

# **Danville-Pittsylvania Regional Industrial Facility Authority**

**CITY OF DANVILLE, VIRGINIA  
COUNTY OF PITTSYLVANIA, VIRGINIA**

## **AGENDA**

**MONDAY, JANUARY 9, 2012**

**12:00 NOON**

**DANVILLE REGIONAL AIRPORT  
EASTERN CONFERENCE ROOM  
424 AIRPORT DRIVE, DANVILLE, VIRGINIA**

### **COUNTY OF PITTSYLVANIA MEMBERS**

**COY E. HARVILLE, CHAIRMAN  
JAMES H. SNEAD  
JESSIE L. BARKSDALE, ALTERNATE**

### **CITY OF DANVILLE MEMBERS**

**SHERMAN M. SAUNDERS, VICE CHAIRMAN  
T. DAVID LUTHER  
FRED O. SHANKS, III, ALTERNATE**

### **STAFF**

**JOSEPH C. KING, CITY MANAGER, DANVILLE  
WILLIAM D. SLEEPER, PITTSYLVANIA COUNTY ADMINISTRATOR  
CLEMENT & WHEATLEY, ATTORNEY FOR AUTHORITY  
SUSAN M. DEMASI, AUTHORITY SECRETARY  
BARBARA A. DAMERON, AUTHORITY TREASURER**

## DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

### 1. MEETING CALLED TO ORDER

### 2. ROLL CALL

### 3. PUBLIC COMMENT PERIOD

Members of the public who desire to comment on a specific agenda item will be heard during this period. The Chairman/Vice Chairman of the Authority may restrict the number of speakers. Each speaker shall be limited to a total of three minutes for comments. (Please note that the public comment period is not a question-and-answer session between the public and the Authority.)

### 4. APPROVAL OF MINUTES FOR THE DECEMBER 12, 2011 MEETING

### 5. OLD BUSINESS

- A. Consideration of Resolution No. 2011-01-09-5A, revising Article VI ("Officers") of the Amended and Restated Bylaws of the Authority adopted August 13, 2007, and last revised April 11, 2011 (the "Bylaws"), to provide that the Treasurer, in the absence of the Secretary, shall perform all duties of the Secretary, except for those certain other duties which the Chairman, under the Bylaws, delegates to a director, alternate director, officer or staff member in the Secretary's absence.

### 6. NEW BUSINESS

- A. Consideration of a request from Lynwood Lunsford to hunt a portion of that certain property located on the west side of Oak Hill Road in the Authority's Mega Park site, located in Pittsylvania County, Virginia. [Request attached.]
- B. Consideration of Resolution No. 2012-01-09-6B, approving an 11.5 month lease to Mountain View Farms of Virginia, L.C., a Virginia limited liability company, for that certain real property (GPIN 1356-75-8216) of the Authority, containing approximately 30 acres and fronting on Stateline Bridge Road, in the Authority's Mega Park site, in Pittsylvania County, Virginia, for the purpose of planting and harvesting sod, soybeans, and/or other cover crops, but not tobacco, at a total rental fee of \$3,000.00. [Resolution attached.]
- C. Consideration of Resolution No. 2012-01-09-6C, approving an amendment for the one-year renewal of the lease to Browning & Associates, Ltd., a Virginia corporation, of the residence located at the Authority's Mega Park site, in Pittsylvania County, Virginia, commonly known as 4380 Berry Hill Road, Danville, Virginia (part of GPIN 1367-70-4519), at a total rental fee of \$6,000.00. [Resolution attached.]
- D. Financial Audit - Barbara A. Dameron, CPA, Authority Treasurer
- E. Financial Report as of December 31, 2011 – Barbara A. Dameron, CPA, Authority Treasurer
- F. Report on progress of Master Plan for the Authority's Mega Park site – Shawn Harden, Project Manager, Dewberry & Davis

**DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**

**7. CLOSED SESSION**

- A. As permitted by Section 2.2-3711(A)(3) of the Code of Virginia, 1950, as amended, for discussion or consideration of the acquisition of certain real property in Pittsylvania County, Virginia, including various parcels of land adjacent to the Authority's Cane Creek site, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the Authority.
- B. As permitted by Section 2.2-3711(A)(7) of the Code of Virginia, 1950, as amended, for consultation with legal counsel employed or retained by the Authority regarding specific legal matters requiring the provision of legal advice by such counsel, and in particular, the request of BDJN, LLC, a Virginia limited liability company, for the Authority to execute a Subordination Agreement, affecting certain real property (Tax PINs 78471 and part of 77831), owned by BDJN, LLC, located in the City of Danville, Virginia, at the Authority's Cyber Park; under the Subordination Agreement, the Authority and the City of Danville, Virginia, would subordinate its respective interests under that certain Credit Line Deed of Trust dated February 7, 2011, and recorded in the Clerk's Office of the Circuit Court of Danville, Virginia, as Instrument No. 11-356, to Bank of America, N.A., a national banking association; and such Credit Line Deed of Trust secures the performance of Electronic Instrumentation and Technology, LLC, a Virginia limited liability company, under that certain Performance Agreement by and among the Authority, the City of Danville, Virginia, Electronic Instrumentation and Technology, LLC, and the County of Pittsylvania, Virginia. [Proposed Subordination Agreement and Recorded Credit Line Deed of Trust attached for public posting.]
- C. Confirmation of Motion and Vote to Reconvene in Open Meeting.
- D. Motion to Certify Closed Meeting.

**8. COMMUNICATIONS FROM:**

Jessie L. Barksdale  
Coy E. Harville  
T. David Luther  
Sherman M. Saunders  
Fred O. Shanks, III  
James H. Snead  
Staff

**9. ADJOURN**

**AGENDA  
ITEM NUMBER 4**

**DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**

**Minutes  
December 12, 2011**

The Regular Meeting of the Danville Pittsylvania Regional Industrial Facility Authority convened at 12:18 p.m. on the above date in the Danville Regional Airport, Conference Room, 424 Airport Drive, Danville, Virginia. Present were City of Danville Members T. David Luther and alternate Fred O. Shanks, III; Vice Chairman Sherman M. Saunders was absent. Pittsylvania County Members present were Chairman Coy E. Harville and Henry A. "Hank" Davis, Jr.; Alternate Fred Ingram was absent.

City/County staff members attending were: City Manager Joe King, Pittsylvania County Administrator Dan Sleeper, Danville Finance Director/Authority Treasurer Barbara Dameron, Pittsylvania County Finance Director Kim Van der Hyde, Pittsylvania County Director of Economic Development Ken Bowman, City of Danville Marketing and Research Manager Corrie Teague, Assistant County Administrator for Planning & Development Gregory Sides, City of Danville Senior Accountant Patricia Cooper, Clement and Wheatley Attorney Michael Guanzon, and Secretary to the Authority Susan DeMasi.

Chairman Harville called the Meeting to order.

**PUBLIC COMMENT PERIOD**

No one desired to be heard.

**APPROVAL OF NOVEMBER 21, 2011 MINUTES**

Upon **Motion** by Mr. Shanks and **second** by Mr. Davis, Minutes of the November 21, 2011 Meeting were approved, as presented. Draft copies had been distributed to Authority Members prior to the Meeting.

**NEW BUSINESS**

**A. CONSIDERATION OF RESOLUTION 2011-12-12-5A – REVISING ARTICLE VI OF THE AMENDED AND RESTATED BYLAWS OF THE AUTHORITY**

Attorney to the Authority, Michael Guanzon noted that because of RIFA's by-laws, any changes to the By-laws need at least one weeks' advance notice to be given. Therefore, this Resolution would be discussed today and voted on at the next meeting. The revision in this by-law would allow the Treasurer to be a "Vice-Secretary" in the Secretary's absence.

Mr. Davis **moved** to **Table** Resolution No. 2011-12-12-5A - Initial Discussion, (2012-01-09-\_\_ Adopted), revising Article VI ("Officers") of the Amended and restated Bylaws of the Authority adopted August 13, 2007, and last revised April 11, 2011 (the "Bylaws"), to provide that the Treasurer, in the absence of the Secretary, shall perform all duties of the Secretary, except for those certain other duties which the Chairman, under the Bylaws, delegates to a director, alternate director, officer or staff member in the Secretary's absence.

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes  
December 12, 2011

The **Motion to Table** was seconded by Mr. Shanks and carried by the following vote:

VOTE: 4-0  
AYE: Davis, Harville, Luther and Shanks (4)  
NAY: None (0).

**B. CONSIDERATION - RESOLUTION NO. 2011-12-12-5B AUTHORIZING THE SALE TO HERB JEFFERSON OF THAT CERTAIN WOOD FENCE LOCATED IN THE AUTHORITY'S MEGA PARK**

County Administrator Dan Sleeper noted that Mr. Jefferson had been writing letters regarding this fence and Greg Sides noted that he had spoken with Mr. Jefferson several times. Mr. Sides also spoke with Jeremy Stratton of the City and their position was that the fence did not need to be removed, but they needed the RIFA Board to confirm this.

After further discussion - **NO ACTION** - was taken on Resolution 2011-12-12-5B - A Resolution Authorizing the Sale to Herb Jefferson of that certain wood fence located on that certain real property (Tax GPIN 1367-70-4519) located in the Authority's Mega Park Project, in Pittsylvania County, Virginia, commonly known as the Trayham Place/Canter Property, for a Purchase Price of \$10,000.

**C. CONSIDERATION - RESOLUTION NO. 2011-12-12-5C DIRECTING PURSUIT OF AN AMENDMENT TO CERTAIN DECLARATION OF RESTRICTIONS OF INDUSTRIAL DEVELOPMENT AUTHORITY AND CITY OF DANVILLE, VIRGINIA DATED MAY 30, 2000**

Karen Black, Chief Public Works Engineer from the City of Danville and Brian Dunevant City of Danville Public Works, explained that the City of Danville has a project on South Boston Road between the Pilot and Airport Drive, adding a third lane to the Eastbound lanes of South Boston Road.

