerk for the CITY OF VIRGINIA BEACH,
whose name is signed to the foregoing Agreement bearing date on
the ____ day of _____, 19____, has acknowledged the
same before me in my City and State aforesaid.

GIVEN under my hand this ____ day of _____,
19____.

Notary Public

My Commission Expires:

STATE OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

I, Robin Hirsch, a Notary Public
in and for the City and State aforesaid, do hereby certify that
Richard S. Foster, President, on behalf of BAYMARK CONSTRUCTION
CORPORATION, a Virginia corporation, whose name is signed to the
foregoing writing, bearing date the 29th day of
May, 1997, has acknowledged the same before
me in my City and State aforesaid.

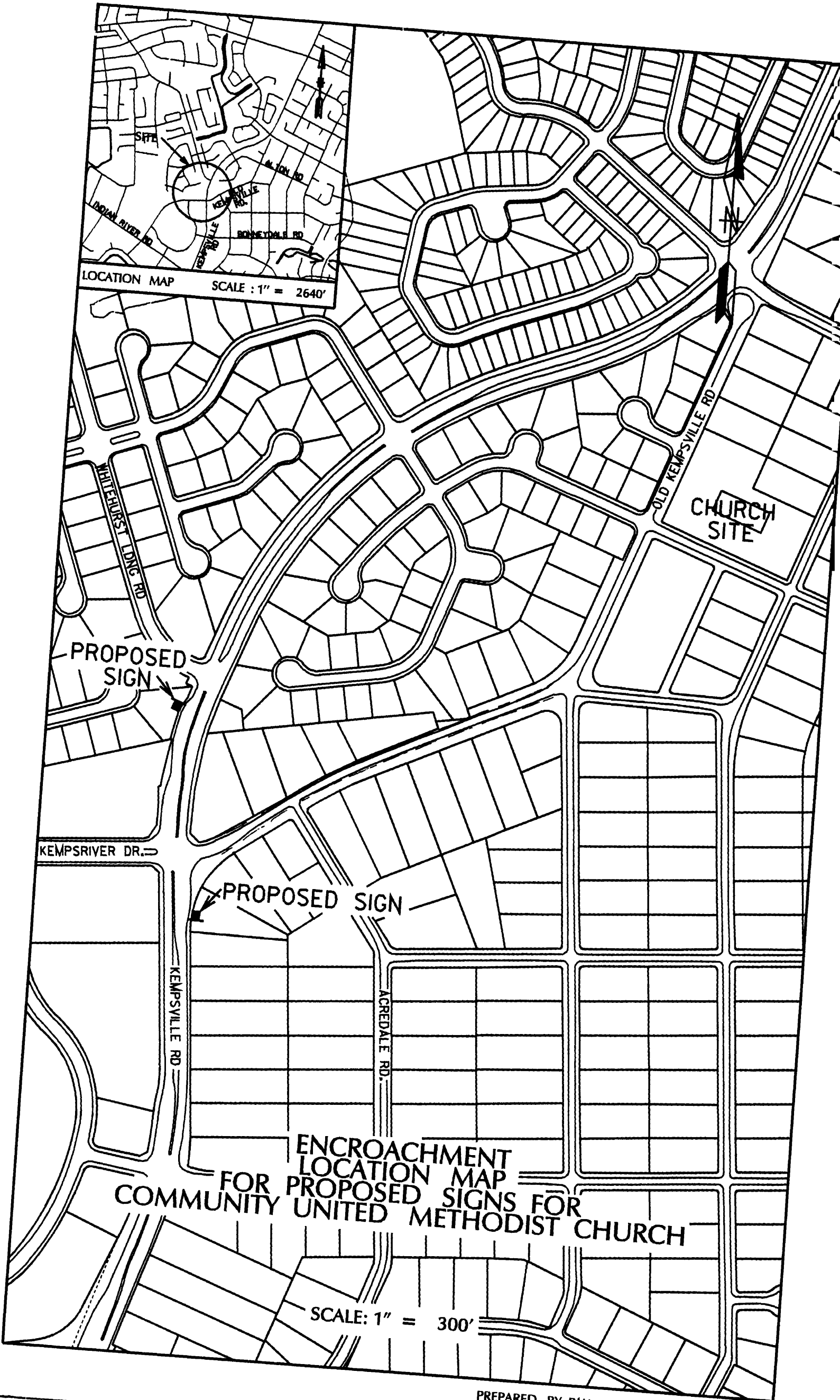
Given under my hand this 29th day of
May, 1997.
Robin Hirsch
Notary Public

My Commission Expires: 7-31-99

APPROVED AS TO CONTENT
TK James C. Lawson
SIGNATURE
Public Works & Real Estate
DEPARTMENT

APPROVED AS TO
LEGAL SUFFICIENCY

David By 6-4-97



ENCROACHMENT
LOCATION MAP
FOR PROPOSED SIGNS FOR
COMMUNITY UNITED METHODIST CHURCH

SCALE: 1" = 300'

Item V-J.7.c.

ORDINANCES

ITEM # 42306

*Upon motion by Councilman Jones, seconded by Councilman Branch, City Council **DEFERRED INDEFINITELY:***

*Ordinance to authorize a temporary encroachment into a portion of the City's right-of-way of **Kempsville Road** by **Community United Methodist Church** re construction and maintenance of two (2) church identification signs.*

Voting: 8-0 (By Consent)

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

June 24, 1997

Item V-J.8.a.

ORDINANCES

ITEM # 42307

Upon motion by Councilman Jones, seconded by Councilman Branch, City Council ADOPTED:

Ordinance authorizing license refunds in the amount of \$31,271.91. upon application of certain persons and upon certification of the Commissioner of the Revenue.

Voting: 8-0 (By Consent)

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

June 24, 1997

AN ORDINANCE AUTHORIZING LICENSE REFUNDS
UPON APPLICATION OF CERTAIN PERSONS AND
UPON CERTIFICATION OF THE COMMISSIONER
OF THE REVENUE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VIRGINIA BEACH, VIRGINIA

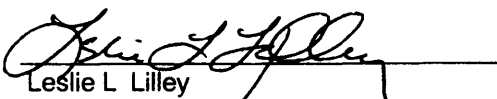
That the following applications for license refunds, upon certification
of the Commissioner of the Revenue are hereby approved

NAME	LICENSE YEAR	DATE PAID	BASE	PENALTY INTEREST	TOTAL
Tandoms II, Inc 2932 Virginia Beach Blvd Va Beach VA 23452	1995-96	Audit	500 76		500 76
Wilson, Sandra G 736 Woodstock Road Va Beach VA 23464	1996	Audit	49 20		49 20
Witchduck Motor Company, Inc 220 N Witchduck Road Va Beach VA 23462	1995-96	Audit	1,202 73		1,202 73
Young, Wendi S 9500 30th Street Norfolk VA 23518	1996	Audit	106 80		106 80

Certified as to Payment


Robert P. Vaughan
Commissioner of the Revenue

Approved as to form


Leslie L. Lilley
City Attorney

This ordinance shall be effective from date of
adoption

The above abatement(s) totaling \$1,859.49 were approved by the Council

of the City of Virginia Beach on the 24TH day of JUNE, 19 97

Ruth Hodges Smith
City Clerk

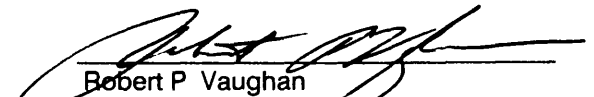
AN ORDINANCE AUTHORIZING LICENSE REFUNDS
UPON APPLICATION OF CERTAIN PERSONS AND
UPON CERTIFICATION OF THE COMMISSIONER
OF THE REVENUE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VIRGINIA BEACH, VIRGINIA

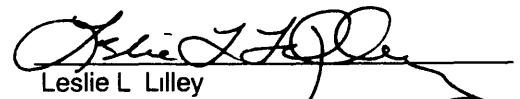
That the following applications for license refunds, upon certification
of the Commissioner of the Revenue are hereby approved

NAME	LICENSE YEAR	DATE PAID	BASE	PENALTY INTEREST	TOTAL
Roberts, S A & Batzel, D L 813 Avatar Drive Va Beach VA 23454	1997	05-05-97	47 27		47 27
Roy F Weston, Inc One Weston Way-Tax Dept West Chester PA 19860-1499	1996-97	Audit	2,692 40		2,692 40
Scholastic Book Fair, Inc P O Box 958411 Lake Mary FL 32975-8411	1995-96	Audit	268 42		268 42
Shore Drive Shell(Nicholas D Langston) 92 Montego Court Coronado CA 92118	1996	Audit	1,713 94		1,713 94

Certified as to Payment


Robert P Vaughan
Commissioner of the Revenue

Approved as to form


Leslie L Lilley
City Attorney

This ordinance shall be effective from date of
adoption.

