

PERFORMANCE AGREEMENT

THIS PERFORMANCE AGREEMENT (“Agreement”) is made as of this ____ day of _____, 2019, by and between the TOWN OF BEDFORD, VIRGINIA, a municipal corporation of the Commonwealth of Virginia (the “Town”), the ECONOMIC DEVELOPMENT AUTHORITY OF THE TOWN OF BEDFORD, VIRGINIA, a political subdivision of the Commonwealth of Virginia under the Industrial Development and Revenue Bond Act (the “Authority”), and WAUKESHA DEVELOPMENT, INC., a Virginia corporation (the “Company” or “Waukeshaw”).

Recitals

WHEREAS, the Company desires to develop the following properties (collectively the “Property”), which are more specifically described in **Exhibit A** hereto:

Property Address: 503 Longwood Ave, Bedford, VA

Property Parcel IDs: 174-5-1-T, 174-5-2-T, 174-5-3-T, 174-5-4-T, 194-A-170-T

Property Description: Bedford Middle School Property and ‘Old Yellow’;

WHEREAS, the Company contemplates redeveloping the Property by converting the ‘Old Yellow’ structure to a hotel with approximately 34 rooms, the Old Middle School structure to an apartment building with approximately 50 market-rate apartment units, together with other improvements, for a total direct investment of approximately \$10 million, for a net direct investment in the Town of approximately \$9.6 million, together with associated spinoff economic impacts and increased tax revenues; and

WHEREAS, the Town contemplates that it will lease the Property to the Company during a Due Diligence Period of six months, which may be extended to 12 months or terminated early by the Company, followed by sale to the Company upon completion of the Due Diligence Period, as permitted by Section 15.2-1802 of the Code of Virginia, 1950, as amended; and

WHEREAS, the Authority contemplates granting the Company a credit line for due diligence items, secured by a promissory note and deed of trust, which will be forgiven upon satisfactory completion of performance targets; and

WHEREAS, the Town and Authority desire for the Company to complete the Project; and

WHEREAS, the Town and Authority expressly find, by adopting this Agreement, that entry of this Agreement will further the public safety, health, and general welfare by increasing the tax base, increasing commerce, and incenting a business to locate in the Commonwealth, and that these are the animating purposes for entry into this Agreement.

Witnesseth

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained herein, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree:

1. Lease & Due Diligence Period.

- a. Lease. The Town shall grant the Company a ground lease (“Lease”) for the Property substantially as set forth in **Exhibit C** upon signing of this Agreement. The Lease shall extend for six (6) months from the date of this Agreement to

perform any due diligence (the “Due Diligence Period,” which term shall include any extensions) necessary to determine whether the Property is suitable for the Project. If the Company is diligently pursuing due diligence items, the Due Diligence Period may be extended for one (1) additional six (6) month term at the discretion of the Town. The Company may, at its sole discretion, exercise its option to close on purchase of the Property early as set forth in the Lease.

- b. Town to Share Information. Within five days of the execution of this Agreement, the Town will provide the Company with copies of all due diligence items requested by the Company. These include, but are not necessarily limited to, any existing surveys and plats of the Property, any photos and building plans, historic or otherwise, any environmental studies or written communications with the Environmental Protection Agency (EPA), the Virginia Department of Environmental Quality (DEQ), or any other governmental agency, any environmental reports, any existing title commitment or policy for the Property, and any physical inspection reports or warranties.
- c. Access to Property During Due Diligence Period. Within five days of execution of this Agreement, the Town will provide the Company with copies of all keys, codes, or other security information reasonably necessary for it to make all inspections and tests necessary for due diligence. The Company shall have full and complete access to the Property to carry out the objectives of this Section.
 - i. During the Due Diligence Period, the Company, its agents, employees, representatives, and contractors, at the Company’s sole cost and expense, may perform such tests, inspections, and examinations of the Property as the Company deems advisable, including without limitation investigations with regard to title, physical condition, environmental matters, matters of survey, flood plain, utilities availability, zoning and building code, and other applicable governmental requirements, financing requirements, and development requirements.
 - ii. Company shall assume all risks involved in entering upon the Property for the performance of such activities and shall indemnify and hold Town harmless from and against all loss or expense by reason of any liability from loss or damage to person or property sustained by anyone arising out of, or in connection with, any such entrances on the Property by the Company, its agents, employees or contractors. The Company shall repair any damage caused by Company or its agents, employees, or contractors resulting from its or their entry upon the Property and restore the Property to the condition existing on the date of this Agreement.
- d. Town to Assist in Application for Historic Preservation Designation. The Town shall act as applicant during the Due Diligence Period for “Part 1” and “Part 2” applications to both the Virginia Department of Historic Resources and the National Park Service, to work with the Company’s historic consultant to complete and submit those applications.

2. Credit Line & Deed of Trust.

- a. Town to Transfer Funds to the Authority. As soon after execution of this Agreement as practical, the Town shall transfer \$400,000 to the Authority (the “Incentive Fund”), in trust to fulfill the terms of this Agreement.

- b. During Due Diligence Period. During the Due Diligence Period, the Company may draw against the Incentive Fund for the following items (as to any information, data, or studies, individually and collectively the “Due Diligence Materials”):
 - i. Determination of the eligibility of the Property or any part thereof for the State or National Historic Register, or both;
 - ii. Preparation and application fees associated with “Part 1” and “Part 2” applications to the Virginia Department of Historic Resources and the National Park Service;
 - iii. An American Land Title Association (ALTA) and topographic survey;
 - iv. A title search;
 - v. A Phase 1 Environmental Site Assessment (ESA);
 - vi. Retention and work by a consultant or consultants retained to seek or determine other grant funding opportunities from third parties to this Agreement;
 - vii. Costs of rezoning the Property as contemplated herein;
 - viii. Structural assessment;
 - ix. Preliminary architectural design work;
 - x. Selective demolition or abatement, as required by a lender or the Town’s Chief Building Official;
 - xi. Required matches for grants to benefit the project;
 - xii. Application fees and costs of preparation of applications and information for other grants and incentives from any third party; and
 - xiii. Such other and further due diligence items as the Company may request reimbursement for, and the Authority may determine are reasonable to reimburse.
- c. Purchase Option. Upon exercise of the Purchase Option set forth in the Lease (“Option”), the Town shall give the Company a deed in substantially the form set forth in **Exhibit F** as soon as the necessary closing documents may be prepared and closing scheduled.
- d. Credit Line. Upon entry of the Lease, the Company shall give the Authority an unsecured, non-interest-bearing promissory note in substantially the form set forth in **Exhibit D**. During the Due Diligence Period, the Company may draw against the credit line in the Note for the items set forth in Subsection 2.b. At closing on the sale of the Property, if the Option vests or is exercised, the Note shall be secured by a Deed of Trust in substantially the form set forth in **Exhibit E**, which the Company shall deliver to the Authority at closing. All draws of funds against the Promissory Note for Due Diligence Items during the Due Diligence Period as permitted under Subsection 2.b shall be made a balance under the Note secured by the Deed of Trust at closing. Following closing, the restrictions set forth in subsection 2.b. shall terminate and the Company may, at its election and at any time during the term of the Deed of Trust, draw upon the credit line to

its maximum permitted principal of \$400,000 for any lawful purpose related to the Project, including, but not limited to, payment of permitting fees that the Town is not able to waive, payment of grantee's tax, or matches for grants. The Authority will subordinate its Deed of Trust to a deed of trust securing a construction loan on the Property for the Project if such subordination is required by the Company's lender.

- e. Forgiveness of Credit Line. If the Company faithfully meets its performance commitments under Section 3 and otherwise complies with the terms of the Promissory Note and Deed of Trust, the Authority shall forgive the balance on the credit line set forth in Section 2.d upon substantial completion as set forth in Section 3.c and release the Deed of Trust.

3. Company's Performance Commitments.

- a. Rezoning Application. The Company, as the applicant, will initiate a change of zoning within the first ninety (90) days after exercise of its Option to purchase the Property. The new zoning shall be "CNW," subject to the proffered conditions attached hereto as **Exhibit B**. The Company shall prepare the application and associated documents; provided, however, that the Town will not unreasonably refuse any assistance or information necessary for the application or processing of the rezoning. This paragraph in no manner binds the legislative discretion of the Town Council to approve or deny any rezoning. However, in the event the rezoning is denied or is conditioned in a manner that will frustrate the manifest intent of this Agreement, the Company may terminate the Agreement and return all intellectual property to the Town, without any further liability for performance.

Company shall submit to the Town with its application a traffic study and traffic and parking management plan prepared by a qualified professional. Such plan shall be considered by the Planning Commission and Town Council, and approved as part of the rezoning or site plan for the Property.

- b. Intent of Project. Company represents that the Project cost (including but not limited to construction and related soft costs) is estimated at \$10,000,000, though the final actual cost may vary from that estimate as the Project evolves. The uses which the Company shall make of the Property, subject to such variations as may be approved upon final engineering and zoning approval, are:

- The 'Old Yellow' building will be redeveloped as a boutique hotel, with approximately 34 rooms.
- The Middle School building will be redeveloped with approximately 50 market-rate apartment units; provided, however, that the existing auditorium space will be preserved as an auditorium. The Company shall be responsible for programming the auditorium.
- The cafeteria building will be used as a catering kitchen and classroom or office space.
- The gymnasium building will be maintained as gymnasium space; the existing classroom space in the building may be adapted to office space.
- All proposed uses will be clearly identified within a site plan submitted by the Company that is fully compliant with Section 1002.02 of the Town of Bedford Land Development Regulations.

- c. Completion. The Company shall have thirty-six (36) months from closing on the

sale of the Property to substantially complete the Project. "Substantially complete" means that the Old Yellow and Middle School structures are substantially complete and able to obtain a final certificate of occupancy for the entire structures for the uses set forth in Subsection b., above, in the judgment of the Chief Building Official for the Town of Bedford.

4. Town and Authority Commitments. In addition to the foregoing, the Town and the Authority agree to provide the following in conjunction with the redevelopment and construction of the Property by the Company:

- a. Incentive Conduit. The Town agrees that it will not unreasonably refuse to act as conduit for any additional incentives or funds identified by the Town or the Company that may benefit the project, including those that must be procured by a not-for-profit entity or municipality.
- b. Permitting Fee Waiver. The cost for any and all permitting fees under the control of the Town shall be granted back to the Company through the Town within 60 days after payment thereof for the first forty-eight (48) months following execution of this Agreement. The Company acknowledges that the Town may have no authority to waive a fee from another agency, but the Town agrees to act in certain cases as an agent of the Company seeking any and all incentives from other agencies that may benefit the Project.
- c. Traffic Study Grant. Should the Company seek a grant for a traffic study under which the Town must submit the grant application, the Town shall apply for a planning grant to cover the cost of obtaining such a study, provided, however, that the Town does not guarantee that any such grant will be obtained, and the Company shall be completely responsible for any match or other costs involved in the development and publication of said study.

5. Default & Lease. If the Company fails to receive historic preservation certification Part 1 and 2 (conditional) and commence construction and renovation activity within twelve (12) months of closing on purchase of the Property, as evidenced by issuance of a building permit and substantial actual construction activity, the Company shall be in default of this Agreement, and the Authority may foreclose immediately in accordance with the terms of the Note and Deed of Trust. If the construction is not substantially complete within thirty-six (36) months, as set forth in Section 2.d., above, the Company shall be in default of the Agreement, and the Authority may foreclose immediately in accordance with the terms of the Note and Deed of Trust.

6. Force Majeure. In the event that any party to this Agreement is delayed or prevented from performing any of its respective obligations (the "Delayed Party") under this Agreement by reason of strikes, lockouts, labor problems, inability to procure materials, contractors, professionals, inability to obtain utilities or failure of utilities, laws or other governmental requirements, riots, war, or other cause not brought about by the Delayed Party, and not related to any financial liability on the part of the Delayed Party, the time for performance of the obligation shall be extended by a period of time equal to the period of such delay or prevention.

7. Due Diligence Materials. The Company shall provide the Town with written notice of the steps it undertakes during the Due Diligence Period. In the event the Company elects not to exercise the Option to Purchase, it shall promptly turn over to the Town any all copies of the Due Diligence Materials and any data, results, or information contained in or related to the Due Diligence Materials, all of which shall be considered the property of

the Town and which the Town will be free to use in further efforts to develop the Property or other lawful purposes. All such Due Diligence Materials shall, upon a failure or refusal to exercise the Option, be deemed "work-for-hire" for the benefit of the Town and will be the property of the Town. At the Town's request and expense, the Company shall undertake all further actions as the Town deems necessary to perfect or protect the Town's ownership and use of the Due Diligence Materials and any data, results, or information contained in or related to the Due Diligence Materials.

8. **Notices.** Notices required under this Agreement shall be given at the following addresses. These addresses may be changed by sending notice to all other parties at the addresses below.

If to Company, to:

WAUKESHAW DEVELOPMENT, INC.
245 East Bank Street
Petersburg, Virginia 23803
Attn: Dave McCormack

If to the Town, to:

TOWN OF BEDFORD, VIRGINIA
215 East Main Street
Bedford, Virginia 24523
Attn: Barrett F. Warner, Town Manager

With a copy to:

GUYNN, WADDELL, CARROLL & LOCKABY, P.C.
415 South College Avenue
Salem, Virginia 24153
Attn: Michael W.S. Lockaby, Esq.

If to Authority, to:

ECONOMIC DEVELOPMENT AUTHORITY OF THE TOWN OF BEDFORD,
VIRGINIA
215 East Main Street
Bedford, Virginia 24523
Attn: Mary Zirkle, Economic Development Coordinator

With a copy to:

CASKIE & FROST, P.C.
2306 Atherholt Road
Lynchburg, Virginia 24501
Attn: Theodore J. Craddock, Esq.

9. **Assignability.** No obligation under this Agreement may be assigned to a third party without the prior written consent of all Parties except that the Company may assign this Agreement, or any part thereof, to an entity under common control with the Company upon providing the Town and the Authority written notice of such assignment. Any such

assignment, however, shall not relieve the Company from any of its obligations under this Agreement.