Ms. Black explained that when the City builds the road, the grading is going to encroach on part of the conservation easement. The City needs to relocate the conservation easement to another section. Mr. Sleeper noted that the City is requesting a change in easement that is currently located by 58' down by the other side.

Mr. Davis moved adoption of Resolution 2011-12-12-5C, directing the pursuit of amendment to that certain Declaration of Restrictions of Industrial Development Authority and City of Danville, Virginia (the "City"), dated May 30, 2000, and recorded in the Clerk's Office of the Circuit Court of Danville, Virginia, as Instrument No. 00-2582, at page 21, as such restrictions pertain to that certain parcel owned by the Authority fronting at the corner of River Point Road and South Boston Road (Tax PIN 76443), located in the Authority's Cyber Park Project, in Danville, Virginia; such amendment shall relocate a portion of the conservation easement to a portion of that certain adjacent parcel owned by the Authority

**DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**

**Minutes  
December 12, 2011**

fronting on River Point Road (Tax PIN 76441), located in the Cyber Park Project, which relocation is in support of the City's transportation project (VDOT UPC 98233) on Route 58 west (South Boston Road), which includes the addition of a right turn lane along South Boston Road for the purpose of improving traffic safety along that road corridor.

The motion was **seconded** by Mr. Luther and carried by the following vote:

VOTE: 4-0  
AYE: Davis, Harville, Luther and Shanks (4)  
NAY: None (0).

**D. CONSIDERATION – RESOLUTION 2011-12-12-5D – AUTHORIZING THE DISTRIBUTION AND CONVEYANCE TO THE AUTHORITY'S MEMBER LOCALITY, CITY OF DANVILLE, PARCEL FRONTING CORNER OF RIVER POINT ROAD AND SOUTH BOSTON ROAD**

Ms. Black, Chief Engineer for City of Danville Public Works noted that in order to fulfill the storm water management requirements for the South Boston Road project, they will need to build a storm water detention pond. The City is asking the RIFA board to dedicate a lot across from the Pilot Station to the City.

Mr. Davis **moved** adoption of Resolution 2011-12-12-5D, authorizing the distribution and conveyance to the Authority's member locality, the City of Danville, Virginia (the "City"), of that certain parcel fronting at the corner of River Point Road and South Boston Road (Tax PIN 76443), containing 2.093 acres, more or less, located in the Authority's Cyber Park Project, in Danville, Virginia, for the purpose of facilitating the City's transportation project (VDOT UPC 98233) on Route 58 West (South Boston Road), which includes the addition of a right turn lane along South Boston Road for the purpose of improving traffic safety along that road corridor.

The Motion was **seconded** by Mr. Luther and carried by the following vote:

VOTE: 4-0  
AYE: Davis, Harville, Luther and Shanks (4)  
NAY: None (0)

**E. CONSIDERATION – RESOLUTION 2011-12-12-5E – RECOGNITION OF SERVICE OF HENRY A. DAVIS, JR., ESQUIRE, TO THE AUTHORITY AS A DIRECTOR**

Mr. Shanks **moved** adoption of Resolution 2011-12-12-5E – Recognizing the service of Henry A. Davis Jr., Esquire to the Authority as a director. (A copy of the Resolution is attached to these minutes).

**DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**

**Minutes  
December 12, 2011**

The Motion was **seconded** by Mr. Luther and carried by the following vote:

VOTE: 3-1-0  
AYE: Harville, Luther and Shanks (3)  
ABSTAIN: Davis (1)  
NAY: None (0)

**F. FINANCIAL REPORT AS OF NOVEMBER 30, 2011 – Barbara A. Dameron, CPA,  
Authority Treasurer**

Barbara Dameron, Authority Treasurer gave a financial report as of November 30, 2011. Ms. Dameron noted that Sheet A, Cane Creek, Lots 5 and 9 Project, local share: \$75,244 in expenditures since October. On Sheet B – General Expenditures: reimbursement of \$6,500 from the County for the painting at the Lake House; Legal: \$10,946 of which \$2,685 relates to the Bond issue and the balance was general items; \$3,500 for Brown & Edwards and several smaller items for meals and utilities. On Sheet C, the Mega Park: no expenditures this past month. On Sheet D, Cane Creek, Lots 5 and 9, expenditures of \$840,000 to Haymes Brothers and \$4,000 to Dewberry and Davis. On Sheet E: no change. Sheet F, rent and interest: \$17,565 from the IALR for rent, \$600 for Securitas for October and November rent and \$26 in interest for a total of \$18,165. Sheet G, comparing October to November, \$205,000 received as reimbursement from the IALR.

Mr. Harville asked City and County staff if the power had been shut off to the two homes that are being torn down. Mr. Harville noted they needed to be taken off of the insurance and the utilities.

Mr. Harville also asked for a report in the January meeting on the cost to the taxpayer versus what RIFA recuperated on the lawsuit.

After questions and discussion by Board members, Mr. Luther **moved** approval of the Financial Report as of November 30, 2011.

The Motion was **seconded** by Mr. Davis and carried by the following vote:

VOTE: 4-0  
AYE: Davis, Harville, Luther and Shanks (4)  
NAY: None (0).

**COMMUNICATIONS**

Mr. Harville read Resolution 2011-12-12-5E recognizing Mr. Davis's service to the Danville-Pittsylvania Regional Industrial Facility Authority.

**DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**

**Minutes  
December 12, 2011**

Mr. Harville noted that Mr. Davis has been a pleasure to work with and has helped this Authority to move forward in the past year and all of RIFA is proud of that.

Mr. Davis noted his thanks to all.

MEETING ADJOURNED AT 12:40 P.M.

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary to the Authority

DRAFT

**DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY  
RESOLUTION  
2011-12-12-5E**

**WHEREAS**, Pittsylvania County Board of Supervisors and the City of Danville developed an agreement to establish a Regional Industrial Facility Authority to provide economic development for the region; and

**WHEREAS**, it has been a significant benefit to both Pittsylvania County and the City of Danville for the partnership that operates the Danville-Pittsylvania Regional Industrial Facility Authority; and

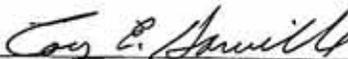
**WHEREAS**, this regional partnership requires significant cooperation and leadership to administer the economic development programs designed for the growth and the future of these two communities; and

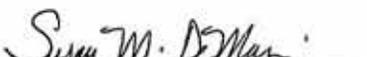
**WHEREAS**, the Honorable Henry A. Davis, Jr., has served as a member of the Danville-Pittsylvania Regional Industrial Facility Authority since January, 2010, providing guidance and leadership necessary for the Authority to move forward in developing the future of the Danville-Pittsylvania County Region; and

**WHEREAS**, Henry A. Davis, Jr., will be retiring from the Pittsylvania County Board of Supervisors on January 1, 2012; then

**BE IT HEREBY RESOLVED**, that the Members of the Board of Directors of the Danville-Pittsylvania Regional Industrial Facility Authority express their sincere appreciation for the service of Henry A. Davis, Jr., as a member of the Danville-Pittsylvania Regional Industrial Facility Board of Directors and recognize the devotion and duty provided by Henry A. Davis, Jr., in his service to the Authority and for his outstanding service and exemplary leadership to the Authority and wish him all success in his future endeavors.

Given under my hand this 12<sup>th</sup> day of December, 2011.

  
Coy E. Harville, Chairman

  
Susan DeMasi, Clerk

**AGENDA  
ITEM NUMBER 5A**

**Resolution No. 2011-12-12-5A (Initial Discussion)**

**Resolution No. 2012-01-09-5A (Adopted)**

**A RESOLUTION REVISING ARTICLE VI (“OFFICERS”) OF THE AMENDED AND RESTATED BYLAWS OF THE AUTHORITY ADOPTED AUGUST 13, 2007, AND LAST REVISED APRIL 11, 2011 (THE “BYLAWS”), TO PROVIDE THAT THE TREASURER, IN THE ABSENCE OF THE SECRETARY, SHALL PERFORM ALL DUTIES OF THE SECRETARY, EXCEPT FOR THOSE CERTAIN OTHER DUTIES WHICH THE CHAIRMAN, UNDER THE BYLAWS, DELEGATES TO A DIRECTOR, ALTERNATE DIRECTOR, OFFICER OR STAFF MEMBER IN THE SECRETARY’S ABSENCE**

**WHEREAS**, the Danville-Pittsylvania Regional Industrial Facility Authority (the “**Authority**”) is a political subdivision of the Commonwealth of Virginia duly created pursuant to the Virginia Regional Industrial Facilities Act, as amended; and

**WHEREAS**, Article XIV (“Amendments”) of the Authority’s Amended and Restated Bylaws of the Authority Adopted August 13, 2007, and last revised April 11, 2011 (the “**Bylaws**”) provides that the Bylaws “may be amended, repealed, or altered, in whole or in part, by a majority vote of the Board, at any regular meeting of the Board, ... ; however, ... at least one (1) week advance written notice of such proposed amendment, repeal or alteration shall be given the directors and alternate directors”; and

**WHEREAS**, paragraph 5(a) of Article VI (“Officers”) of the Bylaws provides that “In the absence of the Secretary, the Chairman shall appoint a director or alternate director or shall direct a member of the Authority's staff to be responsible for the preparation of detailed minutes of any meeting”; and

**WHEREAS**, the Board of Directors of the Authority believe it is in the best interests of the Authority and for efficient operation of the Authority (i) to authorize the Treasurer of the Authority, in the absence of the Secretary, to perform all duties of the Secretary, except for those certain other duties which the Chairman of the Authority, under the Bylaws, delegates to a director, alternate director, officer or staff member in the Secretary’s absence; and (ii) to make some corresponding and grammatical revisions to the Bylaws.