The above abatement(s) totaling \$4,722.03 were approved by the Council

of the City of Virginia Beach on the 24TH day of JUNE, 19 97

Ruth Hodges Smith
City Clerk

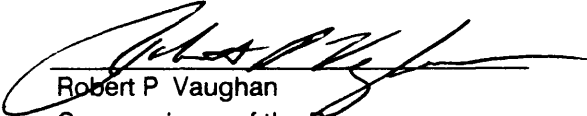
AN ORDINANCE AUTHORIZING LICENSE REFUNDS
UPON APPLICATION OF CERTAIN PERSONS AND
UPON CERTIFICATION OF THE COMMISSIONER
OF THE REVENUE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VIRGINIA BEACH, VIRGINIA

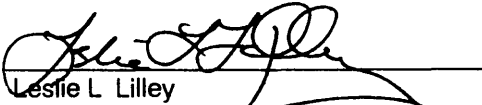
That the following applications for license refunds, upon certification
of the Commissioner of the Revenue are hereby approved

NAME	LICENSE YEAR	DATE PAID	BASE	PENALTY INTEREST	TOTAL
Imperial Productions, Inc 5152 Rugby Road Va Beach VA 23464	1995-97	Audit	414 48		414 48
Kingwitz, David A & Helen E 1436 Deerpond Lane Va Beach VA 23464	1994-96	Audit	31 03		31 03
Kitchen, Paul Mckinley 3844 Colonial Parkway Va Beach VA 23452	1994-96	Audit	42 00		42 00
Nicholson, William G 5633 Hearth Circle Va Beach VA 23464	1994-96	Audit	24 00		24 00

Certified as to Payment


Robert P Vaughan
Commissioner of the Revenue

Approved as to form


Leslie L Lilley
City Attorney

This ordinance shall be effective from date of
adoption

The above abatement(s) totaling \$511 51 were approved by the Council

of the City of Virginia Beach on the 24TH day of JUNE, 19 97

Ruth Hodges Smith
City Clerk

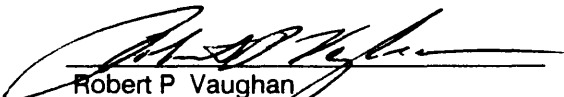
AN ORDINANCE AUTHORIZING LICENSE REFUNDS
UPON APPLICATION OF CERTAIN PERSONS AND
UPON CERTIFICATION OF THE COMMISSIONER
OF THE REVENUE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VIRGINIA BEACH, VIRGINIA

That the following applications for license refunds, upon certification
of the Commissioner of the Revenue are hereby approved

NAME	LICENSE YEAR	DATE PAID	BASE	PENALTY INTEREST	TOTAL
Costa, Louis D 772-202 Hampshire Lane Va Beach VA 23462	1994-96	Audit	84 73		84 73
E T Kernodle Inc 1120 Ginger Crescent Va Beach VA 23456	1994-96	Audit	182 04		182 04
Essig, Joan 2400 Darden Court Va Beach VA 23456	1994-96	Audit	68 32		68 32

Certified as to Payment


Robert P Vaughan
Commissioner of the Revenue

Approved as to form

Leslie L Lilley
City Attorney

This ordinance shall be effective from date of
adoption

The above abatement(s) totaling \$335.09 were approved by the Council

of the City of Virginia Beach on the 24TH day of JUNE, 1997

Ruth Hodges Smith
City Clerk

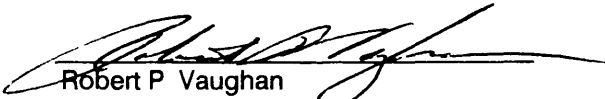
AN ORDINANCE AUTHORIZING LICENSE REFUNDS
UPON APPLICATION OF CERTAIN PERSONS AND
UPON CERTIFICATION OF THE COMMISSIONER
OF THE REVENUE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VIRGINIA BEACH, VIRGINIA

That the following applications for license refunds, upon certification
of the Commissioner of the Revenue are hereby approved

NAME	LICENSE YEAR	DATE PAID	BASE	PENALTY INTEREST	TOTAL
Bower, Allen M 105 46th Street Va Beach VA 23451	1996	Audit	57 35		57 35
Caldwell, Patrick E 2221 A Woodcreek Carrollton TX 75006	1995-96	Audit	50 00		50 00
Carner, Daniel P 1275 Baker Road 215 Va Beach VA 23455	1995	03-27-97	50 00		50 00
Century 21 William R Realtors, Inc 3590 Holland Road 116 Va Beach VA 23452	1995-96	Audit	804 92		804 92

Certified as to Payment


Robert P Vaughan
Commissioner of the Revenue

Approved as to form


Leslie L. Lilley
City Attorney

This ordinance shall be effective from date of
adoption

The above abatement(s) totaling \$962.27 were approved by the Council

of the City of Virginia Beach on the 24TH day of JUNE, 19 97

Ruth Hodges Smith
City Clerk

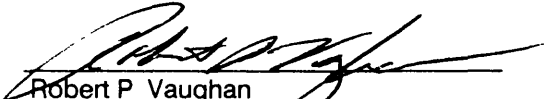
AN ORDINANCE AUTHORIZING LICENSE REFUNDS
UPON APPLICATION OF CERTAIN PERSONS AND
UPON CERTIFICATION OF THE COMMISSIONER
OF THE REVENUE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VIRGINIA BEACH, VIRGINIA

That the following applications for license refunds, upon certification
of the Commissioner of the Revenue are hereby approved

NAME	LICENSE YEAR	DATE PAID	BASE	PENALTY	INTEREST	TOTAL
Chesapeake Pet Supply Co LC 1294 Great Neck Road Va Beach VA 23454	1995-96	Audit	54 59			54 59
Densmore, Dean William 1101 Gladiola Crescent Va Beach VA 23456	1995-97	Audit	10 00			10 00
Dominion Chrysler-Plymouth Inc 4421 Va Beach Blvd Va Beach VA 23462	1996-97	Audit	5,168 54			5,168 54
Eagle Ridge Inc 1696 Dey Cove Drive Va Beach VA 23462	1995	Audit	926 21			926 21

Certified as to Payment



Robert P. Vaughan
 Commissioner of the Revenue

Approved as to form



Leslie L. Lilley
 City Attorney

This ordinance shall be effective from date of
adoption

The above abatement(s) totaling \$6,159 34 were approved by the Council

of the City of Virginia Beach on the 24TH day of JUNE, 19 97

 Ruth Hodges Smith
 City Clerk

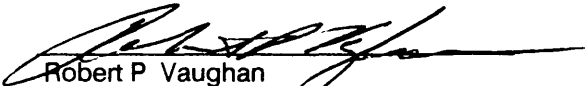
AN ORDINANCE AUTHORIZING LICENSE REFUNDS
UPON APPLICATION OF CERTAIN PERSONS AND
UPON CERTIFICATION OF THE COMMISSIONER
OF THE REVENUE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VIRGINIA BEACH, VIRGINIA

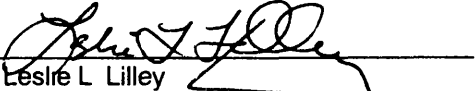
That the following applications for license refunds, upon certification
of the Commissioner of the Revenue are hereby approved

NAME	LICENSE YEAR	DATE PAID	BASE	PENALTY INTEREST	TOTAL
Expressway Motel Associates P O Box 6097 Newport News VA 23606	1996	Audit	1,843 17		1,843 17
Progressive Prosthetic & Orthpedic 4901 Cleveland Street 4 Va Beach VA 23462	1994-96	Audit	5,044 52		5,044 52
Roebuck Carlson & Company 209-59th Street Va Beach VA 23451	1994-96	Audit	130 56		130 56
Select Staffing Services Inc P O Box 3240 Reston VA 22090	1996	Audit	9,703 93		9,703 93

Certified as to Payment


Robert P Vaughan
Commissioner of the Revenue

Approved as to form


Leslie L Lilley
City Attorney

This ordinance shall be effective from date of
adoption

The above abatement(s) totaling \$16,722.18 were approved by the Council

of the City of Virginia Beach on the 24TH day of JUNE, 19 97

Ruth Hodges Smith
City Clerk

Item V-J.8.b..

ORDINANCES

ITEM # 42308

Upon motion by Councilman Jones, seconded by Councilman Branch, City Council ADOPTED:

Ordinance authorizing tax refunds in the amount of \$72,539.22 upon application of certain persons and upon certification of the City Treasurer.

Voting: 8-0 (By Consent)

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

June 24, 1997

AN ORDINANCE AUTHORIZING TAX REFUNDS
UPON APPLICATION OF CERTAIN PERSONS
AND UPON CERTIFICATION OF THE TREASURER
FOR PAYMENT

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VIRGINIA BEACH, VIRGINIA:

That the following applications for tax refunds upon certification of the Treasurer are hereby approved:

NAME	Tax Year	Type of Tax	Ticket Number	Exonera- tion No.	Date Paid	Penalty	Int.	Total
Earl P & Lucy Yates Trs etal	97	RE(1/2)	134830-7		11/19/96			5,174.63
Earl P & Lucy Yates Trs etal	97	RE(2/2)	134830-7		5/22/97			5,174.63
Va. Beach Academy Inc.	97	RE(1/2)	124018-3		12/5/96			14.50
Doyle M & Ivy B Landsford	97	RE(1/2)	069582-5		12/5/96			34.08
Doyle M & Ivy B Landsford	97	RE(2/2)	069582-5		1/22/97			92.69
First Nationwide Mort Corp	97	RE(1/2)	032542-2		12/5/96			5.00
Charles M Purrington	97	RE(1/2)	098197-1		11/27/96			77.30
U P C P Inc.	97	RE(1/2)	123773-9		11/26/96			92.39
Cecil & Jesse Mason etal	79	RE	008539-9		11/17/95			400.00
Cecil & Jesse Mason etal	79	RE	008539-9		12/5/95			107.62
Cecil & Jesse Mason et al	80	RE	007987-5		12/5/95			292.38
Cecil & Jesse Mason et al	96	RE(1/2)	014500-1		12/5/95			172.26
Richard G & Sara E Hall	94	RE(1/2)	047928-8		11/5/93			1.37
Richard G & Sara E Hall	94	RE(2/2)	047928-8		6/5/94			1.37
Richard G & Sara E Hall	95	RE(1/2)	048275-3		11/18/94			1.37
Richard G & Sara E Hall	95	RE(2/2)	048275-3		5/24/95			1.37
Richard G & Sara E Hall	96	RE(1/2)	049213-5		12/5/95			1.43
Richard G & Sara E Hall	96	RE(2/2)	049213-5		5/14/96			1.43
Richard G & Sara E Hall	97	RE(1/2)	049794-1		12/5/96			24.40
Michael F Rose	94	RE(1/2)	099952-7		11/24/93			22.80
Michael F Rose	94	RE(2/2)	099952-7		5/31/94			22.80
Michael F Rose	95	RE(1/2)	100854-1		11/28/94			22.80
Michael F Rose	95	RE(2/2)	100854-1		5/30/95			22.80
Michael F Rose	96	RE(1/2)	102395-2		11/24/95			23.76
Michael F Rose	96	RE(2/2)	102395-2		5/23/96			23.76
Michael F Rose	97	RE(1/2)	103621-5		11/25/96			24.40
The Summs Group	97	RE(1/2)	073117-1		11/21/96			204.36
The Summs Group	97	RE(1/2)	073118-0		11/21/96			165.80
The Summs Group	97	RE(1/2)	073119-9		11/21/96			667.89
The Summs Group	97	RE(1/2)	073120-6		11/21/96			273.83
The Summs Group	97	RE(1/2)	073121-5		11/21/96			132.37
The Summs Group	97	RE(1/2)	073122-4		11/21/96			13.90
Little Neck Associates LC	97	RE(1/2)	920007-6		12/5/96			17,504.53
Little Neck Associates LC	97	RE(1/2)	930007-5		12/5/96			14,339.16
Little Neck Associates LC	97	RE(1/2)	940009-2		12/5/96			14,138.62
Little Neck Associates LC	97	RE(1/2)	950009-1		12/5/96			13,263.42
Paul Bush	97	DL	V25698		5/16/97			2.00

72,539.2.

This ordinance shall be effective from date of adoption.

The above abatement(s) totaling
72,539.22 were approved by
the Council of the City of Virginia
Beach on the 24TH day of JUNE, 1997

Ruth Hodges Smith
City Clerk

Certified as to payment:

John T. Atkinson, Treasurer

Approved as to form:

Leslie L. Lilley, City Attorney

Item V-J.9.a./b/

ORDINANCES

ITEM # 42309

Upon motion by Councilman Jones, seconded by Councilman Branch, City Council ADOPTED:

*Ordinances to **AMEND** the Code of the City of Virginia Beach.*

- a. Chapter 21, Sections 2, 33.1, 116, 147, 150, 154, 191, 205, 207, 273, 318 and 371 re **motor vehicles**.*
- b. Chapter 38, Section 1 re **concealed weapons**.*

*Voting. 8-0 (**By Consent**)*

Council Members Voting Aye.

John A Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R Jones, Reba S McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M Strayhorn

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

June 24, 1997

1 AN ORDINANCE TO AMEND VARIOUS
2 SECTIONS OF CHAPTER 21 OF THE CITY
3 CODE PERTAINING TO MOTOR VEHICLES

4 SECTIONS AMENDED: Sections 21-2,
5 21-33.1, 21-116, 21-147, 21-150, 21-
6 154, 21-191, 21-205, 21-207, 21-273,
7 21-318, and 21-371

8 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VIRGINIA
9 BEACH, VIRGINIA:

10 That Sections 21-2, 21-33.1, 21-116, 21-147, 21-150, 21-154,
11 21-191, 21-205, 21-207, 21-273, 21-318 and 21-371 of the City Code
12 are hereby amended and reordained to read as follows:

13 **Sec. 21-2. Definitions.**

14 The following words and phrases, when used in this chapter,
15 shall, for the purpose of this chapter, have the meanings
16 respectively ascribed to them in this section, except in those
17 instances where the context clearly indicates a different meaning:
18 ...

19 Moped: (i) A bicycle-like device with pedals and a helper
20 motor which is rated at no more than two (2) brake horsepower and
21 which produces speeds up to a maximum of thirty (30) miles per
22 hours-- and (ii) a motorcycle with an engine displacement of fifty
23 (50) cubic centimeters or less and a maximum speed of less than
24 thirty (30) miles per hour. For purposes of this chapter, a moped
25 shall be a vehicle while operated upon a highway.

26 ...

27 *Traffic infraction:* A violation of law punishable as provided
28 in Code of Virginia, section ~~46.1-113~~46.2-113, which is neither a
29 felony nor a misdemeanor.

30 ...

31 **Sec. 21-33.1. Occupants of vehicles required to use safety belts.**

32 (a) Each person at least sixteen (16) years of age and
33 occupying the front seat of a motor vehicle equipped or required by
34 the Virginia motor vehicle code to be equipped with a safety belt
35 system, consisting of lap belts, shoulder harnesses, combinations
36 thereof or similar devices, shall wear the appropriate safety belt
37 system at all times while such motor vehicle is in motion on any
38 public highway, except that a child under the age of ~~four~~
39 ~~(4)~~sixteen (16) years shall be protected as required by the
40 applicable provisions of the Virginia motor vehicle code.

41 ~~(b) Each driver of a motor vehicle equipped or required by~~
42 ~~the Virginia motor vehicle code to be equipped with a safety belt~~
43 ~~system who is transporting a child at least four (4) years of age,~~
44 ~~but less than sixteen (16) years of age, in the front seat of such~~
45 ~~motor vehicle shall cause such child to wear the appropriate safety~~
46 ~~belt system.~~

47 ~~(c)~~(b) This section shall not apply to:

- 48 (1) Any person for whom a licensed physician determines that
49 the use of such safety belt would be impractical by
50 reason of such person's physical condition or other
51 medical reason, provided the person so tempted carries on
52 his person or in the vehicle a signed written statement
53 of the physician identifying the exempted person and
54 stating the grounds for the exemption; or
- 55 (2) Any law enforcement officer transporting persons in
56 custody or traveling in circumstances which render the
57 wearing of such safety belt system impractical; or

(3) Any person while operating a motor vehicle and performing the duties of a rural mail carrier for the United States Postal Service; or

(4) Any person operating a motor vehicle and performing the duties of a rural newspaper route carrier, newspaper bundle hauler or newspaper rack carrier, or drivers of taxicabs; or

(5) Personnel of commercial or municipal vehicles while actually engaged in the collection or delivery of goods or services, including but not limited to solid waste, where such collection or delivery requires the personnel to exit and enter the cab of the vehicle with such frequency and regularity as to render the use of safety belt systems impractical and the safety benefits derived therefrom insignificant. Such personnel shall resume the use of safety belt systems when actual collection or delivery has ceased or when the vehicle is in transit to or from a point of final disposition or disposal, including but not limited to solid waste facilities, terminals, or other locations where the vehicle may be principally garaged; or

(6) Any person operating a motor vehicle and performing the duties of a utility meter reader; or

(7) Police or sheriff's department personnel operating motor vehicles to enforce laws governing motor vehicle parking.

~~(d)~~ (c) Any person who violates this section shall be subject to a civil penalty of twenty-five dollars (\$25.00) to be paid into the city treasury. No assignment of points shall be made

86 under the Virginia Driver Improvement Act and no court costs shall
87 be assessed for violations of this section.

88 ~~(e)~~(d) A violation of this section shall not constitute
89 negligence, be considered in mitigation of damages of whatever
90 nature, be admissible in evidence or be the subject of comment by
91 counsel in any action for the recovery of damages arising out of
92 the operation, ownership or maintenance of a motor vehicle, nor
93 shall anything in this section change any existing law, rule or
94 procedure pertaining to any such civil action.

95 ~~(f)~~(e) A violation of this section may be charged on the
96 uniform traffic summons form.

97 ~~(g)~~(f) No citation for a violation of this section shall be
98 issued unless the officer issuing such citation has cause to stop
99 or arrest the driver of such motor vehicle for the violation of
100 some other provision of this Code or the Code of Virginia relating
101 to the operation, ownership, or maintenance of a motor vehicle or
102 any criminal statute.

103
104 **Sec. 21-116. Obstructions to windshield or windows generally.**

105 (a) Except as otherwise provided in this article or permitted
106 by state or federal law, it shall be unlawful for any person to
107 operate any motor vehicle upon a highway within the city with any
108 sign, poster, colored or tinted film or sun-shading material or
109 other colored material on the windshield, front or rear side
110 windows or rear windows of such motor vehicle. This provision,
111 however, shall not apply to any certificate or other paper required
112 by law or permitted by the superintendent to be placed on a motor
113 vehicle's window or windshield.

(b) Notwithstanding the provisions of subsection (a) of this section, whenever a motor vehicle is equipped with a mirror on each side of such vehicle, so located as to reflect to the operator of such vehicle a view of the highway for a distance of not less than two hundred (200) feet to the rear of such vehicle, any or all of the following shall be lawful:

(1) To drive a motor vehicle equipped with one (1) optically grooved clear plastic right-angle rear view lens attached to one (1) rear window of such motor vehicle, not exceeding eighteen (18) inches in diameter in the case of a circular lens or not exceeding eleven (11) inches by fourteen (14) inches in the case of a rectangular lens, which enables the operator of the motor vehicle to view below the line of sight as viewed through the rear window;

(2) To have affixed to the rear side windows, rear window or windows of a motor vehicle any sticker or stickers, regardless of size; or

(3) To drive a motor vehicle when the driver's clear view of the highway through the rear window or windows is otherwise obstructed.

