

BK 0458PG0195

BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA

O-29-05

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the County Administration Building in New Kent, Virginia, on the 12th day of December, 2005:

Present	Vote
Stran L. Trout	Aye
Mark E. Hill	Aye
D. M. Sparks	Aye
James H. Burrell	Aye
W. R. Davis, Jr.	Aye

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

ORDINANCE CREATING THE FARMS OF NEW KENT
COMMUNITY DEVELOPMENT AUTHORITY

WHEREAS, the Board of Supervisors of New Kent County, Virginia (the "Board") has received a petition (the "Petition") from New Kent Farms, LLC, a Virginia limited liability company (the "Landowner"), for the creation of The Farms of New Kent Community Development Authority (the "CDA"), and the Landowner has represented that it owns all of the land within the proposed CDA district; and

WHEREAS, a public hearing has been held on December 12, 2005 by the Board on the adoption of this Ordinance and notice has been duly provided as set forth in §15.2-1427 of the Code of Virginia of 1950, as amended and §§15.2-5104 and 15.2-5156 of the Virginia Water and Waste Authorities Act, Chapter 51, Title 15.2, Code of Virginia of 1950, as amended (the "Act"); and

WHEREAS, the Board proposes to create the CDA in order to finance all or a portion of the costs of the public improvements as more particularly described in the Petition;

WHEREAS, the creation of the CDA to assist in financing certain improvements in connection with the proposed development within the CDA district will benefit the citizens of New Kent County, Virginia (the "County") by promoting increased employment opportunities, a strengthened economic base and increased tax revenues and additional commercial and business opportunities and will meet the increased demands placed upon the County as a result of development within the CDA district; and

WHEREAS, the Landowner has waived in writing the right to withdraw such Landowner's signature from the Petition in accordance with §15.2-5156 of the Act.

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

1. Creation of Authority. The Farms of New Kent Community Development Authority is hereby created as a political subdivision of the Commonwealth of Virginia in accordance with the applicable provisions of the Act. The CDA shall have the powers set forth in the Act, subject to the limitations set forth in this Ordinance and the Articles of Incorporation.

2. Boundaries of CDA. The CDA boundaries shall initially include the property identified in the attached Exhibits A and B (the "Initial CDA District"). In accordance with §15.2-5157 of the Act, a copy of this Ordinance shall be recorded in the land records of the Circuit Court of New Kent County for each tax map parcel in the CDA district as such CDA district exists at the time of issuance of the first series of the CDA's bonds (the "Bonds") and the CDA district shall be noted on the land records of the County. The Board of Supervisors, upon the request of the CDA or the Landowner, may, by resolution, release or exclude from the CDA district in order to correct errors or conform to existing property boundaries or parcel descriptions (i) at any time before the issuance of the initial Series of Bonds certain portions of land not to exceed 10% of the land included in the Initial CDA District and (ii) after the issuance of the Bonds only de minimis portions of land not to exceed approximately two acres (such modified district is hereinafter referred to as the "CDA District"). In addition, the CDA may release and exclude from the CDA District parcels of land with respect to which all special assessments have been paid or prepaid.

3. Facilities and Services. (a) The CDA is created for the purpose of exercising the powers set forth in the Act, including financing, constructing, acquiring and developing, and owning and maintaining if necessary, all or a portion of the Improvements, as such term is defined in the Petition, in connection with the development of a mixed use development as described in the Petition. The CDA shall have all the powers provided by the Act subject to the limitations set forth in this Ordinance and in the Articles of Incorporation. The CDA shall not provide services which are provided by, or obligated to be provided by, any authority already in existence pursuant to the Act unless such authority provides the certification required by §15.2-5155 of the Act. Notwithstanding the foregoing, the CDA shall not undertake or finance any facilities in addition to the Improvements without prior approval by ordinance of the Board of Supervisors after public hearing before the Board of Supervisors following public notice.

(b) The CDA will undertake to complete the Improvements to be constructed by the CDA within 36 months after issuance of the initial issue of Bonds and in any event by July 1, 2009.

4. Articles of Incorporation. Attached as Exhibit C are the proposed Articles of Incorporation of the CDA. The County Administrator is authorized and directed to execute and file such Articles of Incorporation on behalf of the Board with the State Corporation Commission in substantially the form attached as Exhibit C with such changes, including insubstantial changes to the boundary description of the CDA district described therein, as the County

Administrator may approve. The County Administrator is authorized to approve such changes or corrections to the Articles of Incorporation prior to filing with the State Corporation Commission as do not change the purpose or function of the CDA as set forth in this Ordinance and in the Petition.