10. Miscellaneous.

- a. The Town may cause a memorandum of this Agreement, in substantially the form set forth in **Exhibit G**, to be recorded among the land records of Bedford County, Virginia, so as to ensure that its provisions shall both bind and inure to the benefit of their successors in interest.
- b. The Company agrees to hold the Town and the Authority and their officers, directors, councilors, and employees free and harmless for and from any and all claims, causes of action, damages or any liability of any type, including reasonable attorney's fees, on account of any claims by or any injury or damage to the Company, its employees, officers, directors, and contractors for any action, suit, or other claim arising in any way out of any actions, omissions or activities of the Company or its agents, employees, or representatives related to the performance of their obligations in this Agreement.
- c. This Agreement, including the exhibits hereto, constitutes the full and complete agreement of the Parties respecting its subject matter, and any prior or contemporaneous agreements or understandings, written or oral, are hereby merged into and superseded by the provisions of this Agreement. This Agreement may only be amended or supplemented by a subsequent writing of equal dignity except where expressly set forth herein.
- d. No covenant, agreement, or obligation contained in this Agreement shall be deemed to be a covenant, agreement, or obligation of any present or future director, officer, employee, or agent of the Town or the Authority in his or her individual capacity, and neither Town nor Authority officials nor any officer, employee, or agent thereof executing this Agreement or any related instrument shall be liable personally on this Agreement or such instrument or be subject to any personal liability or accountability by reason of the execution and delivery thereof. No director, officer, employee, or agent of the Town or the Authority shall incur any personal liability with respect to any other action taken by him or her pursuant to this Agreement or any of the transactions contemplated hereby or thereby, provided he acts in good faith.
- e. Any obligation of the Town to pay, set aside, or otherwise appropriate funds for performance of this Agreement in future fiscal years shall be construed to be subject to annual appropriation and shall not constitute a pledge of the full faith and credit of the Town. The obligations of the Authority under this Agreement are not general obligations of the Authority but are limited obligations payable solely from revenues and receipts derived by the Authority from the Town pursuant to this Agreement. **THE OBLIGATIONS OF THE AUTHORITY AND THE TOWN HEREUNDER SHALL NOT BE DEEMED TO CONSTITUTE A DEBT OR PLEDGE OF THE FAITH AND CREDIT OF THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE AUTHORITY AND THE TOWN.**
- f. If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is a Saturday or Sunday or a legal holiday in the Commonwealth of Virginia, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to

be given, on the first business day following such Saturday, Sunday or legal holiday. Unless otherwise specified herein, all references in this Agreement to a "day" or "days" shall refer to calendar days and not business days.

- g. This Agreement shall be construed according to the laws of the Commonwealth of Virginia without regard to its principles of conflicts of laws. The Parties consent to exclusive venue and jurisdiction in the Circuit Court or General District Court, as appropriate, for Bedford County, Virginia.
- h. The Parties agree that, except as specifically provided in this Agreement, each Party shall bear its own legal costs with regard to any obligation under this Agreement or in any action or suit for the enforcement hereof.
- i. This Agreement has been jointly drafted by the Parties, who are all sophisticated and knowledgeable about the subject matter and have had the opportunity to consult with counsel, and is to be construed as jointly drafted and not be construed against any of the Parties as the drafter. This Agreement is severable, and if any provision is found to be invalid by any court of competent jurisdiction, the remainder shall survive.
- j. All Parties warrant that the signatories below have full authority, and have undertaken such legal actions as may be necessary to ensure such authority, to bind the entities of which they are representatives to the full extent permitted by law. The Company agrees that, during the term of this Agreement, it shall not allow its corporate existence to lapse or its certificate of authority in the Commonwealth of Virginia to be revoked or cancelled at any time.
- k. Time is of the essence of all obligations set forth herein for which a time is stated.
- l. The failure of any Party to this Agreement to insist upon strict compliance with any term herein shall not be construed to be a waiver of that requirement.

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

Signatures on Following Page

WAUKESHAW DEVELOPMENT, INC.:

Dave McCormack, President

TOWN OF BEDFORD, VIRGINIA:

Steve C. Rush, Mayor

ECONOMIC DEVELOPMENT AUTHORITY OF
THE TOWN OF BEDFORD, VIRGINIA:

_____, Chair

Exhibit A

TRACT A:

All that certain tract or parcel of land lying and being in the Town of Bedford, Virginia, on the north side of Longwood Avenue and of metes and bounds, courses and distances as follows:

BEGINNING at an iron pipe in Guy's Line, thence with Hayes' line S. $70^{\circ} 44'$ 157.6 feet to an iron pipe, thence S. 20° W. 376.4 feet to a point in the north edge of the concrete sidewalk on the north side of Peaks Street, thence along the edge of said street and sidewalk S. $55^{\circ} 06'$ E. 206.5 feet, thence on an irregular curve of said walk to the left, located by a base line N. $66^{\circ} 54'$ E. (at 7 feet the edge of the walk is right 3.8 feet; at 16 feet, is right 6.2 feet; at 26 feet is right 4.8 feet) in all 34.5 feet thence along the edge of Longwood Avenue and the edge of said concrete sidewalk N. $32^{\circ} 54'$ E. 51.1 feet, thence N. $62^{\circ} 42'$ E. 194.4 feet to an iron pipe, thence N. $73^{\circ} 35'$ W. 35 feet to an iron pipe, thence with his and others' line N. $2^{\circ} 10'$ W. 584.2 feet to an iron pipe, thence N. $87^{\circ} 24'$ W. 345.5 feet to an iron pipe, thence with Guy's Line S. $11^{\circ} 55'$ W. 476.3 feet to the point of BEGINNING; and containing 8.37 acres, more or less.

And being comprised of the following lots or parcels:

PARCEL 1

The residue of a tract formerly containing 0.85 acre, more or less, conveyed to the Town of Bedford by E.W. Connell by Deed dated September 27, 1941, of record in the Clerk's Office of the Circuit Court for Bedford County, Virginia, in Deed Book 195, page 540; after deducting therefrom a conveyance off to Sydnor W. Hayes by the Town of Bedford of a strip of said tract to close an alley, by Deed dated September 13, 1949, and of record in the aforesaid Clerk's Office in Deed Book 228, page 18, together with the easements appurtenant thereto.

PARCEL 2

A tract of 6.09 acres, more or less, conveyed to the School Board of the Municipal District of the County of Bedford, by Junia A. Graves, unmarried, and F.O. Thomas, et ux., by Deed dated April 1, 1912, of record in the Clerk's Office of the Circuit Court for Bedford County, Virginia, in Deed Book 106, page 42; and subject to a certain easement dated December 12, 1949, from the Municipal School Board of the Town of Bedford, Virginia, to W.W. Childress and Mary P. Childress, of record in the aforesaid Clerk's Office in Deed Book 229, page 178.

PARCEL 3

A tract of 2.29 acres, more or less, conveyed to the School Board of the Municipal District of the County of Bedford, by C.E. Harris, et al., Trustees of St. John's Protestant Episcopal Church, Bedford, Virginia, by Deed dated July 1, 1920, of record in the aforesaid Clerk's Office in Deed Book 130, page 412.

PARCEL 4

A tract containing 5,417 square feet, more or less, conveyed to the Municipal School Board of the Town of Bedford, by Hanford R. Johnson by Deed dated November 14, 1939, and of record in the aforesaid Clerk's Office in Deed Book 189, page 30.

AND BEING IN TOTAL that same property conveyed by the County School Board of Bedford County, Virginia, to the City of Bedford, Virginia (now the Town of Bedford, Virginia), by Deed dated June 27, 1985, and of record in the aforesaid Clerk's Office at Deed Book 591, page 171.

TRACT B:

All those certain lots or parcels of land, together with the privileges and appurtenances thereunto belonging, fronting on the west side of Westview Avenue (formerly Belmont Avenue) in the City of Bedford, Virginia, and being Lot 1 fronting 86.1 feet on Westview Avenue and Lots 2, 3, and 4 each fronting 75 feet on Westview Avenue as shown on a certain Plat of Survey entitled, "Plat of the F.O. Thomas Lots situated on the West Side of Belmont Avenue in the Town of Bedford, Virginia," dated August 6, 1936, made by James L. Patterson, C.L.S., and of record in the Clerk's Office of the Circuit Court of Bedford County, Virginia, in Plat Book 3, page 122. And being the same identical lots which were acquired by the County School Board of Bedford County, Virginia, as follows:

LOT 1

Lot 1 from John N. Thomas, et ux., et al., by Deed dated July 3, 1967, and of record in the aforesaid Clerk's Office in Deed Book 341, page 655.

LOT 2

Lot 3 from Cosey Updike Davey, widow, by Deed dated July 25, 1969, and of record in the aforesaid Clerk's Office in Deed Book 356, page 328.

LOTS 3 & 4

Lots 3 and 4 from C.C. Moore, et ux., by Deed dated July 26, 1969, and of record in the aforesaid Clerk's Office in Deed Book 356, page 330.

AND BEING IN TOTAL that same property conveyed by the County School Board of Bedford County, Virginia, to the City of Bedford, Virginia (now the Town of Bedford, Virginia), by Deed dated March 1987, and of record in the aforesaid Clerk's Office at Deed Book 804, page 107.

**BEDFORD MIDDLE SCHOOL
PROPOSED REDEVELOPMENT
CIRCUIT SITE PLAN**

May 25, 2018

Areas/Buildings to be Leased by Waukeshaw
Areas/Buildings of Identified or Potential
Town/Public Interest

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2. 1. Principal brick building, (Market rate apartments)
3. "Old Yellow" building, (Bedouine hotel)
4. Gymnasium building, (Split between gym and classrooms)
4. Athletic field
5. Proposed new parking adjacent to Westview Avenue.
6. Cafeteria building.
7. Auditorium.
8. Proposed new parking adjacent to existing rear parking.
9. Existing parking in front of "Old Yellow" building.
10. Existing front driveway.
11. Existing driveway and rear parking.
12. Existing green space.

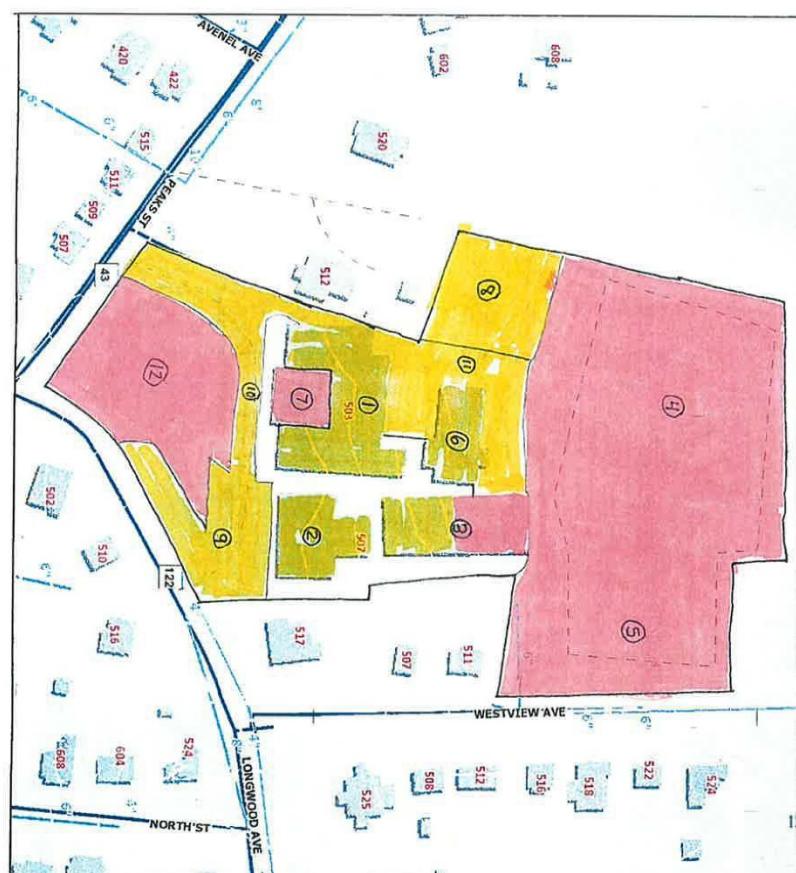


Exhibit B
REZONING PROFFERS

These proffers are voluntarily submitted by the applicant pursuant to Section 1004 of the Land Use Regulations of the Town of Bedford, Virginia, and Section 15.2-2298 of the Code of Virginia, 1950, as amended. The applicant proffers the following conditions:

1. The applicant proffers these conditions as part of its application for rezoning of the parcel or tract known as Tax Map Nos. 174-5-1-T, 174-5-2-T, 174-5-3-T, 174-5-4-T, 194-A-170-T from the _____ (____) District to the Central Neighborhood Workplace (CNW) District.

2. The applicant proffers that he will not make the following uses that are permissible in the CNW District:

- a. Agriculture.
- b. Kennels.
- c. Child care centers, family day care homes, and group homes.
- d. Boardinghouses, lodges, fraternities, and sororities.
- e. Mobile home parks.
- f. Billiard parlors, bowling alleys, and other sports or amusement properties.
- g. Laundries and dry cleaners, except as a private facility for residents only.
- h. Bus terminal facilities.
- i. Dancing establishments.
- j. Motor vehicle sales.
- k. Nightclubs and bars, except as ancillary to the hotel use.
- l. Temporary uses.
- m. Clinics and doctors' offices.
- n. Emergency homeless shelters.
- o. Automobile service stations.
- p. Car washes.
- q. Mini-storage or mini-warehouse units.
- r. Automotive, bus, and truck mechanical and body repair garages.
- s. Licensed group homes for children.
- t. Crisis centers.
- u. Tattoo parlors.
- v. Automobile, washing facility and/or repair, mechanical and body garage.
- w. Automobile refueling, washing, mechanical and/or body repair.
- x. Bottling plants or distribution operations and bus terminals.

- y. Cold storage plants and food locker plants.
- z. Abattoirs or slaughterhouses.
- aa. Shops for repair of goods.
- bb. Printing, blueprinting, bookbinding, photostatting, and photocopying shops.
- cc. Private utilities.
- dd. Private sanitary or solid waste facility.
- ee. Manufacture of asphalt paving and roofing materials.
- ff. Automobile, bus, and truck refueling, repair garage, mechanical and body, provided all operations are conducted in a building which shall not have any opening other than a stationary window within 100 feet of a residential district and which shall not store or otherwise maintain any parts or waste material outside such building.
- gg. Automobile sales and their accessory uses which need not be enclosed, provided that any mechanical or body repair must be conducted entirely within a structure which shall not have any opening other than a stationary window within 100 feet of a residential district and that all vehicles on used car sales lots must be in operating condition at all times.
- hh. Blacksmith shop, welding, or machine shop, except on a small scale in connection with a bona fide educational program.
- ii. Boat building, except on a small scale in connection with a bona fide educational program.
- jj. Bottling plants or distribution operations.
- kk. Building and contractor's storage and equipment yards when located entirely within a building or fenced-in area, except for periods of not more than three consecutive months during periods of actual construction.
- ll. Cabinet making, furniture and upholstery shops, except on a small scale in connection with a bona fide educational program.
- mm. Public sanitary or solid waste management facility, recycling bins or facilities, except usual or customary dumpsters for permitted uses and screened dumpster for not more than three consecutive months during periods of actual construction.
- nn. Cold storage plants and food locker plants, not including slaughtering.
- oo. Food locker plants, not including slaughtering.
- pp. General warehousing.
- qq. Manufacturing, processing, assembling, or fabricating industries not in conflict with the provisions of this ordinance or other town ordinances and/or regulations, except on a small scale in connection with a bona fide educational program.
- rr. Mini-storage, or mini-warehouse units.