(c) Except as provided in Code of Virginia section 46.2-1053, but notwithstanding the foregoing provisions of this section, no sun-shading material or tinting film may be applied or affixed to any window of a motor vehicle unless such motor vehicle is equipped with a mirror on each side of such motor vehicle, so located as to reflect to the driver of the vehicle a view of the highway for at least two hundred (200) feet to the rear of such vehicle, and the

sun-shading material or tinting film is applied or affixed in
accordance with the following:

(1) No sun-shading material or tinting films may be applied
or affixed to the rear side windows or rear window or
windows of any motor vehicle operated on the highways of
this city that ~~reduces~~reduce the total light
transmittance of such window to less than thirty-five
(35) percent;

(2) No sun-shading material or tinting films may be applied
or affixed to the front side windows of any motor vehicle
operated on the highways of this city that ~~reduces~~reduce
total light transmittance of such window to less than
fifty (50) percent;

(3) No sun-shading material or tinting films shall be applied
or affixed to any window of a motor vehicle that ~~has~~have
a reflectance of light exceeding twenty (20) percent;

(4) Any person who operates a motor vehicle on the highways
of this city with sun-shading material or tinting films
that ~~has~~have a total light transmittance less than that
required by subdivisions (1) and (2) of this subsection
or a reflectance of light exceeding twenty (20) percent
shall be guilty of a traffic infraction but shall not be
awarded any demerit points by the commissioner for the
violation;

(5) Any person or firm who applies or affixes to the windows
of any motor vehicle in this city sun-shading material or
tinting films that reduce the light transmittance to
levels less than that allowed in subdivisions (1) and (2)
of this subsection or that have a reflectance of light

171 exceeding twenty (20) percent shall be guilty of a Class
172 3 misdemeanor for the first offense and of a Class 2
173 misdemeanor for any subsequent offense.

174 (d) The Virginia Division of Purchases and Supply, pursuant
175 to Code of Virginia section 2.1-446, shall determine the proper
176 standards for equipment or devices used to measure light
177 transmittance through windows of motor vehicles. Law-enforcement
178 officers shall use only such equipment or devices to measure light
179 transmittance through windows that meet the standards established
180 by the division. Such measurements made by law-enforcement officers
181 shall be given a tolerance of minus seven (-7) percentage points.

182 (e) No film or darkening material may be applied on the
183 windshield except to replace the sunshield in the uppermost area as
184 installed by the manufacturer of the vehicle.

185 (f) Nothing in this section shall be construed as prohibiting
186 the affixing to the rear window of a motor vehicle of a single
187 sticker no larger than twenty (20) square inches in area if such
188 sticker is totally contained within the lower five (5) inches of
189 the glass of such rear window, nor shall the provisions of
190 subsection (b) of this section be applied to a motor vehicle to
191 which but one such sticker is so affixed.

192 (g) Operation of a vehicle equipped by the manufacturer with
193 tinted glass conforming to federal department of transportation
194 specifications shall not constitute a violation of this section.

195 (h) Where a person is convicted within one (1) year of a
196 second or subsequent violation of this section, or of section 46.2-
197 1052 of the Code of Virginia, involving operation of the same
198 vehicle having a tinted or smoked windshield, the court, in

addition to any other penalty, may order the person so convicted to remove such tinted or smoked windshield from the vehicle.

(i) The provisions of this section shall not apply to law enforcement vehicles~~-, sight-seeing carriers as defined in section 46.2-2200 of the Code of Virginia, or limousine and executive sedan carriers as defined in section 46.2-2500 of the Code of Virginia.~~

Sec. 21-147. Dimension or marker lights--Generally.

(a) All motor vehicles, trailers or semitrailers exceeding seven (7) feet in width or the widest portion of which extends four (4) inches beyond the front fender extremes shall be equipped with lamps mounted at the extreme right and left-hand front top corners of such vehicle, each of which lamps shall be capable of projecting an amber light visible in clear weather for a distance of at least five hundred (500) feet to the front of such vehicle, and shall be equipped with lamps mounted at the extreme right and left-hand rear top corners of such vehicle, each of which lights shall be capable of projecting a red light visible in clear weather for a distance of at least five hundred (500) feet to the rear of such vehicle; provided, however, that any tractor truck need not be equipped with rear red dimension or marker lamps. If the front or the rear of such vehicle is not the widest portion of such vehicle, the dimension or marker lights required in this section shall be mounted on the widest portions of the vehicle with the amber lights herein required visible from the front as herein required and the red lights herein required visible from the rear as herein required. The lamps herein required shall be of a type that has been approved by the superintendent.

(b) In addition to the lamps required in subsection (a) above, each such vehicle shall be equipped with amber reflectors

located on the side thereof, at or near the front. Red reflectors shall be used on the rear of each such vehicle. Such reflectors shall be securely fastened to the vehicle, not less than ~~twenty-four~~ fifteen (15) inches and not more than sixty (60) inches from the ground, provided that, in the case of a vehicle ~~which~~ that is less than ~~twenty-four~~ fifteen (15) inches in height, such reflectors shall be securely fastened thereto at the highest point the structure of a vehicle will permit. The reflectors required herein shall be of a type that have been approved by the superintendent.

...

Sec. 21-150. Flashing, blinking or alternating colored lights.

(a) Only law enforcement vehicles may be equipped with flashing, blinking or alternating blue, blue and red, blue and white, or red, white and blue combination warning lights of types approved by the superintendent.

(b) Only the following vehicles may be equipped with flashing, blinking, or alternating red or red and white combination lights which shall be of types approved by the superintendent:

- (1) Fire apparatus;
- (2) Forest warden vehicles;
- (3) Ambulances, rescue and life-saving vehicles, and vehicles of the Virginia Department of Emergency Services;
- (4) Private security vehicles as specifically provided by Code of Virginia, section 46.2-1023;
- (5) Personally owned vehicles of fire department, volunteer fire department or volunteer rescue squad members and of drivers employed by private ambulance services, provided

256 that such light(s) shall be activated only when answering
257 emergency calls;

258 (6) School buses;

259 (7) Animal warden vehicles.

260 (c) Only the following vehicles may be equipped with
261 flashing, blinking or alternating amber warning lights, which shall
262 be of types approved by the superintendent:

263 (1) Vehicles used for the principal purpose of towing or
264 servicing disabled vehicles;

265 (2) Vehicles used in constructing, maintaining and repairing
266 highways or utilities on or along public highways;

267 (3) Vehicles used principally for removing hazardous or
268 polluting substances from state waters and drainage areas
269 on or along public highways;

270 (4) Vehicles used for servicing automatic teller machines;
271 provided such light(s) shall not be activated when the
272 vehicle is in motion;

273 (5) Vehicles used in refuse collection;

274 (6) Vehicles used by individuals for emergency snow removal
275 purposes;

276 (7) High-rail vehicles, when operated on railroad rails;

277 (8) Vehicles engaged in either escorting or towing
278 overdimensional materials, equipment, boats or housing
279 units, as provided by Code of Virginia, section 46.2-
280 1026;

281 (9) Fire apparatus, ambulances, and rescue and life-saving
282 vehicles, provided the amber lights are mounted or
283 installed at the rear of the vehicles and are used in

284 addition to lights permitted under subsection (b) of this
285 section;

286 (10) Vehicles owned and used by businesses providing security
287 services, provided the amber lights are not lit while the
288 vehicle is being operated on a public highway; and

289 (11) Vehicles used to collect and deliver the United States
290 mail, provided the amber lights are lit only when the
291 vehicle is actually engaged in such collection or
292 delivery;

293 (12) Vehicles used to provide escorts for funeral processions;

294 (13) Petroleum tank trucks, to be used in conjunction with
295 backup alarms;

296 (14) Vehicles used in the enforcement of vehicle parking
297 regulations-; and

298 (15) Vehicles used for farm, agricultural, or horticultural
299 purposes, or any farm tractor.

300 (d) Such flashing, blinking or alternating lights shall only
301 be lit when performing the functions which qualify the vehicles to
302 be so equipped. It shall be unlawful to operate on any highway any
303 motor vehicle equipped with such lighting devices, except as
304 provided by this section or Code of Virginia, section 46.2-1023 et
305 seq.

306 **Sec. 21-154. When lights to be lighted; number of lights to be**
307 **lighted at one time; use of warning lights.**

308 (a) Every vehicle in operation upon a highway within this
309 city shall display lighted head lamps and illuminating devices, as
310 required by this division-(i) from sunset to sunrise, (ii) during

311 ~~and at~~ any other time when, due to insufficient light or
312 unfavorable atmospheric conditions, persons or vehicles on the
313 highways are not clearly discernible at a distance of five hundred
314 (500) feet, and (iii) whenever windshield wipers are in use as a
315 result of fog, rain, sleet, or snow. The provisions of this
316 subsection, however, shall not apply to instances when windshield
317 wipers are used intermittently in misting rain, sleet, or snow.

318 (b) Not more than four (4) lamps used to provide general
319 illumination ahead of the vehicle, including at least two (2) head
320 lamps and any other combination of fog lamps, passing lamp, driving
321 lamp or other auxiliary lamp approved by the superintendent, shall
322 be lighted at any time. This limitation shall not preclude the
323 display of such warning lights as may be authorized by section 21-
324 150 or such lights as may be authorized by the superintendent for
325 purposes of identification, other than warning lights.

326 (c) Vehicles equipped with warning lights authorized in
327 section 21-150 shall display such lights at all times when engaged
328 in emergency calls, and if engaged in towing disabled vehicles or
329 in constructing, repairing and maintaining public highways or
330 utilities on or along public highways, such lights shall be
331 displayed during the periods prescribed in subsection (a) of this
332 section.

