

**VIRGINIA:** At a special called meeting of the Board of Supervisors of the County of Patrick, held at the Patrick County Community Center thereof on Friday, October 8, 2004 at 9:00 a.m.

**PRESENT:** Crystal P. Harris, Chairperson; H. Danny Foley, Sr., Vice Chairman; Darrell Cockerham; Roger L. Martin and David G. Young, Board Members; Regena H. Handy, County Administrator; Michael Burnette, Assistant County Administrator; Eric Helms Monday, County Attorney; and Mary Beth Roberson, Assistant to the County Administrator.

The Chairperson called the meeting to order.

The Board called for a Moment of Silence.

The Board recited the Pledge of Allegiance to the Flag, followed by a Moment of Silence in honor of U. S. military personnel serving abroad.

On motion by David G. Young, seconded by Darrell Cockerham and carried, the agenda for the meeting was approved, as amended.

Voting Aye: Harris, Foley, Cockerham, Martin, and Young

Voting Nay: None

A Public Hearing was this day held to receive comments on the granting of an option to purchase certain real property, commonly known as "Fulflex site" to Commonwealth Properties Acquisition, LLC. The Chairperson opened the hearing for public comment. The Assistant County Administrator advised that this is a presentation of the Real Estate Purchase Agreement, which is an option to purchase property at the former Fulflex site outside the Town of Stuart. He stated that this option is being conveyed to Commonwealth Properties Acquisition, LLC for the purchase of property for \$1million that would coincide with the County's option, which runs out in April 2005. Mr. Burnette stated that this option is for a retail shopping development.

Ed Volway, local business owner, approached the Board and asked the name of the retail business. The Assistant County Administrator advised that the County is not allowed by the prospect to offer that information. Mr. Volway stated that the people do not know what is going to happen. Mr. Burnette advised that the County is offering an option agreement to the development company and are not allowed to go into any further detail about the prospective business. The Chairperson stated that if the Board could go into further detail, they would.

The Chairperson asked for any additional comments; none were made and the public hearing was closed.

Mr. Martin stated that he has some questions concerning the contract. He noted that the contract stated that the term of the contract expires on October 13th of the current year and the buyer must make an election fifteen days before the expiration of this term, which would have to have been made by September 28<sup>th</sup> and to his knowledge, there has been no election either way. The County Attorney advised that he is not aware of what communication the company and the Assistant County Administrator have had. He stated that it is