- ss. Public utility structures and buildings, including electric and natural gas substations, telephone exchanges, radio stations, and similar structure for the storage of supply equipment or service operations when screened, and other facilities for the provision and maintenance of public utilities, including railroads and facilities, and water and sewage installations, rescue squads, fire departments and government owned armories.
- tt. Printing establishments, except on a small scale in connection with a bona fide educational program.
- uu. Shops for the repair of goods sold at retail stores.
- vv. Temporary uses including sale of Christmas trees, tents for revivals, carnivals, church bazaars, sale of seasonal fruit and vegetables from roadside stands, but such use shall not exceed four months in any calendar year; except a Town-sponsored farmer's market not more than one day a week.
- ww. Truck terminals.
- xx. Transportation terminal facilities.
- yy. Commercial communication towers, except concealed small-cell and micro-wireless facilities as defined in Section 15.2-2316.3 of the Code of Virginia, 1950, as amended.
- zz. Private sanitary or solid waste facility, recycling bins or facilities, except usual or customary dumpsters for permitted uses and screened dumpster for not more than three consecutive months during periods of actual construction.
- aaa. Private utility structures and buildings, including electric and natural gas substations, telephone exchanges, radio stations, and similar structure for the storage of supply equipment or service operations when screened, and other facilities for the provision and maintenance of public utilities, including railroads and facilities, and water and sewage installations, rescue squads, fire departments and government owned armories.
- bbb. Establishments engaged in the manufacture of asphalt paving and roofing materials.
- ccc. Automobile washing facility and/or repair, mechanical and body garage.
- ddd. Bottling plants or distribution operations and bust terminals.
- eee. Building and contractor's storage and equipment yards when located entirely within a building or structure, except for periods of not more than three consecutive months during periods of actual construction.
- fff. Uses specified in Section 609 of the Land Use Regulations, unless otherwise permitted in Sections 608 or 611 and not ruled out under these proffers.

3. The applicant further proffers substantial conformance with the Master Concept Plan attached to these proffers and incorporated herein as _____, entitled "_____" dated _____.
4. The applicant further proffers that, as set forth in the Master Concept Plan, he will not construct a parking lot with an entrance onto Westview Avenue.

EXECUTED BY AN AUTHORIZED REPRESENTATIVE OF THE APPLICANT:

WAUKESHA DEVELOPMENT, INC.:

J. David McCormack, President

COUNTY/CITY OF _____

COMMONWEALTH OF VIRGINIA, to wit:

The foregoing instrument was acknowledged before me this _____, 2019, by _____
on behalf of _____.

My commission expires: _____

Notary registration number: _____

Notary Public

Exhibit C

Prepared by:

Michael W.S. Lockaby
VSB No. 74136
Guynn, Waddell, Carroll & Lockaby P.C.
415 South College Avenue
Salem, Virginia 24153

Tax Map No.: 174-5-1-T, 174-5-2-T, 174-5-3-T, 174-5-4-T, 194-A-170-T

This lease is partially exempt from recordation taxes and fees pursuant to Section 58.1-811(C)(4) of the Code of Virginia, 1950, as amended.

GROUND LEASE

THIS GROUND LEASE is made this _____ day of _____, 2019, by and between the TOWN OF BEDFORD VIRGINIA, a municipal corporation of the Commonwealth of Virginia ("Lessor"), and WAUKESHAW DEVELOPMENT, INC., a Virginia corporation ("Lessee").

RECITALS

WHEREAS, the Lessor is the owner of that certain real property known as Town of Bedford Tax Map Nos. 174-5-1-T, 174-5-2-T, 174-5-3-T, 174-5-4-T, 194-A-170-T, also known as the Old Bedford Middle School Property (the "Property");

WHEREAS, Lessee proposes to redevelop the Old Bedford Middle School Property as apartment space, hotel space, and other office spaces, while retaining use of the auditorium and gymnasium for community and public purposes;

WHEREAS, in furtherance thereof, the Parties desire to enter this lease.

WITNESSETH

NOW THEREFORE, in consideration of the premises hereof, which are expressly incorporated herein, the mutual covenants and promises made below, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. Leased Premises.

Lessor hereby grants and demises to Lessee, and Lessee hereby leases and rents from Lessor, the Property, together with all buildings, improvements, fixtures, and rights appurtenant thereto, upon and subject to the terms, conditions, covenants and provisions hereof; any building restrictions, regulations and zoning ordinances of the Town of Bedford; any easements; and any other matters of title which a search of the public records would disclose and any state of facts that an accurate survey would show.

2. Term; Extension; Early Termination .

The term of this lease shall be for a period of six (6) months, beginning upon receipt of the Notice of Exercise of Option to Lease by the Lessor from the Lessee, and ending at noon on first day of the seventh month thereafter, without notice from either party to the other.

The term of this lease may be extended by the Lessor if the Lessee is diligently pursuing due diligence items, as defined in the Performance Agreement between Lessor, Lessee, and the

Economic Development Authority for the Town of Bedford, for one (1) additional six (6) month term at the discretion of the Lessor. All time periods set forth herein shall be extended six (6) months if such extension is granted, mutatis mutandis.

The Lessee may terminate this Lease early by invoking Section 20 of this Lease as set forth therein.

3. Rent.

The rent shall be \$1 per month, to be paid by Lessee to Lessor not later than the last day of each month without notice or demand.

4. Rent to be Net to Lessor; Maintenance.

It is the intention of the parties that the rent payable hereunder shall be net to Lessor, and that all costs, expenses and obligations of every kind and nature whatsoever directly relating to the Leased premises, including, but not limited to, utilities, taxes, insurance, and maintenance shall be the responsibility of Lessee.

5. Use of Leased Premises.

The Lessee may make any lawful use of the premises in accordance with the Performance Agreement.

6. Improvements, Repairs, Additions & Replacements.

A. Lessee shall, at all times during the term of this lease, and at its own cost and expense, keep and maintain in repair and good condition (ordinary wear and tear excepted), all buildings and improvements at any time erected on the Leased Premises, and shall use all reasonable precaution to prevent waste, damage, or injury. This requirement expressly includes the duty to insure, maintain, and if necessary replace all statuary and historical monuments on the Premises, including, without limitation, the World War II memorial plaque in front of the southeast corner of the Old Middle School Building; the Sons of Confederate Veterans memorial garden adjacent to North Bridge Street; and the polished stone bench at the intersection of Peaks Street and North Bridge Street. Further, these monuments shall be open to public access.

B. Lessee may, at its own cost and expense, at any time make such alterations, changes, replacements, improvements, and additions in and to the Leased Premises and the buildings and improvements originally constructed thereon, including the modification or renovation of any such building(s) and improvement(s) and/or structure(s), in accordance with the Performance Agreement. Provided, however, that the Lessee shall not demolish any structure of a permanent character without the express written and lawful consent of the Lessor.

C. Lessee covenants and agrees continuously during the term of the lease either to be preparing for, constructing or reconstructing, or actually using the property for (a) a hotel to be constructed on the Old Yellow portion of the leased premises solely for the operations of a first-class commercial-type hotel and to provide all activities and services in connection therewith as are reasonably comparable to those provided in first-class commercial hotels of similar type and size in the Roanoke-Lynchburg area; and (b) a multi-family residential apartment building to be built in the brick Middle School Building solely as a residential apartment building to be operated and maintained in a manner reasonably appropriate and in keeping with the character of adjoining neighborhoods.

D. On the last day, or sooner termination of the term of this lease, Lessee shall quit and surrender the Leased Premises, and the buildings and permanent improvements then thereon, to Lessor. Lessee, on or before such date, may remove all its personal property, movable trade fixtures and equipment. All property not so removed shall be deemed abandoned and shall become the property of Lessor. On the last day, or sooner termination, possession to all buildings and permanent improvements on the Leased Premises shall revert to Lessor. This subsection shall be void if the Lessee option set forth in Section 20 of this Lease vests.

7. Requirements of Public Authority.

Except as expressly set forth in the Performance Agreement, during the term of this lease, Lessee shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of federal, state, county and city governments and of any, and all other governmental authorities affecting the Leased Premises or any part thereof, whether the same are in force at the commencement of the term of this lease or whether the same are in the future passed, enacted or directed, and Lessee shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of Lessee to comply with the covenants of this section.

8. Covenant Against Liens.

If, because of any act or omission of Lessee, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Lessor or any portion of the Leased Premises, Lessee shall, at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after written notice from Lessor to Lessee of the filing thereof; and Lessee shall indemnify and save harmless Lessor against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom. Additionally, no person shall be entitled to any lien directly or indirectly derived through or under Lessee, or through or under any act or omission of Lessee, superior in rank or dignity to the fee interest of Lessor upon the Leased Premises or upon any insurance policies, except as otherwise specifically provided for in this lease and nothing in this lease other than that specifically provided for herein shall be construed in any way so as to contradict this provision.

9. Right of Entry.

Lessor, or Lessor's agents and designees, shall have the right, but not the obligation, to enter upon the Leased Premises, or any part thereof, at all reasonable times to inspect and examine the same. Lessor may exhibit the Leased Premises or any part thereof to prospective purchasers and prospective tenants.

10. Insurance.

A. Lessee shall provide at its expense, and keep in force during the term of this lease, comprehensive general liability insurance with a good and solvent insurance company licensed to do business in the Commonwealth of Virginia, selected by Lessee, in a single limit of at least One Million Dollars (\$1,000,000.00) for bodily injury, personal injury and death and Three Hundred Thousand Dollars (\$300,000.00) with respect to damages to property. Such policy or policies shall include Lessor and, if required, any mortgagee authorized under this lease, as an additional insured.

B. At all times during the term of this lease, Lessee shall, at its own expense, keep all improvements located on the Leased Premises insured against loss or damage by fire, with customary extended coverage, with a good and solvent insurance company licensed to do business in the Commonwealth of Virginia, in an amount not less than the full insurable replacement value of all such improvements with no deduction for obsolescence. The insurance policy shall name Lessor and Lessee and, if, required, any mortgagee authorized under this lease, as an additional insured.

C. Lessee shall, during the term of this lease, pay all premiums for insurance coverage required by this section.

11. Destruction & Damage.

The parties hereto agree that damage to or destruction in whole or in part of any building or improvements on the Leased Premises by fire or any other casualty shall not work as termination of this lease, or authorize Lessee to quit or surrender the possession of the Leased Premises or any part thereof, and shall not release Lessee in any way from its liability to pay Lessor the rent herein provided for or from any of the agreements, covenants or conditions of this lease. Lessee covenants and agrees to repair any such damage or reconstruct the buildings or improvements destroyed as promptly as is practicable, and that all funds received from any insurance policy under Section 10 will be spent on reconstruction. In furtherance of this, Lessor agrees to endorse any checks made to the order of Lessor or to the joint order of Lessor and Lessee in connection with such insurance proceeds and to deliver any such checks to Lessee. The value and usefulness of the buildings or improvements repaired or reconstructed shall be equal to the value and usefulness of those buildings and improvements damaged or destroyed on the date immediately prior to such damage or destruction.

12. Condemnation.

A. If the whole of the Leased Premises, or any material part thereof, or all means of access to the Lease Premises, shall be condemned, or sold under threat of condemnation, this lease shall terminate and the Lessee shall have no claim against the Lessor, or to any portion of the award in condemnation for the value of the unexpired term of this lease. This paragraph shall not limit the Lessee's right to compensation from the condemning authority for the value of any property taken other than Lessee's leasehold interest.

B. In the event of a temporary or permanent dedication under threat of condemnation or for the purposes of site development, or if takings of de minimis portions of the property for right-of-way expansion, utility relocations, or the like occur, this lease shall not terminate.

13. Subordination.

The Lessor agrees to execute any documents necessary to subordinate its interest in the Leased Premises to any liens or mortgages hereinafter made by the Lessee for improvements constructed on the Leased Premises. All of the secured parties shall execute a Non-Disturbance agreement, providing that such secured party will recognize this lease, and will not disturb the Lessee's quiet possession of the Premises so long as the Lessee is not in default in the performance of any other provisions of this lease.

14. Assignment & Sublease.

Except as set forth in the Performance Agreement, Lessee may assign or sublet the Leased Premises for the hotel, apartment, office space, gymnasium space, and auditorium space purposes set forth in the Performance Agreement, but otherwise may not sublease the **Leased Premises without the written consent of the Lessor, which will not be unreasonably withheld.**

15. Default.

A. In the event of default: (i) in the payment of any installment of rent as hereinabove provided; (ii) or in the event of breach of any other covenants or agreements herein contained on the part of Lessee; or (iii) in the event of the occurrence of a Performance Default as hereinafter defined, Lessor, after first giving written notice to Lessee of the alleged default or breach (specifying the default or breach and demanding that it be remedied), and, after the failure of Lessee to remedy the specified default or breach within ten (10) days after receipt of said notice in the case of non-payment of rent or within thirty (30) days or any longer period reasonably necessary to remedy any other specified default or breach after receipt of said notice, shall have the right to reenter the Leased Premises and require Lessee to surrender and vacate possession of the Leased Premises, to restrain for rent, and to re-rent the Leased Premises, without notice to Lessee, for the account of Lessee for the unexpired portion of the term of this lease, or Lessor may, at Lessor's option, immediately terminate this lease. In the event that Lessor shall terminate this lease, recover possession of, or re-rent the Leased Premises, or take any other action under the foregoing provisions, such action on the part of Lessor shall not deprive Lessor of any other action or remedy provided by law against Lessee for possession, for rent or for damages.

a. A Performance Default shall occur if: (1) The Lessee fails to receive historic preservation certification Part 1 and 2 (conditional) and commence construction and renovation activity not later than noon on the first day of the twelfth (12th) month from commencement of the Term of this Lease, unless this Lease is earlier terminated, as evidenced by issuance of a building permit and substantial actual construction activity, or (2) construction activity ceases on the Property for six (6) or more consecutive months after having initially commenced.

b. In any suit brought by the Lessor to enforce any provision of this lease, the Lessor shall have the right to recover all costs incurred in connection with such suit, including reasonable attorney's fees.

c. Upon the filing of the Lessee of any voluntary petition in bankruptcy or for reorganization, arrangement, or other adjustment of creditors' rights, or for appointment of a receiver or trustee of the Lessee's property on the grounds of insolvency or bankruptcy, or the making of a general assignment for the benefit of creditors, or the filing by the Lessee of any petition or answer under any bankruptcy or insolvency statute, state or federal, except to seek dismissal thereof which is diligently pursued by the Lessee, the Lessor may immediately terminate this Lease and enter the Property.

16. Waiver.

Failure of Lessor or Lessee to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of their rights hereunder. No waiver by Lessor or Lessee at any time, express or implied, of any breach of any provision of this lease shall be deemed a waiver of a breach of any other provision of this lease or consent to any subsequent breach of the same or any other provision. No acceptance by Lessor of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on account.

17. Services by Lessor.

Except as set forth in the Performance Agreement, Lessor shall not be required to furnish any service or facility to the Leased Premises or the building and improvements now existing or hereafter erected thereon, including but not limited to heat, water, light and power, and shall not be liable to Lessee or otherwise for any failure of water supply or electric current, or of any service by any utility, or any property damage caused by or resulting from steam, gas, electricity, water or rain which may flow or leak from any part of the Leased Premises or the building and improvements now existing or hereafter erected thereon, or from any pipes, appliances or plumbing works of the same, or from the street or sub-surface, or from any other place, nor from interference with land or easements, however caused, except if due to the negligence or affirmative acts of Lessor. Lessor shall not be required to make any repairs or alterations in or to the Leased Premises or the buildings and improvements now existing or hereafter erected thereon.

18. Notices.

Every notice, approval, consent or other communication authorized or required by this lease shall not be effective unless same shall be in writing and sent postage prepaid by United States registered or certified mail, return receipt requested, directed to:

Lessor at:

TOWN OF BEDFORD, VIRGINIA
215 East Main Street
Bedford, Virginia 24523
Attn: Barrett F. Warner, Town Manager

With a copy to:

GUYNN, WADDELL, CARROLL & LOCKABY, P.C.
415 South College Avenue
Salem, Virginia 24153
Attn: Michael W.S. Lockaby, Esq.