**NOW, THEREFORE, BE IT RESOLVED**, that

1. The Authority hereby approves the amendments to the Bylaws as set forth in **Schedule I**, attached hereto and incorporated herein by this reference.
2. Except as amended by this Resolution, the Bylaws shall remain unchanged.
3. This Resolution shall take effect immediately upon its adoption.

**Resolution No. 2011-12-12-5A (Initial Discussion)**

**Resolution No. 2012-01-09-5A (Adopted)**

**CERTIFICATE**

I, the undersigned Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority, hereby certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by a majority of the directors of the Danville-Pittsylvania Regional Industrial Facility Authority at a meeting duly called and held on January 9, 2012, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof.

**WITNESS** my hand as Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority this \_\_\_\_\_ day of January 2012.

---

Susan M. DeMasi  
Secretary, Danville-Pittsylvania Regional Industrial  
Facility Authority

(SEAL)

Schedule 1

AMENDED AND RESTATED BYLAWS  
OF  
DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Adopted August 13, 2007  
Revised June 14, 2010  
Revised August 9, 2010  
Revised February 14, 2011  
~~Last~~ Revised April 11, 2011  
Last Revised January 9, 2012

ARTICLE I. PURPOSES AND POWERS

Danville-Pittsylvania Regional Industrial Facility Authority (the "Authority") shall be organized and operated in accordance with Title 15.2, Chapter 64 of the Code of Virginia, 1950, as amended, also known as the Virginia Regional Industrial Facilities Act (the "Act"), as the same may be amended from time to time. The Authority shall also comply with all lawful directives as may be mutually agreed to between the City of Danville, Virginia (the "City"), and the County of Pittsylvania, Virginia (the "County"). The general purpose of the Authority shall be to enhance the economic base of the City and the County by developing, owning, and operating one or more facilities on a cooperative basis involving such localities (each locality being hereinafter referred to as a "Member Locality" or collectively hereinafter referred to as "Member Localities"), including without limitation the specific purpose to develop The Cyber Park of Danville and Pittsylvania County (as defined in the Agreement (as hereinafter defined)) and to develop one or more parcels in both the City and the County as regional industrial parks and for additional purpose of future development of other industrial properties or other reasons as permitted by the Act and as agreed upon by the Member Localities. The Authority shall have any and all powers under the Act, as the same may be amended from time to time.

ARTICLE II. OFFICES

1. The principal office of the Authority shall be located within a Member Locality as designated by the Board of Directors of the Authority (the "Board").
2. The title to all property of every kind belonging to the Authority shall be titled in the name of the Authority,

which shall hold such title for the benefit of its Member Localities.

3. Except as otherwise required by resolution of the Authority, or as the business of the Authority may require, all of the books and records of the Authority shall be kept at the office to be designated as provided above.

4. The minutes of the Authority shall be open and available for inspection as required by The Virginia Freedom of Information Act, Virginia Code ~~en~~ 2.2-3700 *et seq.*, as amended. Draft minutes shall be made reasonably available within ten (10) business days of the meeting to which they relate. Final minutes shall be made reasonably available within three (3) business days of approval by the Board.<sup>[1]</sup>

### ARTICLE III. MEMBERSHIP

The Member Localities of the Authority are the City and the County, each of which is a political subdivision of the Commonwealth of Virginia, and each of which is authorized by the Act to participate in the Authority. The membership may, with unanimous approval of the Board, be expanded as may be authorized in the Act.

### ARTICLE IV. MEMBER LOCALITY AGREEMENT

1. The Authority shall be governed by the Act, these Bylaws and by the Agreement For Cost Sharing and Revenue Sharing between the City of Danville, Virginia, and Pittsylvania County, Virginia, dated October 2, 2001, executed by the Governing Body of each Member Locality (the "Agreement"). The Agreement establishes the respective rights and obligations of the Member Localities and provides for revenue and economic growth-sharing arrangements with respect to tax revenues and other income and revenues generated by any facility owned by the Authority.

2. Without limiting the provisions of the Agreement, each Member Locality, through its city manager, county administrator or respective designee, is authorized to incur, on behalf of the Authority, up to an aggregate amount of Ten Thousand Dollars (\$10,000.00) in reasonable expenses, related to, or arising out of, (i) developing or testing the Authority's projects for a particular business prospect or (ii) marketing to a particular business prospect. Prior to incurring any such expense under this paragraph, the Member Locality shall consult with the other Member Locality on such business prospect. Such expenses shall

---

<sup>1</sup>06/14/2010: Entire paragraph revised.

be reported to the Board at its next regular meeting for consideration and ratification.<sup>[2]</sup>

#### ARTICLE V. BOARD OF DIRECTORS

1. The powers, rights, and duties conferred by the Act upon the Authority shall be exercised by the Board, which shall consist of four (4) members selected as follows: two (2) members shall be appointed by the Governing Body of each Member Locality. In addition to the members of the Board, each Governing Body of each Member Locality shall select one (1) alternate director, to serve in the absence of a director appointed by the Governing Body of such Member Locality, in accordance with the provisions of these Bylaws.

2. Each Member Locality shall appoint to the Board one (1) member from its Governing Body to serve an initial two (2) year term and one (1) member from its Governing Body to serve an initial four (4) year term pursuant to the Act. Each Member Locality shall also appoint one (1) member from its Governing Body to serve an initial four (4) year term as an alternate director. Each appointee of a Governing Body shall be a resident of the Member Locality of that Governing Body. All subsequent terms shall be four (4) year terms, and no director or alternative director may serve more than one (1) additional term.

3. In order to remain a director or alternate director of the Authority, such director or alternate director must be a current member of the Governing Body. Once a director or alternate director of the Authority is no longer a member of the Governing Body, the locality will appoint a new director or alternate director, as the case may be, from its Governing Body to fill the unexpired term of the vacating director or alternate director as the case may be. In the event of a vacating director, the alternate director from the same Member Locality shall serve until a replacement director is appointed by the Governing Body of such Member Locality, which shall have the authority to fill any such vacancies.

4. Each director or alternate director of the Board, before entering upon the discharge of the duties of the office, shall take and subscribe to the oath prescribed in Virginia Code § 49-1, as amended, and shall serve in compliance with the Act, these Bylaws and the Agreement.

---

<sup>2</sup>04/11/2011: New paragraph added to clarify how expenses may be incurred on behalf of the Authority for developing business prospects. Such expenses would be ultimately shared by the Member Localities under the Agreement for Cost Sharing and Revenue Sharing.

5. In the absence of a director appointed by the Governing Body of a Member Locality, the alternate director of the same Member Locality may act in place of such absent director. The alternate director from one Member Locality shall not have the right to vote unless at least one (1) director from the same Member Locality is absent.

6. All powers and duties of the Authority shall be exercised and performed by the Board, acting by simple majority vote of those directors present at a meeting at which a quorum is present, except that no facilities owned by the Authority shall be leased or disposed of in any manner without a majority vote of the Board. A quorum shall consist of three (3) directors (including any alternate director entitled to vote at such meeting) of the Board. For the purposes of determining quorum, an alternate director from one Member Locality shall not be counted unless a director of the same Member Locality is absent. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all the rights and perform all the duties of the Board.

7. Members of the Board shall be reimbursed for actual and reasonable expenses incurred the performance of their duties from funds available to the Authority.

#### ARTICLE VI. OFFICERS

1. The Board shall elect from its directors a Chairman and a Vice Chairman<sup>[3]</sup>. The director elected to the office of chairman shall alternate each term of office from one Member Locality to another Member Locality, beginning with the County.

2. The term of office for the officers shall be for the fiscal year in which they are elected, and shall continue until their successors are elected.

3. The duties of the Chairman shall be to preside at meetings of the Authority; to prepare the agenda for any and all meetings, and to make a copy of such agenda available to the Secretary for the purpose of providing notice of special meetings as hereinafter provided; to call special meetings; to call special elections; to appoint committees as may be deemed appropriate to carry out the intents and purposes of the Authority; to be ex officio a member of all committees; to sign, with the Secretary or any other proper officer of the Authority authorized by the Board, any documents or instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer of the

---

<sup>3</sup>08/09/2010: Vice Chairman inserted. Offices of secretary and treasurer shall be appointed by the Board from the Authority's staff.

Authority, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of chairman and such other duties as may be prescribed by the Board from time to time. The Chairman shall have an equal vote with the other directors, and shall not have a second, tie-breaking vote on any question.

4. The Vice Chairman shall, in the absence or disability of the Chairman, perform the duties imposed upon the Chairman and exercise the powers granted to the Chairman, including without limitation those duties and powers set forth in these Bylaws.<sup>[4]</sup>

5. The Board shall appoint a Secretary and a Treasurer from the Authority's staff, which may include staff provided by a Member Locality or other persons employed or contracted by the Authority.<sup>[5]</sup> The offices of Secretary and Treasurer may be held by the same person.<sup>[6,7]</sup> If a person serving as Secretary or Treasurer ceases to be staff of a Member Locality, such person shall not be disqualified from serving as Secretary or Treasurer and shall continue to serve the remainder of the term of office unless such person is sooner removed or resigns from such office.<sup>[8]</sup>

a. The duties of the Secretary shall be to take the minutes of the meetings of the Board; to have custody of all records of the Authority; to have custody of the Seal of the Authority and to ensure that the Seal of the Authority is affixed to all documents or instruments, the execution of which on behalf of the Authority under its Seal is duly authorized by the Board; to sign with the Chairman (or the Vice Chairman, as the case may be)<sup>[9]</sup> any documents or instruments which the Board has authorized to be executed; to ensure that all notices are duly given as required by law, these Bylaws or by the Board; to call meetings of the Board to order in the absence of the Chairman and the Vice Chairman,<sup>[10]</sup> and thereupon to conduct an election for a temporary presiding officer for that meeting; and in general to perform all duties incident to the office of secretary and such other duties as from time to time may be

---

<sup>4</sup>08/09/2010: Entire new paragraph added.

