

VOLUNTEERS IN POLICE SERVICES (VIPS) AWARDS CEREMONY

6:00PM IN THE GOVERNMENT CENTER BOARD ROOM



TOWN OF FRONT ROYAL, VIRGINIA TOWN COUNCIL MEETING

Monday, April 14, 2014 @ 7:00 p.m.
Warren County Government Center

1. Pledge of Allegiance
2. Moment of Silence
3. Roll Call
4. Approval of the Regular Council Meeting minutes of March 24, 2014.
5. Receipt of Petitions and/or Correspondence from the Public
6. Reports:
 - a. Report of special committees or Town officials and Town Manager.
 - b. Requests and inquiries of Council members.
 - c. Report of the Mayor
 - d. Proposals for addition/deletion of items to the Agenda.
- *7. **CONSENT AGENDA ITEMS – (ROLL CALL VOTE REQUIRED)**
 - A. COUNCIL APPROVAL – Resolution of Support for YouthBuild
 - B. COUNCIL APPROVAL – Shentel Request to Install Additional Facilities on Water Tank by Agreement

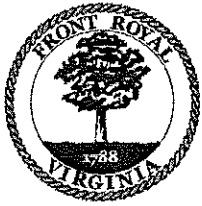
**The nature of a consent agenda is such that discussion of individual items does not occur.*

8. **COUNCIL APPROVAL** – An Ordinance to Amend Chapter 80 of the Town Code Pertaining to Fireworks (2nd Reading)
9. **COUNCIL APPROVAL** – Extension of Proffer Deadlines for Proffer Statement by Heptad, LLC for Rezoning Application.

TOWN COUNCIL WORK SESSION

to be held after regular meeting
Warren County Government Center Caucus Room

1. Continued Discussion from March 24, 2014 Public Hearing on an Ordinance to Adopt a Two Party (Town and County only parties, FRLP not a party) Voluntary Settlement Agreement to Relocate a Portion of the Boundary Line Owned by Front Royal Limited Partnership.



**Town of Front Royal, Virginia
Council Agenda Statement**

Page 1
Item No. 7(A)

Meeting Date: April 14, 2014

Agenda Item: COUNCIL APPROVAL – Resolution of Support for YouthBuild

Summary: YouthBuild is a youth and community development program that addresses issues facing low-income communities such as education, housing, jobs and leadership development. It addresses the status of unemployed young men and women who have dropped out of school and have no apparent path to a productive future. Council is requested to lend its support and endorsement to the YouthBuild Program by considering approval of a Resolution of Support for YouthBuild of Front Royal as presented.

Budget/Funding: None

Attachments: Resolution of Support

Meetings: Work Session held March 31, 2014.

Staff

Recommendation: Approval ✓ Denial

Should Council wish to remove this item from the consent agenda, the following motion would allow approval of this request:

Proposed Motion: I move that Council approve a Resolution of Support for YouthBuild of Front Royal as presented.

*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance

*To be clear and concise, motions should be made in the positive

Approved By: JB

TOWN OF FRONT ROYAL

RESOLUTION OF SUPPORT FOR YOUTHBUILD OF FRONT ROYAL

WHEREAS, YouthBuild is a comprehensive youth and community development program simultaneously addressing several core issues facing low-income communities such as education, housing, jobs, and leadership development; and,

WHEREAS, YouthBuild uniquely addresses the status of unemployed young men and women who have dropped out of school and have no apparent path to a productive future, allowing them to simultaneously serve their communities and building their own futures; and,

WHEREAS, the YouthBuild program has been carefully designed by community activists with the input of young people in several neighborhoods over several decades; and,

WHEREAS, young people of all background have participated and benefited from the program; and,

WHEREAS, the program is appealing to groups in rural as well as urban neighborhoods

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Front Royal lends its support and endorsement to the YouthBuild of Front Royal Program

APPROVED:

Timothy W. Darr, Mayor

Attest:

Jennifer E. Berry, CMC, Clerk of Council

THIS RESOLUTION was approved at the Regular Meeting of the Town of Front Royal, Virginia, Town Council conducted on _____, 2014 upon the following recorded vote:

Thomas H. Sayre	<u>Yes/No</u>	Bret W. Hrbek	<u>Yes/No</u>
Hollis L. Tharpe	<u>Yes/No</u>	Eugene R. Tewalt	<u>Yes/No</u>
N. Shae Parker	<u>Yes/No</u>	Daryl L. Funk	<u>Yes/No</u>

Approved as to Form and Legality:

Douglas W. Napier, Town Attorney

Dated: _____



**Town of Front Royal, Virginia
Council Agenda Statement**

Page 1
Item No. 7(B)

Meeting Date: April 14, 2014

Agenda Item: COUNCIL APPROVAL – Shentel Request to Install Additional Facilities on Water Tank by Agreement

Summary: Council is requested to consider approval of a request from Shentel (Shenandoah Personal Communications, LLC) for the second amendment to their Tower Site Lease Agreement-Second Renewal to install additional facilities that include (1) Microwave dish antennae; (1) ODU; (1) Cat5 cable to its existing facilities located on the Town's Fairground Road Water Tank in the amount of \$250.00 per month added to the existing amount of their monthly payment for a period of two years commencing on April 1, 2014 as presented.

Budget/Funding: None

Attachments: Agreement

Meetings: Work Session held February 18, 2014

Staff

Recommendation: Approval ☒ Denial ☐

Should Council wish to remove this item from the consent agenda, the following motion would allow approval of this request:

Proposed Motion: I move that Council approve Shentel (Shenandoah Personal Communications, LLC) Second Amendment to Tower Site Lease Agreement-Second Renewal to install additional facilities to its existing facilities located on the Town's Fairground Road Water Tank in the amount of \$250.00 per month added to the existing amount of their monthly payment for a period of two years commencing on April 1, 2014, as presented.

*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance

*To be clear and concise, motions should be made in the positive

Approved By: SB

SECOND AMENDMENT TO TOWER SITE LEASE AGREEMENT-
SECOND RENEWAL

This Second Amendment To Tower Site Lease Agreement-Second Renewal ("Second Amended Second Renewal") is made effective this ____ day of _____, 2014, by and between the **TOWN OF FRONT ROYAL**, a Virginia municipal corporation ("Lessor") and **SHENANDOAH PERSONAL COMMUNICATIONS, LLC**, a Virginia Limited Liability Company (successor in interest to Shenandoah Personal Communications Company, a Virginia Corporation), dba "Shentel", with an address of P.O. Box 459, 500 Shentel Way, Edinburg, Virginia 22824 ("Lessee").

WHEREAS, On or about October 14, 1999, Lessor and Lessee entered into that certain Tower Site Lease Agreement ("Lease") for use of Town property located at 395 Fairground Road (Shentel Site 158 Nineveh), Warren County, Virginia ("Leased Premises"); and,

WHEREAS, the Lease provides for an initial term of five (5) years, ending October 31, 2004, and for three (3) successive five (5) year renewal terms upon written request by the Lessee and written agreement by the Lessor; and,

WHEREAS, on or about February 23, 2004, Lessor and Lessee entered into that certain First Renewal of Tower Site Lease Agreement ("First Renewal"), Lessee exercising the first of the three (3) five (5) year renewal terms; and,

WHEREAS, effective November 1, 2009, Lessor and Lessee entered into that certain Tower Site Lease Agreement-Second Renewal ("Second Renewal"), with Second Renewal Term ending October 31, 2014, with Paragraph 4 thereof amending the use and location of the Leased Premises; and,

WHEREAS, effective October 31, 2012, Lessor and Lessee agreed on the exact location and method of installation of base equipment as provided for in Paragraph 4 of the Second Renewal; and,

WHEREAS, effective January 17, 2013, Lessor and Lessee entered into that certain Amendment To Tower Site Lease Agreement-Second Renewal ("Amended Second Renewal") whereby Lessor and Lessee agreed to amend, for additional consideration, the Second Renewal to allow Lessee to further expand its non-exclusive use of the Leased Premises, with access thereto subject at all times to tank operations and the security requirements of Lessor, relocating/upgrading/expanding its wireless communications facility by replacing three (3) existing antenna with three (3) "RFS", three (3) "Powerwave" and one (1) microwave dish antennae, using seven (7) tank mounts, and by installing new Hybriflex and CAT 5 cabling, all in accordance with final "Network Vision Project" dated November 29, 2012, prepared by Network Building & Consulting, LLC, attached thereto and incorporated therein as Exhibit 1, as amended and modified by "Antenna Installation Review Report" dated December 6, 2012, prepared by Tank Industry Consultants, attached thereto and incorporated therein as Exhibit 2; and,

WHEREAS, on October 28, 2013, Lessor approved Lessee's request, made pursuant to Section 2(a) of the Lease, to renew, for a third and final five (5) year period, the Lease, commencing November 1,

2014 and running through October 31, 2019, at the increased monthly rent of \$2,750.00 ("Third Renewal"); and,

WHEREAS, Lessor and Lessee desire to again amend, for additional consideration, the Second Renewal to allow Lessee to further expand its non-exclusive use of the Leased Premises, with access thereto subject at all times to tank operations and the security requirements of Lessor, relocating/upgrading/expanding its wireless communications facility by adding one (1) Microwave dish antennae, one (1) ODU, and one (1) Cat5 cable ("additional facilities"), all in accordance with final "Network Vision Project", Rev. 6, dated November 26, 2013, prepared by Network Building & Consulting, LLC, attached hereto and incorporated herein as Exhibit 1, as amended and modified by "Antenna Installation Review Report" dated January 27, 2014, prepared by Tank Industry Consultants, attached hereto and incorporated herein as Exhibit 2.

NOW, THEREFORE, in consideration of the mutual covenants contained in the Lease and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. Lessor and Lessee hereby ratify and affirm the terms and conditions of the Lease, as amended, and further acknowledge and agree that the Lease, as amended and as renewed, is in full force and effect, and neither Lessor nor Lessee, to Lessor's knowledge, as of the date hereof, is in breach under the terms of the Lease. Lessee acknowledges that Lessor has made no representations regarding fitness of the Leased Premises for a particular purpose.
2. All capitalized terms shall have the meaning ascribed to them in the Lease unless otherwise defined in the First Renewal, Second Renewal, the Amended Second Renewal, or this Second Amended Second Renewal.
3. Lessee agrees to pay to Lessor, in advance, for a two (2) year period commencing April 1, 2014, as additional monthly rent, the sum of Two Hundred Fifty Dollars (\$250.00), for a total monthly rent of Two Thousand Seven Hundred and Fifty Dollars (\$2,750.00) for each remaining month of the Second Renewal term, and for a total monthly rent of Three Thousand Dollars (\$3,000.00) for the first seventeen (17) months of the Third Renewal term and for each and every month of the Third Renewal term thereafter during which the additional facilities remain located on the Leased Premises. If the additional facilities described herein are removed anytime after the initial two (2) years, the monthly rent increase of Two Hundred Fifty Dollars (\$250.00) will cease.
4. Lessee's non-exclusive use of the Leased Premises is hereby amended, permitting Lessee to expand its use of the Leased Premises, with access thereto subject at all times the Lessor's water tank operations and security, relocating/upgrading/expanding its wireless communications facility by adding one (1) Microwave dish antennae, one (1) ODU, and one (1) Cat5 cable ("additional facilities"), all in accordance with final "Network Vision Project", Rev. 6, dated November 26, 2013, prepared by Network Building & Consulting, LLC, attached hereto and incorporated herein as Exhibit 1, as amended and modified by "Antenna Installation Review Report" dated January 27, 2014, prepared by Tank Industry Consultants, attached hereto and incorporated herein as Exhibit 2.
5. Except as expressly set forth in this Second Amended Second Renewal, all other terms and conditions of the Lease, as amended, shall remain in full force and effect. To the extent any provision

contained in this Second Amended Second Renewal conflicts with the terms of the Lease, First Renewal, Second Renewal or Amended Second Renewal, the terms and provisions of this Second Amended Second Renewal shall prevail.

IN WITNESS WHEREOF, the parties execute and make effective this Second Amendment to Tower Site Lease Agreement-Second Renewal as of the date above first written.