Lessee at:

WAUKESHA DEVELOPMENT, INC.
245 East Bank Street
Petersburg, Virginia 23803
Attn: Dave McCormack

or such other address as either party may designate by notice, given from time to time in accordance with this section. All such notices shall be deemed to be given upon deposit in the United States mail as hereinabove provided. The rent payable by Lessee hereunder shall be paid to Lessor at the same place where a notice to Lessor is herein required to be directed.

19. Quiet Enjoyment & Covenant of Title.

Lessor covenants that it has full right and power to execute this Lease and to grant the Premises demised herein, and that Lessee, upon payment of the rents herein reserved, and performing the terms, conditions, and covenants herein contained, shall peacefully and quietly

have, hold, and enjoy the Leased Premises during the full term of this Lease, and any extension hereof, from all persons claiming through Lessor.

20. Vesting Option.

- (a) If, not later than the end of the Term of this Lease as defined in Section 2 of this Lease, the Company gives written notice of its desire to purchase the Premises, the Lessor shall convey the Premises to Lessee as soon thereafter as the necessary documents may be prepared and closing scheduled as set forth in this section.
- (b) The price to be paid upon settlement by Lessee to Lessor to purchase the property is \$10.00.
- (c) At closing, Lessor shall deliver to Lessee a deed of Special Warranty conveying good, marketable, and insurable fee simple title to the Lessee, free of all liens, encumbrances, defects, and subject only to those covenants, restrictions, and easements of record or which would be disclosed by a current field survey or careful inspection of the Property. The Lessee shall deliver to the Economic Development Authority of the Town of Bedford, Virginia, a deed of trust as set forth in the Performance Agreement. If a defect is found which the Lessor may cure within a reasonable time, the Lessor shall, at its own expense, promptly take such action as is necessary to cure the defect. If said defect cannot be cured within a reasonable time, Lessee shall have the option of rescinding its exercise of this option.

21. Governing Law.

This lease shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Virginia. Pursuant to the provisions of Va. Code Ann. § 55-217, the provisions of Chapter 13 of Title 55 of the Code of Virginia shall NOT govern this lease. Any action or suit relating to this Lease shall be brought in the Circuit Court or the General District Court for Bedford County, Virginia, and in no other.

22. Partial Invalidity.

If any term, covenant, condition or provision of this lease shall be invalid or unenforceable, the remainder of this lease shall not be affected, and each term, covenant, condition and provision of this lease shall be valid and be enforceable to the fullest extent permitted by law.

23. Interpretation.

Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The terms "Lessor" and "Lessee" wherever used herein shall mean only the owner at the time of Lessor's or Lessee's interest herein, and upon any sale or assignment of the interest of either Lessor or Lessee herein, their respective successors in interest and/or assigns shall, during the term of their ownership of their respective estates described herein, be deemed to be Lessor or Lessee, as the case may be.

The Parties are each sophisticated, knowledgeable persons about the subject matter of this Lease who negotiated this Lease and had opportunity to consult with counsel. Accordingly, it shall be construed as jointly drafted and construed against neither party as the drafter.

24. Entire Agreement.

No oral statement or prior written matter shall have any force or effect. All parties agree that they are not relying on any representations or agreements other than those contained in this lease. This agreement shall not be modified or cancelled except by a writing signed by all parties.

Notwithstanding this, the provisions of the Performance Agreement are to be construed as collateral to this Lease, and shall survive and not merge into it. In construing this Lease, the provisions of this Lease and the Performance Agreement shall be construed to be parts of the same agreement governing the comprehensive transaction, and such documents shall be read together so as to effectuate the manifest intent of the Parties.

25. Binding Effect.

Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Lessor and Lessee and their respective heirs, successors, administrators and assigns.

LESSOR:

TOWN OF BEDFORD, VIRGINIA:

Steve C. Rush, Mayor

COUNTY OF BEDFORD,

COMMONWEALTH OF VIRGINIA, to wit:

The foregoing instrument was acknowledged before me this _____, 2019, by Steve C. Rush, Mayor, on behalf of the Town of Bedford, Virginia.

My commission expires: _____

Notary registration number: _____

Notary Public

Signatures Continue on Following Page

LESSEE:

WAUKESHAW DEVELOPMENT, INC.:

J. David McCormack, President

CITY/COUNTY OF _____

COMMONWEALTH OF VIRGINIA, to wit:

The foregoing instrument was acknowledged before me this _____, 2019, by J. David McCormack, President, on behalf of Waukeshaw Development, Inc.

My commission expires: _____

Notary registration number: _____

Notary Public

Exhibit D

PROMISSORY NOTE

\$400,000.00 _____, 2019

FOR VALUE RECEIVED, **WAUKESHAW DEVELOPMENT, INC.** (the "Borrower") promises to pay to the order of **ECONOMIC DEVELOPMENT AUTHORITY OF THE TOWN OF BEDFORD, VIRGINIA** (the "Lender"), without offset, at 215 East Main Street, Bedford, Virginia 24523, or such other location as the holder of this Note may in writing designate, the principal sum equal to the aggregate amount of principal advances made from time to time under this Note, and which may be shown on the attached Certificate of Principal Advances, but not to exceed the sum of \$400,000.00, without interest except as provided in Section 2 below, on _____, 202____ (the "Maturity Date"), unless sooner paid in accordance with Section 3 below.

1. **Definitions.** As used in this Note, "Loan Documents" means collectively this Note, the Performance Agreement for Old Bedford Middle School Property dated _____, 2019, between Lender and Waukeshaw Development, Inc. ("Waukeshaw") (the "Performance Agreement"), and the Deed of Trust attached as an exhibit to

the Performance Agreement, if executed and entered, (the “Deed of Trust”) from Borrower to a trustee for the benefit of Lender, all as, if at all, amended, supplemented, or modified from time to time. This Note is the note described in Section 2.d of the Performance Agreement and is subject to being discounted, forgiven, and credited in accordance with the terms of Section 9 of the Performance Agreement.

2. Interest. This Note shall bear interest on outstanding principal at an annualized rate of 0.00% percent. After the occurrence of an Event of Default, interest on the outstanding principal of this Note shall accrue at a per annum rate equal to 6.00% from the date of such occurrence.

3. Mandatory Prepayment. If the property encumbered by the Deed of Trust is sold by the Borrower in advance of the Maturity Date, all outstanding principal of this Note shall be due and payable on the date of the closing of the sale, unless otherwise forgiven in accordance with Section 9 of the Performance Agreement.

4. Optional Prepayments. At the Borrower’s option prepayments may be made in whole or in part at any time without penalty or premium. All prepayments of principal shall be applied in the inverse order of maturity, or in such other order as Lender shall determine in its sole discretion.

5. Events of Default. For purposes of this Note and any other Loan Document, “Event of Default” means any one or more of the following:

(a) The Borrower fails to make any installment or other payment described in this Note as and when due and such failure continues for five days after written notice of such failure has been given to the Borrower by the Lender;

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

(c) The Borrower breaches or fails to perform any other term, covenant, warranty, or agreement contained in any Loan Document, and such breach or failure shall continue for thirty (30) days after written notice of it has been given to the Borrower by the Lender;

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

(e) The Borrower defaults in, fails to pay at maturity, or otherwise defaults in respect of, any indebtedness properly due and owing to the Lender in any amount (except indebtedness under this Note), or to any other Person in excess of \$10,000, or fails to observe or perform any material term, covenant or agreement contained in any other agreement by which it is bound evidencing or securing indebtedness, borrowed monies or advances in excess of \$10,000 from any other Person, and does not cure such failure

within any applicable period of grace, as would, or would have permitted the holder or holders thereof or of any obligations issued thereunder to accelerate the maturity thereof;

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

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

(h) Any of the liens, security interests, pledges and assignments securing this Note in favor of the Lender are declared invalid or otherwise significantly impaired by a court of competent jurisdiction.

6. **Remedies.** Upon the happening of any Event of Default (i) this Note shall, at the sole option of the Lender, become immediately due and payable without notice to or demand on the Borrower and (ii) the Lender may exercise such rights, powers, and remedies available to it under each of the Loan Documents as well as all rights and remedies available to it at law or in equity.

7. **Waivers.** The Borrower and every guarantor and endorser, if any, of this Note (collectively, "Parties") individually and collectively hereby: expressly waives presentment, demand, protest, and notice of dishonor, and agrees that this Note may be renewed by the Lender one or more times and any extension or extensions of the time of payment of this Note may be made before, at, or after Maturity for periods in excess of the original term of this Note by agreement with the Borrower without notice to and without releasing the liability of any other Party; agrees that the Lender may adjust the interest rate payable on this Note or any renewal thereof by agreement with the Borrower without notice to and without releasing the liability of any other Party; waives the benefit of all homestead and similar exemptions as to this debt; waives any right which it may have to require the Lender to proceed against any person or any property securing this Note and agrees that its liability hereunder shall not be affected or

impaired by any failure, neglect or omission of the Lender to exercise any remedies of set-off or otherwise that it may have or by any determination that any security interest or lien taken by the Lender to secure this Note is invalid or unperfected.

8. Costs. The Borrower agrees to pay all reasonable expenses incurred in collecting this Note or in preserving or disposing of any property securing it, including reasonable attorney's fees, if after default this Note is placed in the hands of an attorney for collection, or if the Lender finds it desirable to secure the services or advice of an attorney with regard to collection or the preservation or disposition of any property securing this Note. The attorney's fees provided for herein are intended to take into account post-judgment collection efforts on the part of the Lender's attorneys.

9. Assignment. The Lender may not assign this Note without the prior written consent of the Borrower, which consent the Borrower will not unreasonably delay or withhold.

10. Miscellaneous.

(a) If the Borrower fails to pay any installment of principal or interest, or otherwise fails to repay this Note within seven (7) days of its due date, the Borrower agrees to pay the Lender on demand a late charge of five percent (5.00%) of the overdue payment. The Lender may, at its option, apply any late payments (either full or partial) in the following manner: first to interest, then to principal, and finally to any late charges.

(b) Any failure or delay by the Lender to exercise any right hereunder shall not be construed as a waiver of the right to exercise the same or any other rights at any time.

(c) The term "Lender" used in this Note shall include any future permitted holder of this Note.

(d) This Note shall be governed and construed in accordance with the laws of the Commonwealth of Virginia. Whenever possible each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note.

(e) This Note shall apply to and bind the Borrower its successors and assigns and shall inure to the benefit of the Lender, its permitted successors and assigns.

IN WITNESS WHEREOF, the Borrower has signed this Note as of the date and year first above written.

WAUKESHAW DEVELOPMENT, INC.

By: _____

Name: J. David McCormack
Title: President

CERTIFICATE OF PRINCIPAL ADVANCES

The amount and date of principal advances not to exceed the face amount of this Note shall be entered below by an authorized representative of the Economic Development Authority of the Town of Bedford, Virginia, when the proceeds of each such principal advance are delivered to or for the account of Waukeshaw Development, Inc.

Exhibit E

Prepared by:
Michael W.S. Lockaby
VSB No. 74136
Guynn, Waddell, Carroll & Lockaby, P.C.
415 South College Avenue
Salem, Virginia 24153

Return to:
Theodore J. Craddock, Esq.
Trustee for Lender
Caskie & Frost
2306 Atherholt Road
Lynchburg, Virginia 24501

Partially tax-exempt under Section 58.1-811(A)(3) of the Code of Virginia, 1950, as amended

DEED OF TRUST AND SECURITY AGREEMENT (INCLUDING FUTURE ADVANCES)

This record, in addition to covering other property: [] covers timber to be cut; [] covers as-extracted collateral; [x] is filed in the real property records as a fixture filing and covers goods that are or are to become fixtures. The real property to which the foregoing is related is described on Exhibit 1 attached hereto and incorporated herein by this reference. The "Secured Party" is the Economic Development Authority of the Town of Bedford, Virginia, and the "Debtor" is _____. The record owner is _____. This document serves as a fixture filing under the Virginia Uniform Commercial Code (Va. Code Section 8.9A-502).

THIS CREDIT LINE DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust"), entered into as of _____, 2019 (the "Effective Date"), by **Waukeshaw Development, Inc.**, a Virginia corporation (whether one or more, "Grantor"), with a mailing address of 245 E Bank St, Petersburg, Virginia 23803, to **Theodore J. Craddock**, as trustee, a resident of Virginia and having a business address of 2306 Atherholt Road, Lynchburg, Virginia 24501 ("Trustee"), for the benefit of the **Economic Development Authority of the Town of Bedford, Virginia** ("Lender"), with a mailing address of 215 East Main Street, Bedford, Virginia 24523, which address is the place to which all notices and communications should be sent to Lender regarding this Deed of Trust except as otherwise provided below.

Capitalized terms used in this Deed of Trust without being defined in this Deed of Trust, if defined in the Performance Agreement (as defined below), shall have the meanings given to such terms in the Performance Agreement.

THIS IS A CREDIT LINE DEED OF TRUST. Solely for the purposes of Section 55-58.2 of the Code of Virginia of 1950, as amended (the "Virginia Code"), the address to which communications may be mailed or delivered to the Lender is:

**Economic Development Authority of the Town of Bedford, Virginia
215 East Main Street
Bedford, Virginia 24523**

The maximum aggregate amount of principal to be secured by this Deed of Trust at any one time is \$400,000.00.

Recitals

A. Grantor and Lender have entered into a Performance Agreement dated _____, 2019, as the same may be amended, modified, renewed and/or restated from time to time, being herein called the “Performance Agreement,” and as described in, and subject to the terms of the Performance Agreement, Lender is extending credit to Grantor in a maximum aggregate principal amount of \$400,000.00, and to evidence same Grantor has executed and delivered to Lender one or more promissory notes (individually and collectively, the “Promissory Note”).

B. Grantor desires to secure, among other indebtedness and obligations as provided herein, each and all of the following (the “Obligations”): (1) all indebtedness, liabilities, and obligations of Grantor to Lender of any nature whatsoever (whether now existing or hereafter arising or incurred) evidenced by the Promissory Note, and including any renewals, extensions, restatements, and/or modifications thereof; (2) the performance of the covenants and agreements contained herein; (3) all indebtedness, liabilities, and obligations of Grantor to Lender of any nature whatsoever (whether now existing or hereafter arising or incurred) evidenced by or arising under the Performance Agreement, and any renewals, extensions, restatements, and/or modifications thereof, and (4) any and all other Obligations (as such term is defined in the Performance Agreement) now owing or which may hereafter be owing by Grantor to Lender.

C. This Deed of Trust is given wholly or partly to secure future obligations and future advances. No written instrument or notation shall be required to evidence or secure any future advances and obligations hereunder. Nothing contained herein shall obligate Lender to make any advances to or extend credit to or for the benefit of any person obligated on all or any of the Obligations, and any such advances and extensions shall be under the terms and conditions contained in the Performance Agreement and related Loan Documents.