<sup>5</sup>02/14/2011: The Authority's staff may include staff provided by a Member Locality or other persons employed or contracted by the Authority.

<sup>6</sup>08/09/2010: Secretary and Treasurer shall be appointed by the Board from the Authority's staff.

<sup>7</sup>02/14/2011: Corrected capitalization of Secretary and Treasurer.

<sup>8</sup>02/14/2011: Added "If a person serving as Secretary or Treasurer ceases to be staff of a Member Locality, such person shall not be disqualified from serving as Secretary or Treasurer and shall continue to serve the remainder of the term of office unless such person is sooner removed or resigns from such office."

<sup>9</sup>08/09/2010: Reference to Vice Chairman added.

<sup>10</sup>08/09/2010: Reference to Vice Chairman added.

assigned by the Board. In the absence of the Secretary, the Chairman shall appoint a director or alternate director or shall direct a member of the Authority's staff to be<sup>[11]</sup> responsible for the preparation of detailed minutes of any meeting.

b. The duties and authority of the Treasurer shall include: (a) the duty to keep suitable records of all financial transactions of the Authority; (b) the authority to arrange for the preparation of any audits of the financial records of the Authority, as may be directed by the Board; (c) the duty and authority to have charge and custody of all funds and arrange for their investment and deposit in the name of the Authority when authorized by the Board; ~~and (d) the duty and the authority, in the absence of the Secretary, to perform all duties of the Secretary, except for those certain other duties which the Chairman, under the Bylaws, delegates to a director, alternate director, officer or staff member in the Secretary's absence<sup>[12]</sup>; and (e) in general, the duty and the authority<sup>[13]</sup> to perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned by the Board.~~ The Treasurer shall give bond in such sum as may be fixed by the Board with surety to be approved by the Board. The cost of such surety shall be paid by the Authority.

#### ARTICLE VII. ELECTIONS OF OFFICERS

1. Regular elections of officers shall be held at the regular meeting of the Board in July of each fiscal year.

2. Special elections of officers in order to fill vacancies or to fill newly created offices shall be held (i) at a regular meeting duly called or (ii) at a special meeting designated by the Chairman, but only after notice of such special meeting, as hereinafter provided, has been given.<sup>[14]</sup>

#### ARTICLE VIII. MEETINGS

1. The Board shall determine the times and places of its regular meetings, but shall meet at least, for its annual meeting, as set forth in Paragraph 2 below. Regular meetings of the Board shall be held in the City or in the County, upon call of the Chairman or as otherwise provided in these Bylaws. At a regular meeting, any business may be brought before the Board,

---

<sup>11</sup>08/09/2010: Reference to the Authority's staff added.

<sup>12</sup>01/09/2012: Added that in the absence of the Secretary, the Treasurer shall perform all duties of the Secretary, except for those certain other duties which the Chairman, under the Bylaws, delegates to a director, alternate director, officer or staff member in the Secretary's absence (e.g., duties set forth in paragraph 5(a) of Article VI).

<sup>13</sup>01/09/2012: Added "the duty and the authority" for parallel sentence structure.

<sup>14</sup>02/14/2011: Requests for special meetings shall be in writing.

whether or not that business is set forth in the notice of regular meeting.

2. The annual meeting of the Board shall take place at the regular meeting of the Board in July of each year, at such place, time, and date as may be established by the Board or the Chairman. Each Member Locality shall make their appointments prior to such annual meeting so that the membership of the Board will be complete for such annual meeting. At the annual meeting, the Board shall elect its officers to serve for the then current fiscal year.

3. Special meetings of the Board may be called by the Chairman at the request of (a) any two (2) directors; (b) two (2) alternate directors; or (c) one (1) director and one (1) alternate director, so long as those two (2) persons requesting the special meeting represent both Member Localities.<sup>[15]</sup> Such request shall be in writing, which may be by email to the Chairman at the email address of record,<sup>[16]</sup> and shall specify the time and place of the special meeting and the matters to be considered at the special meeting. No matter not specified in the notice of special meeting shall be considered at such special meeting unless all directors (or an alternate director acting in lieu of an absent director) of the Board are present.

4. Notices of both regular and special meetings shall be mailed by the Secretary to each member of the Board not less than three (3) business days before any such meeting; and notices of special meetings shall state the purposes thereof. All notices required herein shall state the date, time, and location of the meeting and shall be delivered by hand, United States mail, or a private courier service which provides evidence of receipt as part of its service to the address of record of all directors and alternate directors. A notice given hereunder shall be deemed given on the date of hand delivery, deposit with the United States Postal Service properly addressed and postage prepaid, or delivery to a courier service properly addressed with all charges prepaid, as appropriate. Any notice required herein may be waived in writing by the party entitled to such notice, and such waiver may specify that notice may be given to such party electronically (including without limitation by email or access to a website) in lieu of other means of delivery.

At the time that any such notice is given to the directors and alternate directors, a copy of such notice shall be posted (i) in a prominent location at which notices are

---

<sup>15</sup>08/09/2010: Clarification that directors or alternate directors representing two Member Localities may request a special meeting.

<sup>16</sup>02/14/2011: Clarification that the request must be in writing, which may include an email to the Chairman at the email address of record. See Va. Code § 1-257.

regularly posted, and (ii) at the office of the clerk of the Authority, currently at 427 Patton Street, Room 428, Danville, Virginia. A copy of any agenda materials or other information included with the notice to the directors and alternate directors (other than materials exempt from disclosure under The Virginia Freedom of Information Act, Virginia Code ~~en~~ 2.2-3700, et seq., as amended) shall be posted or made available with the copy of such notice. Notice may also be posted electronically on the Authority's website or otherwise, but such posting shall not be required.

At least one (1) copy of the agenda materials or other information given at the meeting to the directors and alternate directors (other than materials exempt from disclosure under The Virginia Freedom of Information Act, Virginia Code ~~en~~ 2.2-3700, et seq., as amended) shall be made open and available for inspection at the meeting.

Attendance of a director or alternate director at a meeting shall constitute a waiver of notice of such meeting, except where a director or alternate director attends for the express purpose of objecting to the sufficiency of the notice given or to the lack of notice.<sup>[17]</sup>

5. Formal action shall be taken by the Board only at open sessions and such meetings shall be open to the public.

6. The vote on the adoption of every resolution, any proposals creating a liability, or for the appropriation or expenditure of funds shall be by yeas or nays, and whenever the vote is not unanimous, the names of the directors (or alternate directors, where permitted under these Bylaws) voting for and of those voting against such action shall be entered upon the minutes.

7. Unless otherwise provided, procedure at meetings shall follow Robert's Rules of Order as then revised.

8. When approved, all minutes shall be signed by the Secretary and the presiding officer of the particular meeting.

9. All actions of the Board requiring the approval of an expenditure will be accompanied by a budget reference and/or funding source.

10. No item will be added to the agenda of a Board meeting without the unanimous consent of the Board members present.

---

<sup>17</sup>06/14/2010: Entire paragraph revised.

ARTICLE IX. REQUIRED REPORTS

1. Annual Reports. The Board shall report to the Governing Body of each Member Locality annually, on or before the last March meeting of the Governing Body, on the activities of the Authority. In addition to oral presentation at the meeting, a written annual report shall be provided prior to the meeting and shall contain, at a minimum, the following information:

- a. A financial update through December 31 of the current fiscal year;
- b. After completion of the first fiscal year, an audited financial report showing expenditures and revenues and a statement showing financial condition at the end of the preceding fiscal year;
- c. A written report, approved by the Board, of the activities and accomplishments of the Authority and recommendations regarding future activities of the Authority; and
- d. A list of tenants, purchasers or other persons occupying The Cyber Park of Danville and Pittsylvania County or any other regional industrial facilities developed by the Authority.

2. Special Reports. Upon written request of the Governing Body of any Member Locality, the Board shall report to such Governing Body within thirty (30) days of receipt of such request or within a longer period if so provided in such request. The special report shall describe the activities and financial status of the Authority within the six (6) month period immediately preceding the request, or as otherwise specified in the request and shall be furnished to each Member Locality. A written report shall be provided if requested.

ARTICLE X. FUNDING

Funding of the Authority shall be by appropriation as decided from time to time by the Governing Bodies of the Member Localities and from such other sources as are identified in the Agreement.

ARTICLE XI. STAFF

The Board may hire such employees as are necessary to accomplish the purposes and powers of the Authority.

ARTICLE XII. OFFICIAL SEAL

The Seal of the Authority shall show the name of the Authority, the name of the Commonwealth, and the year of its formation; i.e., "DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY - VIRGINIA - 2001."

ARTICLE XIII. FISCAL YEAR

The fiscal year of the Authority shall be from July 1 until June 30 of the following year.

ARTICLE XIV. AMENDMENTS

Except as otherwise provided by law, these Bylaws may be amended, repealed, or altered, in whole or in part, by a majority vote of the Board, at any regular meeting of the Board, or at any special meeting where such action has been announced in the call and notice of such meeting; however, instead of the time frame described in paragraph 3 of Article VIII above, at least one (1) week advance written notice of such proposed amendment, repeal or alteration shall be given the directors and alternate directors.