his understanding that this would be treated as an automatic extension and this refers to the extension term that appears on page two. Mr. Burnette advised that the option agreement refers back to the County's option agreement with Mr. Dorn Williams. Mr. Monday asked Mr. Burnette if that agreement had been extended. Mr. Burnette stated that it had. Mr. Martin stated that the document refers to the property as zoned or will be zoned prior to closing; he asked if there is any possibility that it will be zoned. Mr. Monday said that it will not be zoned and that he had some discussions with the developer's attorneys and explained to them that Patrick County does not have any zoning and no further action needs to be taken concerning that issue. Mr. Martin read condition (c) on page 4 of the agreement, which reads: That Seller will be able to convey title to Buyer in fee simple, that Seller's title will be insurable and marketable and subject only to exceptions approved by Buyer, in writing; he asked the County Attorney if he is aware of any exceptions. Mr. Monday advised that he is not aware of any exceptions and that condition (c) ties into paragraph 7 on page 5, which is Title Examination. He stated that the title examination revealed any exceptions, the Board would undertake its best efforts to cure them; if it could not resolve them, the deal would obviously die. Mr. Martin referred to the second paragraph on page 6, which states: "Should Buyer's investigation reveal title defects which in Buyer's opinion render Seller's title unmarketable or uninsurable, or should there be exceptions or restrictions that prevent use of the Property as contemplated by the Buyer, Seller agrees to use its best efforts to cure such defect or exception, and the then current term of the Contract may, in the sole discretion of Buyer, be extended for a reasonable time, not to exceed 90 days, to permit Seller to complete the cure or remedy". He stated that this agreement is putting the County in the position of the Seller, but the County is only the Seller of an option. He asked the County Attorney if there was some cost to this, who was going to bear the cost to cure it. Mr. Monday advised that it is his belief that under the option agreement between the County and Mr. Williams, there is a cure provision included in that the agreement, if the County exercises that option, would require a general warranty deed. He stated that it would be incumbent upon the actual seller if they were obligated to convey a general warranty deed to assist the County in clearing the title. Mr. Monday reiterated that he was not aware of anything that may present a problem with the title of this property. The Chairperson stated that Jim Litten, Litten Real Estate, acknowledged that the statement is correct. Mr. Monday advised that this is pretty standard language. Mr. Martin stated he assumes that the County has access to the property so that the Buyer and its agents can enter the site. The Assistant County Administrator advised that he would present the Board with a proposed Right of Entry Agreement later on in the meeting, which will need to be approved by the Board. Mr. Martin noted that number 10 on page 7 calls for a Perimeter Survey and asked if there is a current survey. He read the following statement from that paragraph, which states: "Seller shall reimburse Buyer for the cost of said survey at time of closing"; he said that if the Buyer requests this, it could be another potential expense to the County. The Assistant County Administrator advised that a new survey would need to be completed, the expense would come off of the final purchase price, and that it would be a minor expense to the County. Mr. Martin stated that the cost of the survey would depend upon the number of acres that are involved and how easy it is to survey the property. Mr. Martin referred to number 12 on page 8 concerning default of Seller that reads: "Buyer shall have such other rights or remedies as may be afforded to it by law or equity, including but not limited to, the right of specific performance"; he stated that he is concerned that the Seller, which refers to the County, is being put in a position where it could be sued due to some kind of a default. He asked if this could be another potential expense to the County. The County Attorney advised that it could be an expense and that even if it were not typed into the agreement, the Buyer could still sue the County if a default occurred. He said that in addition, if the current property owner was the source of the default, which he does not believe will be the case with this property, the County could bring him in as well and that the last sentence in paragraph 12 is implied in any real estate contract. Mr. Martin referred number 14, Proration of Taxes; Payment of Expenses, on page 8 and stated that the Seller shall pay taxes, which is normal in a real estate transaction, until the point that it is conveyed; then the Buyer pays taxes after that point in time. He then read the following sentence from that section: "Seller shall be responsible for the cost of all transfer and documentary stamps and for

the preparation and delivery of all documents to be furnished by Seller”; he stated that this is normal for the Seller. Mr. Martin advised that throughout this agreement, the County is being interposed between the actual owner of the property and the Buyer. He referred to page 9, which reads: “Seller hereby warrants that to the best of its knowledge none of the following substances, other than what is noted above, exist on, over or beneath the Property”; he asked if the County does not know of something that exists in that property, which would be classified as hazardous materials, would the County, as the seller, be liable for that as well. The County Attorney advised that the only thing that the County is aware of is a small amount of asbestos in the building itself. He stated that number 16 on page 9 was a concern of his as well and that the only thing that the County is agreeing to indemnify for is any dumping that would occur between the exercise of our option and the transfer to the developer. Mr. Monday stated that he does not know if there will be a period of time between the exercise of the option and the exercise of the developers option, it may be that the County assigns its option to the developer and it may never become County property. Mr. Martin stated that he brought that issue up because nobody with the County, as far as his knowledge is concerned, has any personal knowledge of that. The County Attorney said that is why the County added the sentence and that he never wanted the County to commit to clean up something on a piece of property that it does not own and knows nothing about. Mr. Monday stated if the County does exercise its option and it becomes the County’s property, the County would be warranting for about a week.

Jim Litten, the real estate agent for this property, approached the Board and asked if they are transferring the entire option to this company. The Assistant County Administrator answered that it was not and advised that the County is selling an option in the interest of that property so that if the County exercises its option, then this company will exercise its option to purchase property from the County. He said that if everything were executed, the company would not be buying directly from Mr. Williams; it would be buying the property from the County after the County exercises its option with Mr. Williams. The County Attorney asked Mr. Litten if he is asking if the company is planning on buying the full tract that the County has under option. Mr. Litten said that is correct. The Assistant County Administrator advised that as far as the County knows right now, the answer is no; the company is looking at property that runs from the branch to the river in the back, which is the property that this option pertains to. He said that the company does have interest in the rest of the property as well. Mr. Litten asked if the County could maintain thirty acres of property if it so desired. Mr. Burnette said that is possible. Mr. Litten asked if the County would then sell that property to other individual retail establishments. The Chairperson and the Assistant County Administrator advised that a decision has not been made concerning that issue. Mr. Litten said that he is confused about what the County is doing; the County is not selling the entire option to the company. Mr. Martin stated that the contract is to sell the option for parcels A, B, and C, so this contract is specific in conveying tracts A, B, and C; the only thing that the County would have left would be a remainder option on parcel D. He said that the County has an insurable interest, but not ownership. Mr. Litten asked who is going to buy the property from Mr. Williams; the entire parcel for \$1.2 million as agreed upon. The Chairperson and the Assistant County Administrator stated that the County would be purchasing the entire parcel from Mr. Williams.