Witnesseth

NOW, THEREFORE, in trust to secure the prompt payment and performance of the Obligations, any sums expended by Lender pursuant to this Deed of Trust and costs of collection (including reasonable attorney’s fees) and the other indebtedness and obligations as aforesaid, and in further consideration of the sum of Ten Dollars (\$10) paid to Grantor by Trustee, receipt of which is hereby acknowledged, Grantor grants and conveys unto Trustee: (1) the parcel or parcels of land described on **Exhibit 1** attached hereto and incorporated herein by reference; (2) the rights and benefits appurtenant to such parcel or parcels of land; and (3) all buildings and other improvements (including, without limitation, Improvements) now located thereon and thereunder and those which in the future may be or may come to be located thereon and thereunder (collectively, the “Property”), together with all rights of Grantor under any purchase contracts now or hereafter arising with respect to the sale of all or any part of the Property, all proceeds now or hereafter arising from the sale, lease or other transfer of the Property, and all equipment, fixtures, standing timber (to include timber to be cut, but this inclusion does not permit cutting of timber unless Lender agrees to such cutting in advance thereof), crops grown,

growing and to be grown on the Property (to include crops that are produced on trees, vines and bushes, and aquatic goods) and other farm products (to include livestock, born and unborn, supplies and products of crops and livestock), oil, gas, and other minerals and as-extracted collateral (but inclusion of as-extracted collateral does not permit extraction unless Lender agrees to such extraction in advance thereof) and all of the property described on **Exhibit 2** attached hereto and incorporated herein by this reference, now or hereafter owned by Grantor and that in which the Grantor has any rights and interests, both now existing and located in, on, over, and under the Property or related to the Property and that which may be hereafter acquired and located as aforesaid or otherwise related to the Property, whether used in connection with the ownership, possession, operation, and maintenance of the Property, or otherwise (collectively, the "Collateral" and the Collateral includes any and all of the proceeds and products thereof, including insurance and condemnation proceeds, accessions and additions thereto, and replacements and substitutions therefor).

Grantor covenants with Trustee and Lender that Grantor is seized of the Property in fee, and has the right to convey the Property as provided herein; that title to the Property is marketable and free and clear of all encumbrances except for the exceptions approved in writing by Lender (collectively, the "Permitted Exceptions"); that Trustee shall have quiet possession of Property free from all encumbrances other than Permitted Exceptions; that Grantor will execute such further assurances of the Property as may be requisite; that Grantor has done no act to encumber the Property; and that Grantor will forever warrant and defend the title to the Property unto Trustee, his heirs, personal representatives, and assigns against the claims and demands of all persons whomsoever, except with respect to the Permitted Exceptions.

Grantor represents, warrants, covenants, and agrees with Trustee and Lender as set forth above and in the Sections set forth below:

Section 1. Future Advances. All terms and conditions under which future advances may be made, if any, are set forth in the Performance Agreement and other Loan Documents. Lender shall make, and be obligated to make, future advances only in accordance with the terms and conditions of the Performance Agreement and other Loan Documents.

Section 2. Representations and Warranties Relating to Grantor, Property, and Collateral. Grantor maintains its chief executive office at Grantor's address set forth herein and will notify Lender in writing of any change in such office within ten (10) days of such change. Grantor represents and warrants that: (i) Grantor is the record owner of the Property; (ii) Grantor's chief executive office is located in the State of Virginia; (iii) Grantor's state of organization is the State of Virginia; (iv) Grantor's exact legal name is as set forth on Page 1 of this Deed of Trust; and (v) Grantor is the owner of the Collateral subject to no liens, charges, or encumbrances other than the lien hereof or otherwise in favor of Lender.

Section 3. Payment of Amounts Due under the Obligations. Grantor shall pay when due all amounts owing by it, and perform all other obligations required to be performed from time to time by it, under each and all of this Deed of Trust, the Notes, the Performance Agreement, and other Loan Documents.

Section 4. Payment of Taxes, Assessments, and other Amounts; Maintenance of Insurance.

4.1 Grantor will pay not later than the last date the same may be paid without penalty, interest, or other similar charge, all real and personal property taxes, assessments, levies, charges, fines, and impositions of every nature whatsoever imposed, levied, or assessed or to be imposed, levied, or assessed upon or against the Property or the Collateral which are now liens thereon and any which may hereafter become liens thereon, in accordance with the terms of the Performance Agreement; provided, however, that Grantor shall have the right to contest in good faith and by appropriate lawful proceedings any such taxes, assessments, fees, dues, charges, fine or impositions if (i) the execution or other enforcement of any lien or charge upon the Property or Collateral is and continues to be effectively stayed or bonded in a manner satisfactory to Lender, and (ii) such appropriate lawful proceedings and such liens or charges do not materially impair the operation of the business located at the Property.

4.2. Grantor shall keep all Improvements on such land, now or hereafter erected, insured in accordance with the terms of the Performance Agreement.

Section 5. Maintenance of the Property. Grantor covenants and agrees that Grantor will not commit or permit any waste to the Property and the Collateral, and will keep the Property and Collateral in good order, repair, and condition and redevelop and improve it in the manner provided in the Performance Agreement. Lender shall have the right to inspect the Property and Collateral, together with the books and records maintained and kept in connection therewith, as provided in the Performance Agreement.

Section 6. Financial Statements. Grantor covenants and agrees that it will from time to time furnish or cause to be furnished to Lender, without cost to Lender, such financial and operating statements and reports, in form and certified in a manner satisfactory to Lender, as may be required under the Performance Agreement.

Section 7. Assignment of Rents, Leases and Profits: Management of Property: Appointment of Receiver. As further security for the payment of the Obligations and the other indebtedness and obligations secured by this Deed of Trust, subject to any rights and license afforded Grantor in the separate Assignment of Leases and Rents entered into by Grantor and Lender of even date herewith with respect to the Property and recorded in the same official records as this Deed of Trust (such Assignment of Leases and Rents, as the same may be amended and/or modified from time to time, the "Assignment of Leases and Rents"), Grantor assigns to Trustee and Lender all of Grantor's right, title, and interest in, to and under each and every lease, sublease, rental agreement, tenant contract, and rental contract, whether written or oral, which may now exist or hereafter be made, in which Grantor is lessor, sublessor, or holds a similar designation, including any and all extensions, renewals, and modifications thereof (collectively, the "Leases") and guaranties of the performance or obligations of any lessees or sublessees, which cover, affect, or relate to all or any part of the Property and Collateral, together with all of Grantor's rights, title, and interest in and to all rents, issues, and profits from the Leases and from the Property and/or the Collateral, all of which are a part of and included as a subset within the terms "Property" and "Collateral" (the rents, profits, etc., are collectively, the "Rents and Profits"); and Lender shall have the absolute and unconditional right, upon the occurrence of an Event of Default hereunder,

or the occurrence of an event which, with the giving of notice or a lapse of time, or both, would become an Event of Default hereunder, either by entering upon and taking possession of either or both the Property and the Collateral, or otherwise, to rent or continue renting the same, and to otherwise manage and operate the Property and the Collateral in such manner as it deems necessary or appropriate, to collect the Rents and Profits, and, to apply such collections against: (i) all costs and expenses, including reasonable attorneys' fees actually incurred, incurred in connection with the operation of the Property and Collateral, the performance of Grantor's obligations under the Leases and the collection of the rents thereunder; (ii) all the costs and expenses, including reasonable attorney's fees actually incurred in the collection of any or all of the Obligations, including all costs, expenses, and reasonable attorneys' fees actually incurred in seeking to realize on or to protect or preserve Lender's interest in any other collateral securing any or all of the Obligations; and/or (iii) any or all unpaid principal and interest on the Obligation, in such order of application as is determined by Lender, unless a specific order of application is mandated under applicable law. Also, Lender shall have the absolute and unconditional right to apply for and to obtain the appointment of a receiver or similar official for all or a portion of the Property and the Collateral, to, among other things, manage and operate the Property and the Collateral, or any part thereof or interest therein, and to collect and apply the Rents and Profits as provided above. In the event of such application, Grantor hereby consents to the appointment of such receiver or similar official and agrees that such receiver or similar official may be appointed without notice to Grantor (unless notice is mandated under applicable law and then with only such minimum notice as may be mandated under applicable law), without regard to the adequacy of any security for the indebtedness secured hereby and without regard to the solvency of Grantor or any other person who may be liable for the payment of the Obligations or any other indebtedness or obligations secured hereunder unless thresholds for adequacy of security or solvency are mandated by applicable law and then with only the minimum thresholds so mandated. All expenses related to the appointment of a receiver or other similar official hereunder shall be the responsibility of Grantor, but if paid by Lender, Grantor hereby agrees to pay to Lender, immediately and without demand, all such expenses, together with interest thereon as provided in the Performance Agreement. In the event of any conflict between the provisions of this Section 7 and the Assignment of Leases and Rents, the Assignment of Leases and Rents shall control to the extent such provisions in the Assignment of Leases and Rents are permissible under applicable law.

Section 8. Condemnation. In the event of a Condemnation with respect to the Property, Grantor shall give immediate written notice to Lender and Lender shall have the right to receive and collect all damages awarded by reason of such taking, and the right to such damages hereby is assigned to Lender who shall have the discretion to apply the amount so received, or any part thereof, to the Obligations secured hereby in such order of application as is determined by Lender, or to any alteration, repair, or restoration of the Property by Grantor subject to such terms and procedures reasonably required by Lender. In the event of a Total Condemnation, the Grantor shall pay such amounts in addition to the condemnation award as required in Section _____ of the Performance Agreement.

Section 9. Sale or Transfer of Property; Due on Sale; Junior Liens. Except as expressly permitted under the Development Agreement, Grantor covenants and agrees that the sale, lease, demise, further encumbrance (including, without limitation, by way of mortgage, deed of trust,

security deed, deed to secure debt, declaration of trust, assignment, pledge or security agreement), transfer, or other disposition by Grantor, either directly or indirectly, voluntarily or involuntarily, of all or any part of the Property or the Collateral, or any interest, right, or estate in either or both, without Lender's prior written consent, shall be an Event of Default under this Deed of Trust and shall entitle Lender to exercise, at its option, any and all rights and remedies provided to Lender under this Deed of Trust upon the occurrence of an Event of Default including, without limitation, declaring the Obligations immediately due and payable.

Section 10. **Security Agreement; Harmonization of Conflicts.** Grantor hereby grants to Lender a security interest in all fixtures and articles of personal property now owned or hereafter acquired by the Grantor that are now or hereafter located on the Land including, but not limited to, those items described on **Exhibit 2** attached hereto and incorporated herein by reference and any of the Collateral and Property constituting personal property, for the purpose of securing the payment of the Obligations, with interest thereon, and extensions, renewals, modifications and amendments thereof, or substitutions and replacements therefor, in whole or in part, the payment of all other sums, with interest thereon, in accordance with the Performance Agreement or hereunder to protect the security of this Deed of Trust, or advanced to protect the rights of Lender hereunder or under the Loan Documents, and to secure the performance of the covenants and agreements contained herein and in the Loan Documents. This Deed of Trust constitutes a "security agreement" with respect to the Collateral and the Property constituting personal property as that term is now or hereafter used in the Uniform Commercial Code as enacted in the Commonwealth of Virginia, and Lender shall have all of the rights and remedies provided to a secured party now or hereafter under the Uniform Commercial Code as enacted in the Commonwealth of Virginia, including, without limitation, the right to proceed against the Collateral and the Property constituting personal property in accordance with the provisions of the Uniform Commercial Code relating to default and enforcement of a security interest by a secured party, or to instruct the Trustee to proceed as to the Collateral and the Property, including, without limitation, that which constitutes personal property, in accordance with laws applicable to foreclosure of real estate interests in the Commonwealth of Virginia, as provided herein. The Security Agreement and the security interests created therein shall be, in addition to and not in substitution of this Deed of Trust and the liens and security interests created hereby and this Deed of Trust shall be in addition to and not in substitution of the Security Agreement and the security interests created thereby. To the extent possible, this Deed of Trust and the Security Agreement, as well as all other evidences and records of any and all of the Obligations and agreements of other persons who may be obligated on any of the Obligations, shall be applied and enforced in harmony with and in conjunction with each other. To the extent conflicts exist between this Deed of Trust and the Security Agreement, such conflicts shall be resolved in favor of Lender for the purpose of achieving the full realization of Lender's rights and remedies and liens and security interest as aforesaid. Grantor hereby authorizes Lender, at Lender's option, to file from time to time, without the execution by Grantor or further consent or approval of Grantor, such financing statements and amendments, continuations, and addendums thereto as Lender may deem appropriate to perfect, preserve, maintain, or continue the perfection of the security interest granted Lender by this Deed of Trust.

Section 11. **Environmental Provisions.**

11.1 As used in this Deed of Trust: (i) "Hazardous Wastes" means all waste materials subject to regulation under the Comprehensive Environmental Response, Compensation, and Liability Act as modified by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, or applicable state law and any other applicable federal, state or local laws and their regulations now in force or hereafter enacted relating to hazardous waste disposal; and (ii) "Toxic Substances" means and includes any materials which are now or hereafter subject to regulation under the Toxic Substances Control Act, applicable state law, or any other applicable federal, state, or local laws now in force or hereafter enacted relating to toxic substances. "Toxic Substances" includes, but is not limited to, asbestos, polychlorinated biphenyls (PCB's), petroleum products, and lead-based paints to the extent any of those materials is in a quantity, use, or application that would make the Grantor a responsible party under any Environmental Law. All such laws relating to hazardous waste disposal and toxic substances are collectively referred to herein as "Environmental Laws."

11.2 The Grantor represents, warrants and covenants as follows:

(i) The Grantor has no knowledge of any conditions that are likely to lead to the imposition of any lien on all or a part of the Property under the Environmental Laws. The Grantor's familiarity with the Property includes among other factors, (i) the relationship of the purchase price to the value, of the Property if uncontaminated when originally purchased by Grantor, (ii) commonly known or reasonably ascertainable information about the Property, and (iii) the obviousness of the presence or likely presence of contamination at the Property.

(ii) The Grantor has no knowledge of any pending or threatened litigation, orders, rulings, notices, permits, or investigations regarding Hazardous Wastes and Toxic Substances on the Property.

(iii) The Grantor will comply in all material respects with the requirements of all Environmental Laws and shall promptly notify the Lender in the event of the discovery of Hazardous Wastes or Toxic Substances at the Property that could result in material liability to the Grantor or the creation of any lien on all or a part of the Property. Further, Grantor will promptly forward to the Lender copies of all orders, notices, permits, applications or other communications and reports in connection with any discharge, spillage, use or the discovery of Hazardous Wastes and Toxic Substances that could result in material liability to the Grantor or the creation of any lien on all or a part of the Property or any other matters relating to the Environmental Laws as they may affect the Property.

(iv) If at any time the Lender has reasonable cause to believe there are Hazardous Wastes or Toxic Substances upon the Property that could result in material liability to the Grantor or the creation of any lien on all or a part of the Property, the presence of which occurs after the recordation of this Deed of Trust, the Lender may obtain, at Grantor's cost, an environmental site assessment or environmental audit report from a firm acceptable to the Lender, to assess with a reasonable degree of certainty (A)

the presence of any Hazardous Wastes or Toxic Substances and (B) the cost in connection with the abatement, cleanup or removal of such.