333 (d) The failure to display lighted headlights and illuminating
334 devices under the conditions set forth in clause (iii) of
335 subsection (a) of this section shall not constitute negligence per
336 se, nor shall violation of clause (iii) of subsection (a) of this
337 section constitute a defense to any claim for personal injury or
338 recovery of medical expenses for injuries sustained in a motor
339 vehicle accident.

340 (e) No citation for a violation of clause (iii) of subsection
341 (a) of this section shall be issued unless the officer issuing such
342 citation has cause to stop or arrest the driver of such motor
343 vehicle for the violation of some other provision of this Code or
344 the Code of Virginia relating to the operation, ownership, or
345 maintenance of a motor vehicle, or any criminal statute or
346 ordinance.

347 **Sec. 21-191. Farm machinery and fire-fighting equipment exempt**
348 **from certain size limitations.**

349 (a) The limitations upon the size of vehicles prescribed in
350 sections 21-192, 21-193, 21-194, 21-196 and 21-197 shall not apply
351 to farm machinery when such farm machinery is temporarily
352 propelled, hauled, transported or moved upon highway by a farm
353 machinery distributor or dealer of fertilizer distributor, or by a
354 farmer in the ordinary course of business, nor to fire-fighting
355 equipment of any county, city, town or fire-fighting company or
356 association; provided that, any farm tractor in excess of one
357 hundred eight (108) inches in width which is so propelled, hauled,
358 transported or moved upon highway shall be equipped with a safety
359 light of a type approved by the superintendent, which light shall
360 be plainly visible from the rear of such tractor.

361 (b) Notwithstanding subsection (a) of this section, any farm
362 tractor or other farm, agricultural, or horticultural vehicle wider
363 than one hundred eight (108) inches may be equipped with an amber
364 flashing, blinking, or alternating warning light as provided by
365 section 46.2-1025 of the Code of Virginia. Any such light may be

366 installed in lieu of or in addition to the safety light described
367 in subsection (a) of this section.

368 (c) The absence of amber flashing, blinking, or alternating
369 warning lights on any farm tractor or other farm, agricultural, or
370 horticultural vehicle, as authorized under subsection (b) of this
371 section, shall not constitute negligence, be considered in
372 mitigation of damages of whatever nature, be admissible in evidence
373 or be the subject of comment by counsel in any action for the
374 recovery of damages arising out of the operation, ownership, or
375 maintenance of any motor vehicle or farm tractor, nor shall
376 anything in this section change any existing law, rule, or
377 procedure pertaining to any such civil action.

378 **Sec. 21-205. Special permits for oversize and overweight**
379 **vehicles generally.**

380 (a) The city manager may, in his discretion, upon
381 application in writing and good cause being shown therefor,
382 issue a special permit in writing authorizing the applicant to
383 operate or move a vehicle upon the highways of the city of a
384 size or weight exceeding the maximum specified in this
385 article. Except as otherwise specifically provided, every such
386 permit may designate the route to be traversed and contain any
387 other requirements or conditions deemed necessary by the city
388 manager. For permits other than those specified in
389 subsections (b), (c) and (d), the following processing fees
390 shall be charged:

391 (1) Annual (blanket) permit \$125.00

392 (2) Mobile crane, annual permit:

393 First unit 125.00

394 Each additional unit 25.00

395 (3) House move permit (single instance) 75.00

396 (4) Single trip permit 25.00

397 (b) Special permits to operate or move a vehicle upon the

398 highways of the city of a weight exceeding the maximum

399 specified in this article shall be granted without cost where

400 the vehicle is hauling or carrying containerized cargo in a

401 sealed, seagoing container bound to or from a Virginia seaport

402 and has been or will be transported by marine shipment,

403 provided the single axle weight does not exceed twenty

404 thousand (20,000) pounds, the tandem axle weight does not

405 exceed thirty-four thousand (34,000) pounds and the gross

406 weight does not exceed ~~seventy-eight~~eighty thousand ~~(78,000)~~

407 (80,000) pounds, and provided the contents of such seagoing

408 container are not changed from the time it is loaded by the

409 consignor or his agents to the time it is delivered to the

410 consignee or his agents. Cargo moving in vehicles conforming

411 to specifications shown in this subsection but exceeding axle

412 and gross weight limitations shown in this subsection shall be

413 considered irreducible and eligible for permits under

414 regulations of the state highway and transportation

415 commission. The requirement of this paragraph that the

416 container be bound to or from a Virginia seaport need not be

417 met if the cargo in the container (i) is destined for a

seaport outside Virginia and (ii) consists wholly of farm products grown in that part of Virginia separated from the larger part of the commonwealth by the Chesapeake Bay.

...

Sec. 21-207. Liquidated damages for violation of weight limits; storage, disposition, etc., of vehicle and cargo involved in weight violation.

(a) Any person violating any weight limit as provided by this chapter or in any permit issued either by the Virginia Department of Transportation or by the city manager pursuant to this Code shall be assessed liquidated damages. The amount of those damages shall be two cents (\$0.02) per pound for each pound of excess weight over the prescribed limit in this article for an excess which does not exceed five thousand (5,000) pounds; five cents (\$0.05) per pound of excess weight over the prescribed limit in this article when such excess is more than five thousand (5,000) pounds; two cents (\$0.02) per pound for each pound of excess axle weight over the prescribed limit in any permit issued pursuant to section 46.2-1139 or section 46.2-1148 of the Code of Virginia when the excess is five thousand (5,000) pounds or less; five cents (\$0.05) per pound for each pound of excess axle weight over the gross prescribed limit in any permit issued pursuant to section 46.2-1139 or section 46.2-1148 of the Code of Virginia when such excess is more than five thousand (5,000) pounds; and ten cents (\$0.10) per pound for each pound of excess weight over the prescribed limit in any permit issued pursuant to section 46.2-1139 or section 46.2-1148 of the Code of Virginia. However, whenever any

vehicle does not exceed the gross weight permitted according to the table provided in section 46.2-1139 of the Code of Virginia, and exceeds the axle weight in this article by two thousand (2,000) pounds or less, the liquidated damages shall be assessed in the amount of one cent (\$0.01) per pound for each pound of excess weight over the prescribed axle limit in this article. If a person has no prior violations under the motor vehicle weight laws, and the excess weight does not exceed two thousand five hundred (2,500) pounds, the general district court may waive the liquidated damages against such person. Such assessment shall be entered by the court or by the department as a judgment for the city, the entry of which shall constitute a lien upon the overweight vehicle. Such sums shall be paid to the court or collected by the city attorney and forwarded to the city treasurer and allocated to the fund appropriated for the construction and maintenance of city highways.

(b) If the gross weight of the vehicle exceeds lawful limits by at least ~~thirty-five (35)~~twenty-five (25) percent but not more than fifty (50) percent, the amount of the liquidated damages shall be two (2) times the amount provided for in subsection (a) above; if the gross weight of the vehicle exceeds lawful limits by more than fifty (50) percent, the amount of the liquidated damages shall be three (3) times the amount provided for in subsection (a) above. The provisions of subsection (b) shall not apply to pickup or panel trucks.

(c) The charge hereinabove specified shall be in addition to any other liability which may be legally fixed against such owner or operator of the vehicle in question for damage to a highway or bridge attributable to such weight violation.

**Sec. 21-273. Driving while license, permit or privilege to drive
suspended or revoked.**

Except as otherwise provided in Code of Virginia, sections 46.2-304 and 46.2-357, no person, resident or nonresident, whose license, learner's permit or privilege to drive a motor vehicle has been suspended or revoked or who has been directed not to drive by any court or by the commissioner or by operation of law pursuant to the provisions of Code of Virginia, title 18.2, title 46.2, or this chapter, or who has been forbidden, as prescribed by law, by the commissioner, the state corporation commission, the commonwealth transportation commissioner, the state highway commissioner, any court or the superintendent of state police, to operate a motor vehicle in this state commonwealth, shall thereafter drive any motor vehicle or any self-propelled machinery or equipment on any highway in this city, unless and until the period of such suspension or revocation shall have terminated.

For purposes of this section the phrase "motor vehicle or any self-propelled machinery or equipment" shall not include mopeds.

A first offense of violating this section shall constitute a Class 2 misdemeanor. A second or subsequent offense shall constitute a Class 1 misdemeanor.

In addition to the above provided penalties, the court shall suspend or revoke such person's license, permit or privilege to drive for the same period for which it had been previously suspended or revoked when such person violated this section. In the event such person has violated this section by driving during a period of suspension or revocation which was not for a definite period of time, the court shall suspend or revoke such person's license, permit or privilege to drive for an additional period not

to exceed ninety (90) days. Any additional suspension ordered under the provisions of this section shall commence upon the expiration of the previous suspension or revocation, unless such previous suspension or revocation has expired prior to the ordering of an additional suspension or revocation.

Sec. 21-318. Maximum speed in school zones.

(a) Notwithstanding any other provision of this article, no person shall drive a motor vehicle at a speed of more than twenty-five (25) miles per hour on any highway between portable signs, tilt-over signs or fixed blinking signs paced in or along the highway and bearing the word "school" or the words "school crossing". Such word or words shall indicate that school children are present in the vicinity.

(b) Any signs erected under this section shall be placed not more than six hundred (600) feet from the limits of the school property or crossing in the vicinity of the school, which is used by children going to and from the school; provided that, "school crossing" signs may be placed in any location where an engineering and traffic investigation establishes a need therefor and the state department of highways and transportation or the city council approves the crossing for such signs.