LESSOR:

TOWN OF FRONT ROYAL
A Virginia Municipal Corporation

By: _____

Name: _____

Title: _____

LESSEE:

**SHENANDOAH PERSONAL
COMMUNICATIONS, LLC**
A Virginia Limited Liability Company

By: William L. Pirtle 4.2.14

Name: William L. Pirtle

Title: Vice President - Wireless

Approved as to Form:

By: _____
Town Attorney Date

EXHIBIT 1A

Attached is the Network Vision Project,
dated November 29, 2012, revised January 28, 2014,
prepared by Network Building & Consulting, LLC

SHENTEL

SHENANDOAH PERSONAL COMMUNICATIONS, LLC

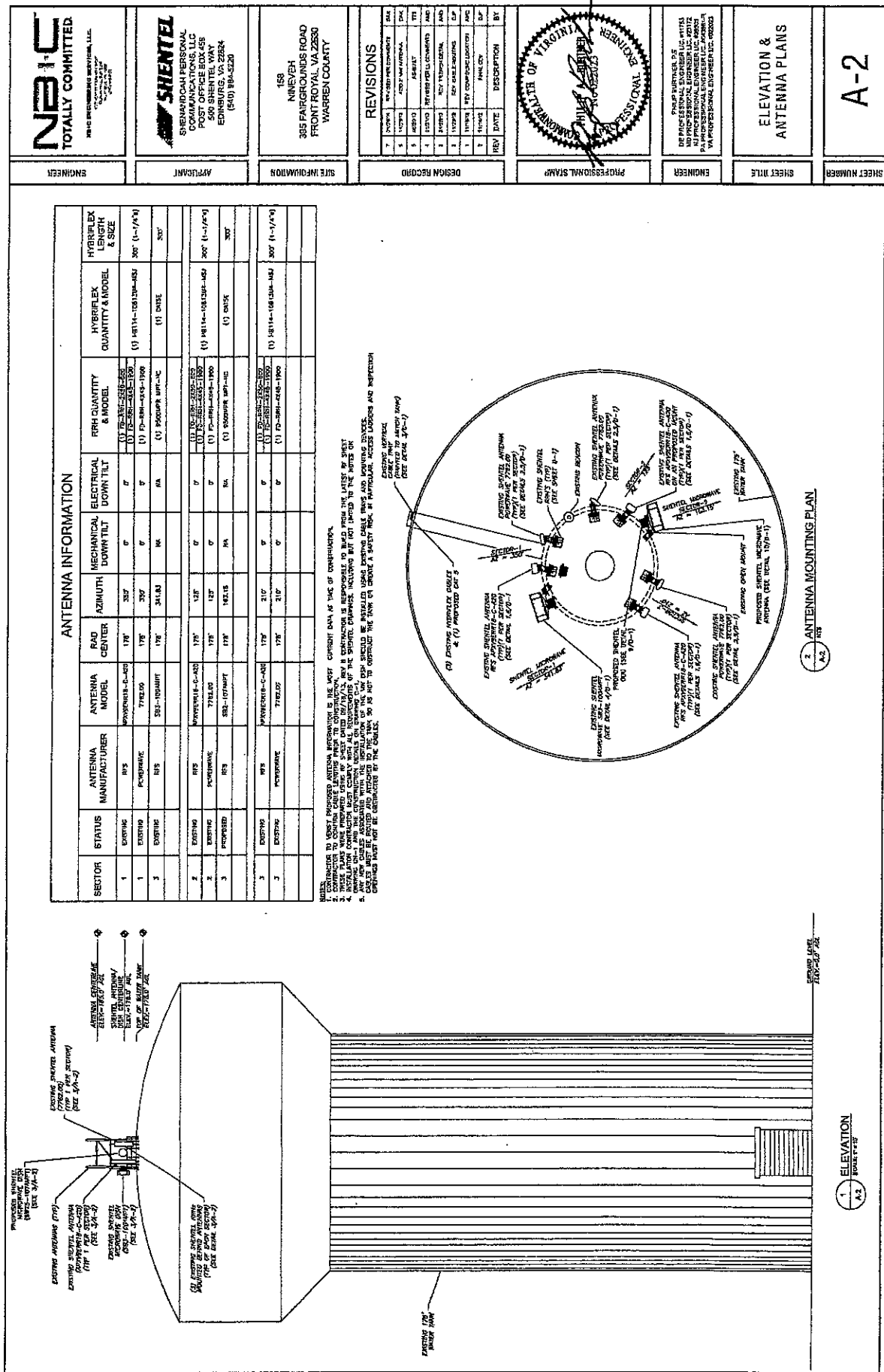
NETWORK VISION PROJECT

SITE NUMBER: 158
SITE NAME: NINEVEH

395 FAIRGROUNDS ROAD
 FRONT ROYAL, VA 22630
 TOWN OF FRONT ROYAL
 WARREN COUNTY



SHENTEL SHENANDOAH PERSONAL COMMUNICATIONS, LLC 800 SHENTEL WAY FIRST OFFICE SUITE 100 EDINBURG, VA 22624 (540) 554-5200		SHENTEL SHENANDOAH PERSONAL COMMUNICATIONS, LLC 800 SHENTEL WAY FIRST OFFICE SUITE 100 EDINBURG, VA 22624 (540) 554-5200		158 NINEVEH 395 FAIRGROUNDS ROAD FRONT ROYAL, VA 22630 WARREN COUNTY		REVISIONS <table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td>1</td> <td>01/14/04</td> <td>ISSUED FOR PERMITS</td> </tr> <tr> <td>2</td> <td>01/14/04</td> <td>ISSUED FOR PERMITS</td> </tr> <tr> <td>3</td> <td>01/14/04</td> <td>ISSUED FOR PERMITS</td> </tr> <tr> <td>4</td> <td>01/14/04</td> <td>ISSUED FOR PERMITS</td> </tr> <tr> <td>5</td> <td>01/14/04</td> <td>ISSUED FOR PERMITS</td> </tr> <tr> <td>6</td> <td>01/14/04</td> <td>ISSUED FOR PERMITS</td> </tr> <tr> <td>7</td> <td>01/14/04</td> <td>ISSUED FOR PERMITS</td> </tr> </table>		NO.	DATE	DESCRIPTION	1	01/14/04	ISSUED FOR PERMITS	2	01/14/04	ISSUED FOR PERMITS	3	01/14/04	ISSUED FOR PERMITS	4	01/14/04	ISSUED FOR PERMITS	5	01/14/04	ISSUED FOR PERMITS	6	01/14/04	ISSUED FOR PERMITS	7	01/14/04	ISSUED FOR PERMITS	DESIGN RECORD DATE: 01/14/04 BY: [Signature] CHECKED: [Signature]		PROFESSIONAL STAMP 		ENGINEER DATE: 01/14/04 BY: [Signature]		APPLICANT DATE: 01/14/04 BY: [Signature]		ENGINEER DATE: 01/14/04 BY: [Signature]		SHEET TITLE TITLE SHEET		SHEET NUMBER T-1																															
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SITE INFORMATION PROJECT CONSISTS OF EXCAVATING, INSTALLING AND CONCRETE FOUNDATION FOR THE EXISTING WIRELESS TELECOMMUNICATIONS FACILITY. 811 SITE ADDRESS: 395 FAIRGROUNDS ROAD, FRONT ROYAL, VA 22630 TOWNSHIP: TOWN OF FRONT ROYAL PARCEL: 14.1 AC. (14.1 AC.) PARCEL OWNER: FRONT ROYAL, VA 22630 PARCEL MAP: 2074-90-1546 PARCEL AREA: 2.35 ACRES GROUND ELEVATION: 14.1 AC. (14.1 AC.) POWER PROVIDER: BATHAMWOOD ELECTRIC POWER BACKHAUL PROVIDER: CENTURYLINK, IT PROVIDER ALU MICROPHONE - ETHERNET PROVIDER DATE: 01/14/04 BY: [Signature] SHENTEL NO. 158 PROJECT TEAM APPLICANT: SHENANDOAH PERSONAL COMMUNICATIONS, LLC 800 SHENTEL WAY FIRST OFFICE SUITE 100 EDINBURG, VA 22624 (540) 554-5200 PROJECT MANAGEMENT FIRM: SHENANDOAH PERSONAL COMMUNICATIONS, LLC 800 SHENTEL WAY FIRST OFFICE SUITE 100 EDINBURG, VA 22624 (540) 554-5200 ENGINEERING FIRM: SHENANDOAH PERSONAL COMMUNICATIONS, LLC 800 SHENTEL WAY FIRST OFFICE SUITE 100 EDINBURG, VA 22624 (540) 554-5200																																																																											



TOTALLY COMMITTED

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1814 COMMUNICATIONS INTERNATIONAL, LLC
1814 COMMUNICATIONS INTERNATIONAL, LLC

SHENTEL

SHENTEL PERSONAL COMMUNICATIONS, LLC
500 SHENTEL WAY
ELLSBURG, VA 22626
(540) 804-3228

150
NINE/24
305 FANTIGROUNDS ROAD
FRONT ROYAL, VA 22630
WARREN COUNTY

ENGINEER

APPLICANT

SITE INFORMATION

DESIGN RECORD

PROFESSIONAL STAMP

ENGINEER

SHEET TITLE

SHEET NUMBER

REVISIONS

NO.	DATE	DESCRIPTION
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78	10/1/04	ISSUED FOR PERMITTING
79	10/1/04	ISSUED FOR PERMITTING
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97	10/1/04	ISSUED FOR PERMITTING
98	10/1/04	ISSUED FOR PERMITTING
99	10/1/04	ISSUED FOR PERMITTING
100	10/1/04	ISSUED FOR PERMITTING

PHILIP BURTON, D.E.
DE PROFESSIONAL ENGINEER LIC. 10111
10111 COMMUNICATIONS INTERNATIONAL, LLC
10111 COMMUNICATIONS INTERNATIONAL, LLC
10111 COMMUNICATIONS INTERNATIONAL, LLC

ELEVATION & ANTENNA PLANS

A-2

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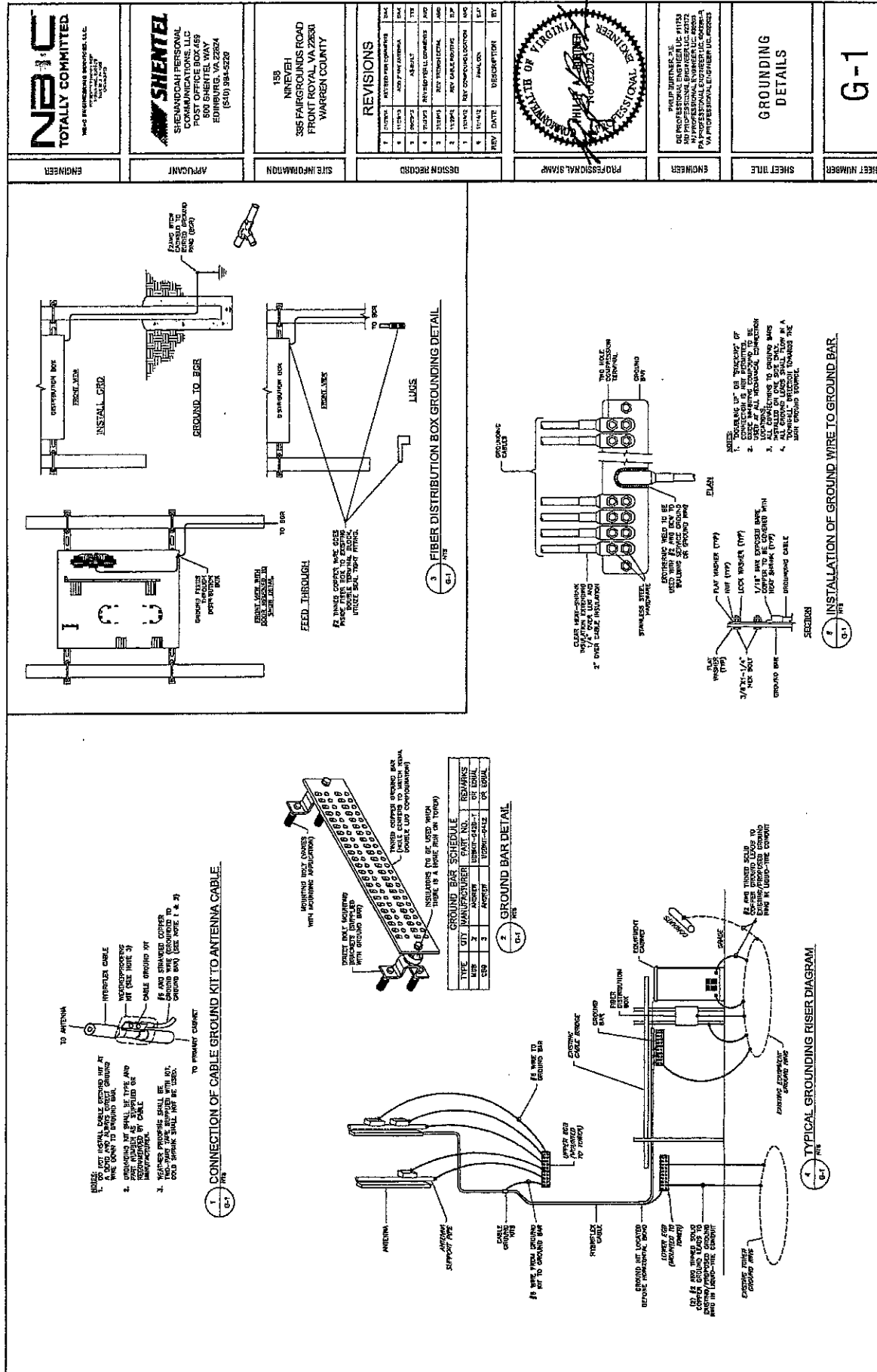