5. Capital Cost Estimates. The Board hereby finds, in accordance with §15.2-5103(B) of the Act, that it is impracticable to include capital cost estimates, project proposals and project service rates, except as preliminarily summarized in the Petition, which are incorporated herein by reference.

6. Membership of the Authority.

(a) The powers of the CDA shall be exercised by an authority board consisting of five members. The Board of Supervisors may appoint alternate members for any or all of the CDA board members

(b) All members of the CDA board shall be appointed by the Board in accordance with the provisions of §15.2-5113 for the terms set forth in the Articles of Incorporation. The Board of Supervisors is not required to appoint a CDA board member to represent each of the County's magisterial districts. The Board of Supervisors may establish criteria for the appointment of CDA board members to ensure that the CDA board includes members with financial, legal, development or other relevant expertise.

(c) The initial members of the CDA board shall be as set forth in the Articles of Incorporation for the terms set forth therein.

(d) The County Administrator, or such officer's designee, shall serve as a non-voting, ex-officio member of the CDA board.

(e) Each CDA board member, except for the ex-officio member, shall receive such compensation for his or her services as a CDA board member as may be authorized from time to time by resolution of the CDA board, provided that no member shall receive compensation in excess of \$300 per meeting attended unless authorized by resolution of the Board.

7. Plan of Finance; Issuance of Bonds.

(a) The CDA is specifically authorized and directed to pay to the County the amount referred to as the Parham Landing Related Improvements portion of the Improvements and defined as the "CDA Contribution" in the Petition (\$39,222,855 as calculated in the Petition) immediately upon initial issuance of the below described Bonds (the "CDA Contribution"). The amount of the CDA Contribution will be reduced by the amount of Utility Fees, as defined below, paid by the Landowner. The financing of the Improvements, including the CDA Contribution, as described in the Petition, shall be funded from all or some of the following sources: (i) bonds to be issued by the CDA in one or more series (the "Bonds"); (ii) special assessments to be levied pursuant to Virginia Code Section 15.2-5158A5 and (iii) any other source of funding available to the CDA.

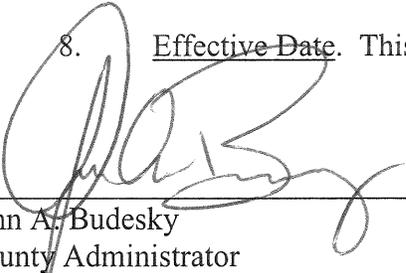
(b) The Bonds to be issued by the CDA may be issued in one or more series and will be used to finance the Improvements, including, but not limited to the CDA Contribution and to pay the costs of issuing the Bonds and any required reserves, and interest on the Bonds prior to and during construction of the Improvements and for a period up to three years after completion of the Improvements. Upon issuance of the initial issue of Bonds the CDA will pay the CDA Contribution to the County. The County will use the CDA Contribution to pay the costs of certain of the Improvements referred to as the Parham Landing Related Improvements (\$39,222,855 as calculated in the Petition and as reduced by Utility Fees paid by the Landowner). The term "Utility Fees" means the water and sewer connection fees, including the sewer connection availability fee, applicable to the total number of approved residential units and for all commercial square footage to which the Landowner is committed in the PUD Ordinance for The Farms of New Kent at the rates in effect at the time the CDA Contribution is paid to the County. Upon payment of the CDA Contribution to the County the Landowner will receive a credit for the Utility Fees (to the extent included in the calculation of the CDA Contribution) or a reimbursement from the CDA for previously paid Utility Fees. Prior to the issuance of any Bonds or other financial obligations that would be paid through assessments on the property within the CDA, the CDA must obtain approval of the special assessments by the Board by ordinance adopted by the Board of Supervisors after public hearing following public notice.

(c) Any bonds issued by the CDA or any other financing arrangements entered into by the CDA will be debt of the CDA, will not be a debt or other obligation of the County and will not constitute a pledge of the faith and credit or a moral obligation of the County. It is specifically understood and agreed that the County shall have no liability of any kind for actions taken or not taken or obligations or agreements entered into by the CDA.