(c) Portable signs provided for in this section shall be furnished and delivered by the city. It shall be the duty of the principal or chief administrative officer of each school, or some responsible person designated by the school board, preferably not a classroom teacher, to place such portable signs in the highway, at a point not more than six hundred (600) feet from the limits of the school property, and remove such signs when their presence is no longer required by this section.

(d) Portable signs, tilt-over signs or fixed blinking signs provided for in this section shall be placed in a position plainly visible to vehicular traffic approaching from either direction, but shall not be placed so as to obstruct the roadway. Such signs shall be in a position, or be turned on, for thirty (30) minutes preceding regular school hours and for thirty (30) minutes thereafter and during such other times as the presence of children on such school property or going to and from school reasonably requires a special warning to motorists.

(e) The city council may increase or decrease the speed limit provided in this section, but only after justification for such increase or decrease has been shown by an engineering and traffic investigation. No such increase or decrease in such speed limit shall be effective, unless such increased or decreased speed limit is conspicuously posted upon the portable signs, tilt-over signs or fixed blinking signs required by this section.

(f) Any person operating any motor vehicle in excess of the maximum speed limit established in subsection (a), when such school crossing zone is (i) indicated by appropriately placed signs displaying the maximum speed limit and (ii) in operation pursuant to this section shall be guilty of a traffic infraction punishable by a fine of not more than two hundred and fifty dollars (\$250.00), in addition to other penalties provided by law.

(g) For the purpose of this section, "school crossing zone" means an area located within the vicinity of a school at or near a highway where the presence of children on such school property or going to and from school reasonably requires a special warning to motorists. Such zones are marked and operated in accordance with

the requirements of this section with appropriate warning signs or other traffic control devices indicating that a school crossing is in progress.

Sec. 21-371. Parking in space reserved for persons with disabilities.

(a) It shall be unlawful for any person to park any vehicle in a parking space reserved for persons with disabilities ~~which~~that limit or impair their ability to walk, unless such vehicle is displaying disabled parking license plates, an organizational removable windshield placard, a permanent removable windshield placard or a temporary removable windshield placard issued under Code of Virginia, section 46.2-731; or DV disabled license plates issued under Code of Virginia, section 46.2-739, subsection B. Spaces reserved for persons with disabilities shall be identified by above grade signs in accordance with the provisions of Code of Virginia, section ~~36-99.10~~36-99.11. The words, "Minimum penalty for violation \$100.00," may be posted on an accompanying sign ~~and~~provided, however, that effective July 1, 1998, all disabled parking signs shall include the following language: PENALTY, \$100-500 Fine, TOW-AWAY ZONE. Such language may be placed on a separate sign and attached below existing above-grade disabled parking signs, provided that the bottom edge of the attached sign is no lower than four(4) feet above the parking surface.

(b) It shall be unlawful for any person without a disability ~~which~~that limits or impairs his or her ability to walk to park a vehicle with disabled parking license plates, an organizational removable windshield placard, a permanent removable windshield placard or a temporary removal windshield placards in any parking

space reserved for persons with disabilities ~~which~~that limit or impair their ability to walk, except when transporting such a disabled person in the vehicle.

(c) Any operator of a motor vehicle parked in violation of this section in a parking space reserved for disabled persons on public property or at a privately owned parking area shall be subject to a fine of not more than ~~two~~five hundred and ~~fifty~~ dollars ~~(\$250.00)~~ (\$500.00) and may be issued a summons or parking ticket, without the necessity of a warrant being obtained by the owner of such private parking area obtaining a warrant.

(d) When a notice or citation is attached to a vehicle found parked in violation of this section, the owner of the vehicle may, within fourteen (14) calendar days thereafter, pay to the city treasurer, in satisfaction of such violation, a penalty of one hundred dollars (\$100.00). Such payment shall constitute a plea of guilty for the violation in question. If such payment is not postmarked or received by the city treasurer within fourteen (14) calendar days of the city after receipt of such notice or violation, the penalty shall be two hundred dollars (\$200.00). The failure of any owner to make payment as prescribed above, or to present the notice or citation for a violation of this section at an office of the city treasurer for certification to the general district court within thirty (30) days shall render such owner, upon conviction of such violation, subject to a fine of not more than ~~two~~five hundred ~~fifty~~ dollars ~~(\$250.00)~~ (\$500.00).

(e) In any prosecution charging a violation of this section, proof that the vehicle described in the complaint, summons, parking ticket, citation, or warrant was parked in violation of this section, together with proof that the defendant was at the time the

1
617 registered owner of the vehicle, as required by title 46.2, chapter
618 6 (§ 46.2-600 et seq.) of the Code of Virginia, shall constitute
619 prima facie evidence that the registered owner of the vehicle was
620 the person who committed the violation.

621 (f) No violation of this section shall be dismissed for a
622 property owner's failure to comply strictly with the requirements
623 for disabled parking signs set forth in § 36.99.11 of the Code of
624 Virginia, provided the space is clearly distinguishable as a
625 parking space reserved for persons with disabilities that limit or
626 impair their ability to walk.

627 (g) The terms "disabled parking sign," "organizational
628 removable windshield placard," "permanent removable windshield
629 placard," "temporary removable windshield placard," and "person
630 with a disability that limits or impairs his ability to walk" when
631 used in this section shall, for purposes of this section, have the
632 meanings respectively ascribed to them in section 46.2-1240 of the
633 Code of Virginia.

634
635 This ordinance shall become effective July 1, 1997.

636 Adopted by the City Council of the City of Virginia Beach on
637 this 24 day of June 1997.

638
639 CA-6699
640 DATA/ORDIN/PROPOSED/21-2et.Ord
641 06/25/97
R2

1 AN ORDINANCE TO AMEND THE CITY CODE
2 PERTAINING TO CONCEALED WEAPONS

3 SECTION AMENDED: Section 38-1

4 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VIRGINIA
5 BEACH, VIRGINIA:

6 That Section 38-1 of the City Code is hereby amended and
7 reordained to read as follows:

8 **Sec. 38-1. Carrying concealed weapons.**

9 (a) If any person carries about his person, hidden from
10 common observation, (i) any pistol, revolver, or other weapon
11 designed or intended to propel a missile of any kind, ~~or~~ (ii) any
12 dirk, bowie knife, switchblade knife, ballistic knife, razor,
13 slingshot, spring stick, metal knucks, or blackjack, ~~or~~ (iii) any
14 flailing instrument consisting of two (2) or more rigid parts
15 connected in such a manner as to allow them to swing freely, which
16 instrument may also be known as a nunchuck, nunchanka, nunchalcu,
17 shuriken or fighting chains ~~or~~ (iv) any disc, of whatever
18 configuration, having at least two (2) points or pointed blades
19 which is designed to be thrown or propelled and which may be known
20 as a throwing star or oriental dart, or (v) any weapon of like kind
21 as those enumerated in this section, he shall be guilty of a Class
22 1 misdemeanor, and such weapon shall be forfeited to the city and
23 may be seized by an officer as forfeited, and such as may be needed
24 for police officers and conservators of the peace shall be devoted
25 to that purpose, and the remainder shall be destroyed by the
26 officer having them in charge. For the purposes of this section,
27 a weapon shall be deemed to be hidden from common observation when
28 it is observable but is of such deceptive appearance as to disguise
29 the weapon's true nature.

(b) This section shall not apply to any person carrying a concealed weapon in accord with permission granted by a circuit court pursuant to section 18.2-308 of the Code of Virginia.

(c) This section shall not apply to:

- (1) Any person while in his own place of abode or curtilage thereof;
- (2) Any police officer, sergeant, sheriff, deputy sheriff, regular game warden or animal control officer;
- (3) Any regularly enrolled member of a target shooting organization who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;
- (4) Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;
- (5) Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;
- (6) Campus police officers appointed pursuant to section 23-232 et seq. of the Code of Virginia;
- (7) Any person actually engaged in lawful hunting, as authorized by the board of game and inland fisheries, under inclement weather conditions

58 necessitating temporary protection of his weapon
59 from these conditions; and

60 (8) ~~Retired state police officers certified by the~~
61 ~~Superintendent of State Police pursuant to section~~
62 ~~18.2-308 of the Code of Virginia. Any state police~~
63 ~~officer retired from the Department of State Police~~
64 ~~and any local law-enforcement officer retired from~~
65 ~~a police department or sheriff's office within the~~
66 ~~Commonwealth (i) with a service-related disability~~
67 ~~or (ii) following at least fifteen (15) years of~~
68 ~~service, other than a person terminated for cause;~~
69 ~~provided such officer carries with him written~~
70 ~~proof of consultation with, and a favorable review~~
71 ~~of the need to carry a concealed weapon issued by,~~
72 ~~the chief law-enforcement officer of the agency~~
73 ~~from which the officer retired.~~

74 (d) This section shall not apply to any of the following
75 individuals while in the discharge of their official duties or
76 while in transit to or from such duties:

77 (1) Carriers of the United States mail in rural
78 districts;

79 (2) Officers or guards of any state correctional
80 institution;

81 (3) Conservators of the peace, except that the
82 following conservators of the peace shall not be
83 permitted to carry a concealed weapon unless a
84 permit is obtained pursuant to section 18.2-308 of
85 the Code of Virginia:

86 a. Notaries public;

- 87 b. Registrars;
- 88 c. Drivers, operators or other persons in charge
- 89 of any motor vehicle carrier of passengers for
- 90 hire; or
- 91 d. Commissioners in chancery;
- 92 (4) Noncustodial employees of the department of
- 93 corrections designated to carry weapons by the
- 94 director of the department of corrections pursuant
- 95 to section 53.1-29 of the Code of Virginia;
- 96 (5) Law enforcement agents of the Armed Forces of the
- 97 United States and federal agents who are otherwise
- 98 authorized to carry weapons by federal law while
- 99 engaged in the performance of their duties; and
- 100 (6) Law enforcement agents of the United States Naval
- 101 Criminal Investigative Service.
- 102 (e) As used in this section:
- 103 (1) *Spring stick* means a spring-loaded metal stick
- 104 activated by pushing a button which rapidly and
- 105 forcefully telescopes the weapon several times its
- 106 original length.
- 107 (2) *Ballistic knife* means any knife with a detachable
- 108 blade that is propelled by a spring-operated
- 109 mechanism.