EXHIBIT 2A

Attached is Antenna Installation Review Report
dated January 27, 2014,
Prepared by Tank Industry Consultants

TIC

TANK INDUSTRY CONSULTANTS

7740 West New York Street
Indianapolis, Indiana 46214
317 / 271-3100 - Phone
317 / 271-3300 - FAX

Bolingbrook, Illinois
630 / 226-0745

El Paso, Texas
915 / 790-0790

Houston, Texas
281 / 367-3511

Pittsburgh, Pennsylvania
412 / 262-1586

January 27, 2014

Shenandoah Personal Communications, LLC (Shentel)
P.O. Box 459
500 Shentel Way
Edinburg, Virginia 22824
Attn: Ms. Pamela Wilson, SA Consultant

Subject: Antenna Installation Review Report
1,000,000 Gallon Fairground Road Fluted Pedestal Tank
Shentel Site 158 Nineveh, 395 Fairgrounds Road
Town of Front Royal, Virginia
TIC Project 14.005.E1500.001

Ms. Wilson,

In fulfillment of Shentel Purchase Order 000998-1, this letter report will summarize TIC's evaluation, conclusions and recommendations with regard to the proposed installation of new RFS microwave dish antenna equipment on the subject tank in accordance with drawings, provided by Shentel.

INTRODUCTION

The following documents were reviewed by TIC in preparing this summary report:

Shentel drawings T-1, GN-1, A-1 & A-2, C-1, D-1 & D-2, E-1 and G-1.
All drawings were Rev. 6, dated 11/26/13.

As described in our January 6, 2014 proposal letter, TIC performed a Structural Evaluation of the antenna installation on the tank to assess the overall structural effects of the new antennas and also performed Design Review Services to review the methods of mounting the antennas on the tank for potential interferences to the operation and maintenance of the tank. Our conclusions and recommendations with respect to these topics are summarized as follows.

CONCLUSIONS

Structural Evaluation

TIC evaluated the effects of the microwave dish antenna and associated wind loadings on the subject tank assuming the details shown on Shentel Drawing D-1. The antenna installer must ensure that these details are used before proceeding with the proposed work. Based on the assumed geometry, TIC

concludes that the structural effects of the proposed new Shentel antenna loads are acceptable without additional modification of the tank roof, shell, pedestal or anchorage components. Note that the structural analysis and the design of the antenna supports to the existing structures assumes that the existing structure has not deteriorated or been damaged since its construction.

The additional vertical dead loads of the proposed new antennas, microwave dish and associated cables are negligible in comparison to the dead loads of the tank and its contents on the tank foundation and the cylindrical and conical components of the steel tank and pedestal. The lateral loads due to the design wind on the proposed new antenna equipment increase the base shear and overturning moment on the tank by less than 0.2%.

The proposed new microwave dish and associated cables will increase the wind loading on the handrail structure at the center of the roof and on the roof itself. TIC concludes that the loads imposed by the new microwave dish are negligible in comparison to the strength of the handrail components and the roof on which the handrails are mounted.

Design Review Services

TIC concludes that the Shentel drawings are acceptable, providing that the following comments are addressed:

- 1) The installation Contractor must comply with all requirements of the Shentel drawings, including but not limited to the notes on Drawing GN-1 and the construction details on Drawing C-1. Installation of antenna equipment can damage the coatings on tanks and lead to corrosion and potential failure of these components. The Contractor must exercise care in the installation of the equipment and repair any damage to the coatings on the tank.
- 2) Any cables associated with the installation of the new microwave dish must be routed and attached to the tank so as not to obstruct access to the tank or create a safety risk. In particular, access to ladders and inspection openings must not be obstructed by the cables. Cables must be securely attached using devices designed for the purpose of routing and securing cable runs.

RECOMMENDATIONS

Structural Evaluation

Installation of the proposed new microwave dish antenna may proceed in accordance with the Shentel drawings without additional structural modifications to the tank or roof handrail. Any deterioration or structural damage to the existing tank should be reported to the Engineer of Record before proceeding with the proposed antenna installation.

Design Review Services

Any new cables associated with the installation of the new microwave dish should be installed using existing cable trays and mounting devices. All antenna cables should be removed and temporarily supported whenever re-coating of the tank is performed. Note that any cables, galvanized metal, and/or thin gage metal items may be damaged by abrasive blast cleaning

anytime that tank maintenance or repainting activities occur. For this reason, TIC recommends that antenna and wireless carriers remove their equipment when the tank is next repainted, or if removal is not feasible, that such items be adequately protected from damage.

TIC recommends that a visual inspection be performed immediately following any severe storm or extreme high wind conditions, such as those due to a tornado or hurricane, as antenna equipment, mountings and cable trays/ladders have been known to experience damage in such extreme conditions. Loose or broken components can become projectiles in these high wind conditions.

Please contact me at (630) 226-0745 or lieb@tankindustry.com if there are any questions on the above.

Sincerely,

Tank Industry Consultants

John M. Lieb

John M. Lieb, P.E.
Chief Engineer

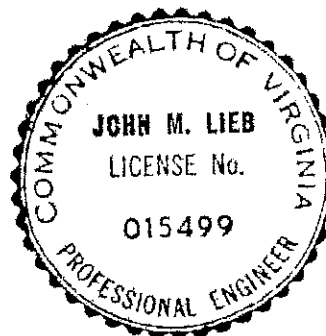
Cc: Stephen W. Meier, P.E., S.E./Gregory R. "Chip" Stein, P.E. - TIC Indianapolis
Sabrina Fleming - TIC Bolingbrook

PROFESSIONAL ENGINEER'S CERTIFICATION

I hereby certify that this report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Virginia.

John M. Lieb
John M. Lieb, P.E.

Date: *Jan 27, 2014*





**Town of Front Royal, Virginia
Council Agenda Statement**

Page 1
Item No. 8

Meeting Date: April 14, 2014

Agenda Item: COUNCIL APPROVAL – An Ordinance to Amend Chapter 80 of the Town Code Pertaining to Fireworks (*2nd Reading*)

Summary: Council is requested to adopt on its second and final reading an Ordinance to amend Chapter 80 of the Town Code pertaining to fireworks as presented.

Budget/Funding: None

Attachments: Ordinance amendment

Meetings: Work Session held March 3, 2014. Public Hearing held March 24, 2014

Staff Recommendation: Approval ✓ Denial

Proposed Motion: I move that Council adopt on its second and final reading an Ordinance to amend Chapter 80 of the Town Code pertaining to fireworks, as presented.

ROLL CALL VOTE REQUIRED

*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance

*To be clear and concise, motions should be made in the positive

Approved By: JB

ORDINANCE TO AMEND CHAPTER 80 OF THE FRONT ROYAL TOWN CODE PERTAINING TO FIREWORKS

WHEREAS, the County of Warren has instituted a Fire Marshall to oversee and regulate fire related issues in the County; and,

WHEREAS, the County of Warren regulations currently require approval of the Town Manager for storage and display of fireworks within the Town limits; and,

WHEREAS, the Town desires to simplify the process of regulating the storage and display of fireworks by requiring that permits be obtained from the Warren County Fire Marshall instead of Town Council; and,

NOW, THEREFORE, BE IT ENACTED by the Town Council of the Town of Front Royal, Virginia the Chapter 80 of the Front Royal Code be hereby amended as follows:

80-1 PROHIBITIONS

No person, firm or corporation shall store, use, possess, manufacture, sell or offer for sale firework as defined by VAC 27-95 to include any firecracker, torpedo, skyrocket or other substance or thing of whatever form or construction that contains any explosive or inflammable compound or substance. ~~containing nitrates, chlorates, oxalates, sulfides of lead, barium, antimony, nitroglycerin, phosphorous or any other explosive or flammable compound or substance and intended or commonly known as "fireworks".~~

80-2 EXCEPTIONS

A. This chapter shall not apply to the use or the sale of permissible fireworks as defined by VAC 27-95 ~~sparklers, fountains, pharaoh's serpents, caps for pistols or to pinwheels commonly known as "whirligigs" or "spinning jennys",~~ provided that said fireworks listed in this section may only be used, ignited or exploded on private property with the consent of the owner of such property.

B. This chapter shall have no application to any officer or member of the Town Police Department or the Armed Forces of this state or the United States while acting within the scope of his authority and duties as such, nor shall it be applicable to the sale or use of said materials when used or to be used by any person for signaling or other emergency use in the operation of boat, railroad train or other vehicle for the transportation of persons or property.

80-3 PERMITS FOR FIREWORKS DISPLAY

~~The Town Council of Front Royal shall have the power to provide for the issuance of permits, upon application in writing, for the display of fireworks by fair associations, amusement parks or by any organization or group of individuals under such terms and conditions as the Town Council may prescribe and upon payment of an application fee of fifty dollars (\$50.) After such permit has been issued, sale, storage, use and possession of fireworks may be made for use under~~

such permit. Any storage or display of fireworks within the Town limits shall be required to obtain a permit from the Warren County Fire Marshall

80-4 VIOLATIONS AND PENALTIES

Violations of this chapter shall be punished as misdemeanors.

This ordinance shall become effective upon passage.

APPROVED:

Timothy W. Darr, Mayor

ATTEST:

Jennifer E. Berry, Clerk of Council

THIS ORDINANCE was approved at the Regular Meeting of the Town of Front Royal, Virginia on its second reading, conducted _____ 2014, upon the following recorded vote:

Thomas H. Sayre	Yes/No	Bret W. Hrbek	Yes/No
Hollis L. Tharpe	Yes/No	Eugene R. Tewalt	Yes/No
N. Shae Parker	Yes/No	Daryl L. Funk	Yes/No

A public hearing on the above was held on _____, 2014 having been advertised in the Northern Virginia Daily on _____, 2014 and _____, 2014. The Ordinance was enacted at the Regular Meeting of the Town Council held _____ 2014.

Approved as to form and legality:

Douglas W. Napier, Town Attorney

Date: ____/____/____



Town of Front Royal, Virginia
Council Agenda Statement

Page 1
Item No. 9

Meeting Date: April 14, 2014

Agenda Item Extension of Proffer Deadlines for Proffer Statement by Heptad LLC for Rezoning application

Summary: Ratification of the act of the Mayor in executing the **Extension of Proffer Deadlines** agreement on April 7, 2014, which extends proffer deadlines contained in Heptad, LLC **Proffer Statement** relating to Leach Run Parkway Improvements. The Proffer Statement was approved by Council on April 9, 2012. The additional one hundred and twenty (120) days will allow for completion of right-of-way acquisition, for submission of the Applicant's development plan showing the location of the Leach Run Parkway road dedication, and for entering into a memorandum of understanding between the Town and the Applicant addressing various aspects of the Leach Run Improvements. Copies of the **Extension of Proffer Deadlines** agreement and Heptad, LLC's recorded **Proffer Statement** are provided herewith.