The undersigned hereby certify that the foregoing are the Amended and Restated Bylaws adopted by the Board of Directors at its monthly meeting held August 13, 2007, revised at its monthly ~~meeting~~meetings held June 14, 2010, ~~revised at its monthly meeting held~~ August 9, 2010, ~~revised at its monthly meeting held~~ February 14, 2011, and ~~as~~April 11, 2011, and last revised at its monthly meeting held ~~April 11, 2011~~January 9, 2012.<sup>[18]</sup>

---

Secretary

*\* The bracketed footnotes and annotations do not constitute a part of these Bylaws and are provided for convenience only.*<sup>[19]</sup>

---

<sup>18</sup>06/14/2010, 08/09/2010, 02/14/2011, 04/11/2011, 01/09/2012: Updated references to monthly meetings.

<sup>19</sup>02/14/2011: Footnotes and annotations do not constitute a part of the Bylaws and are for convenience only.

**AGENDA  
ITEM NUMBER 6A**

Susan DeMasi  
Secretary to the Authority  
Danville-Pittsylvania Regional Industrial  
Facility Authority  
P.O. Box 3300  
Danville, VA 24543-3300

RE: Hunting privileges 2011-2012

December 19, 2011

Dear Ms DeMasi, et al:

My name is Lynwood Lunsford and I am a resident of Pittsylvania Co, in the Cascade, Va community. I am a professional musician and an avid hunter. Primarily I hunt varmit species, especially coyotes. That is why I write to you today.

I would like to respectfully ask permission to varmit hunt on property owned/managed by the Danville-Pittsylvania Regional Industrial Facility Authority, located on the Oak Hill Rd in Pittsylvania Co. More specifically, I am interested in the property on the west side of Oak Hill Rd, in which the Trans-Continental Pipeline traverses.

The coyote population has exploded in our part of the county and seems to be reaching a point of major concern. It is common knowledge that coyotes carry rabies, will often kill calves, and pets. They have also been documented attacking humans. Especially small children. Left unchecked, it may become impossible to eliminate them at all. With your permission, I would like to prevent that from happening.

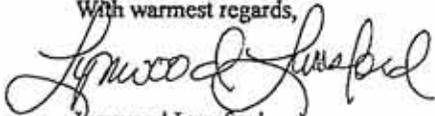
In addition to abiding by all applicable Virginia state game laws, I would also offer the following restrictions on my activities:

- 1) Only I alone will have access to the property. I will not invite guests, nor will I issue permission to others to access the property.
- 2) I will limit my hunting to daylight hours and will not be upon the property between the hours of sundown and sunup.
- 3) Any time there may be survey crews or other workers on the property, I will not access the property until they are no longer in the area.
- 4) I will relieve the Danville-Pittsylvania Regional Industrial Facility Authority of all responsibility due to accident or injury suffered by me while on the property.

For your convenience, I have enclosed a SASE, along with a permission slip to hunt the aforementioned property. Should you agree to grant me permission to hunt this property, any person of authority my sign on the appropriate line.

I humbly thank you for your time and due consideration of this request. Working together, we can do a good deed for the people of the Cascade area in Pittsylvania Co!

With warmest regards,



Lynwood Lunsford

**Permission to Hunt and/or Trap**

I hereby grant permission to the person named below to hunt and/or trap on my property located at Oak Hill Rd in Pittsylvania Co.,  
laying to the west of Oak Hill Rd.  
on the following dates: 2011 - 2012 hunting season  
Signed: \*

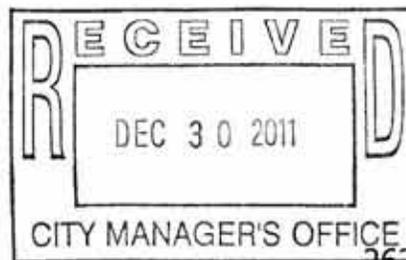
**Agreement**

In return for the privilege of hunting and/or trapping on this property, I agree to obey the laws, to observe all safety precautions and practices, to take every precaution against fire, and to assume all responsibility and liability for my person and my property while on the landowners property.

Signed: Spencer J. Jumper  
Address: 2333 Huntington Tr., Cascade, Va 24069  
License #: VA 2157672  
Date: 12/19/2011

**AGENDA  
ITEM NUMBER 6B**

## Mountain View Farms of VA



2625 Oxford Road  
Chatham, VA 24531  
(434) 927-5290

---

December 12, 2011

Honorable Coy Harville  
Danville Pittsylvania Rifa  
548 River Bend Road  
Danville, VA

Dear Mr. Harville:

Mountain View Farms of VA, LLC would like to lease a thirty (30) acre tract of land located on Stateline Bridge Road in Pittsylvania County, VA at a lease rate of \$3,000 per year. The lease will run from January 15, 2012 to December 31, 2012.

This tract was previously leased by Patten Seed Company and I was acting manager for the company. Patten Seed Company closed operations in Pittsylvania County effective December 1, 2011 and I am now employed by Mountain View Farms of VA.

Roger Jefferson, owner of Mountain View Farms, and I can attend the January 9, 2012 meeting of the RIFA Board to present the request and answer any questions you may have.

Regards,

A handwritten signature in black ink, appearing to read "Mark Osborne".

Mark Osborne

**Resolution No. 2012-01-09-6B**

**A RESOLUTION TO APPROVE AN 11 1/2-MONTH LEASE TO MOUNTAIN VIEW FARMS OF VIRGINIA, L.C., A VIRGINIA LIMITED LIABILITY COMPANY, FOR THAT CERTAIN REAL PROPERTY (GPIN 1356-75-8216) OF DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY (THE "AUTHORITY"), CONTAINING APPROXIMATELY 30 ACRES AND FRONTING ON STATELINE BRIDGE ROAD, IN THE AUTHORITY'S MEGA PARK SITE, IN PITTSYLVANIA COUNTY, VIRGINIA, FOR THE PURPOSE OF PLANTING AND HARVESTING SOD, SOYBEANS, AND/OR OTHER COVER CROPS, BUT NOT TOBACCO, AT A TOTAL RENTAL FEE OF \$3,000.00.**

**WHEREAS**, the Danville-Pittsylvania Regional Industrial Facility Authority (the "**Authority**") is a political subdivision of the Commonwealth of Virginia duly created pursuant to the Virginia Regional Industrial Facilities Act, as amended; and

**WHEREAS**, the Mountain View Farms of Virginia, L.C., a Virginia limited liability company ("**Mountain View**"), desires to lease certain real property (GPIN 1356-75-8216) of the Authority, containing approximately thirty (30) acres and fronting on Stateline Bridge Road, in Pittsylvania County, Virginia (the "**Property**"), at the Authority's Mega Park site, for agricultural purposes;

**WHEREAS**, the Authority has determined that it is in the best interests of the Authority and of the citizens of Pittsylvania County and the City of Danville for the Authority to enter into a lease of the Property with Mountain View, for a total rental fee of Three Thousand and 00/100 Dollars (\$3,000.00), and the Property may only be used for planting and harvesting sod, soybeans, and/or other cover crops, but not tobacco, and any other purposes approved by the Authority; and

**WHEREAS**, the terms of such new lease are set forth in Schedule A, attached hereto and incorporated herein by this reference (the "**Lease**").

**NOW, THEREFORE, BE IT RESOLVED**, that

1. The Authority hereby approves the Lease as reviewed at this meeting, together with such amendments, deletions or additions thereto as may be approved by the Chairman or the Vice Chairman of the Authority, and hereby authorizes the Chairman and the Vice Chairman, either of whom may act independently of the other, to execute and deliver the Lease on behalf of the Authority, such execution of the Lease by the Chairman (or Vice Chairman as the case may be) to conclusively establish his approval of any amendments, deletions or additions thereto.

2. The Authority hereby authorizes and directs staff and other agents and representatives working on behalf of the Authority to take such actions and to do all such things as are contemplated by the Lease, or as they in their discretion deem necessary or appropriate in order to carry out the intent and purposes of these resolutions.

3. The Authority hereby approves, ratifies and confirms any and all actions previously taken by the Authority, its agents and representatives, in respect to the Lease and the matters contemplated therein.

4. This Resolution shall take effect immediately upon its adoption.

**CERTIFICATE**

I, the undersigned Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority, hereby certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by a majority of the Directors of the Danville-Pittsylvania Regional Industrial Facility Authority at a meeting duly called and held on January 9, 2012, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof.

**WITNESS** my hand as Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority this 9th day of January 2012.

(SEAL)

---

Susan M. DeMasi  
Secretary, Danville-Pittsylvania Regional Industrial  
Facility Authority

**SCHEDULE A**

**THIS LEASE AGREEMENT ("Lease")** made as of January 15, 2012, by and between **DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**, a political subdivision of the Commonwealth of Virginia (hereafter referred to as "**Landlord**"); and **MOUNTAIN VIEW FARMS OF VIRGINIA, L.C.**, a Virginia limited liability company (hereafter referred to as "**Tenant**");

**WITNESSETH:**

That for and in consideration of the mutual promises and covenants contained in this Lease, the parties agree as follows:

Section 1 - Property Description. Landlord leases to the Tenant, and Tenant rents from Landlord, an approximately thirty (30) acre tract of land (GPIN 1356-75-8216) located on Stateline Bridge Road in Pittsylvania County, Virginia (the "**Property**"), which had been previously leased by Patten Seed Company, a Georgia corporation.

Section 2 - Term. This Lease shall be for a term beginning on the date first above written and ending on December 31, 2012 (the "**Term**"), unless sooner terminated as provided for herein.

Section 3 - Rental Payment. Tenant agrees to pay to Landlord a base rent ("**Base Rent**") for the Property in the amount of Three Thousand and 00/100 Dollars (\$3,000.00), due and payable by Tenant to Landlord on the date this Lease is executed by Tenant.

Section 4 - Assignment. Tenant may not assign or sublet the Property for any reason without Landlord's prior written consent. No assignment or sublease shall affect the obligation of Tenant to perform all of Tenant's obligations under this Lease, unless Landlord executes a written document releasing Tenant from such obligations.