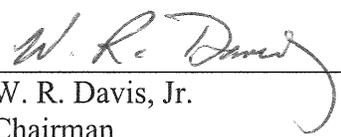
(d) Adoption of this Ordinance approving the creation of the CDA does not constitute approval of the issuance of any Bonds or similar debt obligations by the CDA. No Bonds or other obligations of the CDA, including but not limited to refunding bonds, may be issued without prior approval of each such issue by the Board of Supervisors by adoption of a resolution or ordinance after public hearing following public notice.

(e) The Landowner agrees to comply with the requirements set forth in the New Kent County Policy Guidelines for Approval of the Creation of a Community Development Authority, including, but not limited to the requirement to provide the County and its agents detailed information on the financing plan for the CDA in a timely fashion.

8. ~~Effective Date.~~ This Ordinance shall take effect immediately.



John A. Budesky
County Administrator



W. R. Davis, Jr.
Chairman

Exhibits:

- A – Initial CDA District Boundaries
- B – Initial CDA District Map
- C – Proposed Articles of Incorporation

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STATE OF VIRGINIA

County of New Kent, to-wit:

Subscribed to before me, the undersigned Notary Public, on the 15th day of December, 2005, by John A. Budesky and W. R. Davis, Jr.

My commission expires 5/31/08.

Annice C. Hall

Notary Public



Initial CDA District Boundaries

Owner: New Kent Farms, LLC

LAND BAY I

<u>GPIN</u>	<u>TAX ID</u>	<u>ACREAGE (BY SURVEY/PLAT)</u>
L12-1302-3058	21-104	99.4±
L12-3516-3203	21-101	127±
M13-2271-0365	11-24	445±
L13-3432-2247	22-1	159.004
L13-1278-1107	22-2	170.597
M12-3437-1136	10-63	96±
		TOTAL: 1191±

LAND BAY III

K13-0030-4637	22-2C	16.4±
K13-1726-4204	22-2A	11.059
K13-3356-4098	22-11A	10.0
K13-3750-1456	22-11(PART)	36.229
		TOTAL: 46.229

LAND BAY IV

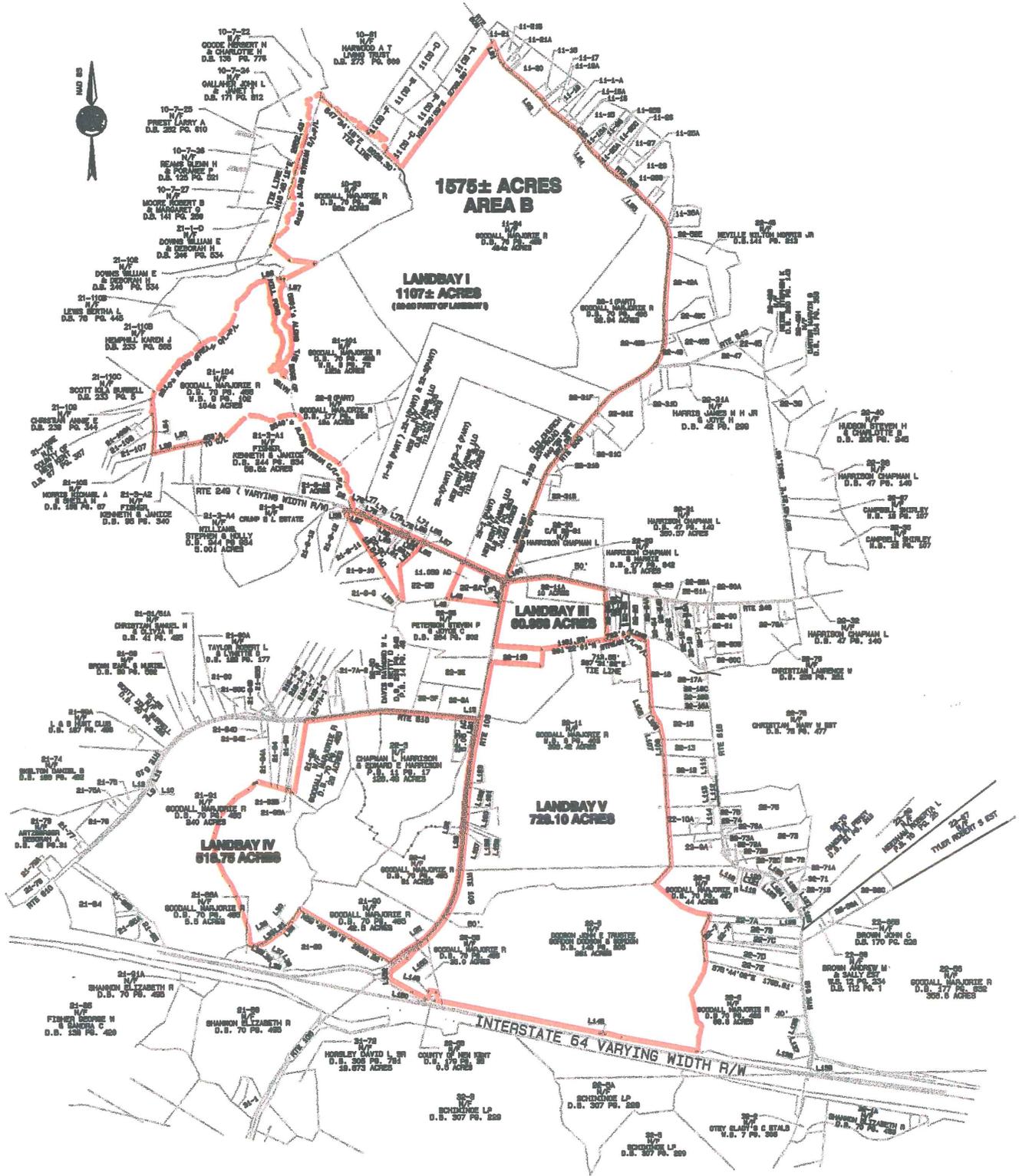
K12-2888-1030	21-92	29.263
K12-4019-0701	22-3	123.524
K13-1556-1403	22-3C	5.024
J13-0447-3910	22-4	60.99
J12-3617-3048	21-90	42.3±
J12-0648-4405	21-91(PART)	81±
		TOTAL: 343±