Patty Volway approached the Board and stated that Mr. Williams has the property for sale for \$1.2 million and that the County is potentially going to exercise an option and pay \$1.2 million to Mr. Williams and then sell it to Commonwealth Properties Acquisition, LLC on an option for \$1 million. She stated that the County will incur a \$200,000 cost and will get what is left, which is parcel D. She then stated that if she is correct, the County would own a piece of property, which she does not know the size of, at a cost of \$200,000. The Assistant County Administrator said that was correct.

On motion by Darrell Cockerham, seconded by David G. Young and carried, the Board does hereby accept the following Real Estate Purchase Agreement with Commonwealth Properties Acquisition, LLC.

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into this the 8<sup>th</sup> day of October, 2004, by and between PATRICK COUNTY BOARD OF SUPERVISORS, or its assigns, hereinafter called “Seller,” and COMMONWEALTH PROPERTIES ACQUISITION, LLC, a Tennessee limited

liability company, whose principal place of business is situated in the City of Knoxville in the State of Tennessee, hereinafter called "Buyer," for and in consideration of the premises herein contained,

WITNESSETH:

1. RIGHT TO PURCHASE: The Seller currently has under an Option to Buy Agreement, dated April 13, 2004, by and between Dorn V. Williams ("Owner") and the Seller, the option to purchase several tracts of land containing 11.89 acres, 33.569 acres, 13.52 acres and being in the Mayo River Magisterial District (the "Option Agreement"), which is attached hereto as Exhibit B. The Seller does hereby give and grant unto Buyer exclusive right and option to purchase, under the terms and conditions hereinafter set forth, the fee simple interest, including both surface rights and mineral rights, in and to that certain real property of Seller located in the County of Patrick, State of Virginia, being a portion of Parcel "A", all of Parcel "B", and all of Parcel "C", as shown as that property outlined in red on the attached Exhibit "A", entitled Plat for Dorn V. Williams, dated January 13, 2003, hereinafter referred to as "Property."

2. TERM OF CONTRACT: (A) The parties acknowledge that the First Extension term under the Option Agreement expires on October 13, 2004, therefore upon full execution of this Agreement, the Buyer will pay to the Seller as consideration, the amount of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) for the Initial Term, which will be through and including January 13, 2005 (the "Initial Term"). Not later than fifteen (15) days before the expiration of the Initial Term or any Extension Term, the Buyer may either (i) exercise its right to purchase the Property from the Seller under the terms and conditions of this Agreement or (ii) notify Seller that it has elected to extend the term of this Agreement, as provided for in Section 3 of this Agreement. Within five (5) days after receiving such notice, the Seller shall either (x) exercise the right to extend the Option Agreement or (y) assign the Option Agreement to the Buyer. In the event the Seller elects to assign the Option Agreement to the Buyer, such assignment must be delivered to the Buyer not later than seven (7) days before the end of the Initial Term or the then applicable Extension Term. Notice of either election by Buyer shall be in writing and shall be delivered by nationally recognized express courier service or by facsimile transmission to the Seller at the following address: P. O. Box 466, Stuart, VA 24171 or facsimile number: 276-694-2160. Any notice sent by facsimile transmission shall be confirmed by a writing sent by nationally recognized express courier service not later than five (5) days after the date of the facsimile transmission. In either event, notice shall be effective upon delivery or refusal by Seller to accept delivery. If the last day within which to give notice of exercise of this option falls on Saturday, Sunday or a holiday, this exclusive right to purchase may be exercised by giving notice in the above manner on the business day next ensuing.