Section 5 - Insurance; Personal Property. It shall be the sole responsibility of Tenant to protect and, if Tenant desires, to insure Tenant's personal property located on the Property. Landlord shall have no liability for any damage to any persons or personal property located in the Property. The parties understand and agree that Tenant shall maintain, during the Term, liability insurance on the Property with a minimum limit of \$1,000,000.00, naming Landlord as an additional insured, and that Tenant will provide Landlord with evidence of such insurance as requested by Landlord.

Section 6 - Alterations; Surrender of Property. Tenant agrees that Tenant shall seed or cover the Property throughout the Term. Tenant shall, at the termination of this Lease, surrender the Property in at least as good condition as the Property was in at the beginning of this Lease, reasonable wear and tear excepted. Tenant agrees that, at the termination of this Lease, the Property shall be stabilized by perennial vegetation in accordance with the guidelines specified in Std.&Spec. 3.32 of the Virginia Erosion and Sediment Control Handbook. In addition, stabilization of the Property must also comply with Minimum Standard – 3 of the Virginia Erosion and Sediment Control Regulations, which states that "A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion." The parties understand and agree that the determination of stabilization, or the need for additional stabilization measures, shall be made by Landlord or its designated agent.

Section 7 - Maintenance; Taxes. Tenant shall be solely responsible for the maintenance of the Property during the Term. Landlord shall pay any and all real estate taxes assessed against

the Property, and Tenant shall pay any and all personal property taxes or other assessments assessed against the Property.

Section 8 - Use of Property by Tenant. No permanent structure shall be erected on the Property. The Property shall be used by Tenant solely for planting and harvesting sod, soybeans, and/or other cover crops, but not tobacco, and for no other purpose without the prior written approval of Landlord, which approval may be withheld in the sole discretion of Landlord. However, in no event shall the Property be used for any purpose or in any manner which constitutes a violation of any federal, state, or county law or regulation.

Section 9 - Waiver of Liability. Landlord shall not be responsible for any damage to Tenant or their invitees, or for any other occupant of the Property, resulting from any cause whatsoever unless caused by willful misconduct of Landlord. Tenant promises and agrees to insure, protect, and save harmless Landlord from any liabilities, costs, or expenses incurred by reason of personal injuries (including without limitation death at any time resulting therefrom) to any person or damage to any property on or about the Property during the Term, or arising from Tenant's occupancy or use of the Property.

Section 10 - Destruction of Premises and Risk of Loss. If the Property be demolished or materially damaged by fire or otherwise, then this Lease shall automatically terminate as of the date of the destruction or damage. Landlord is under no duty to make repairs under this clause. Tenant shall have the sole and exclusive responsibility for any insurance for Tenant's personal property.

Section 11 - Default of Tenant. Upon (i) the breach of any covenant of this Lease (other than payment of Base Rent pursuant to Section 3 of this Lease) which is not cured within thirty (30) days after notice of such breach is sent to Tenant, (ii) the use of the Property for any illegal purpose, or (iii) Tenant's failure to pay rent within five (5) days of written notice from Landlord that the rent is due and unpaid, Landlord shall have the right, at Landlord's sole option, (a) to declare all Base Rent immediately due and payable, and (b) to immediately terminate this Lease without further notice to Tenant. The exercise by Landlord of the rights granted pursuant to this paragraph shall not deprive the Landlord of any other remedy against Tenant for possession or for damages. The failure of either party to insist on the strict observance by the other party of any covenant contained in this Lease shall in no way be construed as a waiver of a future breach of the same or other covenants.

Section 12 - Condemnation. If the Property is condemned by public authority by the exercise of eminent domain or otherwise, or if the Property is sold to or is otherwise acquired by any public authority, thereupon vesting title in such public authority, this Lease shall thereupon immediately terminate, and Landlord shall not be liable for any inconvenience or damage to Tenant. Any and all awards for such condemnation shall be the sole and exclusive property of Landlord.

Section 13 - Condition of Property. Tenant represents and warrants that Tenant has inspected the Property and all equipment located thereon and that such is suitable for Tenant's purposes; therefore Tenant hereby accepts the Property in its present "AS IS" condition.

Section 14 - Holding Over. It is hereby agreed that, in the event that Tenant holds over after the termination of the Term, Tenant shall be a tenant at sufferance and may be removed at any time by Landlord.

Section 15 - Notice. Any notice required or contemplated to be given to a party by the other party shall be in writing and shall be given by hand delivery, certified or registered United

States mail, or a private courier service which provides evidence of receipt as part of its service, as follows:

If to Landlord:  
Danville-Pittsylvania Regional  
Industrial Facility Authority  
Attention: Chairman  
427 Patton Street, Room 428  
Danville, VA 24541

If to Tenant:  
Mountain View Farms of Virginia, L.C.  
Attn.: Roger Jefferson, Managing Member  
2625 Oxford Road  
Chatham, VA 24531

---

Any party may change the address to which notices hereunder are to be sent to it by giving written notice of such change in the manner provided herein. A notice given hereunder shall be deemed given on the date of hand delivery, deposit with the United States Postal Service properly addressed and postage prepaid, or delivery to a courier service properly addressed with all charges prepaid, as appropriate.

Section 16 - Successors in Interest. All rights and liabilities set forth in this Lease or otherwise imposed upon any party shall extend to the heirs, executors, administrators, successors, and, so far as same are assignable by the terms of this Lease, to the assigns of such party (whether voluntary by act of the parties or involuntary by operation of law).

Section 17 - Construction. Feminine or neuter pronouns are to be substituted for those of the masculine form, and the plural is to be substituted for the singular number, in any place or places herein which the context may require such substitution. This Lease shall be construed under the laws of the Commonwealth of Virginia.

Section 18 - Final Agreement. This Lease represents the final understanding between the parties; no representations shall be binding upon Landlord unless stated in this Lease; no agent of Landlord has authority to change or modify any of the terms hereof except by writing endorsed on or attached to this Lease; Tenant has inspected and examined the Property and agrees to accept the same; and Landlord makes no warranties whatsoever regarding the fitness, operation, and continued usefulness of the premises for any purpose.

Section 19 - Quiet Enjoyment. Landlord agrees that so long as Tenant is not in default under this Lease, Tenant may quietly hold and enjoy the Property during the Term.

Section 20 - Attorneys' Fees and Costs. In the event that a party to this Lease defaults in the performance of any of the terms or obligations imposed upon such party by this Lease or the transactions contemplated hereby, the non-defaulting party may institute legal proceeding to enforce the provisions of this Lease. In such instance, in addition to any other remedy, the non-prevailing party shall be responsible for the reasonable attorneys' fees and costs incurred by the prevailing party in pursuing such action. The parties retain all rights at law and in equity to enforce the provisions of this agreement in accordance with applicable law.

[SIGNATURES ON FOLLOWING PAGE]

**WITNESS** the following signatures to this **LEASE AGREEMENT**:

**LANDLORD:**

**DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**, a political subdivision of the Commonwealth of Virginia

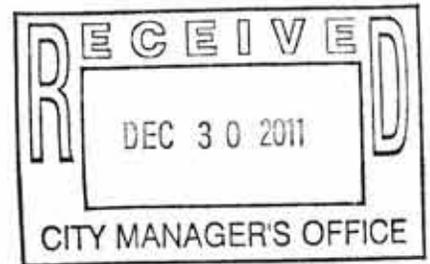
By: \_\_\_\_\_  
Coy E. Harville, Chairman

**TENANT:**

**MOUNTAIN VIEW FARMS OF VIRGINIA, L.C.**, a Virginia limited liability company

By: \_\_\_\_\_  
Roger Jefferson, Managing Member

**AGENDA  
ITEM NUMBER 6C**



**Lyle E. Browning, RPA**

Browning & Associates, Ltd., 2240 Chartstone Drive, Midlothian, VA 23113

804-379-1666 ♦ 804-357-2959 mobile ♦ lebrowning@att.net

December 23, 2011

Mr. Coy E. Harville  
548 River Bend Road  
Danville, VA 24541

Dear Mr. Harville,

With regard to the lease at 4380 Berry Hill Road, it appears that the contract for the removal of the graveyard at the Coleman Site in Danville will move forward and there may be further work on the Fearn Plantation. We would like to renew the lease at the same \$500.00 monthly for another year if possible. We also anticipate possible additional work at the Mega-Park as that proceeds. Having the house would save the county <sup>city</sup> thousands of dollars on motel fees.

Should you have any questions, please advise.

Sincerely yours,

Lyle E. Browning  
President

**Resolution No. 2012-01-09-6C**

**A RESOLUTION TO APPROVE AN AMENDMENT FOR THE ONE-YEAR RENEWAL OF THE LEASE TO BROWNING & ASSOCIATES, LTD., A VIRGINIA CORPORATION, OF THE RESIDENCE LOCATED AT THE AUTHORITY'S MEGA PARK SITE, IN PITTSYLVANIA COUNTY, VIRGINIA, COMMONLY KNOWN AS 4380 BERRY HILL ROAD, DANVILLE, VIRGINIA (PART OF GPIN 1367-70-4519), AT A TOTAL RENTAL FEE OF \$6,000.00.**

**WHEREAS**, the Danville-Pittsylvania Regional Industrial Facility Authority (the "**Authority**") is a political subdivision of the Commonwealth of Virginia duly created pursuant to the Virginia Regional Industrial Facilities Act, as amended; and

**WHEREAS**, the Authority entered into that certain Lease Agreement, as amended on August 1, 2011 (the "**Lease**"), with Browning & Associates, Ltd., a Virginia corporation, for the house located at the Authority's Mega Park site in Pittsylvania County, Virginia, commonly known as 4380 Berry Hill Road, Danville, Virginia (part of GPIN 1367-70-4519); and

**WHEREAS**, the parties desire to enter into an amendment to renew the Lease for an additional period of one (1) year under the terms and conditions set forth in Schedule A, attached hereto and incorporated herein by this reference (the "**Amendment**"), at a total rental fee of \$6,000.00.