(v) In the event of the presence of any Hazardous Waste or Toxic Substance upon the Property which presence occurs subsequent to the recordation of this Deed of Trust and which presence may result in material liability to the Grantor or the creation of any lien on all or a part of the Property, whether or not the same originates or emanates from the Property, or if Grantor shall fail to comply with any of the requirements of the Environmental Laws, the Lender may at its election, but without the obligation to do so (but only after the Grantor has failed or refused to do so on the Lender's request), (A) give such notices, (B) cause such work to be performed at the Property or (C) take any and all other actions as the Lender shall deem necessary or advisable in order to abate, remove and clean up the Hazardous Waste or Toxic Substance or otherwise cure the Grantor's non-compliance. All of the representations, warranties and covenants of this Section shall survive the termination, satisfaction or release of this Deed of Trust.

(vi) Any amount disbursed by the Lender pursuant to the provisions of this Section shall be added to, and deemed a part of, the indebtedness secured hereby, shall be secured in the same manner as the Obligations are secured, and shall, together with the interest thereon, be payable by Grantor on demand.

Section 12. Events of Default: Remedies upon Default.

12.1 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder: (1) the occurrence of an Event of Default (as therein defined) under the Promissory Note; or (2) the actual or threatened demolition, injury, or waste to the Property, the Collateral, or any part of either or both, and same shall, in Lender's reasonable good faith judgment, have a material and adverse effect on the value or utility of the Property and such condition or circumstance is not remedied by Grantor within thirty (30) days after Grantor has knowledge of such condition or circumstance.

12.2 Rights and Remedies. Upon the occurrence of an Event of Default under Section 12.1 or any other event defined in this Deed of Trust as an "Event of Default," Lender and Trustee shall have the rights and remedies set forth in Sections 12.2.1 through 12.2.4, in addition to their other rights and remedies set forth in this Deed of Trust.

12.2.1 Accelerate Obligations. Lender shall have the right, at its option, to declare

any or all of the Obligations, as well as any or all of the other indebtedness and obligations secured hereby that are not already due hereunder, to be immediately due and payable without demand or any notice (unless notice is required under any of the Obligations or by law, then such notice as may be required under the Obligations or by law), whereupon the same shall become immediately due and payable, regardless of the maturity date thereof.

12.2.2 Protection of Security. Lender, without any obligation on its part to determine the validity or necessity thereof, may do and cause to be done any one or more of the following: (1) pay the sums for which Grantor is obligated; (2) perform or cause to be performed the obligations of Grantor; or (3) take such other actions as Lender deems necessary to maintain, protect, repair, restore, and preserve the Property and the Collateral, and the lien created by this Deed of Trust, and, in connection therewith, Lender may advance, pay, or expend such sums as may be proper or necessary for the maintenance, protection, repair, restoration, and preservation of the Property and the Collateral, to maintain insurance (including, without limitation, title insurance), to provide security guards and systems to protect the Property and the Collateral and intervene in any condemnation, foreclosure and other proceedings or disputes affecting the Property or the Collateral. Grantor hereby agrees to pay to Lender, immediately and without demand, all such sums so advanced, paid or expended, together with interest thereon from the date of each payment at the Default Rate. All sums so advanced, paid or expended by Lender, and the interest thereon, shall be added to and be secured by the lien of this Deed of Trust. Any amounts advanced, paid or expended shall be at Lender's sole option and shall not constitute a waiver of any Event of Default or right arising from the occurrence of an Event of Default. Nothing herein obligates Lender to pay any amount or take any actions described in this Section 12.2.2.

12.2.3 Foreclosure. Lender shall have the right, at its option, to exercise the rights and remedies set forth below:

(a) Upon the occurrence of an Event of Default under Section 12.1 or any other event defined in this Deed of Trust as an "Event of Default," Lender may invoke the power of sale and any other remedies permitted by Virginia law or provided in this Instrument or in any other Loan Document. Grantor acknowledges that Lender may exercise the power of sale granted by this Instrument without prior judicial hearing to the extent allowed by Virginia law. On the application of Lender, Trustee is hereby authorized and empowered to expose at one or more sales and sell the Property or any part thereof at public action, in such manner, at such time and place, upon such terms and conditions, and upon such public notice as the Trustee may deem best for the interest of all concerned consisting of advertisement in a newspaper of general circulation in the county or city in which the Property or any part thereof is located for at least once a week for two successive weeks or for such other period as applicable law may require, and, upon compliance by the purchaser with the terms of sale and applicable law, convey the Property in fee simple to and at the cost of the purchaser, who shall not be liable to see to the application of the purchase money. Lender shall have the right to bid at any sale thereunder through a credit bid against the Obligations and other indebtedness and obligations secured hereby, or otherwise. The Trustee may require the successful bidder at any sale to deposit immediately with Trustee cash or certified funds in an amount not to exceed ten percent (10%) of the bid before the bid is received. If Collateral is sold hereunder, it need not be at the place of sale. The published notice of public sale, however, shall state the time and place where the Collateral may be inspected prior to sale. In the event a proceeding to exercise the power of sale contained herein is begun but not completed, Grantor shall pay all expenses incurred by Trustee and a partial commission computed as follows: one and twenty-five hundreds percent (1.25%) of the

secured debt existing (including expenses and partial commission provided herein) prior to Trustee's issuance of a notice of sale in accordance with Section 55-59.1 of the Code of Virginia and two and fifty hundreds percent (2.50%) of the secured debt existing (including expenses and partial commission provided herein) after the issuance of such notice and prior to sale. Such expenses and partial commission may be paid by Lender on behalf of Grantor but, in any event, shall be secured by this Deed of Trust. The foregoing shall in no way be construed to limit the powers of sale or restrict the discretion Trustee may have under the provisions applicable law.

(b) Each legal, equitable or contractual right, power and remedy of Lender or Trustee now or hereafter provided herein or by law or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy. The exercise or beginning of the exercise of any one or more of such rights, powers and remedies shall not preclude the simultaneous or later exercise of any or all such other rights, powers and remedies and without limiting the foregoing, Trustee and Lender, as appropriate, may sell the Property and Collateral separately' or together, as a whole or in parts or parcels, at one or more sales conducted at different times and places. Unless a different order of application is mandated under applicable law, proceeds derived from any sale of the Property as provided above shall be applied: FIRST, to pay all proper costs and charges, including but not limited to recording fees of whatever kind and/or court costs, abstracts and title reports, advertising expenses, auctioneer's allowance, the expenses, if any, required to correct any irregularity in the title, premium for Trustees' bond, Commissioner of Account's and/or other auditors' fees, attorneys' fees (including Lender's in house counsel), and all other expenses of sale incurred in and about the protection and execution of this Deed of Trust, and all moneys advanced for taxes, assessments, insurance, and with interest thereon at the rate provided in the Obligations, and to retain as reasonable compensation a Trustee commission of five percent (5%) on the amount of the sale or sales; SECOND, to the discharge of all Taxes and assessments, if any, as provided by Virginia law; THIRD, to pay interest, principal, costs or late charges included in the Obligations, as the Lender, in its sole discretion, may determine hereunder, it being understood and agreed that, upon such sale before maturity of the Obligations, the balance thereof shall be immediately due and payable; FOURTH, to pay liens of record against the Property according to their priority of lien and to the extent that funds remaining in the hands of the Trustees are available; and LAST, to pay the remainder of the proceeds, if any, to Grantor, its personal representatives, successors or assigns upon the delivery and surrender to the purchaser of possession of the Property, less costs and expenses of obtaining possession.

(c) In any foreclosure sale or sales, the Lender shall have the right to sell or cause to be sold either or both the Property and the Collateral, or parts thereof or interests therein, subject to any liens, security interests and other encumbrances and rights which are subordinate to the lien and security interest hereof, including without limitation, any leases which may be subordinate hereto; and any such sale or sales shall not release Grantor or any other person obligated on the Obligations or the other indebtedness and obligations secured hereby, and shall not provide to them any claim or defense in any

action or proceeding brought hereunder by Lender or otherwise brought by Lender to collect full payment of the indebtedness and other obligations secured hereby.

(d) If the Grantor: (i) fails to receive historic preservation certification Part 1 and 2 (conditional) and commence construction and renovation activity within twenty-four (24) months of closing on purchase of the Property, as evidenced by issuance of a building permit and substantial actual construction activity, or (ii) construction activity ceases on the Property for six (6) or more consecutive months after having initially commenced, the Grantor shall be in default of this Agreement, and the Lender may direct the Trustee foreclose immediately; accelerate the Note in accordance with Section 12.1.1; and convey the Property to the Town of Bedford, Virginia, a municipal corporation of the Commonwealth of Virginia, for \$10.

12.2.4 Discontinuance of Proceedings; Position of Parties Restored. If Lender shall

have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry, or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Lender, then and in every such case Grantor and Lender shall be restored to their former positions and rights hereunder, and all rights, powers, and remedies of Lender shall continue as if no such proceedings had occurred or had been taken.

Section 13. Miscellaneous.

13.1 Incorporation of Exhibits. All exhibits, supplements, schedules, addenda, and other attachments to this Deed of Trust are by this reference incorporated herein and made a part hereof as if fully set forth in the body of this Deed of Trust. The recitals set forth in this Deed of Trust are also a part of this Deed of Trust.

13.2 Maintenance of Records by Lender. Lender is authorized to maintain, store, and otherwise retain evidences of the Obligations, this Deed of Trust, any separate security agreements and other agreements executed-or delivered or to be executed or delivered by Grantor or others on Grantor's behalf to Trustee or Lender in their original, inscribed tangible form or a record thereof in an electronic medium or other non-tangible medium which permits such record to be retrieved in a perceivable form.

13.3 Accuracy of Information Regarding Grantor. Grantor represents to Lender the information contained in this Deed of Trust and other information provided to Lender by or on behalf of Grantor is true, accurate, and correct and Grantor agrees to promptly inform Lender in writing of any changes therein or any inaccuracies thereto, such notices to be addressed to Lender and mailed, postage prepaid, to Lender's address set forth herein.

13.4 No Deductions for Taxes or Withholdings: Documentary Taxes. All payments made by Grantor under this Deed of Trust shall be made by Grantor free and clear of and without deduction for any and all present and future taxes, levies, charges, deductions and withholdings, and if any present or future applicable law requires such deduction for any tax, levy or charge on

this Deed of Trust or Lender's interest hereunder which is required to be paid by Lender (with the exception of income tax required to be paid by Lender), the same shall be an Event of Default and Lender may exercise, at its option, any and all rights and remedies provided to Lender hereunder upon the occurrence of an Event of Default. In addition, to the extent not prohibited by applicable law and notwithstanding who is liable for payment of the taxes or fees, Grantor shall pay upon demand any stamp tax, documentary tax, intangible tax and other taxes, levies, and charges of any jurisdiction with respect to the execution, delivery, registration, performance and enforcement of this Deed of Trust.

13.5 Marshalling of Assets. Grantor hereby waives, to the extent permitted by law, the benefit of all homestead, appraisement, valuation, stay, extension, reinstatement, and redemption laws now in force and any hereafter arising and in force and all rights of marshalling in the event of any sale hereunder of the Property, the Collateral or any part or any interest in either or both. Further, Grantor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust on behalf of Grantor, and on behalf of each and every person acquiring any interest in or title to the Property or the Collateral subsequent to the date of this Deed of Trust and on behalf of all other persons to the extent permitted by law.

13.6 Waiver of Statutory Rights. Grantor waives any right to require Lender to bring any action against any other person or to require that resort be had to any security or to any balances of any deposit or other accounts on the books of Lender in favor of any other person; and, without limiting the foregoing, but in furtherance thereof, Grantor waives any rights Grantor otherwise might have or have had under any laws that require or may require Lender to recover against some other person, or to realize upon any security which Lender holds for the Obligations. Grantor also waives any and all right of subrogation, contribution, reimbursement and indemnity whatsoever or any right of recourse to or with respect to the assets or property of any person that is or may be security for the Obligations.

13.7 Jury; Venue; Jurisdiction. This Deed of Trust shall be deemed to have been executed and delivered in the Commonwealth of Virginia, regardless of where the signatories may be located at the time of execution and shall be governed by and construed in accordance with the substantive laws of such jurisdiction, excluding, however, the conflict of law and choice of law provisions thereof. Grantor, to the extent permitted by law, waives any right to a trial by jury in any action arising from or related to this Deed of Trust.

13.8 Cumulative Rights, etc. The rights, powers, and remedies of Lender under this Deed of Trust shall be in addition to all rights, powers and remedies given to Lender at law and in equity, and in any other agreement, all of which rights, powers and remedies shall be cumulative and may be exercised by Lender from time to time and at any number of times successively, concurrently and alternatively without impairing Lender's rights under this Deed of Trust.

13.9 No Waiver; No Course of Dealing; No Invalidity. Lender, at any time or times, may grant extensions of time for payment or other indulgences or accommodations to any person obligated on any of the Obligations, or permit the renewal, amendment, or modification thereof or substitution or replacement therefor, or permit the substitution, exchange or release of any

property securing any of the Obligations and may add or release any person primarily or secondarily liable on any of the Obligations, all without releasing Grantor from any of its liabilities and obligations under this Deed of Trust and without Lender waiving any of its rights and remedies under this Deed of Trust, or otherwise. No delay or forbearance by Lender in exercising any or all of its rights and remedies hereunder or rights and remedies otherwise afforded by law or in equity shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any Event of Default as set forth herein or in the event of any subsequent Event of Default hereunder. Also, no act or inaction of Lender under this Deed of Trust shall be deemed to constitute or establish a "course of performance or dealing" that would require Lender to so act or refrain from acting in any particular manner at a later time under similar or dissimilar circumstances. Wherever possible, each provision of this Deed of Trust shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Deed of Trust shall be prohibited or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Deed of Trust.

13.10 No Oral Change. Subject to the exercise by Lender of its rights and remedies as set forth in this Deed of Trust and without limiting any of such rights and remedies, this Deed of Trust, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Grantor or Lender, but only by an agreement in writing, signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

13.11 Power of Attorney; Financing Statements. Grantor does hereby irrevocably constitute and appoint Lender its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to execute, deliver or file such agreements, documents, notices, financing statements and records as Lender, in its sole discretion, deems necessary or advisable to effect the terms and conditions of this Deed of Trust and to otherwise protect the security of the liens and security interests created by this Deed of Trust; and, to the extent Lender deems necessary or appropriate, to make public in financing statements or other public filings (unless prohibited by applicable law) such information regarding Grantor as Lender deems necessary or appropriate, including, without limitation, federal tax identification numbers, social security numbers and other identifying information. The foregoing appointment is and the same shall be coupled with an interest in favor of Lender.

13.12 Payment of Expenses. Without limiting any other provision of this Deed of Trust relating to Grantor's payment of costs and expenses incurred by Lender and those incurred on behalf of Lender, but in addition thereto, Grantor shall pay to Lender, on demand, any and all costs and expenses, including, without limitation, reasonable legal expenses and reasonable attorneys' fees, reasonable fees of legal assistants and reasonable fees and expenses of other professionals and service providers, incurred or paid by Lender and those incurred or paid on behalf of Lender in doing any one or more of protecting its interest in the Property and the Collateral, collecting any amount payable hereunder or secured hereby and enforcing its rights hereunder with respect to the Property and the Collateral (including, without limitation, commencing any foreclosure action or prosecuting or defending any legal or equitable proceeding), together with interest thereon at the Default Rate from the date paid or incurred by

or on behalf of Lender until such costs and expenses are paid by Grantor. All sums so paid or expended by Lender, and the interest thereon, shall be added to and be secured by the lien of this Deed of Trust.