Budget/Funding: N/A

Meetings: This item has not been on a work session agenda.

Staff

Recommendation: Approval X Denial

Proposed Motion: I move that Council ratify the act of the Mayor in executing the **Extension of Proffer Deadlines** agreement on April 7, 2014.

*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance

*To be clear and concise, motions should be made in the positive

Approved By: SB

**EXTENSION OF PROFFER DEADLINES
FOR PROFFER STATEMENT BY HEPTAD, LLC
FOR REZONING APPLICATION #05-07-56**

THIS EXTENSION OF PROFFER DEADLINES, dated this 7th day of April, 2014 (the "Effective Date"), by and between the TOWN OF FRONT ROYAL, VIRGINIA, a municipal corporation of the Commonwealth of Virginia (hereinafter the "Town") and HEPTAD, LLC (hereinafter the "Applicant").

WITNESSETH:

WHEREAS, the Applicant executed an Amended Proffer Statement on January 31, 2012 (hereinafter the "Proffer Statement"); and

WHEREAS, the Proffer Statement contained certain terms and conditions if the Town approved Rezoning Application #05-07-56 for the rezoning of approximately 98.25 acres (hereinafter the "Property") from Suburban Residential (R-S) to Planned Neighborhood Development (PND) District; and

WHEREAS, the Town approved the Proffer Statement as part of the Applicant's rezoning application for the Property on April 9, 2012; and

WHEREAS, Proffer 3.1.3.1 of the Proffer Statement states that within two (2) years from approval of the rezoning, the Town shall have acquired all right-of-way sufficient to permit construction of the Leach Run Improvements from Route 55 to the Northern Boundary of the Property; and

WHEREAS, Proffer 3.1.3.2 of the Proffer Statement states that within two (2) years from approval of the rezoning, the Town shall have obtained all special use permits required pursuant to the Front Royal Town Code necessary to permit construction of two (2) lanes of the Leach Run Improvements; and

WHEREAS, Proffer 3.1.3.3 of the Proffer Statement states that within two (2) years from approval of the rezoning, the Town and the Applicant shall have entered into a Memorandum of Understanding which shall include provisions detailing the parties' responsibilities with respect to construction of the Leach Run Improvements; and

WHEREAS, Proffer 3.1.3.6.7 of the Proffer Statement states that the Applicant and the Town can mutually agree to change the proffer deadlines set forth in Proffer 3.1.3.1 through Proffer 3.1.3.3, and such agreement shall be memorialized in a writing signed by

the Applicant and the Mayor without the necessity of amending the Proffer Statement; and

WHEREAS, the Town and the Applicant both desire to extend the proffer deadlines for Proffer 3.1.3.1 through Proffer 3.1.3.3; and

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein, the parties hereto mutually covenant and agree as follows:

- (1) Extension of Proffer Deadlines – The proffer deadlines for Proffer 3.1.3.1 through Proffer 3.1.3.3, which expire two (2) years after the approval of the rezoning application for the Property, shall be extended for One Hundred and Twenty (120) days from the Effective Date.
- (2) Other Terms of the Proffer Statement – All other terms and conditions of the Proffer Statement remain in full force and effect.
- (3) Ratification by Town Council – Ratification by the Front Royal Town Council of the act of the Mayor in signing this Extension of Proffer Deadlines shall not affect the Effective Date hereof.

IN WITNESS WHEREOF, the parties hereafter have made and executed this Amendment to the Agreement effective the day and year first written above.

(SEAL)

Attest: [Signature]

Type Name: Steven M. Burke

Title: Town Manager

Mayor of the Town of Front Royal

By: [Signature]

Type Name: Timothy W. Orr

Title: Mayor Town of Front Royal

Date: 4/7/2014

(SEAL)

Attest: _____

Type Name: _____

Title: _____

Heptad, LLC

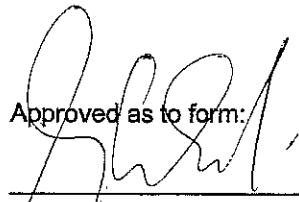
By: [Signature]

Type Name: Ron Howell

Title: May. Member

Date: 4/7/2014

Approved as to form:

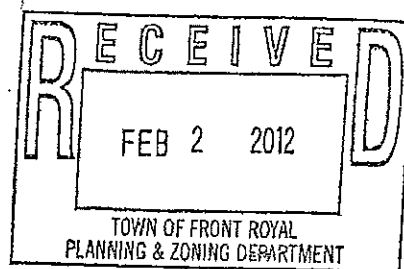


George M. Sonnett, Jr.
Assistant Town Attorney

WARREN COUNTY, VIRGINIA
LAND RECORDS

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PROFFER STATEMENT



REZONING: RZ# 05-07-56
Suburban Residential (R-S) District to Planned Neighborhood
Development (PND) District

PROPERTY: 98.25 acres +/-;
Tax Parcel #20-A21-2-1 and Tax Parcel # 20A20-2-11

APPLICANT: HEPTAD, LLC

PROJECT NAME: Swan Estates

ORIGINAL DATE
OF PROFFERS: June 30, 2005
Amended November 2005
Amended March 2006
Amended April 15, 2011
Amended January 31, 2012

Preliminary Matters

Pursuant to Section 15.2-2296 et. seq. of the Code of Virginia, 1950, as amended, and the provisions of the Town of Front Royal Zoning Ordinance with respect to conditional zoning, the undersigned Applicant hereby proffers that in the event the Town Council of Front Royal, Warren County, Virginia, shall approve Rezoning Application #05-07-56 for the rezoning of approximately 98.25 acres from the Suburban Residential (R-S) District to Planned Neighborhood Development (PND) District, development of the subject property shall be done in general conformity with the terms and conditions set forth herein, except to the extent that such terms and conditions may be subsequently amended or revised by the Applicant and such be approved by the Front Royal Town Council in accordance with the said Code and Zoning Ordinance. In the event that such rezoning is not granted, then these proffers shall be deemed withdrawn and have no effect

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whatsoever. In the event this application is denied by the Front Royal Town Council (the "Council"), such denial is appealed to a court of competent jurisdiction, and this rezoning application is thereafter remanded to the Council for reconsideration, then the Applicant may elect to readopt all or any portion hereof, in a writing specifically for that purpose; if no such election is made, these proffers shall be withdrawn and shall be invalid.

Dedications and improvements proffered herein shall be provided at the time of development of that portion of the Property that contains or will be served by the dedication or improvement, unless otherwise specified herein. These proffers shall be binding upon the Applicant and its legal successors, heirs, or assigns.

The subject property, identified as the Anna Swan Estate, and more particularly described as the lands owned by Heptad, LLC, being all of Tax Map Parcels 20-A21-2-1 and 20A20-2-11 by virtue of a deed dated August 14, 2009 and recorded among the land records of the Warren County Circuit Court Clerk's Office as Instrument No. 090004959. More particularly consisting of Tax Map Parcels 20-A21-2-1, containing 97.7395 acres, more or less, as shown by plat of survey dated May 5, 2003, prepared by Mark D. Smith, L.S., of Greenway Engineering, entitled "Boundary Survey of the land of Anna Swan Estate, Town of Front Royal, Warren County, Virginia" and recorded as Instrument number 030007026, and Tax Map Parcel 20-A20-2-11, containing .52 acres, more or less, as shown by plat of survey dated May 3, 1957, prepared by S. M. Boyd, Jr., C.L.S., recorded in Warren County Deed Book 102, page 300.

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I. Master Land Use Plan

The Applicant hereby proffers to develop the 98.25 acre property in substantial conformance with a Master Land Use Plan (Master Plan) approved as part of the rezoning application, subject to revisions by the Applicant due to lot layout and road alignment in accordance with final engineering considerations. The Master Land Use Plan is intended to illustrate the systems of roadways that will provide access to the land bays and serve the single-family residential lots, parking areas and community facilities therein. The Master Land Use Plan generally identifies the single-family detached residential land bays, the multi-family residential land bays, the single-family attached residential land bays, and the commercial use land bay. The Master Land Use Plan consists of the following:

1. Cover Sheet – June 30, 2005, Revised November 2005, March 2006, March 2011
2. Generalized Location Plan – June 30, 2005, Revised November 2005, March 2006, March 2011
3. Boundary Survey – June 30, 2005, Revised November 2005, March 2006, March 2011
4. Slope Analysis – June 30, 2005, Revised November 2005, March 2006, March 2011
5. Topography Map – June 30, 2005, Revised November 2005, March 2006, March 2011

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6. Trip Distribution & Road Classification Plan – June 30, 2005, Revised November 2005, March 2006, March 2011
7. Flood Plain and Wetlands Delineation – June 30, 2005, revised November 2005, March 2006, March 2011
8. Leach Run Parkway Layout – June 30, 2005, Revised November 2005, March 2006, March 2011
9. Functional Use Plan- Land Bay Layout – June 30, 2005, Revised November 2005, March 2006, March 2011

II. Design Guidelines

The Applicant hereby proffers the Swan Estates Design Guidelines prepared by Joe Duggan & Associates, submitted concurrent with, and as an appendix to, this proffer statement. Design Guidelines may be revised by the Applicant in accordance with final engineering considerations. The Swan Estates Design Guidelines shall generally have the same force and effect as if incorporated herein, and the Applicant, in developing the Property, shall generally conform to such Design Guidelines; however, modification and alternatives shall be allowed provided such modifications and alternatives achieve the same intent. If any provision of the Swan Estates Design Guidelines shall subsequently be found to be invalid, the remaining provisions shall remain intact. Provided, however, notwithstanding anything in the Swan Estate Design Guidelines to the contrary, the applicant hereby proffers that the foundation of any residential structure shall be faced with brick, natural stone, synthetic stone, colored textured concrete, stamped concrete, or any combination thereof.

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III. Transportation

3.1 Leach Run Parkway

3.1.1 Right of Way Dedication

3.1.1.1 The final subdivision plat (a "Record Plat") for the first phase of the development of the Property shall include dedication of right-of-way for Leach Run Parkway as it traverses the Property presently as described in the Plan and Profile of Proposed Leach Run Parkway dated July 1, 1991 (the "Leach Run Parkway Dedication"), **provided** that Applicant shall be entitled to a credit for the Leach Run Dedication as provided for in Proffer 7.2.1 below.

3.1.1.2 The horizontal alignment of future Leach Run Parkway shown on Sheet 8 of the Master Plan as it traverses the Property is established and set by the rezoning approval.

3.1.2 Leach Run Parkway Improvements

3.1.2.1 Subject to the terms and conditions set forth as part of Proffer 3.1.3 below, prior to and as a condition of the issuance of the 130th building permit, the Applicant shall design and engineer four (4) lanes of Leach Run Parkway to VDOT standards running from State Route 55 (John Marshall Highway) and across the Property and terminating at the northeast corner of the Property as shown on the Master Land Use Plan. If desired by the Town, Applicant shall include a bicycle lane in its design of the portion of

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Leach Run Parkway running across the Property. In addition, the Applicant shall engineer and construct two (2) lanes of Leach Run Parkway to VDOT standards running from State Route 55 (John Marshall Highway) and across the Property and terminating at the northeast corner of the Property as shown on the Master Land Use Plan. Applicant's obligation is to design, grade, and provide drainage improvements for four (4) lanes of Leach Run Parkway and to engineer and construct two (2) such lanes as set forth herein shall be referred to collectively as the "Leach Run Improvements."

3.1.3 Terms & Conditions to Leach Run Improvements.

3.1.3.1 On or before two (2) years from approval of the rezoning, the Town shall have acquired all right-of-way sufficient to permit construction of the Leach Run Improvements from Route 55 (John Marshall Highway) to the northern boundary of the Property as shown on the Master Land Use Plan.

3.1.3.2 Within two (2) years from approval of the rezoning application for Swan Estates, the Town, on its own application and at its sole expense, shall have obtained all special use permits required pursuant to the Front Royal Town Code necessary to permit construction of two (2) lanes of the Leach Run Improvements.