**WHEREAS**, the Board of Directors of the Authority has determined that it is in the best interests of the Authority and of the citizens of Danville and Pittsylvania County, Virginia, for the Authority to enter into the Amendment and for the Authority to perform its obligations as contemplated therein.

**NOW, THEREFORE, BE IT RESOLVED BY THE DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY, THAT:**

1. The Authority hereby approves the Amendment as reviewed at this meeting, together with such amendments, deletions or additions thereto as may be approved by the Chairman or the Vice Chairman of the Authority, and hereby authorizes the Chairman and the Vice Chairman, either of whom may act independently of the other, to execute and deliver the Amendment on behalf of the Authority, such execution of the Amendment by the Chairman (or Vice Chairman as the case may be) to conclusively establish his approval of any amendments, deletions or additions thereto.

2. The Authority hereby authorizes and directs staff and other agents and representatives working on behalf of the Authority to take such actions and to do all such things as are contemplated by the Amendment, or as they in their discretion deem necessary or appropriate in order to carry out the intent and purposes of these resolutions.

3. The Authority hereby approves, ratifies and confirms any and all actions previously taken by the Authority, its agents and representatives, in respect to the Amendment and the matters contemplated therein.

4. This Resolution shall take effect immediately upon its adoption.

**CERTIFICATE**

I, the undersigned Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority, hereby certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by a majority of the directors of the Danville-Pittsylvania Regional Industrial Facility Authority at a meeting duly called and held on January 9, 2012, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof.

**WITNESS** my hand as Secretary of the Danville-Pittsylvania Regional Industrial Facility Authority this 9th day of January 2012.

---

Secretary  
Danville-Pittsylvania Regional Industrial Facility  
Authority

**[Schedule A]**

**THIS AMENDMENT TO LEASE AGREEMENT** (this "Amendment") is made as of the 14th day of February 2012, by and between **DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**, a political subdivision of the Commonwealth of Virginia ("Landlord"); and **BROWNING & ASSOCIATES, LTD.**, a Virginia corporation ("Tenant").

**WITNESSETH:**

That for and in consideration of the mutual promises and covenants contained in this Lease, the parties agree as follows:

Section 1 – Recitals.

a. Landlord and Tenant entered into that certain Lease Agreement, dated February 14, 2011, and amended August 1, 2011 (as amended, the "Lease") for lease of the Property.

b. The Term expires on February 13, 2012, and the parties desire to renew the Lease under the terms and conditions set forth in this Amendment.

Section 2 - Term. The Term shall be and is hereby renewed for an additional period of one (1) year, commencing on February 14, 2012 and ending on February 13, 2013, unless sooner terminated as provided for in the Lease.

Section 3 - Entire Agreement. The Lease and this Amendment contain the entire agreement and understanding of the parties with respect to the transactions contemplated hereby; and the Lease and this Amendment supersede all prior understandings and agreements of the parties with respect to the subject matter hereof.

Section 4 - Interpretation. All of the terms, covenants and conditions of the Lease shall continue in full force and effect, and the same are hereby reaffirmed, remade and rewritten, except to the extent that any such terms, covenants or conditions have been nullified hereby or conflict or are inconsistent with the terms of this Amendment, in which event the terms of this Amendment shall, in all respects, govern and prevail.

Section 5 - Defined Terms. The capitalized terms of this Amendment that are not defined herein shall be defined as set forth in the Lease.

[SIGNATURES ON FOLLOWING PAGE]

WITNESS the following signatures to this AMENDMENT TO LEASE AGREEMENT:

**LANDLORD:**

**DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**, a political subdivision of the Commonwealth of Virginia

By: \_\_\_\_\_  
Coy E. Harville, Chairman

**TENANT:**

**BROWNING & ASSOCIATES, LTD.**, a Virginia corporation

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**AGENDA  
ITEM NUMBER 6D**

# Danville-Pittsylvania Regional Industrial Facility Authority

427 Patton Street, Room 428  
Danville, VA 24541  
Telephone: 434-797-8928  
Facsimile: 434-799-5041

Date: December 29, 2011

To: Danville-Pittsylvania Regional Industrial Facility Authority (RIFA) Board of Directors

From: Barbara A. Dameron

Subject: FY2011 Financial Report

Mailed under separate cover is the *Financial Report* for fiscal year ending June 30, 2011, as well as the *Comments on Internal Control and Other Suggestions for Your Consideration* and the *Management Letter* for fiscal year 2011 from Brown, Edwards & Company, LLP, Independent Auditors for RIFA. Norman Yoder and Susan Chapman from Brown, Edwards & Company, LLP will attend the meeting on January 9, 2012 to discuss the audit of the Financial Reports and answer any questions you may have concerning the reports.

The *Management Letter* lists one audit adjustment. This adjustment was made to record legal fees incurred for fiscal year 2011 but not yet billed to the Authority at the time of the audit. The staff clearly understands the nature of these transactions and adjustments of this nature should not be likely in future years.

The *Comments on Internal Control and Other Suggestions for Your Consideration* continues to note the lack of segregation of duties. Limited human resources make it difficult to achieve ideal segregation of duties. This item was noted as a significant deficiency for fiscal year 2010, and it remains a significant deficiency for fiscal year 2011. The staff will continue to seek further opportunities to strengthen the segregation of duties and implement additional internal controls where possible to compensate for the lack of segregation that still exists. The letter also notes that one adjustment was noted by the auditors for fiscal year 2011, which is discussed in the paragraph above. Since the adjustment was not considered qualitatively material, this item is not a deficiency for fiscal year 2011. The letter also addresses the value of land owned by RIFA. RIFA maintains land values at cost in its accounting records, which is typical. However, since a formal evaluation of RIFA's land has not been conducted, the auditors recommend undertaking a formal evaluation that provides independent evidence of the value of the land in the coming year. RIFA staff is in the process of evaluating the necessity of this and reviewing various options to accomplish this task.

We are pleased with the audit. We will continue to seek areas for improvement in the upcoming year.

**AGENDA  
ITEM NUMBER 6E**

**Danville - Pittsylvania Regional Industrial Facility  
Authority**

---

# **Financial Status**

---

## **Table of Contents**

- A. \$7.3 Million Bonds - Cane Creek Centre
- B. General Expenditures for FY 2012
- C. Mega Park – Funding Other than Bond Funds
- D. \$11.25 Million Bonds – Mega Park
- E. Cane Creek Centre – Lots 3 & 9
- F. Yorktowne Reimbursement
- G. Rent, Interest, and Other Income Realized
- H. Unaudited Financial Statements
- I. Litigation Expense Details

**Danville-Pittsylvania Regional Industrial Facility Authority**

\$7.3 million Bonds for Cane Creek Centre - Issued in August 2005

As of December 31, 2011

	<u>Funding</u>	<u>Budget / Contract Amount</u>	<u>Expenditures</u>	<u>Encumbered</u>	<u>Unexpended / Unencumbered</u>
<i>Funding</i>					
Funds from bond issuance	\$ 7,300,000.00				
Issuance cost	(155,401.33)				
Bank fees	(98.25)				
Interest earned to date	486,478.85				
<b>Cane Creek Parkway <sup>2</sup></b>		\$ 3,804,576.00	\$ 3,724,241.16	\$ -	
<b>Swedwood Drive <sup>2</sup></b>		69,414.00	69,414.00	-	
<b>Cane Creek Centre entrance <sup>2</sup></b>		72,335.00	53,878.70	-	
<b>Financial Advisory Services</b>		7,600.00	7,600.00	-	
<b>Dewberry contracts <sup>1</sup></b>		69,582.50	69,582.50	-	
<b>Dewberry contracts not paid by 1.7 grant <sup>4,5</sup></b>		71,881.00	10,972.12	60,908.88	
<b>Yorktowne Sound Buffer</b>		-	-	-	
<b>Land</b>		-	2,560,921.67	-	
<b>Demolition services</b>		-	33,761.62	-	
<b>Legal fees</b>		-	48,954.23	-	
<b>CCC - Lots 3 &amp; 9 project - RIFA Local Share <sup>6</sup></b>		142,190.00	75,320.40	66,869.60	
<b>Other expenditures</b>			10,649.70	-	
<b>Total</b>	<b>\$ 7,630,979.27</b>	<b>\$ 4,237,578.50</b>	<b>\$ 6,665,296.10</b>	<b>\$ 127,778.48</b>	<b>\$ 637,904.69</b>

**notes:**

<sup>1</sup> Dewberry Contracts consist of wetland, engineering, surveying and site preparation

<sup>2</sup> Funds being used to cover City and County matching contributions for a VDOT grant for Swedwood Drive

<sup>3</sup> Project completed under budget

<sup>4</sup> In September 2008 the outstanding principal balance of \$6,965,000 on the Series 2005 Cane Creek Project Revenue Bonds was tendered and not remarketed. These bonds were converted to bank bonds and are now subject to the Credit and Reimbursement agreement the Authority has with Wachovia Bank. The remarketing agent will continue its attempt to remarket these bonds in order to convert them back to Variable Rate Revenue Bonds. As a result, it is likely that the City and County will have to contribute additional funds in order to make future interest payments on the letter of credit attached to these bonds.

<sup>4</sup> These contracts were originally to be paid by the \$1.7M Special Projects Grant, this grant has expired and the TIC did not issue an extension. The remaining amounts of the contract will be paid using bond funds.