13.13 Relationship of Parties; Successors and Assigns. The relationship of Lender to Grantor is that of a creditor to an obligor or debtor; and in furtherance thereof and in explanation thereof, Lender has no fiduciary, trust, guardian, representative, partnership, joint venturer, or other similar relationship to or with Grantor and no such relationship shall be drawn or implied from this Deed of Trust or any of Lender's actions or inactions hereunder or with respect hereto - and, Lender has no obligation to Grantor or any other person relative to administration of the Obligations secured by this Deed of Trust or the Property or Collateral, or any part or parts thereof or interests therein. The covenants, terms and conditions herein contained shall bind, and the benefits and powers shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto, as well as any persons who become bound to this Deed of Trust as a debtor, but nothing herein contained shall alter or negate the provisions of Section 9. If two or more persons have joined as Grantor, each of the persons shall be jointly and severally obligated to perform the obligations herein contained. The term "Lender" shall include any payee of the Obligations or other indebtedness or obligations hereby secured and any transferee or assignee thereof, whether by operation of law or otherwise, and Lender may transfer, assign or negotiate all or any of the Obligations or other indebtedness or obligations secured by this Deed of Trust from time to time without consent of Grantor and without notice to Grantor and any transferee or assignee of time without the consent of Grantor and without notice to Grantor and any transferee or assignee of Lender or any transferee or assignee of another may do the same without Grantor's consent and without notice to Grantor. Grantor waives and will not assert against any transferee or assignee of Lender any claims, defenses, set-offs or rights of recoupment which Grantor could assert against Lender, except defenses which Grantor cannot waive.

13.14 Notices. All notices, certificates, requests for information and other communications hereunder shall be given in accordance with the terms of the Development Agreement. Grantor, Trustee and, except as otherwise provided by Virginia Code Section 55-58.2, the Lender may, by written notice given hereunder, designate a different address where communications should be sent and Lender may direct, by notice to Trustee or Grantor, for communications to be sent electronically or in some other non-tangible medium.

13.15 Use and Application of Terms. To the end of achieving the full realization by Lender of its rights and remedies under this Deed of Trust, including payment in full of the Obligations, in using and applying the various terms, provisions and conditions in this Deed of Trust, the following shall apply: (1) the terms "hereby", "hereof", "herein", "hereunder", and any similar words, refer to this Deed of Trust; (2) words in the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular numbered meaning include the plural number, and vice versa; (3) words importing persons include firms, companies, associations, general partnerships, limited partnerships, limited liability partnerships, limited liability limited partnerships, limited liability companies, trusts, business trusts, corporations and other legal organizations, including public and quasi-public bodies, as well as individuals; (4) the use of the terms "including" or "included in", or the use of examples

generally, are not intended to be limiting, but shall mean, without limitation, the examples provided and others that are not listed, whether similar or dissimilar; (5) the phrase "costs and expenses", or variations thereof, shall include, without limitation, reasonable attorneys' fees and fees of legal assistants, and reasonable fees of accountants, engineers, surveyors, appraisers and other professionals or experts -and all references to attorneys' fees or fees of legal assistants, or fees of accountants, engineers, surveyors, appraisers or other professionals or experts shall mean reasonable fees; (6) as the context requires, the word "and" may have a joint meaning or a several meaning and the word "or" may have an inclusive meaning or an exclusive meaning; (7) all terms used in this Deed of Trust that are not defined in this Deed of Trust or in the Development Agreement, but are defined in the Uniform Commercial Code in effect in the Commonwealth of Virginia, shall have the meaning ascribed to such terms from time to time in such Uniform Commercial Code; (8) any reference contained in this Deed of Trust to specific statutes or laws shall include any successor statutes or laws, as the case may be; (9) headings and captions used in this Deed of Trust are for convenience only, and shall not be used to interpret, construe, define, limit or expand the terms and conditions of this Deed of Trust; (10) this Deed of Trust shall not be applied, interpreted and construed more strictly against a person because that person or that person's attorney drafted this Deed of Trust; and (11) "Deed of Trust" means this Deed of Trust and Security Agreement, together with any and all extensions, renewals, amendments, modifications, restatements, substitutions and replacements hereof or herefor.

13.16 Cancellation of Deed of Trust Lien. If at any time during the period of this Deed of Trust there is no indebtedness outstanding under any of the Loan Documents, no obligation of Lender to make any further or additional advances to any person under any of the Loan Documents, and all Obligations and other debts and obligation secured by this Deed of Trust have been paid and satisfied in full, Lender will, upon written request of Grantor and at Grantor's costs and expense (including, without limitation, reasonable attorneys' fees) if permitted by applicable law, cause the Trustee to execute and deliver to Grantor a reconveyance or release of the lien of this Deed of Trust.

13.17 Substitution of Trustee. Lender shall at any time have the irrevocable right to remove Trustee herein named without notice or cause and to appoint its/his successor by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to be recorded in Virginia. In the event of the death, cessation of business, termination of existence or resignation of Trustee herein named, Lender shall have the right to appoint his successor by such written instrument. Any Trustee so appointed shall be vested with the title to the Property or the Collateral and shall possess all the powers, duties and obligations herein conferred on Trustee in the same manner and to the same extent as though he were named herein as Trustee. If more than one Trustee or successor Trustee is appointed, then any Trustee or successor Trustee may act as provided in Section 55-60 of the Code of Virginia.

13.18 Sealed Instrument. This Deed of Trust is executed by Grantor under seal and it is intended that this Deed of Trust is and shall constitute and have the effect of a sealed instrument according to law.

(Signatures Begin on the Next Page)

The undersigned has executed and delivered this Deed of Trust under seal as of the date first above written to be effective as of the Effective Date.

GRANTOR:

Waukeshaw Development, Inc.

By: _____
Name: J. David McCormack
Title: President

STATE OF _____
CITY/COUNTY OF _____

The foregoing document was acknowledged before me by J. David McCormack, President of Waukeshaw Development, Inc., a Virginia corporation, on behalf of such entity, this _____ day of _____, _____.

Notary Public

Registration Number

My Commission Expires: _____

EXHIBIT 1 TO DEED OF TRUST

TRACT A:

All that certain tract or parcel of land lying and being in the Town of Bedford, Virginia, on the north side of Longwood Avenue and of metes and bounds, courses and distances as follows:

BEGINNING at an iron pipe in Guy's Line, thence with Hayes' line S. $70^{\circ} 44'$ 157.6 feet to an iron pipe, thence S. 20° W. 376.4 feet to a point in the north edge of the concrete sidewalk on the north side of Peaks Street, thence along the edge of said street and sidewalk S. $55^{\circ} 06'$ E. 206.5 feet, thence on an irregular curve of said walk to the left, located by a base line N. $66^{\circ} 54'$ E. (at 7 feet the edge of the walk is right 3.8 feet; at 16 feet, is right 6.2 feet; at 26 feet is right 4.8 feet) in all 34.5 feet thence along the edge of Longwood Avenue and the edge of said concrete sidewalk N. $32^{\circ} 54'$ E. 51.1 feet, thence N. $62^{\circ} 42'$ E. 194.4 feet to an iron pipe, thence N. $73^{\circ} 35'$ W. 35 feet to an iron pipe, thence with his and others' line N. $2^{\circ} 10'$ W. 584.2 feet to an iron pipe, thence N. $87^{\circ} 24'$ W. 345.5 feet to an iron pipe, thence with Guy's Line S. $11^{\circ} 55'$ W. 476.3 feet to the point of BEGINNING; and containing 8.37 acres, more or less.

And being comprised of the following lots or parcels:

PARCEL 1

The residue of a tract formerly containing 0.85 acre, more or less, conveyed to the Town of Bedford by E.W. Connell by Deed dated September 27, 1941, of record in the Clerk's Office of the Circuit Court for Bedford County, Virginia, in Deed Book 195, page 540; after deducting therefrom a conveyance off to Sydnor W. Hayes by the Town of Bedford of a strip of said tract to close an alley, by Deed

dated September 13, 1949, and of record in the aforesaid Clerk's Office in Deed Book 228, page 18, together with the easements appurtenant thereto.

PARCEL 2

A tract of 6.09 acres, more or less, conveyed to the School Board of the Municipal District of the County of Bedford, by Junia A. Graves, unmarried, and F.O. Thomas, et ux., by Deed dated April 1, 1912, of record in the Clerk's Office of the Circuit Court for Bedford County, Virginia, in Deed Book 106, page 42; and subject to a certain easement dated December 12, 1949, from the Municipal School Board of the Town of Bedford, Virginia, to W.W. Childress and Mary P. Childress, of record in the aforesaid Clerk's Office in Deed Book 229, page 178.

PARCEL 3

A tract of 2.29 acres, more or less, conveyed to the School Board of the Municipal District of the County of Bedford, by C.E. Harris, et al., Trustees of St. John's Protestant Episcopal Church, Bedford, Virginia, by Deed dated July 1, 1920, of record in the aforesaid Clerk's Office in Deed Book 130, page 412.

PARCEL 4

A tract containing 5,417 square feet, more or less, conveyed to the Municipal School Board of the Town of Bedford, by Hanford R. Johnson by Deed dated November 14, 1939, and of record in the aforesaid Clerk's Office in Deed Book 189, page 30.

AND BEING IN TOTAL that same property conveyed by the County School Board of Bedford County, Virginia, to the City of Bedford, Virginia (now the Town of Bedford, Virginia), by Deed dated June 27, 1985, and of record in the aforesaid Clerk's Office at Deed Book 591, page 171.

TRACT B:

All those certain lots or parcels of land, together with the privileges and appurtenances thereunto belonging, fronting on the west side of Westview Avenue (formerly Belmont Avenue) in the City of Bedford, Virginia, and being Lot 1 fronting 86.1 feet on Westview Avenue and Lots 2, 3, and 4 each fronting 75 feet on Westview Avenue as shown on a certain Plat of Survey entitled, "Plat of the F.O. Thomas Lots situated on the West Side of Belmont Avenue in the Town of Bedford, Virginia," dated August 6, 1936, made by James L. Patterson, C.L.S., and of record in the Clerk's Office of the Circuit Court of Bedford County, Virginia, in Plat Book 3, page 122. And being the same identical lots which were acquired by the County School Board of Bedford County, Virginia, as follows:

LOT 1

Lot 1 from John N. Thomas, et ux., et al., by Deed dated July 3, 1967, and of record in the aforesaid Clerk's Office in Deed Book 341, page 655.

LOT 2

Lot 3 from Cosey Updike Davey, widow, by Deed dated July 25, 1969, and of record in the aforesaid Clerk's Office in Deed Book 356, page 328.

LOTS 3 & 4

Lots 3 and 4 from C.C. Moore, et ux., by Deed dated July 26, 1969, and of record in the aforesaid Clerk's Office in Deed Book 356, page 330.

AND BEING IN TOTAL that same property conveyed by the County School Board of Bedford County, Virginia, to the City of Bedford, Virginia (now the Town of Bedford, Virginia), by Deed dated March 1987, and of record in the aforesaid Clerk's Office at Deed Book 804, page 107.

EXHIBIT 2 TO DEED OF TRUST

(Description of Additional Personal Property)

All furniture, furnishings, apparatus, machinery, equipment, motors, elevators, fittings, radiators, ranges, refrigerators, awnings, shades, screens, blinds, carpeting, office equipment, engines, boilers, incinerators, building materials, and other furnishings and all plumbing, heating, lighting, gas, water, air, cooking, laundry, ventilating, refrigerating, incinerating, fire prevention and extinguishing apparatus, security and access control apparatus, air conditioning and sprinkler equipment, telephone systems, televisions and television systems, computer systems and fixtures and appurtenances thereto, water tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, paneling, rugs, attached floor coverings, pictures, antennas, trees and plants and all appliances and goods of every nature whatsoever and all renewals or replacements thereof or articles in substitution thereof, whether or not the same are or shall be attached to the Property in any manner, and all products and proceeds therefrom, and any and all awards or payments, including interest thereon, and the right to receive the same, as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, or (c) any other injury to, taking of, or decrease in the value of, the Property.

Exhibit F

Prepared by:

Michael W.S. Lockaby (VSB No. 74136)
Guynn, Waddell, Carroll & Lockaby P.C.
415 South College Avenue
Salem, Virginia 24153

Tax Map No.: _

Title Ins.: _____

Consideration: \$10 (tax assessment \$ _____)

Exempt from recordation taxes and fees pursuant to Sections 58.1-811(A)(3) and (C)(4) and 17.1-266 of the Code of Virginia, 1950, as amended.

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is dated as of this _____ day of _____, 20____, by and between the TOWN OF BEDFORD, VIRGINIA, a municipal corporation of the Commonwealth of Virginia ("Grantor") and WAUKESHA DEVELOPMENT, INC., a Virginia corporation ("Grantee").

IN CONSIDERATION of the sum of Ten Dollars (\$10.00), cash in hand paid by Grantee unto Grantor, the receipt and sufficiency of which are acknowledged, the Grantor grants and conveys, with Special Warranty of title, unto the Grantee all that certain parcel of land being situate in the Town of Bedford, Virginia, and more particularly described as follows (the "Property"), together with all improvements, fixtures, and easements and rights appurtenant thereto:

TRACT A:

All that certain tract or parcel of land lying and being in the Town of Bedford, Virginia, on the north side of Longwood Avenue and of metes and bounds, courses and distances as follows:

BEGINNING at an iron pipe in Guy's Line, thence with Hayes' line S. 70° 44' 157.6 feet to an iron pipe, thence S. 20° W. 376.4 feet to a point in the north edge of the concrete sidewalk on the north side of Peaks Street, thence along the edge of said street and sidewalk S. 55° 06' E. 206.5 feet, thence on an irregular curve of said walk to the left, located by a base line N. 66° 54' E. (at 7 feet the edge of the walk is right 3.8 feet; at 16 feet, is right 6.2 feet; at 26 feet is right 4.8 feet) in all 34.5 feet thence along the edge of Longwood Avenue and the edge of said concrete sidewalk N. 32° 54' E. 51.1 feet, thence N. 62° 42' E. 194.4 feet to an iron pipe, thence N. 73° 35' W. 35 feet to an iron pipe, thence with his and others' line N. 2° 10' W. 584.2 feet to an iron pipe, thence N. 87° 24' W. 345.5 feet to an iron pipe, thence with Guy's Line S. 11° 55' W. 476.3 feet to the point of BEGINNING; and containing 8.37 acres, more or less.

And being comprised of the following lots or parcels:

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PARCEL 2

A tract of 6.09 acres, more or less, conveyed to the School Board of the Municipal District of the County of Bedford, by Junia A. Graves, unmarried, and F.O. Thomas, et ux., by Deed dated April 1, 1912, of record in the Clerk's Office of the Circuit Court for Bedford County, Virginia, in Deed Book 106, page 42; and subject to a certain easement dated December 12, 1949, from the Municipal School Board of the Town of Bedford, Virginia, to W.W. Childress and Mary P. Childress, of record in the aforesaid Clerk's Office in Deed Book 229, page 178.