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3.1.3.3 Within two (2) years from approval of the rezoning application for Swan Estates, the Town and the Applicant have entered into a mutually satisfactory memorandum of understanding which shall, among other things, include provisions delineating the parties' responsibilities with respect to construction of the Leach Run Improvements.

3.1.3.4 Notwithstanding anything in these Proffers or Chapter 175 of the Front Royal Town Code to the contrary, the Applicant shall not be required to submit a Final Development Plan pursuant to Section 175-37.18 of the Front Royal Town Code until after (i) the provisions of Proffer 3.1.3.1 through Proffer 3.1.3.3 have been satisfied or waived or (ii) the date after that the Town, Warren County, or other state or local agency have given written notice of their election to design and construct the Leach Run Improvements pursuant to Proffer 3.1.3.6 below .

3.1.3.5 Failure by the Town to comply with the terms of Proffer 3.1.3.1 through Proffer 3.1.3.3 above shall relieve Applicant of its obligations to make any of the Leach Run Improvements and shall have no impact on the maximum number of units allowed herein. Provided, however, this Proffer 3.1.3.5 shall not be interpreted to

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have any impact on Applicant's obligation to make cash proffers pursuant to the terms and conditions of Article VII herein.

3.1.3.6 In the event that the Town, the County of Warren, Virginia, or other state or local agency (e.g., the Industrial Development Authority of the Town of Front Royal and Warren County, Virginia (the "EDA")) give written notice to the Applicant that the Town, the County of Warren, Virginia, or other state or local agency will be responsible for the design and/or construction of the Leach Run Improvements, the Applicant shall no longer be responsible for the design and/or construction of the Leach Run Improvements as of the date of such written notice. However, the Applicant shall remain responsible for the payment of the Cash Proffers set forth in Section VII of these Proffers, with the Town Proffers to be used to defray the construction and design costs of the Leach Run Parkway Improvements. The decision by the Town, Warren County or other state or local agency to assume the responsibility of designing and/or constructing the Leach Run Parkway Improvements shall remove the limitation on Applicant's building permits as set forth in Proffer 3.1.2.1.

3.1.3.6.7 In the event that the Applicant and the Council mutual agree to change the deadlines set forth in Proffer 3.1.3.1 through

000186 APR 13 2000

Proffer 3.1.3.3 above, such agreement shall be memorialized in a writing signed by the Applicant and the Mayor without the necessity of amending this Proffer Statement.

3.2. Off-Site Swan Estates Drive to Existing Westminster Drive.

The Applicant proffers to engineer, design and construct an extension of Swan Estates Drive to connect to existing Westminster Drive to the west of the subject property (Tax Map 20-A21-2-1) across property currently owned by the Warren County School Board (Tax Map 20-A14-2-1) (the "Westminster Connector") conditioned upon an agreement between the Town and School Board as to the final location and legal status of the property across which the Westminster Connector will be built. The Applicant proffers to make its best efforts to have the School board dedicate the Westminster Connector easement to the Town in fee simple.

In the interest of public safety and general welfare, the Westminster Connector will provide an alternate access to the public schools located on Westminster Drive. In the event that (i) the School Board does not dedicate the Westminster Connector to the Town in fee simple and (ii) responsibility for the Leach Run Improvements has not been assumed by the Town, Warren County, or any other state or local agency pursuant to Proffer 3.1.3.5, the Applicant agrees to construct the Leach Run Improvements first, subject to the terms and conditions set forth in Proffer 3.1.3.

WARREN COUNTY, VIRGINIA
LAND RECORDS

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Construction Entrance.

- 3.3 Applicant shall construct a temporary construction entrance road from Virginia State Route 55 to the Property within the Leach Run Parkway alignment shown in the 1991 Plan and Profile (the "Construction Entrance"). The purpose of the Construction Entrance shall be to permit access to the Property for construction and development. No construction traffic shall access the Property via Westminster Drive. Provided, however, notwithstanding anything in these Proffers to the contrary, Applicant's obligations in this Proffer 3.3 are conditioned upon the Town having right of way from Route 55 to the southern boundary of the Property sufficient to allow ingress and egress for construction vehicles between the Property and Route 55.
- 3.4 Interparcel Connection. Subject to the terms and conditions set forth in Proffer 3.1.3 above, no interparcel connection to Happy Creek Knolls subdivision shall be constructed until the completion of the connection to State Route 55.

IV. Residential

4.1. Residential Density

- 4.1.1 The maximum number of dwelling units to be constructed on the Property shall not exceed four hundred and fifty (450) dwelling units.
- 4.1.2. In general conformance with the Master Plan the single-family detached land bays shall contain between thirty seven (37) and fifty four (54) dwelling units; the single-family attached land bays

WARREN COUNTY, VIRGINIA
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shall contain between one hundred (100) and one hundred twelve (112) dwelling units; and the multi-family land bays shall contain between two hundred fifty two (252) and three hundred twenty six (326) dwelling units. The Applicant reserves the right to adjust the above mix of housing unit types but in no case shall the total number of units exceed four hundred fifty (450).

4.2. Phasing

The Applicant hereby proffers that residential development shall be phased such that building permits shall not be issued for more than fifty (50) dwelling units every twelve (12) months. For the purposes of this provision, the first twelve-month period shall be considered the first full twelve (12) months following the beginning of construction on the Swan Estates project. All units not developed within the specified twelve-month period shall be carried forward to the next twelve-month period.

V. Community Design

5.1. Design

The Applicant agrees to provide an overall continuity of design within the community by means of selecting standards for the following elements, which will be uniformly specified and applied over the entire project, excluding areas within the public rights-of-way or public property:

1. Custom mailbox design.
2. Standardized common area fencing styles and color.
3. Standardized private residential fencing styles and color.

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4. Community color selections to create neighborhood theme.
5. Uniform site furnishing selection (benches and trash receptacles).
6. Custom designed street signage and stop signage.
7. Landscaping at the entrance monuments along Swan Estates Drive selected to provide for a repetition of the neighborhood flower color scheme and theme trees throughout the community.

5.2. Architectural

5.2.1. The Applicant shall develop architectural and design covenants for the overall community. Said covenants will establish an architectural review board for the purpose of review and approval of all architectural elevations, exterior architectural features (including but not limited to fences, railings, walls and decks) for all uses within Swan Estates, as well as any publicly provided structures located on sites dedicated for public use. These covenants are intended to assure a continuity of overall architectural appearance, quality material selection, and a cohesive color palate for all structure within the entire development.

5.2.2. The Applicant shall construct all homes in conformance with the Design Guidelines referenced in Section II of these proffers. These homes shall utilize brick, stone, masonry and/or stucco on the front elevation facing the addressing street. Siding may be used if a porch extends across a portion of the front of a house. In

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the event siding is utilized, all siding shall be a minimum of six

inches (6") wide and shall not be made from aluminum.

5.3. Multi-Family Dwelling Units. The Applicant hereby proffers that all multi-family dwelling units shall be in a condominium form of ownership consistent with Virginia law.

5.4. Signage

The Applicant shall provide an entrance feature with entry sign on the right and/or left side of Swan Estates Drive. The entrance feature shall be in conformance with Section 175-106 of the Town Zoning Ordinance or applicable successor provision. The sign may be lighted from the front at ground level with a minimal amount of illumination. Landscaping both in front of and behind the signage and wall will be provided. The sign shall have either stone or brick columns and will be compatible with and closely related to the themes and color schemes for the overall community. All signage shall comply with Section 175-106 of the Town Zoning Ordinance or successor provision thereto, except as waived or modified by the Town.

5.5. Lighting

Any exterior lighting of common use recreation areas shall be directed downward and inward to reduce glare on adjacent properties, the public and/or private right-of-way, and upward stray illumination.

5.6. Landscape Adjacent to Adjoining Property

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5.6.1. Happy Creek Knolls. The Applicant shall provide a landscape area within the fifty-five foot (55') perimeter buffer and along the common boundary with the Happy Creek Knolls subdivision either through tree preservation and/or installed landscaping. This landscape area will be owned and maintained by the property owners association and will not be part of any private lot. If the Applicant elects to not provide tree preservation in connection with this landscape area, the landscape area will be planted at a rate of one (1) tree per forty (40) linear feet with a minimum of twenty-five percent (25%) deciduous trees within said area.

5.6.2. Williamsburg Estates. The Applicant shall provide a landscape area on the south side of Swan Estates Boulevard and along the common boundary with the Williamsburg Estates subdivision Section 3, Block K, Lots 3-6 either through tree preservation and/or installed landscaping. The installed landscaping will include a double row of evergreen trees adjacent to Swan Estates Boulevard. This landscape area will be owned and maintained by the home owners association and will not be part of any private lot.

5.6.3 Additional Commercial Buffer. In addition to the 55' vegetative buffer surrounding the Commercial portion of the project (as reflected in the Master Land Use Plan), the Applicant hereby proffers an additional 50' vegetative buffer along the property line of the subject property where the Commercial portion

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of the project lies adjacent to Green Hills Subdivision (the "Additional Commercial Buffer"); provided, however, that the Applicant shall be under no duty to maintain or add new plantings to the Additional Commercial Buffer.

5.7. Recreational Amenities

5.7.1 Neighborhood Park. Before the seventy sixth (76th) building permit is issued, the Applicant shall design and submit a site plan for a neighborhood park of 3.5 acres in size, more or less, to applicable government agencies for review (the "Neighborhood Park"). Once the site plan is approved, the Applicant shall complete the construction of the Neighborhood Park in accordance with the above-mentioned approved site plan and dedicate the land and improvements for the Neighborhood Park to Warren County. The location of the Neighborhood Park and its associated amenities shall be located in the general area shown on the Master Plan. The Neighborhood Park shall be designed in accordance with the document titled "Comprehensive Parks and Recreation Facilities Master Plan; Warren County Virginia Parks and Recreation" dated March 2007 and the description of both Mini and Neighborhood Parks on page 36 of that plan. The park will include a field area that will allow multi-purpose sports for children of all ages; a playground for younger children ranging from toddler to 12 years; a picnic area that will include picnic tables and possibly a walking trail. However, if Warren County makes it known that different amenities are desired, they will be substituted as

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needed in place of the amenities offered above. In the event that Warren County accepts the dedication of the Neighborhood Park, the Applicant shall receive a credit against the Warren County Proffers for the value of the dedicated land as set forth in Proffer 7.5.1 below. Alternatively, in the event that the County declines to accept the aforesaid dedication, the Neighborhood Park shall be dedicated to an HOA created pursuant to Section VI below, and the Applicant shall not receive any credits against the Warren County Proffers.

5.7.2 Passive Recreation Area. Additionally, the Applicant shall provide passive recreation on the Property consisting of a bird habitat preservation area, to be located in the general area shown on the Master Plan. Active development of and use in the bird habitat area will be limited to areas outside of any wetlands or other resource protection areas. Only those activities that are allowed by appropriate regulatory agencies without additional permitting will be allowed inside such areas. No applications for additional use in these areas will be made.

5.8 Schools Sidewalk

The Applicant hereby proffers to construct, on the west side of Westminster Drive, a concrete sidewalk six feet (6') wide beginning approximately at the northern entrance to the Warren County High School and ending approximately at the southern most entrance to the Hilda J. Barbour Elementary School (the "Schools Sidewalk"). The Applicant will construct this portion of the Schools Sidewalk to Town standards after the final approval of the subject rezoning and after the issuance of all applicable permits

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necessary for such construction. This obligation is conditional upon the granting of any necessary easements or dedications by the School Board to allow such construction; the Applicant shall then begin construction within sixty (60) days of written notification by the Town of Front Royal requesting such construction. The exact location of the sidewalk is to be determined by the Town of Front Royal, with the approval and agreement of the Applicant and the School Board.

5.9 Commercial Entrance Aesthetic. To the extent possible and commercially reasonable, the aesthetic elements of the entrance corridor for the commercial portion of the project shall be generally consistent with the visual elements of the entrance corridor of the residential portions of the project. Further, the aesthetic of the residential and commercial entrance corridors for the project shall, to the extent possible and commercially reasonable, be generally consistent with the aesthetic of Leach Run Parkway.