110 This ordinance shall become effective July 1, 1997.

111 Adopted by the City Council of the City of Virginia Beach on this

112 24 day of June 1997.

113 CA-6692

114 DATA/ORDIN/PROPOSED/38-1.ORD

115 R2

06/12/97

Item V-K.

PUBLIC HEARING

ITEM # 42310

PLANNING

Vice Mayor Sessoms DECLARED a PUBLIC HEARING on:

PLANNING

1. NO ACTION ITEM DEFERRED BY PLANNING COMMISSION

a. WIDENER HOMES, LTD.

CHANGE OF ZONING

**2. LAWRENCE A. SANCILIO, RACHEL V. SANCILIO
LENA SANCILIO, MAURICE STEINGOLD,
LEWIS B. STEINGOLD AND SIGNET BANK/VIRGINIA,
TRUSTEES UNDER THE WILL OF ISRAEL STEINGOLD**

STREET CLOSURE

3. C & C DEVELOPMENT, L.L.C.

STREET CLOSURE

4. BPP DEVELOPERS, INC.

STREET CLOSURE

5. LIFENET, D/B/A LIFENET TRANSPLANT SERVICES

STREET CLOSURE

6. STEVEN S. CLYMER

VARIANCE

7. JOSEPH OVERHOLT, TRUSTEE OVERHOLT TRUST

**CONDITIONAL CHANGE
OF ZONING**

8. MCGINNIS REALTY AND DEVELOPMENT COMPANY

**CHANGE OF ZONING
AND
CONDITIONAL USE PERMIT**

June 24, 1997

Item V-K.

PUBLIC HEARING

ITEM # 42311

PLANNING BY CONSENT

*Upon motion by Councilman Heischober, seconded by Councilman Branch, City Council **APPROVED** in **ONE MOTION** Items 2, 3, 4, 5, 6, 7, and 8 of the **PLANNING BY CONSENT** Items.*

*Item 2 a.b. (Phase 1) was **AUTHORIZED FOR FINAL APPROVAL***

*Item 2 a.b.c.(Phase 2) was **DEFERRED AN ADDITIONAL 180 DAYS (December 8, 1997)***

*Item 4 was **DEFERRED AN ADDITIONAL 180 DAYS (December 8, 1997)***

*Item 6 was **WITHDRAWN**.*

*Item 7 was **DEFERRED until the City Council Session of July 1, 1997.***

*Item 8 was **DEFERRED INDEFINITELY.***

Voting: 8-0

Council Members Voting Aye:

*John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn**

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

*Vice Mayor Sessoms **ABSTAINED** on Item 2 (Sancilio) because of a business relationship.*

**Verbal Aye*

June 24, 1997

Item V-K.1.

PUBLIC HEARING

ITEM # 42312

PLANNING

City Council TOOK NO ACTION:

Application of WIDENER HOMES, LTD. for a Change of Zoning District Classification from R-7.5 Single Family District to Conditional A-12 Apartment District (527 North Witchduck Road, containing 2.2 acres (BAYSIDE BOROUGH).

This item was deferred by the Planning Commission on June 11, 1997.

Item V-K.2.

PUBLIC HEARING

ITEM # 42313

PLANNING

*Upon motion by Councilman Heischober, seconded by Councilman Branch, City Council **AUTHORIZED FINAL APPROVAL Phase I and DEFERRED AN ADDITIONAL 180 DAYS FOR COMPLIANCE (December 8, 1997) Phase II** of the Ordinance for discontinuance, closure and abandonment in the Petition of **LAWRENCE A.. SANCILIO, RACHEL V. SANCILIO, LENA SANCILIO, MAURICE STEINGOLD, LEWIS B. STEINGOLD and SIGNET BANK/VIRGINIA**, Trustees under the Will of Israel Steingold*

Application of Lawrence A. Sancilio, Rachel V. Sancilio, Lena Sancilio, Maurice Steingold, Lewis B. Steingold and Signet Bank/Virginia, Trustees under the Will of Israel Steingold for the discontinuance, closure and abandonment of the following streets:

Phase 1

***Wagner Street** - That portion of Wagner labeled "closed _____", consisting of 2,599 square feet, bounded on the South by the Northern right-of-way boundary of the Virginia Beach-Norfolk Expressway and extending in a Northerly direction a distance of 51.69 feet as more specifically shown on said plat.*

***Avenue E** - That portion of Avenue E, labeled "closed _____", consisting of 1,297 square feet, approximately twenty-five (25) feet in width, bounded on the South by the Northern right-of-way boundary of the Virginia Beach-Norfolk Expressway and extending in a Northerly direction an approximate distance of 52 feet as more specifically shown on said plat.*

Phase 2

***Wagner Street** - All that portion of Wagner Street not included in Phase 1 above, containing 10,044.31 square feet (10,096 square feet - 51.69 square feet).*

***Avenue E** - All that portion of Avenue E not included in Phase 1 above, containing 162.67 square feet (214.67 sq. ft. - 52 sq. ft.)*

***First Street** - Beginning at the Western Boundary of Avenue E and running in a Westerly direction a distance of 349.78 feet.*

June 24, 1997

Item V-K.2.

PUBLIC HEARING

ITEM # 42313 (Continued)

PLANNING

Voting: 7-0 (By Consent)

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan and Louisa M Strayhorn*

Council Members Voting Nay:

None

Council Members Abstaining:

Vice Mayor William D. Sessoms, Jr.

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

Vice Mayor Sessoms ABSTAINED because of a business relationship.

****Verbal Aye***

June 24, 1997

Item V-K.3.

PUBLIC HEARING

ITEM # 42314

PLANNING

Upon motion by Councilman Heischober, seconded by Councilman Branch, City Council AUTHORIZED FINAL APPROVAL of an Ordinance upon application of C & C DEVELOPMENT, L.L.C. for the discontinuance, closure and abandonment of a portion of the East side of Pleasure House Road:

Ordinance upon application of C & C Development, L.L.C. for the discontinuance, closure and abandonment of a portion of Pleasure House Road located on the east side of Pleasure House Road beginning at a point 123.17 feet south of Andrew Jackson Lane, running a distance of 50.42 feet along the east side of Pleasure House Road, running around a curve a distance of 19.81 feet, running a distance of 66.13 feet along the eastern property line and running a distance of 17.37 feet along the northern property line. Said parcel is variable in width and contains 836 square feet. BAYSIDE BOROUGH.

Voting: 8-0 (By Consent)

Council Members Voting Aye:

*John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn**

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

****Verbal Aye***

June 24, 1997

Item V-K.4.

PUBLIC HEARING

ITEM # 42315

PLANNING

*Upon motion by Councilman Heischober, seconded by Councilman Branch, City Council **AUTHORIZED AN ADDITIONAL 180 DAYS FOR COMPLIANCE** (December 8, 1997); Ordinance upon Application of **BPP DEVELOPERS, INC.**, a Virginia Corporation for the discontinuance, closure and abandonment of Lynnhaven Drive:*

Petition of BPP Developers, Inc., a Virginia Corporation, for the discontinuance, closure and abandonment of Lynnhaven Drive beginning at a point 151.6 feet east of Vista Drive and running in an easterly direction a distance of 115 feet. Said parcel is variable in width and contains 3239 square feet. LYNNHAVEN BOROUGH.

Voting: 8-0 (By Consent)

Council Members Voting Aye:

*John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn**

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

***Verbal Aye**

June 24, 1997

Item V-K.5.

PUBLIC HEARING

ITEM # 42316

PLANNING

*Upon motion by Councilman Heischober, seconded by Councilman Branch, City Council **APPROVED**, subject to compliance of conditions in 180 days (December 8, 1997) Petition of LIFENET, d/b/a LIFENET TRANSPLANT SERVICES, for the discontinuance, closure and abandonment of a portion of Baker Road:*

Petition of LifeNet, d/b/a/ LifeNet Transplant Services, for the discontinuance, closure and abandonment of a portion of Baker Road beginning at the southwest corner of Baker Road and Ward Court and running in a southerly direction a distance of 357.65 feet. Said property contains 5294.4 square feet. BAYSIDE BOROUGH.

The following conditions shall be required.

- 1. Because the applicant dedicated this right-of-way in 1989 and the right-of-way is no longer needed for public purposes, the applicant shall not be required to purchase this property from the City. The property shall be deeded to the applicant at no charge.*
- 2. The applicant is required to dedicate a drainage easement to the City across the LifeNet Transplant Services site, satisfactory to the Development Services Center.*
- 3. The applicant shall dedicate the right-of-way at the corner of Ward Court and Baker Road to provide a sufficient turning radius for truck traffic. This dedication shall be satisfactory to the Development Services Center.*
- 4. The applicant is required to resubdivide the property and vacate internal lot lines to incorporate the enclosed area into the adjoining parcel.*
- 5. The applicant is responsible for determining if any private utilities are located within the area proposed for closure and working with the private utility companies to provide any necessary easement. Preliminary comments from the private utility companies indicate that no private utilities will be impacted.*
- 6. Closure of the right-of-way shall be contingent upon compliance with the above stated conditions within 180 days of the approval by City Council (December 8, 1997)*

Item V-K.5.