PARCEL 3

A tract of 2.29 acres, more or less, conveyed to the School Board of the Municipal District of the County of Bedford, by C.E. Harris, et al., Trustees of St. John's Protestant Episcopal Church, Bedford, Virginia, by Deed dated July 1, 1920, of record in the aforesaid Clerk's Office in Deed Book 130, page 412.

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AND BEING IN TOTAL that same property conveyed by the County School Board of Bedford County, Virginia, to the City of Bedford, Virginia (now the Town of Bedford, Virginia), by Deed dated June 27, 1985, and of record in the aforesaid Clerk's Office at Deed Book 591, page 171.

TRACT B:

All those certain lots or parcels of land, together with the privileges and appurtenances thereunto belonging, fronting on the west side of Westview Avenue (formerly Belmont Avenue) in the City of Bedford, Virginia, and being Lot 1 fronting 86.1 feet on Westview Avenue and Lots 2, 3, and 4 each fronting 75 feet on Westview Avenue as shown on a certain Plat of Survey entitled, "Plat of the F.O. Thomas Lots situated on the West Side of Belmont Avenue in the Town of Bedford, Virginia," dated August 6, 1936, made by James L. Patterson, C.L.S., and of record in the Clerk's Office of the Circuit Court of Bedford County, Virginia, in Plat Book 3, page 122. And being the same identical lots which were acquired by the County School Board of Bedford County, Virginia, as follows:

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Lot 3 from Cosey Updike Davey, widow, by Deed dated July 25, 1969, and of record in the aforesaid Clerk's Office in Deed Book 356, page 328.

LOTS 3 & 4

Lots 3 and 4 from C.C. Moore, et ux., by Deed dated July 26, 1969, and of record in the aforesaid Clerk's Office in Deed Book 356, page 330.

AND BEING IN TOTAL that same property conveyed by the County School Board of Bedford County, Virginia, to the City of Bedford, Virginia (now the Town of Bedford, Virginia), by Deed dated March 1987, and of record in the aforesaid Clerk's Office at Deed Book 804, page 107.

As part of the consideration for this grant, the Grantee agrees perpetually to maintain the outdoor historical monuments on the Property, including, without limitation, the World War II memorial plaque in front of the southeast corner of the Old Middle School Building; the Sons of Confederate Veterans memorial garden adjacent to North Bridge Street; and the polished stone bench at the intersection of Peaks Street and North Bridge Street (collectively the "Monuments"). The Grantor reserves unto itself an easement to the benefit of the public for reasonable access to the Monuments for the purposes of viewing, meditation, prayer, and other similar honorary purposes. The Grantor further reserves the right, for itself or for its assigns, but not the duty, to maintain the Monuments or to replace them with monuments of substantially similar size, location, and design; and to change the design as part of replacement or maintenance upon approval of the Grantee, not to be unreasonably withheld or delayed.

THIS CONVEYANCE is made subject to all easements, restrictions, and conditions of record or which would be revealed by a current field survey.

THIS DEED HAS BEEN PREPARED WITHOUT BENEFIT OF A FULL TITLE REPORT AND NO REPRESENTATION AS TO THE STATE OF TITLE IS MADE BY THE ATTORNEY PREPARING THIS DEED.

Signatures on Following Page

GRANTOR:

TOWN OF BEDFORD, VIRGINIA:

Steve C. Rush, Mayor

COUNTY OF BEDFORD,

COMMONWEALTH OF VIRGINIA, to wit:

The foregoing instrument was acknowledged before me this _____, 2019,
by Mayor Steve C. Rush on behalf of the Town of Bedford, Virginia.

My commission expires: _____

Notary registration number: _____

Notary Public

Signatures Continue on Next Page

GRANTEE:

WAUKESHAW DEVELOPMENT, INC.:

J. David McCormack, President

CITY/COUNTY OF _____

COMMONWEALTH OF VIRGINIA, to wit:

The foregoing instrument was acknowledged before me this _____, 2019, by J.
David McCormack, President, on behalf of Waukeshaw Development, Inc.

My commission expires: _____

Notary registration number: _____

Notary Public

Exhibit G

Prepared by and return to:

Michael W.S. Lockaby
VSB No. 74136
Guynn, Waddell, Carroll & Lockaby, P.C.
415 South College Avenue
Salem, Virginia 24153

Tax Map Nos. 174-5-1-T, 174-5-2-T, 174-5-3-T, 174-5-4-T, 194-A-170-T

This memorandum is tax-exempt under Section 58.1-____ of the Code of Virginia, 1950, as amended.

MEMORANDUM OF PERFORMANCE AGREEMENT & OPTION

THIS MEMORANDUM OF PERFORMANCE AGREEMENT ("Memorandum") is entered into effective as of the ____ day of _____, 2019, by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF THE TOWN OF BEDFORD, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "Authority"), **the TOWN OF BEDFORD, VIRGINIA**, a Virginia municipal corporation (the "Town"), and **WAUKESHAW DEVELOPMENT, INC.**, a Virginia corporation ("Company").

RECITALS

WHEREAS, the Company has entered into a performance agreement with the Town and the Authority relating to certain property at 503 Longwood Ave., in the Town of Bedford, Virginia (the "Property"), generally known as the Old Bedford Middle School and 'Old Yellow,' and described in **Exhibit 1**;

WHEREAS, the Company expects to make substantial new investments and create new jobs in the Town of Bedford; and

WHEREAS, under the performance agreement, the Company has committed to attain certain performance targets, and has the option to purchase the Property, in return for which the Authority is obliged to make certain incentive grants and the Town will undertake certain legal actions; and

WHEREAS, the animating purpose for the performance is the stimulation of additional tax revenue and economic activity through the increase of commerce and the promotion of the public safety, health, welfare, convenience, and prosperity:

MEMORANDUM

NOW, THEREFORE, the parties provide the following information concerning the Performance Agreement:

1. Parties to the Performance Agreement are: The Town of Bedford, Virginia, the Economic Development Authority of the Town of Bedford, Virginia, and Waukeshaw Development, Incorporated.

2. The Performance Agreement is dated as of _____, 2019. In substance it provides that:

- a. The Company will make a capital investment of approximately \$10,000,000 at the Property, by converting the 'Old Yellow' structure to a hotel with approximately 34 rooms, the Old Middle School structure to an apartment building with approximately 50 market-rate apartment units, together with other improvements.
- b. In return, the Authority will make a loan to the Company, subject to availability of funds from the Town of Bedford, Virginia, in an amount not to exceed \$400,000, for the purpose of stimulating and incenting the Company's investment. The loan is subordinable to a construction loan at the request of the Company and is forgivable if the Company meets certain performance targets not later than three years following purchase of the Property.
- c. The Performance Agreement also contains a provision providing for the Town to lease the Property to the Company during a due diligence period of six months, which may be extended by the Town to 12 months. Reference is made to the Lease, put to record contemporaneously herewith, for a more particular description of the rights and obligations contained therein.
- d. The Performance Agreement also contains a provision providing for the Company to have an Option to purchase the Property, as described in the Lease, and provides for the Authority to take a deed of trust against the Property to secure the loan mentioned in subsection 2.b., above.
- e. Under the terms of the Performance Agreement and the Deed of Trust, the Company is required to obtain a rezoning and various other regulatory and construction targets within three years from conveyance of the Property to the Company pursuant to the Option. If the Option is exercised or otherwise vests, a Special Warranty Deed will be put to record memorializing the transfer, to which reference is made for a more particular description of the rights and obligations contained therein.

3. The terms of the Performance Agreement bind the successors and assigns of the parties.

4. The Property is more particularly described in the attached Exhibit 1.

The addresses of the parties are as follows:

WAUKESHAW DEVELOPMENT, INC.
245 East Bank Street
Petersburg, Virginia 23803
Attn: Dave McCormack

TOWN OF BEDFORD, VIRGINIA
215 East Main Street
Bedford, Virginia 24523
Attn: Barrett F. Warner, Town Manager

With a copy to:

GUYNN, WADDELL, CARROLL & LOCKABY, P.C.
415 South College Avenue
Salem, Virginia 24153
Attn: Michael W.S. Lockaby, Esq.

ECONOMIC DEVELOPMENT AUTHORITY OF THE TOWN OF BEDFORD,
VIRGINIA
215 East Main Street
Bedford, Virginia 24523
Attn: Mary Zirkle, Economic Development Coordinator

With a copy to:

CASKIE & FROST, P.C.
2306 Atherholt Road
Lynchburg, Virginia 24501
Attn: Theodore J. Craddock, Esq.

4. This Memorandum is not intended to be used to vary, interpret, limit, extend, or otherwise in any manner affect the terms of the Performance Agreement. The purpose of this Memorandum is solely to alert all persons of the existence of an economic development Performance Agreement relating to the Property and certain other matters related thereto. In the event of any difference or discrepancy between this Memorandum and the Performance Agreement, the Performance Agreements shall control in all respects.

TOWN OF BEDFORD, VIRGINIA:

Steve C. Rush, Mayor

COUNTY OF BEDFORD,

COMMONWEALTH OF VIRGINIA, to wit:

The foregoing instrument was acknowledged before me this _____, 2019, by Steve C. Rush, Mayor, on behalf of the Town of Bedford, Virginia.

My commission expires: _____

Notary registration number: _____

Notary Public

Signatures Continue on Next Page

ECONOMIC DEVELOPMENT AUTHORITY OF
THE TOWN OF BEDFORD, VIRGINIA:

COUNTY OF BEDFORD,

_____, Chairman

COMMONWEALTH OF VIRGINIA, to wit:

The foregoing instrument was acknowledged before me this _____, 2019,
by _____, Chairman, on behalf of the Economic Development Authority
of the Town of Bedford, Virginia.

My commission expires: _____

Notary registration number: _____

Notary Public

WAUKESHAW DEVELOPMENT, INC.:

J. David McCormack, President

CITY/COUNTY OF _____

COMMONWEALTH OF VIRGINIA, to wit:

The foregoing instrument was acknowledged before me this _____, 2019,
by J. David McCormack, President, on behalf of Waukeshaw Development, Inc.

My commission expires: _____

Notary registration number: _____

Notary Public

Exhibit 1

TRACT A:

All that certain tract or parcel of land lying and being in the Town of Bedford, Virginia, on the north side of Longwood Avenue and of metes and bounds, courses and distances as follows:

BEGINNING at an iron pipe in Guy's Line, thence with Hayes' line S. $70^{\circ} 44'$ 157.6 feet to an iron pipe, thence S. $20^{\circ} W.$ 376.4 feet to a point in the north edge of the concrete sidewalk on the north side of Peaks Street, thence along the edge of said street and sidewalk S. $55^{\circ} 06' E.$ 206.5 feet, thence on an irregular curve of said walk to the left, located by a base line N. $66^{\circ} 54' E.$ (at 7 feet the edge of the walk is right 3.8 feet; at 16 feet, is right 6.2 feet; at 26 feet is right 4.8 feet) in all 34.5 feet thence along the edge of Longwood Avenue and the edge of said concrete sidewalk N. $32^{\circ} 54' E.$ 51.1 feet, thence N. $62^{\circ} 42' E.$ 194.4 feet to an iron pipe, thence N. $73^{\circ} 35' W.$ 35 feet to an iron pipe, thence with his and others' line N. $2^{\circ} 10' W.$ 584.2 feet to an iron pipe, thence N. $87^{\circ} 24' W.$ 345.5 feet to an iron pipe, thence with Guy's Line S. $11^{\circ} 55' W.$ 476.3 feet to the point of BEGINNING; and containing 8.37 acres, more or less.

And being comprised of the following lots or parcels:

PARCEL 1

The residue of a tract formerly containing 0.85 acre, more or less, conveyed to the Town of Bedford by E.W. Connell by Deed dated September 27, 1941, of record in the Clerk's Office of the Circuit Court for Bedford County, Virginia, in Deed Book 195, page 540; after deducting therefrom a conveyance off to Sydnor W. Hayes by the Town of Bedford of a strip of said tract to close an alley, by Deed dated September 13, 1949, and of record in the aforesaid Clerk's Office in Deed Book 228, page 18, together with the easements appurtenant thereto.

PARCEL 2

A tract of 6.09 acres, more or less, conveyed to the School Board of the Municipal District of the County of Bedford, by Junia A. Graves, unmarried, and F.O. Thomas, et ux., by Deed dated April 1, 1912, of record in the Clerk's Office of the Circuit Court for Bedford County, Virginia, in Deed Book 106, page 42; and subject to a certain easement dated December 12, 1949, from the Municipal School Board of the Town of Bedford, Virginia, to W.W. Childress and Mary P. Childress, of record in the aforesaid Clerk's Office in Deed Book 229, page 178.

PARCEL 3

A tract of 2.29 acres, more or less, conveyed to the School Board of the Municipal District of the County of Bedford, by C.E. Harris, et al., Trustees of St. John's Protestant Episcopal Church, Bedford, Virginia, by Deed dated July 1, 1920, of record in the aforesaid Clerk's Office in Deed Book 130, page 412.

PARCEL 4

A tract containing 5,417 square feet, more or less, conveyed to the Municipal School Board of the Town of Bedford, by Hanford R. Johnson by Deed dated November 14, 1939, and of record in the aforesaid Clerk's Office in Deed Book 189, page 30.

AND BEING IN TOTAL that same property conveyed by the County School Board of Bedford County, Virginia, to the City of Bedford, Virginia (now the Town of Bedford, Virginia), by Deed dated June 27, 1985, and of record in the aforesaid Clerk's Office at Deed Book 591, page 171.

TRACT B:

All those certain lots or parcels of land, together with the privileges and appurtenances thereunto belonging, fronting on the west side of Westview Avenue (formerly Belmont Avenue) in the City of Bedford, Virginia, and being Lot 1 fronting 86.1 feet on Westview Avenue and Lots 2, 3, and 4 each fronting 75 feet on Westview Avenue as shown on a certain Plat of Survey entitled, "Plat of the F.O. Thomas Lots situated on the West Side of Belmont Avenue in the Town of Bedford, Virginia," dated August 6, 1936, made by James L. Patterson, C.L.S., and of record in the Clerk's Office of the Circuit Court of Bedford County, Virginia, in Plat Book 3, page 122. And being the same identical lots which were acquired by the County School Board of Bedford County, Virginia, as follows:

LOT 1

Lot 1 from John N. Thomas, et ux., et al., by Deed dated July 3, 1967, and of record in the aforesaid Clerk's Office in Deed Book 341, page 655.

LOT 2

Lot 3 from Cosey Updike Davey, widow, by Deed dated July 25, 1969, and of record in the aforesaid Clerk's Office in Deed Book 356, page 328.

LOTS 3 & 4

Lots 3 and 4 from C.C. Moore, et ux., by Deed dated July 26, 1969, and of record in the aforesaid Clerk's Office in Deed Book 356, page 330.

AND BEING IN TOTAL that same property conveyed by the County School Board of Bedford County, Virginia, to the City of Bedford, Virginia (now the Town of Bedford, Virginia), by Deed dated March 1987, and of record in the aforesaid Clerk's Office at Deed Book 804, page 107.