VI. Creation of a Homeowner's Association

6.1. A homeowners association ("HOA") shall be created for the residential portions of the Property and shall be made responsible for the maintenance and repair of all common areas, together with such other responsibilities, duties and powers as are customary for such associations or as may be required for such HOA herein.

6.2. In addition to such other responsibilities and duties as may be assigned or as may be set forth herein, the HOA shall have title to and responsibility for all common open space areas not otherwise dedicated to public use and common buffer areas located

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outside of residential lots, to include, but not limited to, the entry of feature sign proffered herein.

6.3. The Applicant shall provide to the HOA, at the time of completion of the development, temporary funding for the purpose of maintaining open space areas; the HOA shall assume financial responsibility for its responsibilities at the time it is financially solvent and the Applicant shall have no further obligation to provide supplemental funding to the HOA.

VII. Cash Proffers.

7.1 Town Proffers.

7.1.1 First 335 Dwelling Units. In the event this rezoning is approved, for the first three hundred and thirty five (335) dwelling units, the Applicant will pay to the Town of Front Royal a per unit contribution of \$18,000 for each single-family residential detached dwelling unit (SFD); \$11,000.00 for each single family residential attached dwelling unit (SFA); and \$9,000.00 for each multi-family dwelling units (MDU) which contributions shall be used by the Town solely for the planning, design, engineering, right of way acquisition and/or construction of Leach Run Parkway.

7.1.2 Remaining 115 Dwelling Units. In the event this rezoning is approved, for the remaining one hundred fifteen (115) dwelling units, the Applicant will pay to the Town of Front Royal a per unit contribution of \$9,000.00 for each single family detached residential unit (SFD);

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\$5,500.00 for each single family residential attached dwelling unit (SFA);
and \$4,500.00 for each multi-family dwelling unit (MDU), which
contributions shall be used by the Town solely for the planning, design,
engineering, right of way acquisition and/or construction of Leach Run
Parkway.

7.1.3 Time of payment of Town Proffers. The Applicant shall pay the
applicable amount of Town Proffers at the time that the Applicant receives
an occupancy permit for a residential dwelling unit (whether attached,
detached, or multi-family in nature).

7.2 Credits Against Town Proffers. The Applicant shall receive a dollar-
for-dollar credit against the aforesaid Town Proffers for the following costs actually
incurred by the Applicant:

7.2.1 The fair market value, as mutually determined between the
applicant and the Town, of the land being offered as part of the Leach Run
Land Dedication, shall have a maximum value of One Hundred Thousand
and 0/100 Dollars (\$100,000.00) per acre;

7.2.2 The engineering, design and construction costs associated with
constructing the Leach Run Improvements as provided for in Proffers
3.1.2 & 3.1.3; and

7.2.3 The engineering, design and construction costs associated with
constructing the Construction Entrance as provided for in Proffer 3.4.

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7.3 Accounting of Credits to Town Proffers. An accounting of the credits

accrued by the Applicant shall be undertaken by the Town, in cooperation with the Applicant, and the credits available for the future phases of the development shall be determined.

7.4 Escrow of Town Proffers. In the event the Town elects to have the Applicant construct the Leach Run Improvements as provided in Proffers 3.1.2 & 3.1.3 above, the per unit contribution set out in Proffer 7.1 shall be placed in third party escrow (such third party escrow agent and the escrow agreement to be mutually agreed upon by the Town and the Applicant), and shall be paid over to the Applicant to reimburse it for the actual audited cost of the engineering, design, and construction of Leach Run Parkway. The Town and the Applicant shall enter into a mutually satisfactory agreement that sets out responsibilities of the parties; provided that until such agreement is entered into, the Applicant shall not be obligated to make the Leach Run Improvements, and provided further that the Applicant shall not unreasonably condition or withhold approval of such agreement. Upon the completion of the Leach Run Improvements, and if the actual audited cost of the engineering, design, and construction of the Leach Run Improvements do not exceed the escrowed contribution proffers and projected future proffer payments, the remaining per-unit contributions, if any, shall be made directly to the Town of Front Royal for use in those projects related to (i) trails and/or bike paths as outlined in the Town of Front Royal Capital Improvement Plan and/or (ii) signalization improvements at the intersection of State Route 55 and Leach Run Parkway. Nothing

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7.5.1. For all 450 Dwelling Units. In the event this rezoning application is approved, the Applicant will pay to Warren County, Virginia a per unit sum of \$5,500.00 prior to and as a condition of the issuance of an occupancy permit for each dwelling unit constructed on the Property (SFD, SFA, or MDU).

7.5.2 For the final 115 Dwelling Units. In addition, in the event this rezoning application is approved, for the final 115 dwelling units, the Applicant will pay to Warren County a per unit contribution of \$9,000.00 for each SFD; \$5,500.00 for each SFA; and \$4,500.00 for each MDU.

7.5.3 Proffer Designation. All County Proffers provided for herein shall be designated for Warren County Public Schools.

7.5.4 Credits Against County Proffers. Notwithstanding the foregoing Proffer 7.5, the audited costs of the engineering, design, and construction of the Neighborhood Park as provided in these Proffers shall be credited against the aforesaid Warren County Proffers, provided further that the Applicant shall be entitled to a credit for the dedication of the land for the Neighborhood Park, with such land dedication credit being a maximum of One Hundred Thousand and 0/100 Dollars (\$100,000.00) per acre.

7.5.5 Time of payment of County Proffers. The Applicant shall pay the applicable amount of County Proffers at the time that the Applicant applies for an occupancy permit for a residential dwelling unit (whether attached, detached, or multi-family in nature).

7.6 Assumption of Leach Run Parkway Improvements by Locality. In the event that the Town, Warren County, and/or any state or local agency (e.g., the EDA)

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occupancy permit for a residential dwelling unit (whether attached, detached, or multi-family in nature).

7.6 Assumption of Leach Run Parkway Improvements by Locality. In the event that the Town, Warren County, and/or any state or local agency (e.g., the EDA) notify the Applicant in writing that it will assume responsibility for the design and construction of the Leach Run Parkway Improvements as provided for in Proffer 3.1.3.5, the Applicant shall remain responsible for the payment of the Town Proffers and the County Proffers. Moreover, the Town Proffers shall be used for the purpose of defraying the costs and expenses associated with the design and construction of the Leach Run Parkway Improvements.

VIII. Comprehensive Plan Conformity

Approval of the subject zoning map amendment and its constituent parts, including Proffers, Master Plan, and Design Guidelines, by the Town Council of Front Royal, Warren County, Virginia, constitutes a finding that the subject zoning map amendment is found to be in substantial conformance with the Town of Front Royal adopted Comprehensive Plan.

IX. Miscellaneous Provisions

9.1 Monetary contributions as set forth in this Proffer Statement that are paid to the Town of Front Royal after 24 months from the date of rezoning approval shall be adjusted in accordance with the Urban Consumer Price Index ("CPI-U"), as published by the United States Department of Labor. The adjustment shall be calculated from the CPI-U published most nearly to and following January 1st from that date 24

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months after rezoning approval and the date the contributions are paid, subject to a cap of 3% per year, non-compounded.

X. Signature

The conditions proffered above shall be binding upon the heirs, executors, administrators, assigns, and successors in the interest of the Applicant and owner. In the event the front Royal Town Council grants this rezoning and accepts the conditions, the proffered conditions shall apply to the land rezoned in addition to other requirements set forth in the Front Royal Code.

This Proffer Statement supersedes any proffer statements previously submitted in connection with this application and this Property.

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SIGNATURE PAGE TO FOLLOW.

WARREN COUNTY, VIRGINIA
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APPLICANT:

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HEPTAD, LLC

By:

Ronald Llewellyn

Ronald Llewellyn, Manager

STATE OF VIRGINIA

CITY/COUNTY OF

Warren

TO-WIT:

The foregoing instrument was acknowledged before me this 1st day of July 2012, 2012, by Ronald Llewellyn, in his capacity as Manager of HEPTAD, LLC.

My commission expires: 11-30-15

Notary Registration Number: 173689

Debra B. Brown
NOTARY PUBLIC



Debra B. Brown
Commonwealth of Virginia
Notary Public
Commission No. : 173689
My Commission Expires 11-30-15

INSTRUMENT #120002053
RECORDED IN THE CLERK'S OFFICE OF
WARREN COUNTY ON
APRIL 13, 2012 AT 04:23PM

JENNIFER R. SIMS, CLERK

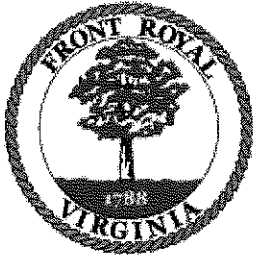
RECORDED BY: AKU



TOWN COUNCIL WORK SESSION

to be held after regular meeting of April 14, 2014
Warren County Government Center Caucus Room

1. Continued Discussion from March 24, 2014 Public Hearing on an Ordinance to Adopt a Two Party (*Town and County only parties, FRLP not a party*) Voluntary Settlement Agreement to Relocate a Portion of the Boundary Line Owned by Front Royal Limited Partnership.



Town of Front Royal, Virginia Work Session Agenda Form

Date: April 14, 2014

Agenda Item: Continued Discussion from March 24, 2014 Public Hearing

COUNCIL CONSIDERATION/APPROVAL/DISAPPROVAL: Adoption of two party (Town and County only parties, Front Royal Limited Partnership [FRLP] not a party) Voluntary Settlement Agreement (VSA).

Summary: On August 12, 2013, Town Council approved the draft 3-party Voluntary Settlement Agreement (VSA) with the Board of Supervisors and the Front Royal Limited Partnership (FRLP), for the annexation of 604.76 acres of undeveloped land into the Town. On January 6, 2014, the Commission on Local Government (COLG) issued its report and recommendations regarding the proposed annexation, and noted that, in the opinion of COLG, under the terms of Va. Code § 15.2-3400 which governs voluntary settlement agreements, the VSA must be between the County and the Town, and cannot include FRLP as a party. The Town Attorney and County Attorney drafted a revision to the VSA last November, making it a 2-party agreement, and including all the same terms as the 3-party agreement. The COLG noted at its January 6, 2014 meeting, that it had reviewed the revised VSA and its recommendation of approval of the annexation is based on that revised 2-party agreement.

However, both the Town Attorney, the County Attorney, and the attorney for FRLP continue to have significant reservations if FRLP can legally be excluded as a party to this VSA, as the underlying Annexation Petition which gives rise to the VSA was filed by FRLP and therefore, the parties feel that FRLP may be a necessary party to the VSA and the subsequent annexation suit. Further, the Town's Planning and Zoning Director has pointed out the difficulties in the Town attempting to collect monetary and other proffers on behalf of the County under the VSA if FRLP is not a party to the VSA, and if the VSA is not binding on FRLP and its successors in interest.

The change from the 3-party agreement approved by Town Council last August to a 2-party agreement is simply that the VSA is to be between the Town and the County (FRLP is not to be a party). The edited 2-party VSA is attached. The VSA rewords the proffer provisions simply to say that the Town will not approve any rezoning for any part of the FRLP property unless FRLP makes the same proffers on cash contributions to the County, the cap on total number of market rate housing units, and the minimum size of the units that were included in the original 3-party VSA.

To move forward with the proposed annexation, the Town and County and the Town should approve the VSA, by Ordinance, after a public hearing. The Town has proposed that each governing body approve both the 3-party agreement and the revised 2-party agreement (the County has already approved both VSAs). In that manner, both VSAs can be submitted to the Special Annexation Court, in the alternatives, and the Court can approve whichever version it feels appropriate.

The terms of both versions of the VSA include the following:

- 604.76-acre site, north of Happy Creek Road, will be boundary adjusted into the Town limits, initially zoned agricultural under the Town Zoning Ordinance.
- FRLP may in the future apply for rezoning to allow for residential and/or other uses.
- Town will not approve any rezoning resulting in more than 818 "market rate" houses, defined as houses capable of housing persons of age 55 and younger.
- Detached market rate houses will be a minimum of 1,600 square feet in size. No minimum size for attached units (duplexes) or multi-family units.
- FRLP proposes to offer approximately 56 acres of land to County for school, park, open space or other governmental use. County not obligated to accept any or all of it.