(B) Extension Of Contract Term –Buyer may extend the term of this contract for additional terms as follows:

			<u>Option Agreement Term</u>
First Extension	3 months	\$2,500.00	10/13/04-01/13/05
Second Extension	3 months	\$2,500.00	01/14/05-04/13/05

In order to exercise its right to extend the term hereof, Buyer must give Seller written notice of its intention to extend at least fifteen (15) days prior to the end of the Initial Term or any then current extension term, such notice to be give as provided for in Section 2 hereinabove. Within five (5) days of receipt of written notice from the Seller that it extended its rights under the Option Agreement, the Buyer will tender to the Seller the amount shown above for such Extension Term. Each such extension is herein referred to as an "Extension Term," and the deposits made to secure such Extension Term(s) are referred to herein as the "Extension Deposits."

3. PURCHASE PRICE: In the event that Buyer elects to purchase the Property, the purchase price shall be One Million and 00/100Dollars (\$1,000,000.00).

4. DISPOSITION OF DEPOSITS: In the event that Buyer elects to purchase the Property and the transaction is closed, then all deposits paid by the Buyer pursuant to the terms of this Contract, and any interest earned thereon, shall be credited to and offset against the purchase price at the closing.

Should Buyer elect not to purchase the Property and either terminates this Contract by giving written notice thereof to Seller, then the deposits, including any interest earned thereon, shall be paid over to Seller, provided however, that if Buyer terminates or elects not to purchase or allows the then current Contract term of the Contract to expire without extending the term or exercising its right to purchase because one or more of the conditions set forth in **Section 5** herein below have not been met to Buyer's satisfaction, the deposits, including any interest earned thereon, will be returned to Buyer.

5. CONDITIONS: Seller understands that Buyer will not be able to use the Property, and therefore will not be likely to purchase the Property, unless certain conditions or facts as to the Property are satisfied or verified during the term of this Contract and continue to exist on the date of closing. These conditions are:

- (a) That water, sanitary sewer, storm sewer and other necessary utilities exist at locations and with sufficient capacity to provide timely service to Buyer's project on an economically feasible basis;
- (b) That the Property is zoned (or will be zoned prior to closing) to permit development and operation of a retail shopping center as contemplated by Buyer, or in the event that the Property must be zoned, then such zoning must be completed prior to the end of the term hereof (as same may be extended);
- (c) That Seller will be able to convey title to Buyer in fee simple, that Seller's title will be insurable and marketable and subject only to exceptions approved by Buyer, in writing;
- (d) That Buyer's soil tests and borings and site engineering will confirm that the Property, in the sole opinion of Buyer, is suitable for the construction of a retail shopping center on an economically feasible basis;
- (e) That Buyer, in its sole satisfaction, will be able to obtain from the government entities having jurisdiction, approval of its plan for ingress and egress into the Property from public roadways serving the Property; and
- (f) That Buyer, in its sole satisfaction, will be able to secure from the government entities having jurisdiction, approval of its site development plan.

Buyer and Seller understand that the period of time established by this Contract for the Initial Term, and the Extension Terms, is to permit Buyer to undertake the investigations and procedures necessary to verify that the above conditions can be satisfied, or facts verified, in addition to determining whether or not major retailers will be willing to locate stores on the Property. In the event these facts and conditions cannot be verified or satisfied, then Buyer shall have the right to terminate this Contract or allow the then current term to expire as provided in **Section 4** hereof, in which event the deposits paid hereunder, together with any interest earned thereon, will be returned to Buyer.

6. SELLER'S WARRANTY: Seller warrants and represents that: (a) it has the right and authority to enter into this Agreement and all action required on the part of Seller to approve this Agreement and the transaction contemplated herein has been duly and properly taken; (b) that it will take all steps reasonably necessary to enforce the Option Agreement and to purchase the Property; (c) there are no claims, proceedings or other action, either pending or threatened, against Seller's or, to the best of Seller's knowledge, the Property, that would impede or delay Seller in performing its obligations under this Agreement, and that should such a claim arise during the term of this Contract, Seller will diligently defend such claim, proceedings or action in order to be able to complete the transaction contemplated herein; (d) during the term of this Agreement it will not sell or contract to sell the Property and it will not take any action, or permit any action to be taken by others, that would impair or impede the Property or the title to the Property or otherwise diminish the Seller's interest in the Property; and (e) the Property is contiguous to and has access to public streets or roads as shown on the attached Exhibit.

7. TITLE EXAMINATION: Buyer will undertake whatever work and investigations it deems necessary to determine that Seller has marketable, fee simple title in the Property, and that such title is subject only to exceptions that do not adversely affect use of the Property for the purposes contemplated by Buyer. This work may include ordering a preliminary title binder from a title insurance company or a lawyer's title opinion. In such event, Buyer will select the title insurance company and/or attorney and will pay the cost thereof.