PUBLIC HEARING

ITEM # 42316 (Continued)

PLANNING

Voting: 8-0 (By Consent)

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S McClanan, Vice Mayor William D Sessoms, Jr. and Louisa M. Strayhorn*

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

****Verbal Aye***

June 24, 1997

Item V-K.6.

PUBLIC HEARING

ITEM # 42317

PLANNING

*Upon motion by Councilman Heischober, seconded by Councilman Branch, City Council **ALLOWED WITHDRAWAL** of the application of **STEVEN S. CLYMER** for a Variance to Section 4.4(b) of the Subdivision Ordinance which requires all lots created by subdivision meet all requirements of the City Zoning Ordinance:*

Appeal from Decisions of Administrative Officers in regard to certain elements of the Subdivision Ordinance, Subdivision for Steven S. Clymer. Property is located on the north side of Winston-Salem Avenue, 105 feet east of Rudee Avenue. VIRGINIA BEACH BOROUGH.

Voting 8-0 (By Consent)

Council Members Voting Aye:

*John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M Henley, Louis R. Jones, Reba S McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn**

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

***Verbal Aye**

June 24, 1997

Item V-K.7.

PUBLIC HEARING

ITEM # 42318

PLANNING

*Upon motion by Councilman Heischober, seconded by Councilman Branch, City Council **DEFERRED** until the City Council Session of July 1, 1997, an Ordinance upon application of **JOSEPH OVERHOLT, TRUSTEE OVERHOLT TRUST** for a Conditional Change of Zoning District Classification:*

**ORDINANCE UPON APPLICATION OF JOSEPH OVERHOLT,
TRUSTEE OVERHOLT TRUST FOR A CONDITIONAL CHANGE OF
ZONING DISTRICT CLASSIFICATION FROM R-10 to B-2**

Ordinance upon application of Joseph Overholt, Trustee Overholt Trust, for a Conditional Change of Zoning District Classification from R-10 Residential District to Conditional B-2 Community Business District on certain property located at the southwest corner of Lynnhaven Parkway and Salem Road. The proposed zoning classification change to B-2 is for commercial land use. The Comprehensive Plan recommends use of this parcel for suburban medium density residential use at densities that are compatible with single family use in accordance with other Plan policies. Said parcel contains 15 acres. KEMSPVILLE BOROUGH.

Voting: 8-0 (By Consent)

Council Members Voting Aye:

*John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn**

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

**Verbal Aye*

June 24, 1997

Item V-K.8.

PUBLIC HEARING

ITEM # 42319

PLANNING

*Upon motion by Councilman Heischober, seconded by Councilman Branch, City Council **DEFERRED INDEFINITELY** until the adoption of the **COMPREHENSIVE PLAN** Ordinances upon application of **McGINNIS REALTY AND DEVELOPMENT COMPANY** for a Conditional Change of Zoning and Conditional Use Permit:*

ORDINANCE UPON APPLICATION OF McGINNIS REALTY AND DEVELOPMENT COMPANY FOR A CHANGE OF ZONING FROM AG-1 AND AG-2 TO CONDITIONAL R-20

Ordinance upon application of McGinnis Realty & Development Company for a Change of Zoning District Classification from AG-1 and AG-2 Agricultural Districts to Conditional R-20 Residential District on certain property located on the west side of Princess Anne Road beginning at a point 1060 feet more or less south of Elson Green Avenue. The proposed zoning classification change to Conditional R-20 is for single family residential land use at a density no greater than 1.7 dwelling units per acre. The Comprehensive Plan recommends use of this parcel for rurally compatible development, agriculture, public recreational facilities and public land banking opportunities. Said parcel contains 57.94 acres. PRINCESS ANNE BOROUGH.

A N D,

ORDINANCE UPON APPLICATION OF McGINNIS REALTY & DEVELOPMENT COMPANY FOR A CONDITIONAL USE PERMIT FOR AN OPEN SPACE PROMOTION

Ordinance upon application of McGinnis Realty & Development Company for a Conditional Use Permit for an open space promotion development option on certain property located on the west side of Princess Anne Road beginning at a point 1060 feet more or less south of Elson Green Avenue. Said parcel contains 57.94 acres. PRINCESS ANNE BOROUGH.

Voting: 8-0 (By Consent)

Council Members Voting Aye:

*John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn**

Council Members Voting Nay.

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

***Verbal Aye**

June 24, 1997

Item V-L.1.

APPOINTMENTS

ITEM # 42320

Upon NOMINATION by Councilman Baum, City Council APPOINTED:

Armando P. Placides

***4 Year Term
07/01/97 - 06/30/2001***

SOCIAL SERVICES BOARD

Voting: 8-0

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S. McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

June 24, 1997

Item V-L.2.

APPOINTMENTS

ITEM # 42321

Upon NOMINATION by Councilman Baum, City Council APPOINTED:

Barbara Brinson

Unexpired thru 02/28/2000

YOUTH SERVICES COORDINATING COMMITTEE

Voting: 8-0

Council Members Voting Aye:

John A. Baum, Linwood O. Branch, III, Harold Heischober, Barbara M. Henley, Louis R. Jones, Reba S McClanan, Vice Mayor William D. Sessoms, Jr. and Louisa M. Strayhorn

Council Members Voting Nay:

None

Council Members Absent:

Mayor Meyera E. Oberndorf, William W. Harrison, Jr. and Nancy K. Parker

Item V-N.1.a.b.

NEW BUSINESS

ITEM # 42322

BY CONSENSUS, City Council ACCEPTED FOR RECORDATION:

ABSTRACTS OF VOTES

Republican Primary Election

10 June 1997

ATTORNEY GENERAL

COMMISSIONER OF REVENUE

ABSTRACT OF VOTES

cast in the City of Virginia Beach, Virginia,
at the June 10, 1997 Republican Primary Election for:

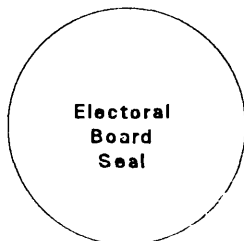
ATTORNEY GENERAL

<i>NAMES OF CANDIDATES ON BALLOT</i>	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
K. W. "KEN" STOLLE	<u>7,951</u>
GILBERT K. DAVIS	<u>1,731</u>
MARK L. EARLEY	<u>6,969</u>
JERRY W. KILGORE	<u>851</u>

We, the undersigned Electoral Board, upon examination of the official records deposited with the Clerk of the Circuit Court of the election held on June 10, 1997, do hereby certify that the above is a true and correct Abstract of Votes cast at said Republican Primary Election for the above office

Given under our hands this 11th day of June, 1997.

A copy teste



[Signature], Chairman
[Signature], Vice Chairman
[Signature], Secretary

[Signature] Secretary, Electoral Board

ABSTRACT OF VOTES

cast in the City of Virginia Beach, Virginia,
at the June 10, 1997 Republican Primary Election for:

COMMISSIONER OF REVENUE

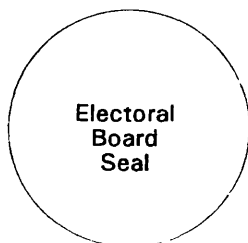
<i>NAMES OF CANDIDATES ON BALLOT</i>	<i>TOTAL VOTES RECEIVED (IN FIGURES)</i>
<u>RICKIE L. RICHARDS</u>	<u>10,421</u>
<u>HENRY H. RICHARDSON III</u>	<u>6,411</u>
_____	_____

We, the undersigned Electoral Board, upon examination of the official records deposited with the Clerk of the Circuit Court of the election held on June 10, 1997, do hereby certify that the above is a true and correct Abstract of Votes cast at said Republican Primary Election and do, therefore, determine and declare that the following person has received the greatest number of votes cast for the above office in said election

RICKIE L. RICHARDS

Given under our hands this 11th day of June, 1997.

A copy teste



_____, Chairman
_____, Vice Chairman
_____, Secretary

_____, Secretary, Electoral Board

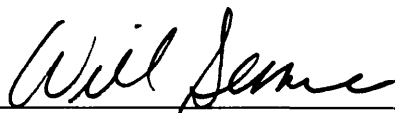
Item V-O.

ADJOURNMENT

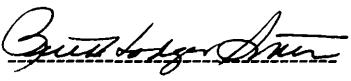
ITEM # 42181

*Vice Mayor William D. Sessoms **DECLARED** the City Council Meeting **ADJOURNED** at 6:33 P.M.*

Beverly O Hooks, CMC/AAE
Chief Deputy City Clerk



William D. Sessoms, Jr.
Vice Mayor



Ruth Hodges Smith, CMC/AAE
City Clerk



Meyera E. Oberndorf
Mayor

City of Virginia Beach
Virginia

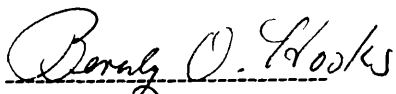
June 24, 1997

Item V-O.

ADJOURNMENT

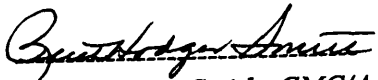
ITEM # 42181

Vice Mayor William D. Sessoms DECLARED the City Council Meeting ADJOURNED at 6.33 P.M.



Beverly O. Hooks, CMC/AAE
Chief Deputy City Clerk

William D. Sessoms, Jr.
Vice Mayor



Ruth Hodges Smith, CMC/AAE
City Clerk

Meyera E. Oberndorf
Mayor

City of Virginia Beach
Virginia

June 24, 1997