- Town will not approve any rezoning with cash proffers to County of less than:
 - \$8,750 per unit at time of occupancy permit for first 409 units built.
 - \$16,250 per unit at time of occupancy permits for units 410 – 818.
 - Amount of cash payment will be adjusted pursuant to Consumer Price Index beginning 2 years after Court approves agreement, up to a maximum adjustment of 2% per year.
- Value of land dedications to County (as determined by average of 3 appraisers) will reduce amount of cash payments on a dollar-for-dollar basis.
- Town will allow FRLP to extend public water and sewer facilities into the site at FRLP's expense.
- County and FRLP will endorse expansion of the Town's electric service into the site.
- Town and County will amend their Comprehensive Plans to show the proposed future development of the site to include the market rate housing, age-restricted housing, and commercial uses.
- County and Town will dedicate needed right-of-way for connection of East-West Connector Road to Commerce Avenue. If any current public facilities require relocation, FRLP shall pay for such relocation.
- Town will use its best efforts to consider approval of any requested rezoning of site (or parts of site) within 12 months of application.
- All parties agree to submit agreement to COLG and Special Annexation Court for approval.
- Town will support FRLP applications for public funding to assist in construction of East-West Connector Road.
- Agreement terms shall be binding for the later of 25 years or complete build-out of project.

The proposed Ordinance to approve both versions of the VSA as alternatives is attached. If Town Council approves the VSAs, the next step in the annexation process will be for the Town and County to jointly petition the Circuit Court for approval of the appropriate VSA and the annexation. The Circuit Court Clerk must then notify the Supreme Court of Virginia of the filing of the petition, and request the Supreme Court to designate a special 3-judge panel to hear the petition.

Council Discussion: Council is requested to consider approving the 2-party (Town and County as parties) VSA in the alternative to the 3-party VSA (Town, County, FRLP) to conform to COLG's recommendation, so as to cover all the legal bases when this matter comes before the Special Annexation Court.

Staff Evaluation: See above.

Budget/Funding: No additional funding required.

Legal Evaluation: See above.

Staff Recommendations: See above.

Town Manager Recommendation: The Town Manager concurs with the recommendation of the Town Attorney and the Town Planning and Zoning Director.

Council Recommendation:

☐ Additional Work Session ☐ Regular Meeting ☐ No Action
 Consensus Poll on Action: ____ (Aye) ____ (Nay)

TOWN COUNCIL OF THE TOWN OF FRONT ROYAL, VIRGINIA

**AN ORDINANCE TO APPROVE THE VOLUNTARY SETTLEMENT
AGREEMENT FOR THE ANNEXATION INTO THE TOWN OF FRONT
ROYAL OF APPROXIMATELY 604.76 ACRES OF LAND BELONGING
TO FRONT ROYAL LIMITED PARTNERSHIP, AS REVIEWED BY THE
COMMISSION ON LOCAL GOVERNMENT**

WHEREAS, Front Royal Limited Partnership (FRLP) has filed an application with the Commission on Local Government for the annexation from the County of Warren into the Town of Front Royal of approximately 604.76 acres of land belonging to FRLP bounded by the Front Royal-Warren County Economic Development Authority's Happy Creek technology Park to the east, the Shenandoah River and a quarry to the west, Allegheny Power transmission lines and Interstate 66 to the north, and a Norfolk Southern railroad line separating the FRLP properties from Happy Creek Road to the south; and

WHEREAS, the Front Royal Town Council (the Town), the Board of Supervisors (the County) and FRLP have negotiated and agreed upon the terms and conditions for a boundary change to settle the requested annexation by a Voluntary Settlement Agreement (the Agreement) as an alternative to a fully contested litigation and have submitted two versions of the Agreement (one between all three parties, being the Town, the County, and FRLP; and a second between the Town and the County) to the Commission on Local Government (the Commission) for review and recommendation; and

WHEREAS, the Commission has reviewed the two versions of the Agreement, and has recommended approval of the second version (between the Town and the County) based upon the Commission's belief that voluntary settlement agreements cannot include non-governmental entities as parties; and

WHEREAS, the County and the Town desire to adopt and present to the Circuit Court for approval both versions of the Agreement in the alternative as options to be approved;

NOW THEREFORE, BE IT HEREBY ORDAINED AND ENACTED by the Town Council of the Town of Front Royal, Virginia, that the Town Council consents to the

adjustment of the FRLP property into the Town's corporate limits; that this Ordinance is the implementation of the Town Council's approval and adoption of the Commission's review and recommendation aforesaid; that the said Town Council endorses, approves and adopts the terms of both versions of the Voluntary Settlement Agreement as negotiated and drafted by the Town Attorney, the County Attorney, and FRLP; that the said Town Council authorizes the Mayor of the Town of Front Royal to execute both versions of the Voluntary Settlement Agreement on its behalf; and the said Town Council directs that, in the filing of a petition and law suit in the Circuit Court to accomplish the annexation, the Town Attorney, in conjunction with the County Attorney for Warren County and any other appropriate party, forward both versions of the Agreement, in the alternative, to the Circuit Court with a request that the Circuit Court endorse the three-party version if the Court deems it to be appropriate and lawful, or, in the alternative, that the Court endorse the two-party version if the Court finds that FRLP cannot be a party to the Agreement.

This ordinance shall be effective upon enactment.

THIS ORDINANCE was advertised in the Northern Virginia Daily on _____

_____ and _____, 2014, was adopted by the Town Council during the first reading held during the regular Council Meeting of _____, 2014, and was enacted during its second and final reading during the regular Council Meeting of _____, 2014, upon the following recorded vote:

Motion to Approve by: _____

Seconded by: _____

Votes:

Daryl L. Funk _____
Bret W. Hrbek _____
Thomas H. Sayre _____

N. Shae Parker _____
Hollis L. Tharpe _____
Eugene R. Tewalt _____

APPROVED:

[Type text]

Timothy W. Darr, Mayor

ATTEST:

**Jennifer E. Berry,
Clerk of Council**

APPROVED AS TO FORM AND LEGALITY:

**Douglas W. Napier,
Town Attorney**

Date

Draft

A

**VOLUNTARY SETTLEMENT AGREEMENT BETWEEN THE TOWN
OF FRONT ROYAL, VIRGINIA, WARREN COUNTY, VIRGINIA, AND
FRONT ROYAL LIMITED PARTNERSHIP**

THIS VOLUNTARY SETTLEMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2013, and executed in triplicate originals (each executed copy constituting an original), by and between the TOWN OF FRONT ROYAL, VIRGINIA, a municipal corporation of the Commonwealth of Virginia (hereinafter the "Town"), the COUNTY OF WARREN, VIRGINIA, a political subdivision of the Commonwealth of Virginia (hereinafter the "County"), and FRONT ROYAL LIMITED PARTNERSHIP, a Virginia Limited Partnership (hereinafter "FRLP"). Together the Town, County, and FRLP are collectively identified as the "Parties."

RECITALS

R-1. WHEREAS, the Parties have reached this Agreement pursuant to Title 15.2, Chapter 34, of the Code of Virginia, (i) providing for the annexation of certain territory of the County into the Town, and (ii) providing for the development of the annexation areas in accordance with a jointly approved land use plan, and

R-2. WHEREAS, FRLP is the owner of a certain tract of land containing approximately 604 acres (hereinafter the "FRLP Property"), as the same is more thoroughly identified below, and

R-3. WHEREAS, the Town and the County, after due consideration, have determined and agree that the Town's boundaries should be adjusted and relocated as identified herein, and that certain other matters should be resolved between the Parties, and

R-4. WHEREAS, FRLP desires that the FRLP Property be annexed into the Town pursuant to these terms and conditions, and

R-5. WHEREAS, the Parties have determined that this Agreement is necessary to ensure the effective provision of public services to the area to be adjusted into the Town,

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained the receipt and sufficiency of which are conclusively agreed, the Parties agree as follows:

SECTION 1. DEFINITIONS

The Parties agree that the following words, terms, and abbreviations as used in this Agreement shall have the following defined meanings, unless the context clearly provides otherwise:

- 1.1. "Town" means the Town of Front Royal, Virginia.
- 1.2. "Town Council" means the Town Council of the Town of Front Royal, Virginia.
- 1.3. "County" means the County of Warren, Virginia.
- 1.4. "Board of Supervisors" means the Board of Supervisors of the County of Warren, Virginia.
- 1.5. "Code" means the Code of Virginia (1950), as amended. A reference to a specific Code provision shall mean that Code provision as it existed on the date of execution of this Agreement or any successor provision should the Code be amended after execution of this agreement.
- 1.6. "Commission" means the Virginia Commission on Local Government.

- 1.7. "Effective Date of the Annexation" shall be the first day of the second calendar month after entry of the Order by the Special Three-Judge Court appointed pursuant to Va. Code § 15.2-3400 to affirm, validate and give full force and effect to this Agreement.
- 1.8. "Future Land Use Plan" refers to the exhibit prepared by Bowman Consulting entitled "Future Land Use Plan of Annexation Area, Front Royal Limited Partnership Property," dated March 20, 2013, and attached as Exhibit A.
- 1.9. "Market Rate Dwellings" means all types of dwelling units not restricted to persons aged 55 years and older.
- 1.10. "Section" refers to the parts of this Agreement unless the context indicates that the reference is to sections of the Code.
- 1.11. "Special Court" means the Special Three-Judge Court appointed by the Supreme Court of Virginia pursuant to Title 15.2, Chapter 30, of the Code.
- 1.12. "Subsection" refers to the parts of this Agreement set out in the various "Sections."

SECTION 2. VOLUNTARY ANNEXATION OF PROPERTY BY THE TOWN

2.1. Annexation Agreement. The Town and the County agree to the annexation by the Town of certain territory consisting of the FRLP Property, more specifically described by metes and bounds on the attached Exhibit B. A survey showing the FRLP Property to be annexed shall be prepared (the "Survey"). The area so identified is referred to herein as the "Annexation Area," and is generally described as the area lying to the

northeast of the existing Town boundaries to the north of Happy Creek Road, to the west of State Route 606 (Shenandoah Shores Road), and to the south of Interstate 66. It comprises approximately 604 acres of land more or less.

2.2. Submission of the Survey. The Survey shall be submitted to and filed with the Commission and the Special Court appointed to affirm, validate, and give full force and effect to this Agreement.

2.3. Extension of Municipal Utility Services. Except as otherwise provided herein, the Town agrees that upon the Effective Date, the Town will permit the extension of its municipal utility services to the Annexation Area on the same basis and at the same level and rates as such services are now or hereafter provided to the areas within its current corporate limits where like conditions exist. The owner of property within the Annexation Area shall be responsible for the costs of extension of public utility services.

2.4. Electric Utility Service Endorsement. The County and FRLP will favorably endorse, at such reasonable times and in such reasonable manner as the Town may request, expansion of the Town's electric utility service to the Property upon its becoming part of the Town.

SECTION 3. LAND USE AND ZONING ARRANGEMENTS IN THE ANNEXATION AREA

3.1. Future Land Use. Pursuant to the provisions of Va. Code Ann. § 15.2-3400(2), the Parties agree that the orderly development of the Annexation Area is in the best interest of the Parties and to that end the Parties agree that the Future Land Use Plan (Exhibit A), which depicts the proposed land use for the Annexation Area, represents a reasonable and appropriate conceptual Plan for the future development of that Area subject to further consideration during the rezoning process.

3.2. Comprehensive Plan Amendment. The Town and the County agree that promptly upon validation of this Agreement by order of the Special Court, each will use its best good faith efforts to amend its Comprehensive Plan to incorporate the Future Land Use Plan therein. Nothing herein shall prohibit the Town and County from repealing, modifying, or amending the Future Land Use Plan, with the mutual consent of both parties, and in accordance with law.

3.3. Transitional Zoning Classification of the Annexation Area. As of the Effective Date the Property within the Annexation Area shall be classified "Agriculture and Open Space Preservation District A-1" pursuant to the Town's Zoning Ordinance. This District shall apply to the Annexation Area pending the orderly amendment of the Town's Zoning Ordinance and Zoning Map as set forth herein.