LAND BAY V

K13-3750-1456	22-11(PART)	300.233
J13-3207-2356	22-5	265±
J13-0839-1844	22-5B	35.361
		TOTAL: 600.594

GRAND TOTAL: 2,181±

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PROJECT NO.
2010FONK-02
SHEET
1 OF 1

COMMUNITY DEVELOPMENT
AUTHORITY BOUNDARY

FARMS OF NEW KENT

COUNTY OF NEW KENT

DESIGNED: [Signature]
DRAWN: [Signature]
CHECKED: [Signature]
DATE: 07/24/03
SCALE: AS SHOWN

REVISIONS:
07/02/03 REVISED NOVELATURE



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**Articles of Incorporation
of
The Farms of New Kent
Community Development Authority**

The undersigned, pursuant to Chapter 51, Title 15.2 of the Code of Virginia, adopts the following Articles of Incorporation for The Farms of New Kent Community Development Authority and states as follows:

Article I

Name

The name of this Authority is THE FARMS OF NEW KENT COMMUNITY DEVELOPMENT AUTHORITY (the "Authority").

Article II

Organization

Pursuant to an ordinance adopted by the Board of Supervisors of New Kent County, Virginia ("Board of Supervisors"), the Authority shall be organized by the County of New Kent, Virginia under the Virginia Water and Waste Authorities Act (Chapter 51, Title 15.2 of the Code of Virginia of 1950, as amended) (the "Act"), as a political subdivision governed by the laws of the Commonwealth of Virginia.

Article III

Members

The affairs of the Authority shall be conducted by an authority board of five members ("Board"). The County Administrator, or such officer's designee, shall serve as a non-voting, ex-officio member. All members shall be appointed by the Board of Supervisors. The Board of Supervisors may appoint alternate members for any or all of the Board members. Each member shall serve a four year term, except the initial members who shall serve the terms of office set forth in Exhibit 1 hereto. The Board of Supervisors shall have the authority to replace a member at its discretion at any time, notwithstanding the term of such member may not have expired. The election of officers of the Authority shall be as set forth in the By-Laws of the Authority. Qualifications and appointment of members of the Board shall be consistent with the requirements of the Act.

The Board shall have the powers and duties set forth in the Act and in these Articles of Incorporation and the By-Laws, to the extent that such powers and duties are not inconsistent with the Act and Article VI of these Articles of Incorporation.