Should Buyer's investigation reveal title defects which in Buyer's opinion render Seller's title unmarketable or uninsurable, or should there be exceptions or restrictions that prevent use of the Property as contemplated by the Buyer, Seller agrees to use its best efforts to cure such defect or exception, and the then current term of the Contract may, in the sole discretion of Buyer, be extended for a reasonable time, not to exceed 90 days, to permit Seller to complete the cure or remedy. Seller agrees to furnish such information, documents and affidavits as may be requested by Buyer or the title insurer either prior to or at the time of closing in order to facilitate the issuance of a title policy.

8. CONDEMNATION: If there is a threat of condemnation or an actual condemnation as to any portion of the Property, Buyer shall have the right to elect (a) to decline to purchase the Property, in which event Buyer shall have no further responsibility to Seller and shall be entitled to the return of all deposits paid hereunder, together with the interest thereon, or (b) to purchase the Property by paying the full purchase price but to have the right to receive any

condemnation award, or (c) to purchase the Property by reducing the purchase price in an equitable manner considering the extent of the condemnation and to allow Seller to receive any condemnation award.

9. INGRESS AND EGRESS: The parties acknowledge that the Seller currently does not have the right to enter upon the Property for the purpose of inspecting and testing the Property. Not later October 13, 2004, the Seller shall undertake its best efforts to obtain the following rights with respect to entry upon and inspection and testing of the Property: Buyer and its agents or representatives shall have the right of ingress and egress over the Property at all times during the term of this Agreement for the purpose of examining the Property and making such surveys, soil borings and other tests as Buyer deems necessary to determine the suitability of the Property for the conduct of Buyer's business thereon, provided said tests shall not be so exercised as to damage the Property materially or to interfere substantially with its use or occupancy by Seller. Buyer agrees to indemnify and hold both the Seller and the current property harmless against loss or damage from claims arising out of Buyer's conduct of its tests and investigations on the Property. Buyer shall also have the right to erect temporary signs on the Property for the purpose of announcing its development and tenants and occupants thereon.

10. PERIMETER SURVEY: In the event that Seller does not have a current boundary survey of the Property, or fails to deliver same to Buyer as provided for in **Section 3** hereinabove, Buyer may elect to secure a perimeter survey of the Property by a surveyor or engineer licensed in the State of **Virginia**. Seller shall reimburse Buyer for the cost of said survey at time of closing, or, if the closing does not occur as a result of the failure of any condition contained in **Section 5** hereof, or any default on the part of Seller, upon demand therefore by Buyer.

11. CLOSING: In the event Buyer elects to Purchase the Property and so notifies Seller in writing, then the closing will be held on a date to be chosen by the Buyer which date shall be within **sixty (60)** days after Buyer has notified Seller, in writing, that it is exercising its option to purchase.

At such closing, Seller shall convey the Property to Buyer by Warranty Deed in the form customarily used in similar transactions in the State of **Virginia** and with full covenants of warranty, subject only to exceptions approved by Buyer in writing. Seller further agrees to deliver to Buyer, at closing, such other documentation as may be required by Buyer and its title insurance company.

Simultaneous with the delivery of said Warranty Deed to Buyer, Buyer shall pay to Seller the purchase price in cash or by cashier's check or federal bank wire.

12. DEFAULT OF SELLER: Should this transaction not be concluded because of the default of Seller, then the deposits paid by Buyer, including any interest earned thereon, shall be returned to Buyer, and in addition, Buyer shall have such other rights or remedies as may be afforded to it by law or equity, including but not limited to, the right of specific performance.

13. DEFAULT OF BUYER: In the event that all conditions set forth in **Section 5** hereinabove have been met and Seller is ready, willing and able to perform its obligations under this Contract then, in the event that Buyer elects not to purchase the Property, Seller as its sole remedy, may retain the deposits paid by Buyer as full liquidated damages, and both Buyer and Seller will be relieved of all rights and obligations under this Contract, it being agreed by the parties that such damages would be difficult to ascertain and calculate and that such deposits shall constitute reasonable liquidated damages under the circumstances.

