

**BOARD OF SUPERVISORS  
COUNTY OF NEW KENT  
VIRGINIA**

**O-16-11 (R1)**

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 9th day of November, 2011:

Present:	Vote:
David M. Sparks	Aye
James H. Burrell	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye

Motion was made by Mr. Trout, which carried 5:0, to adopt the following ordinance:

**AN ORDINANCE AMENDING ORDINANCE 0-03-06  
ADOPTED MAY 9, 2006, ESTABLISHING A SPECIAL ASSESSMENT  
FOR THE FARMS OF NEW KENT COMMUNITY DEVELOPMENT  
AUTHORITY AND AUTHORIZING AN AMENDMENT TO THE  
MEMORANDUM OF UNDERSTANDING WITH THE COMMUNITY  
DEVELOPMENT AUTHORITY**

WHEREAS, the Board of Supervisors (the "Board") of the County of New Kent, Virginia (the "County") created The Farms of New Kent Community Development Authority (the "CDA") by Ordinance enacted December 12, 2005;

WHEREAS, the Board established a special assessment on property within the CDA District (the "Special Assessment") by Ordinance enacted on May 9, 2006;

WHEREAS, in connection with the establishment of the Special Assessment, the CDA, the County, and New Kent Farms LLC ("New Kent Farms"), NKP LB4 LLC and NKP LB5 LLC (collectively, "NKP"), William E. Downs and Deborah H. Downs and Talleyville Associates LLC (collectively, the "Landowners") and New Kent Partners, LLC (the "Developer") entered into a Memorandum of Understanding, dated as of June 15, 2006 (the "MOU");

WHEREAS, the CDA issued its Special Assessment Revenue Bonds, Series 2006 in the aggregate principal amount of \$85,666,000 (the "Bonds");

WHEREAS, New Kent Farms and NKP have requested U.S. Bank National Association, as successor trustee for the Bonds (the "Trustee") and the owners of the Bonds to agree to certain amendments with respect to the Bonds, including a First Amendment to the Memorandum of Understanding, dated as of November 1, 2011, and the Restructuring Term Sheet attached thereto as Exhibit A (collectively, the "First Amendment"); and

WHEREAS, in connection with the First Amendment, the Landowners have requested that the Board of Supervisors amend Ordinance O-03-06, adopted May 9, 2006 (the "Assessment Ordinance") to elect the authority provided under Section 58.1-3965.2 of the Code of Virginia of 1950, as amended (the "Virginia Code") to institute foreclosure proceedings with respect to delinquent special assessments on property within the CDA District on the first anniversary date of any such delinquency in accordance with the First Amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF NEW KENT, VIRGINIA:

1. Approval of First Amendment to Memorandum of Understanding. The First Amendment is approved in substantially the form on file with the County Administrator, with such changes and corrections (including, without limitation, changes in the date thereof) as may be approved by the County Administrator, whose approval shall be evidenced conclusively by the execution and delivery of the First Amendment. The County Administrator is authorized and directed to execute and deliver the First Amendment provided that the First Amendment will not be executed and delivered on behalf of the County until consent of the Trustee has been obtained.

2. Amendment to Assessment Ordinance; Election to Apply Virginia Code Section 58.1-3965.2. The collection of special assessments on property within the CDA District pursuant to the MOU, as amended by the First Amendment is hereby approved. In accordance with Virginia Code Section 58.1-3965.2 the Board of Supervisors hereby provides that if any special assessment levied pursuant to the Assessment Ordinance, as amended by this Ordinance, is delinquent, proceedings for the sale of the real property subject to such special assessment are authorized to be instituted on the first anniversary date on which the special assessment became due to the extent provided under Section 58.1-3965.2 and the First Amendment. The Board of Supervisors acknowledges that the First Amendment provides for payment of a portion of any special assessment on or before June 5 of each year (the "Deferred Portion") and agrees that the County will not request the Treasurer to commence tax foreclosure proceedings with respect to any Deferred Portion which is unpaid on the applicable June 5 until at least 12 months after such June 5.

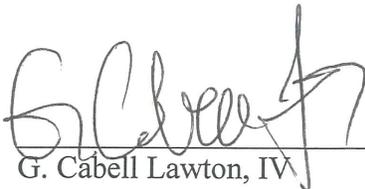
3. Subsequent Resolution. The Board may approve by subsequent resolution such changes or amendments to the First Amendment, in addition to any changes

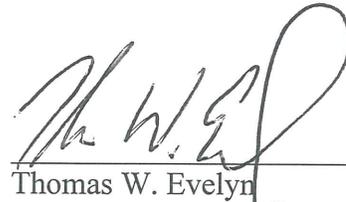
approved by the County Administrator pursuant to paragraph 1, as it determines to be necessary or appropriate.

4. Further Actions. The County Administrator and such officers and agents of the County as he may designate are authorized to execute and deliver such certificates, documents and agreements and take such action as they deem necessary or appropriate to carry out the transactions authorized by this Ordinance or contemplated by the First Amendment and any such actions previously taken are ratified and confirmed.

5. Severability. If any part, section, clause or phrase of this Ordinance, or any individual assessment levied hereby, is declared to be unconstitutional or invalid for any reason, such decision shall not affect the validity of any other portion hereof or assessment hereunder.

6. Effective Date. This Ordinance shall be effective upon the execution and delivery of the First Amendment by all parties to such First Amendment and payment of funds as required in the Restructuring Term Sheet on or before November 16, 2011.

  
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G. Cabell Lawton, IV  
County Administrator

  
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Thomas W. Evelyn  
Chairman

Copy Teste:

  
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Connie C. Nalls, Deputy Clerk