~~Article IV~~
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Principal Office

The Authority's principal office shall be c/o John A. Budesky, New Kent County Administrator, P. O. Box 50, 12007 Courthouse Circle, New Kent, Virginia 23124. The Authority may conduct its business and maintain offices for such purposes at such other places within or without New Kent County, Virginia as may from time to time be deemed advisable by the Board, and not in conflict with the requirements of the Act.

Article V

Authority District

The land initially encompassed within the Authority is set forth in Exhibit 2 attached hereto (the "Initial Authority District") provided that the Board of Supervisors, upon the request of the Authority or the landowner petitioning to create the Authority, may release and exclude from the Initial Authority District in order to correct errors or conform to existing property boundaries or parcel descriptions (i) at any time before the issuance of the initial series of the Authority's bonds certain portions of land not to exceed 10% of the land included in the Initial Authority District and (ii) after such bonds are issued only certain de minimis portions of land not to exceed approximately two acres (such modified district is hereinafter referred to as the "Authority District"). In addition, the Authority may release and exclude from the Authority District portions of land with respect to which all special assessments have been paid or prepaid.

Article VI

Purposes and Powers

The Authority is organized for the purpose of exercising all powers granted by the Act, including financing, funding, planning, establishing, acquiring, constructing or reconstructing, enlarging, extending, equipping, operating and maintaining infrastructure improvements generally described in the Petition to create the Authority attached hereto as Exhibit 3 (the "Improvements"). The Authority shall have all powers granted to a "community development authority" under the Act subject to the limitations set forth in these Articles of Incorporation and the ordinance creating the Authority. Notwithstanding the foregoing, the Authority shall not undertake or finance any facilities in addition to the Improvements without the approval by ordinance of the Board of Supervisors after public hearing before the Board of Supervisors following public notice.

Article VII

Not-for-Profit

The Authority shall not be organized or operated for pecuniary gain or profit. No part of the net earnings of the Authority shall inure to the benefit of, or be distributable to any member, director, officer, or any other private person, except that the Authority shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments in furtherance of the purposes set forth in Article VI.

Article VIII

Amendment of Articles

These Articles of Incorporation may be amended at any time and from time to time by the Board of Supervisors as now or hereafter prescribed by the Act and after public hearing by the Board of Supervisors following public notice.

Article IX

Registered Office and Registered Agent

The address of the initial registered office of the Authority is c/o John A. Budesky, New Kent County Administrator, P. O. Box 50, 12007 Courthouse Circle, New Kent, Virginia 23124. The initial Registered Agent of the Authority is John A. Budesky, New Kent County Administrator, whose business address is identical to that of the initial registered office and who is a resident of Virginia and an ex-officio director of the Authority.

Article X

Initial Members

The names and addresses of the initial members of the Board of the Authority are as set forth on the attached and incorporated Exhibit 1.

Article XI

Indemnification of County

To the extent permitted by law, the Authority agrees to indemnify and hold harmless the County of New Kent, Virginia (the "County") and its officers, employees, agents and Board of Supervisors members (the "Indemnified Parties") from and against all liabilities, obligations, claims, damages, penalties, fines, losses, costs and expenses (the "Damages") (except for any Damages resulting from the intentional misrepresentation or any willful misconduct of the aforesaid Indemnified Parties) arising from any activities undertaken by the Authority which would be prohibited under law.

Article XII

Indemnification

(a) For purposes of Article XI the following definitions shall apply:

(i) "expenses" include counsel fees, expert witness fees, and costs of investigation, litigation and appeal, as well as any amounts expended in asserting a claim for indemnification;

(ii) "liability" means the obligation to pay a judgment, settlement, penalty, fine, or other such obligation;

(iii) "legal entity" means a corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise; and

(iv) "proceeding" means any threatened, pending, or completed action, suit, proceeding or appeal whether civil, criminal, administrative or investigative and whether formal or informal.

(b) In every instance in which the Virginia Nonstock Corporation Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of liability of directors or officers of a corporation to the corporation, the members, directors and officers of the Authority shall not be liable to the Authority.