14. PRORATION OF TAXES; PAYMENT OF EXPENSES: Ad valorem taxes on the Property shall be prorated between Buyer and Seller as of the date on which this transaction is closed. If, on such date, the rate of taxes or amount of assessment is undetermined, proration shall be on the basis of the rate or amount applicable for the next preceding year.

Seller shall be responsible for the cost of all transfer and documentary stamps and for the preparation and delivery of all documents to be furnished by Seller. Buyer shall be responsible for the cost of recording the deed and the cost of Buyer's title insurance policy. Each party shall be responsible for its own attorney's fees.

15. CONTIGUOUS PARCELS: Deleted prior to signature.

16. WARRANTY AS TO CONDITION OF SITE: Seller has notified the Buyer that an environmental Phase I and Phase II ("Environmental Reports") have been issued for the Property, and that such Environmental Reports revealed the existence of Asbestos in the building located on Parcel A. Additionally, pursuant to the Environmental Reports, a monitoring well was placed on the Property. Based on a recent Ground Water Sampling Report from S&ME, Inc., the monitoring well is reporting all substances under the "Below Quantitation Limit", except for the presence of barium, which is a naturally occurring metal. Seller hereby warrants that to the best of its knowledge none of the following substances, other than what is noted above, exist on, over or beneath the Property, and that none of such substances have been produced, generated, stored or released on, over or beneath the Property by Seller or any other person or entity whatsoever at any time, to wit: (i) "hazardous substances" as defined by the

Comprehensive Environmental Response, Compensation and Liability Act of 1960, "CERCLA" in 42 U.S.C. Section 9601 (14), (ii) "pollutants or contaminants" as defined by CERCLA in 42 U.S.C. Section 9601(33), (iii) "hazardous wastes" as defined by the Resource Conservation and Recovery Act in 42 U.S. C. Section 6903(5) and identified in 40 C.F.R. Section 261, or (iv) hazardous substances, hazardous wastes, pollutants or contaminants, as defined in similar Federal or state statutes or regulations. The Seller shall not be held responsible for any environmental contamination that occurred prior to the effective date of this Option; however, Seller agrees to indemnify and hold harmless Buyer against all loss, claims, suits, liability and expense arising out of any such production, generation, storage or release having occurred at any time on the Property from the effective date of this Agreement through the date of closing, including the loss of value and the expenses associated with governmental reporting and penalties and clean up restoration. Seller further agrees to indemnify and hold harmless Buyer against all loss, claims, suits, liability and expense arising out of any such production, generation, storage or release having occurred at any time on the Property through the date of closing, including the loss of value and the expenses associated with governmental reporting and penalties and clean up restoration.

17. **FOREIGN PERSON AFFIDAVIT- OTHER TAX MATTERS:** At the closing Seller shall furnish to Buyer such affidavit or certificate as Buyer may reasonably require for the purpose of establishing that Seller is not a foreign person and has no foreign affiliation which would require withholding under Section 1445 of the Internal Revenue Code.

18. **ASSIGNMENT:** Buyer shall have the privilege of assigning this Contract to any person or persons, firm or corporation, prior to the closing date. Buyer shall deliver to Seller an executed copy of any such assignment, in which event Seller shall close the transaction with the assignee of Buyer.

19. **RECORDATION:** Buyer, at its sole discretion, shall have the right to record this Contract or a memorandum thereof.

20. **REAL ESTATE COMMISSION:** Buyer and Seller each warrant to the other that each, respectively, has not dealt with any other broker or third party in connection with this transaction, other than Dominion Real Estate Services, Inc. Seller shall not be responsible for the payment of any sales commission in the event this option is exercised by Buyer.

21. **BINDING EFFECT:** This Contract shall inure to the benefit of, and shall be binding upon, each of the parties hereto, and their respective heirs, personal representatives, successors and assigns.

22. **SURVIVAL:** Each and every provision of this Contract shall survive the closing and shall not be nullified or affected by the closing.

23. **ENTIRE AGREEMENT:** This Contract and the documents referred to in this Contract constitute the entire agreement between the parties, and there are no other conditions, covenants or agreements which shall be binding between the parties.

24. **GOVERNING LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State in which the Property is located.

25. **SPECIAL CONDITIONS** – The Buyer agrees to grant the Seller an Access Easement, at closing, to its retained property shown as Parcel "D" on the attached Exhibit A.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals (or in the case of a corporation caused this instrument to be executed by its duly authorized officers) on the date set out below their respective signatures, but as of the date above first written.