3.4. Future Zoning Actions with Respect to the Annexation Area. Application to rezone all or a portion of the Annexation Area may be made at any time in accordance with law, provided that the Town will not approve a rezoning of all or a portion of the Property that would result in the construction of more than 818 Market Rate Dwelling units on the Property, for the duration of this Agreement. Single-family detached Market Rate Dwellings shall comprise not less than 1,600 square feet of habitable space.

3.4.1. The Town further agrees that no rezoning application that may be filed with respect to the Annexation Area shall be approved, except as further provided below, unless the Applicant agrees to contribute to the County \$12,500 for each Market Rate Dwelling unit for which a building permit is issued. Each such payment shall be made to the County prior to issuance of a certificate of occupancy for such units. Such

contributions shall be set forth in a conditional zoning proffer statement submitted in connection with any rezoning.

3.4.2. The aforesaid cash payments to the County shall be adjusted annually in accordance with the Urban Consumer Price Index ("CPI-U"), as published by the United States Department of Labor, published most nearly to, and following January 1st annually, subject to a cap of 2% per year, non-compounded, said adjustments to begin on the second anniversary of the Effective Date.

3.4.3. In order to offset the substantial initial infrastructure costs that must be incurred in connection with the development of the Annexation Area, it shall constitute compliance with the foregoing requirement for payments to the County if, in connection with any such rezoning, the Applicant proffers that the first 50% of all approved Market Rate Dwelling units shall contribute 70% of the aforesaid per unit contribution, and the remaining 50% of the Market Rate Dwelling units shall contribute 130% of the aforesaid per unit contribution, as the amount of those contributions may be adjusted in accordance with section 3.4.2. This provision shall not relate to or affect any proffered payments to the Town that may be agreed to in connection with a rezoning of all or a portion of the Property.

3.4.4. In addition to the foregoing, the Applicant in any such rezoning shall receive a credit against the foregoing monetary contributions to the County in the dollar value of any proffered and accepted dedications to the County of real property for public use. At the time of any such dedication the Applicant and the County shall each select a real estate appraiser licensed and in good standing in the Commonwealth of Virginia, who shall select a third such real estate appraiser, and together those appraisers

shall establish a value for the real property so dedicated. Such determination shall be final.

3.4.5. In connection with any development of the Annexation Property, the Town and the County agree that if the finally approved alignment of the East/West Connector requires the dedication of publicly-owned right-of-way in the vicinity of Bing Crosby Stadium, the County and the Town shall use their best good faith efforts to dedicate such right-of-way, at no cost to either jurisdiction, in a timely manner so as to permit the construction of that Connector. In the event that any such dedication adversely affects existing uses on such publicly-owned properties, FRLP shall reimburse the affected jurisdiction in connection with and as a proffer made in any rezoning application as provided for herein, for costs that the jurisdiction may be required to incur as a consequence of that dedication.

3.4.6. Upon the submission of all materials required for a rezoning Application, the Town agrees that it shall use its best good faith efforts to reclassify the property included in the rezoning application within twelve months of the receipt thereof, subject to applicable requirements of the State Code and local ordinances regarding the rezoning of property.

3.4.7. For the purposes of this Agreement, a complete rezoning application shall be an application that contains the submission materials required by the provisions of the Front Royal Town Code and the Code of Virginia, in form and substance acceptable to the Town's Director of Planning. In the event that the Director determines that an Application is incomplete, he shall advise the applicant in writing of deficiencies noted within 10 business days of receipt thereof, and shall advise the

applicant therein what information or other materials are required in order to complete the Application. The Director's acceptance of any such Application for processing shall not be unreasonably withheld.

SECTION 4. COMMISSION AND SPECIAL COURT APPROVAL

4.1. Commission on Local Government Review. The Town and the County agree to initiate promptly the steps necessary and required by Title 15.2, Chapter 34 of the Code to obtain review of this Agreement by the Commission.

4.2. Special Court Approval. Following the issuance of the report of findings and recommendations by the Commission, the Town and the County agree that they will take all steps necessary and will submit this Agreement in its approved form to a Special Court for affirmation and validation and to give it full force and effect, as required by Title 15.2, Chapter 34 of the Code.

4.3. Termination for Failure to Affirm and Validate and Give Full Force and Effect to This Agreement. The Parties agree that if this Agreement is not affirmed, validated, and given full force and effect by the Special Court without modification, this Agreement shall immediately terminate. However, the Parties may waive termination by mutually agreeing to any modifications recommended by the Special Court.

SECTION 5. AUTHORIZATION FOR THE EXECUTION OF THIS AGREEMENT.

5.1. The Town has authorized the execution and implementation of this Agreement by resolution of the Town Council, a copy of which is attached hereto as Exhibit D.

5.2. The County has authorized the execution and implementation of this Agreement by resolution of its Board, a copy of which is attached hereto as Exhibit E.

SECTION 6. FURTHER REQUIREMENTS.

6.1. Each Party agrees to perform such other and further actions as may be necessary to effectuate this Agreement and the terms and conditions hereof. Each Party further agrees that it shall expeditiously perform those duties and obligations that may be imposed on it by the terms of this Agreement, including, but not limited to, the preparation and submission of necessary materials required for application to the Commission on Local Government, the Special Court, and for approval by the United States Department of Justice.

6.2. The Town agrees to support any applications by FRLP for public funding from sources other than the Town to the extent that it does not interfere with the Town's establishment of legislative priorities, for construction of the East-West Connector road.

SECTION 7. DURATION OF AGREEMENT.

7.1. This Agreement shall remain in effect until the later of a period of twenty-five (25) years from the Effective Date, or, with respect to the Land Use and Zoning Arrangements referenced herein, the development of the Property is complete. For the purposes of this Agreement, development of the Property shall be deemed complete upon the issuance of a building permit for the last Market Rate Unit authorized to be constructed on the Property.

SECTION 8. MISCELLANEOUS PROVISIONS

8.1. Binding Effect. This Agreement contains the final and entire agreement between the Parties with respect to the matters addressed herein, and is intended to be an integration of all prior understandings with respect thereto. It shall be binding upon and

inure to the benefit of FRLP, the Town, and the County, future governing bodies of the Town and the County, and upon the heirs, successors, or assigns to or of any Party.

8.2. Amendments. This Agreement may be amended, modified, or supplemented in whole or in part, by mutual agreement of the Parties, by a written document of equal formality and dignity, duly executed by the authorized representatives of the Parties as may be permitted by law.

8.3. Enforceability. This Agreement shall be enforceable only by the Special Court or by a successor Special Court appointed to pursuant to Title 15.2, Chapter 30 of the Code, pursuant to a declaratory judgment action initiated by any of the Parties to secure the performance of any provisions, covenants, conditions and terms contained in this Agreement or the Order affirming, validating, and giving full force and effect to this Agreement.

8.4. Alternative dispute resolution. The parties to this agreement may, upon mutual written concurrence, submit any dispute arising hereunder to a mediator to facilitate the settlement of the dispute if otherwise permitted by law.

8.5. Standing. The Parties agree that each has standing to enforce any of the provisions, covenants, conditions, and terms of this Agreement.

8.6. Exhibits. All exhibits referenced herein are incorporated into this Agreement by reference thereto.

IN CONSIDERATION of the foregoing, the authorized representatives of FRLP, the Town, and the County have executed this Agreement in triplicate as of the date and year first herein written.

{SIGNATURES APPEAR ON FOLLOWING PAGES}

TOWN OF FRONT ROYAL, VIRGINIA

Mayor

Date: _____

WARREN COUNTY, VIRGINIA

Chairman of the Board of Supervisors

Date: _____

FRONT ROYAL LIMITED PARTNERSHIP,
a Virginia limited Partnership

By: MVA Limited Partnership, general partner of
Front Royal Limited Partnership

By: DOC Corporation, general partner of MVA
Limited Partnership

By: _____
David A. Vazzana, President of
DOC Corporation

Date: _____

B

**VOLUNTARY SETTLEMENT AGREEMENT BETWEEN THE TOWN
OF FRONT ROYAL, VIRGINIA, AND WARREN COUNTY, VIRGINIA,**

THIS VOLUNTARY SETTLEMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2014, and executed in triplicate originals (each executed copy constituting an original), by and between the TOWN OF FRONT ROYAL, VIRGINIA, a municipal corporation of the Commonwealth of Virginia (hereinafter the "Town"), and the COUNTY OF WARREN, VIRGINIA, a political subdivision of the Commonwealth of Virginia (hereinafter the "County"), Together the Town and County are collectively identified as the "Parties."

RECITALS

R-1. WHEREAS, the Parties have reached this Agreement pursuant to Title 15.2, Chapter 34, of the Code of Virginia, (i) providing for the annexation of certain territory of the County into the Town, and (ii) providing for the development of the annexation areas in accordance with a jointly approved land use plan, and

R-2. WHEREAS, Front Royal Limited Partnership, a Virginia limited partnership ("FRLP") is the owner of a certain tract of land containing approximately 604 acres (hereinafter the "FRLP Property"), as the same is more thoroughly identified below, and

R-3. WHEREAS, the Town and the County, after due consideration, have determined and agree that the Town's boundaries should be adjusted and relocated as identified herein, and that certain other matters should be resolved between the Parties, and

R-4. WHEREAS, FRLP desires that the FRLP Property be annexed into the Town pursuant to these terms and conditions, and

R-5. WHEREAS, the Parties have determined that this Agreement is necessary to ensure the effective provision of public services to the area to be adjusted into the Town,

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained the receipt and sufficiency of which are conclusively agreed, the Parties agree as follows:

SECTION 1. DEFINITIONS

The Parties agree that the following words, terms, and abbreviations as used in this Agreement shall have the following defined meanings, unless the context clearly provides otherwise:

- 1.1. "Town" means the Town of Front Royal, Virginia.
- 1.2. "Town Council" means the Town Council of the Town of Front Royal, Virginia.
- 1.3. "County" means the County of Warren, Virginia.
- 1.4. "Board of Supervisors" means the Board of Supervisors of the County of Warren, Virginia.
- 1.5. "Code" means the Code of Virginia (1950), as amended. A reference to a specific Code provision shall mean that Code provision as it existed on the date of execution of this Agreement or any successor provision should the Code be amended after execution of this agreement.
- 1.6. "Commission" means the Virginia Commission on Local Government.

- 1.7. "Effective Date of the Annexation" shall be the first day of the second calendar month after entry of the Order by the Special Three-Judge Court appointed pursuant to Va. Code § 15.2-3400 to affirm, validate and give full force and effect to this Agreement.
- 1.8. "Future Land Use Plan" refers to the exhibit prepared by Bowman Consulting entitled "Future Land Use Plan of Annexation Area, Front Royal Limited Partnership Property," dated March 20, 2013, and attached as Exhibit A.
- 1.9. "Market Rate Dwellings" means all types of dwelling units not restricted to persons aged 55 years and older.
- 1.10. "Section" refers to the parts of this Agreement unless the context indicates that the reference is to sections of the Code.
- 1.11. "Special Court" means the Special Three-Judge Court appointed by the Supreme Court of Virginia pursuant to Title 15.2, Chapter 30, of the Code.
- 1.12. "Subsection" refers to the parts of this Agreement set out in the various "Sections."

SECTION 2. VOLUNTARY ANNEXATION OF PROPERTY BY THE TOWN

2.1. Annexation Agreement. The Town and the County agree to the annexation by the Town of certain territory consisting of the FRLP Property, more specifically described by metes and bounds on the attached Exhibit B. A survey showing the FRLP Property to be annexed shall be prepared (the "Survey"). The area so identified is referred to herein as the "Annexation Area," and is generally described as the area lying to the

northeast of the existing Town boundaries to the north of Happy Creek Road, to the west of State Route 606 (Shenandoah Shores Road), and to the south of Interstate 66. It comprises approximately 604 acres of land more or less.

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{SIGNATURES APPEAR ON FOLLOWING PAGES}

TOWN OF FRONT ROYAL, VIRGINIA

Mayor

Date: _____

WARREN COUNTY, VIRGINIA

Chairman of the Board of Supervisors

Date: _____