(c) The Authority shall indemnify any individual who is, was or is threatened to be made a party to a proceeding (including a proceeding by or in the right of the Authority) because such individual is or was a member, director or officer of the Authority or because such individual is or was serving the Authority or any other legal entity in any capacity at the request of the Authority while a member, director or officer of the Authority, against all liabilities and reasonable expenses incurred in the proceeding except such liabilities and expenses as are incurred because of such individual's willful misconduct or knowing violation of the criminal law. Service as a member, director or officer of a legal entity controlled by the Authority shall be deemed service at the request of the Authority. The determination that indemnification under this paragraph (c) is permissible and the evaluation as to the reasonableness of expenses in a specific case shall be made, in the case of a member or director, as provided by law, and in the case of an officer, as provided in Section (d) of this Article; provided, however, that if a majority of the members of the Authority has changed after the date of the alleged conduct giving rise to a claim for indemnification, such determination and evaluation shall, at the option of the person claiming indemnification, be made by special legal counsel agreed upon by the Board and such person. Unless a determination has been made that indemnification is not permissible, the Authority shall make advances and reimbursements for expenses incurred by a member, director or officer in a proceeding upon receipt of an undertaking from such member, director or officer to repay the same if it is ultimately determined that such member, director or officer is not entitled to indemnification. Such undertaking shall be an unlimited, unsecured general

obligation of the member, director or officer and shall be accepted without reference to such member's, director's or officer's ability to make repayment. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that a member, director or officer acted in such a manner as to make such member, director or officer ineligible for indemnification. The Authority is authorized to contract in advance to indemnify and make advances and reimbursements for expenses to any of its members, directors or officers to the same extent provided in this paragraph (c).

(d) The Authority may, to a lesser extent or to the same extent that it is required to provide indemnification and make advances and reimbursements for expenses to its members, directors and officers pursuant to paragraph (c) of this Article, provide indemnification and make advances and reimbursements for expenses to its employees and agents, the members, directors, officers, employees and agents of its subsidiaries and predecessor entities, and any person serving any other legal entity in any capacity at the request of the Authority, and may contract in advance to do so. The determination that indemnification under this paragraph (d) is permissible, the authorization of such indemnification and the evaluation as to the reasonableness of expenses in a specific case shall be made as authorized from time to time by general or specific action of the Board, which action may be taken before or after a claim for indemnification is made, or as otherwise provided by law. No person's rights under paragraph (c) of this Article shall be limited by the provisions of this paragraph (d).

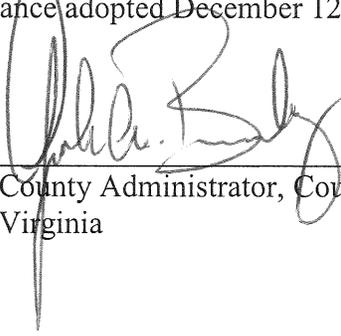
(e) The rights of each person entitled to indemnification under this Article shall inure to the benefit of such person's heirs, executors and administrators. Special legal counsel selected to make determinations under this Article may be counsel for the Authority. Indemnification pursuant to this Article shall not be exclusive of any other right of indemnification to which any person may be entitled, including indemnification pursuant to a valid contract, indemnification by legal entities other than the Authority and indemnification under policies of insurance purchased and maintained by the Authority or others. However, no person shall be entitled to indemnification by the Authority to the extent such person is indemnified by another, including an insurer. The Authority is authorized to purchase and maintain insurance against any liability it may have under this Article or to protect any of the persons named above against any liability arising from their service to the Authority or any other legal entity at the request of the Authority regardless of the Authority's power to indemnify against such liability. The provisions of this Article shall not be deemed to preclude the Authority from entering into contracts otherwise permitted by law with any individuals or legal entities, including those named above. If any provision of this Article or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Article, and to this end the provisions of this Article are severable.

(f) No amendment, modification or repeal of this Article shall diminish the rights provided hereunder to any person arising from conduct or events occurring before the adoption of such amendment, modification or repeal.

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IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation as of the 15th day of December, 2005, as duly authorized by the Board of Supervisors of New Kent County, Virginia by Ordinance adopted December 12, 2005.

By: _____


County Administrator, County of New Kent,
Virginia

INSTRUMENT #050006223
RECORDED IN THE CLERK'S OFFICE OF
NEW KENT COUNTY ON
DECEMBER 27, 2005 AT 10:33AM
KAREN A. BUTLER, CLERK

RECORDED BY: ADM