**Voting Aye: Harris, Foley, Cockerham, Martin, and Young**

**Voting Nay: None**

**On motion by David G. Young, seconded by Darrell Cockerham and carried, the Board does here by accept the following Right of Entry agreement:**

#### **RIGHT OF ENTRY**

This Right of Entry is made between PATRICK COUNTY BOARD OF SUPERVISORS, a political subdivision of the Commonwealth of Virginia ("Patrick Co."), and DORN V. WILLIAMS, an individual Property Owner in Stuart, Virginia ("Owner").

WHEREAS, Patrick Co. is interested in acquiring and redeveloping certain property located in the County of Patrick, City of Stuart, Virginia; and

WHEREAS, Owner owns that certain parcel of real property located in Stuart, Virginia as more particularly described as outlined in red on Exhibit A attached hereto and incorporated herein by reference (the "Williams Property"); and

WHEREAS, the Owner has or will grant to Patrick Co. an option to acquire the Williams Property (the "Option") and, as an accommodation to Patrick Co., the Owner is willing to grant

permission to Patrick Co. and/or its representatives to enter onto the Williams Property in order to do testing, surveying, and due diligence to investigate the feasibility of including the Williams Property as part of Patrick Co.'s proposed redevelopment of the property in Stuart, Virginia.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the payment of Ten Dollars (\$10.00) in hand paid each to the other, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Owner grants to Patrick Co. and/or its representatives, its contractors, agents, employees and assigns a right of entry and license to enter upon the Williams Property to do testing, surveying, environmental investigations, soil investigations and borings, sampling, and such other reasonable due diligence as Patrick Co. and/or its representatives deem appropriate. Patrick Co. shall perform such due diligence activities in a manner such that it minimizes its interference with the operation of any business located on the Williams Property. Patrick Co. shall give the Owner at least two (2) days notice by phone that it will be on the Property to perform any of the above due diligence tasks.

2. Patrick Co. agrees to comply with all local, state and federal laws, rules and ordinances applicable to the work. Patrick Co. shall, prior to doing subsurface testing, take appropriate steps to locate existing utilities.

3. Patrick Co. shall indemnify, defend, protect, and hold harmless the Owner, its tenants, employees, agents or contractors, from all loss, costs or damage to persons or property arising out of Patrick Co. or its employees, agents or contractor's entry upon the Williams Property.

4. The term of this right of entry shall be for a period of three (3) months from the effective date of the Option Agreement between the parties. This Agreement shall be automatically extended, without further writing as to such, with any such extension exercised pursuant to the terms of the Option Agreement.

5. In the event Patrick Co. or its employees, agents or contractor's disturb the Williams Property in exercising its rights under this Agreement, Patrick Co. agrees to restore the Williams Property to substantially the same condition as existed prior to Patrick Co.'s entry on the Williams Property.

6. This agreement constitutes the entire understanding between the parties with respect to the activities contemplated by this Agreement. All prior agreements or understandings, whether oral or written, are superseded. This agreement may be amended only by a written document duly executed by the parties. This agreement is governed by the laws of the Commonwealth of Virginia.

**Voting Aye: Harris, Foley, Cockerham, Martin, and Young**

**Voting Nay: None**

**The County Administrator advised that she had asked Michael Hudson, Patrick County Emergency Management Coordinator, to give the Board a status report on the recent flooding in the County as a result of Hurricane Jeanne. Mr. Hudson reported that forty-three structures in the County had been damaged by the flooding; some of the damages were minor and some were major. He stated that three businesses had been damaged and that they are in the process of compiling cost estimates, which will be submitted to his office. He advised that his office has submitted a report to the Virginia Department of Emergency Management and has also requested that Congressman Boucher and the Governor include Patrick County in a Declaration, which would provide federal funding for the citizens who were affected. He advised that he has not received any word on that as of yet. Mr. Hudson stated that FEMA visited Patrick County last Saturday to examine the damage, however, that agents have not yet given any indication concerning their ruling. He noted that FEMA looks for three things during their examinations, which include: safety, security, and sanitation, and that its purpose is to get citizens "back on their feet" after such disasters. Mr. Hudson presented the Board with a map of the County, which he and the County Administrator had placed green dots to depict the areas that received major damage. He advised that his office did not declare a local emergency during this flood because the County's resources were not extended beyond its normal operation. He noted that the County held a mock disaster this morning in which two dams were busted. The County Administrator stated that she appreciates Mr. Hudson's hard work. She said that he worked a lot of long hours during the flood and that the rest of the staff in the office pulled together to do what needed**

to be done. Mr. Hudson noted that the County needs to go ahead and do something about an Emergency Operations Center (EOC).

**Mr. Cockerham temporarily left the meeting.**

**On motion by David G. Young, and seconded by H. Danny Foley, Sr. and carried, the Board convened into Executive Session to discuss legal matters [Section 2.2-3711 (A)(7) and prospective business [Section 2.2-3711 (A)(5) 1950 Code of Virginia as amended].**

**Voting Aye: Harris, Foley, Martin, and Young**

**Voting Nay: None**

**Temporarily Absent: Cockerham**

**Mr. Cockerham rejoined the meeting during executive session.**

**On motion by Darrell Cockerham, seconded by H. Danny Foley, Sr. and carried, the Board reconvened into regular session, based upon the following:**

**WHEREAS, the Patrick County Board of Supervisors has convened an executive meeting on this date pursuant to an affirmative recorded vote and in accordance with provisions of the Virginia Freedom of Information Act, and**

**WHEREAS, Section 2.1-344.1 of the Code of Virginia requires a certification by the Board that such executive meeting was conducted in conformity with Virginia law,**

**NOW, THEREFORE, BE IT RESOLVED that the Patrick County Board of Supervisors does hereby certify that, to the best of each member's knowledge, only such public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered by the Board,**

**BE IT FURTHER RESOLVED that the Patrick County Board of Supervisors does hereby certify that, to the best of each member's knowledge, only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive meeting to which this certification resolution applies.**

**Voting Aye: Harris, Foley, Cockerham, Martin, and Young**

**Voting Nay: None**

**On motion by Roger L. Martin, seconded by H. Danny Foley and carried, the does hereby adopt the following resolution in support of placing a New College in Martinsville / Henry County.**

**WHEREAS, higher education can be the catalyst for economic revitalization in Southside Virginia, and**

**WHEREAS, many leaders in the Commonwealth have called over the years for the establishment of a new public college (a "New College") in Southside Virginia ("Southside"), including State Senator Charles R. Hawkins of Pittsylvania County and, more recently, Lieutenant Governor Timothy M. Kaine, and**

**WHEREAS, the Commonwealth is not in a position fiscally to establish a New College without substantial local funding, and a locality could be expected to contribute substantial funding to any New College begun within it, and**

**WHEREAS, Patrick County is not in a position fiscally to contribute substantial funding to a New College, and**

**WHEREAS, in January 2004 the Harvest Foundation of the Piedmont presented the Commonwealth with a \$50,000,000 challenge grant to help begin a New College in Martinsville/Henry County, and**

**WHEREAS, the Harvest Foundation's plans for the New College, as developed by Dr. Ronald E. Carrier, former president of James Madison University, are non-traditional and**

innovative, and seek to stimulate the regional economy and provide accessible higher education to the underserved students of the region, and

WHEREAS, the Board has long held the firm belief that only by working together on a regional basis can many of the County's goals be accomplished, and

WHEREAS, education and knowledge are the foundations of success in the twenty first century economy and are necessary for the success of Southside as a region,

NOW THEREFORE BE IT HEREBY RESOLVED that the Board of Supervisors of Patrick County supports the Commonwealth's acceptance of the \$50,000,000 challenge grant make by the Harvest Foundation, and supports the establishment by the Commonwealth of a New College in Martinsville/Henry County, with affiliated weekend colleges in surrounding Southside localities,

BE IT FURTHER RESOLVED that the Board does hereby prefer and encourage the placement of the New College in the Western portion of Henry County.

**Voting Aye: Harris, Foley, Cockerham, Martin, and Young**

**Voting Nay: None**

**On motion by H. Danny Foley, Sr., seconded by Darrell Cockerham and carried, the Board does hereby request Congressman Rick Boucher for his assistance in securing funding to study problems encountered in Patrick County due to the coyote population and determine if the United States Department of Agriculture (USDA) can assist in the commencement of a control program.**

**Voting Aye: Harris, Foley, Cockerham, Martin, and Young**

**Voting Nay: None**

**Ordered that the Board be adjourned.**

**, Chairperson**