<sup>5</sup> The budget amount decreased \$71,279.61 from the September 30, 2010 reports. This amount represented the remaining budget amount carried from the \$1.7 SP grant upon its expiration for the following contracts: Wetland Delineation, Wetland Bank Plan Rev., Stream Concept Plan, & Stream Attribute Plan. Per Shawn Harden of Dewberry, these contracts are complete and finished under budget. The only contract that remains open is for Wetland Monitoring and the budget, expended, and encumbered amounts included here are only for this contract.

<sup>6</sup> This line item represents the amount of expenditures on the "CCC - Lots 3 & 9" budget sheet that is covered by bond funds. RIFA's local share of 5% of these project costs is being covered by these bond funds.

<b>Road Summary-Cane Creek Parkway:</b>	
English Contract-Construction	\$ 5,363,927.00
Change Orders	165,484.50
Expenditures over contract amount	3,579.50
(Less) County's Portion of Contract	(935,207.00)
(Less) Mobilization Allocated to County	(9,718.00)
Portion of English Contract Allocated to RIFA	4,588,066.00
Dewberry Contract-Engineering	683,850.00
<b>Total Road Contract Allocated to RIFA</b>	<b>\$ 5,271,916.00</b>

<b>Funding Summary - Cane Creek Parkway</b>	
VDOT	\$ 1,467,340.00
Bonds	3,804,576.00
	<b>\$ 5,271,916.00</b>

**Danville-Pittsylvania Regional Industrial Facility Authority**  
**General Expenditures for Fiscal Year 2012**  
**As of December 31, 2011**

	<u>Funding</u>	<u>Budget</u>	<u>Expenditures</u>	<u>Encumbered</u>	<u>Unexpended / Unencumbered</u>
<b>Funding</b>					
City Contribution	\$ 75,000.00				
County Contribution	75,000.00				
Carryforward from FY11	-				
<b>Contingency</b>					
Bank Fees		\$ 4,100.00	\$ 4,071.25	\$ -	\$ -
Arbitrage Rebate Calculation Fees		2,000.00	2,000.00	-	-
Moody's Investor Service		-	1,100.00	-	-
Cyber Park Parcel Appraisal		-	900.00	-	-
Employee Reimbursement		-	44.24	-	-
Miscellaneous contingency items		15,000.00	44.16	-	-
<b>Total Contingency Budget</b>		<b>21,100.00</b>	<b>8,159.65</b>	<b>-</b>	<b>12,940.35</b>
<b>Legal</b>		<b>90,250.00</b>	<b>28,913.13</b>	<b>-</b>	<b>61,336.87</b>
<b>Accounting</b>		<b>18,750.00</b>	<b>18,750.00</b>	<b>-</b>	<b>-</b>
<b>Postage &amp; Shipping</b>		<b>100.00</b>	<b>17.67</b>	<b>-</b>	<b>82.33</b>
<b>Meals</b>		<b>2,800.00</b>	<b>1,390.40</b>	<b>-</b>	<b>1,409.60</b>
<b>Utilities</b>		<b>10,000.00</b>	<b>1,087.69</b>	<b>-</b>	<b>8,912.31</b>
<b>Insurance</b>		<b>7,000.00</b>	<b>-</b>	<b>-</b>	<b>7,000.00</b>
<b>Total</b>	<b>\$ 150,000.00</b>	<b>\$ 150,000.00</b>	<b>\$ 58,318.54</b>	<b>\$ -</b>	<b>\$ 91,681.46</b>

**Danville-Pittsylvania Regional Industrial Facility Authority**

Mega Park - Funding Other than Bond Funds

As of December 31, 2011

<u>Funding</u>	<u>Funding</u>	<u>Budget / Contract Amount</u>	<u>Expenditures</u>	<u>Encumbered</u>	<u>Unexpended / Unencumbered</u>
<b>Funding</b>					
City contribution	\$ 134,482.50				
County contribution	134,482.50				
City advance for Klutz, Canter, & Shoffner property <sup>1</sup>	10,340,983.83				
Tobacco Commission FY09 SSED Allocation	3,370,726.00				
Tobacco Commission FY10 SSED Allocation - Engineering Portion	407,725.00				
<b>Land</b>					
Klutz property		\$ 8,394,553.50	\$ 8,394,553.50	\$ -	
Canter property <sup>2</sup>		1,200,000.00	1,200,000.00	-	
Adams property		37,308.00	37,308.00	-	
Carter property		5,843.00	5,843.00	-	
Jane Hairston property		1,384,961.08	1,384,961.08	-	
Bill Hairston property		201,148.00	201,148.00	-	
Shoffner Property		1,872,896.25	1,872,896.25	-	
<b>Other</b>					
Dewberry & Davis		28,965.00	28,965.00	-	
Dewberry & Davis <sup>3</sup>		990,850.00	954,595.79	36,254.21	
Consulting Services - McCallum Sweeney		115,000.00	92,130.18	22,869.82	
<b>Total</b>	<b>\$ 14,389,399.83</b>	<b>\$ 14,231,524.83</b>	<b>\$ 14,172,400.60</b>	<b>\$ 59,124.03</b>	<b>\$ 156,875.00</b>

<sup>1</sup> This figure does not include the interest the City is losing from the uninvested funds.

<sup>2</sup> Settlement fees have been charged to general expenditures until a funding source is available

<sup>3</sup> This contract was originally for \$814,500, but has been amended to include a traffic impact analysis, and a cemetery survey. \$740,000 will be covered by the FY09 Tobacco Allocation and \$250,850 will be covered by the FY10 Tobacco Allocation.

**Danville-Pittsylvania Regional Industrial Facility Authority**  
**\$11.25 million Bonds for Berry Hill Mega Park project - Issued December 1, 2011**  
**As of December 31, 2011**

---

<i>Funding</i>	<u>Funding</u>	<u>Budget / Contract</u> <u>Amount</u>	<u>Expenditures</u>	<u>Encumbered</u>	<u>Unexpended /</u> <u>Unencumbered</u>
Funds from bond issuance	\$ 11,250,000.00				
Issuance cost	(315,545.70)				
Underwriter's Discount	(225,000.00)				
Original Issue Discount	(21,325.15)				
<i>Initial Land Purchases</i> <sup>1</sup>		-	10,345,376.83	-	
<i>Interest owed to City on fronts for land purchases</i>		-	144,150.41	-	
<i>Legal fees</i>		-	148,396.67	-	
<i>Dewberry &amp; Davis Project Presentation</i>		-	14,785.00	-	
<i>Other expenditures</i>		-	17,254.39	-	
<b>Total</b>	<b>\$ 10,888,129.15</b>	<b>\$ -</b>	<b>\$ 10,889,963.30</b>	<b>\$ -</b>	<b>\$ 18,165.85</b>

<sup>1</sup> The City of Danville fronted the funds for \$10,340,983.83 of these land purchases. RIFA will reimburse the City of Danville this amount plus the interest owed once bond funds requested are received.

## Danville-Pittsylvania Regional Industrial Facility Authority

Cane Creek Centre - Lots 3 & 9

As of December 31, 2011

	<u>Funding</u>	<u>Budget / Contract Amount</u>	<u>Expenditures</u>	<u>Encumbered</u>	<u>Unexpended / Unencumbered</u>
<b>Funding</b>					
EDA Grant Investment	\$ 2,275,030.00				
Tobacco Commission FY10 Reserve Fund Allocation	426,568.00				
Local Match - RIFA <sup>1</sup>	142,190.00				
<b>Expenditures</b>					
Haymes Brothers, Inc. <sup>2</sup>		\$ 1,488,466.71	\$ 1,392,425.00	\$ 96,041.71	
Dewberry & Davis		111,600.00	111,600.00	-	
Advertisements for bids		-	2,383.00	-	
<b>Total</b>	<b>\$ 2,843,788.00</b>	<b>\$ 1,600,066.71</b>	<b>\$ 1,506,408.00</b>	<b>\$ 96,041.71</b>	<b>\$ 1,241,338.29</b>

<sup>1</sup> Bond funds are available to cover this local match.

<sup>2</sup> Please note that the expended amount does not include 5% retainage withheld that has not yet been paid by RIFA to Haymes Brothers, Inc.



## Danville-Pittsylvania Regional Industrial Facility Authority

Rent, Interest, and Other Income Realized  
As of December 31, 2011

<u>Funding</u>	<u>Funding</u>	<u>Expenditures</u>	<u>Unexpended / Unencumbered</u>
<u>Rental Properties</u>			
<u>Lessee</u>	<u>Property</u>	<u>Rent Received</u>	
<i>Cyberpark</i>			
Institute for Advanced Learning and Research (IALR) <sup>1,4</sup>	Hawkins Research Building at 230 Slayton Ave.	\$ 515,291.27	
Securitas	Gilbert Building at 1260 South Boston Rd.	11,900.00	
<i>Cane Creek Centre</i>			
Stephen R. & Susan G. Wilson	Hughes House at 390 Cedar Lane	2,800.00	
Douglas C. Agner	Hughes House at 390 Cedar Lane	6,000.00	
Richard A. Parker	Hughes House at 390 Cedar Lane	2,400.00	
Axxor N.A. LLC <sup>5</sup>	Apartments at 390 Cedar Lane	750.00	
<i>Berry Hill Mega Park</i>			
Guilford Whitetail Management	Klutz Farm off State Rd. 863	11,000.00	
Oak Hill Hunt Club	Hairston Farm off State Rd. 863	8,000.00	
Patten Seed Company	30 acre tract on Stateline Bridge Rd.	6,500.00	
Browning & Associates, Ltd. <sup>5</sup>	4380 Berry Hill Road House	6,750.00	
Osborne Company of North Carolina, Inc.	4380 Berry Hill Road Pastureland	800.00	
<i>Total Rent</i>		\$ 572,191.27	
<u>Interest Received</u> <sup>2</sup>		\$ 23,198.06	
<u>Expenditures</u>			
Disbursement to IALR for SEnTeC project <sup>1</sup>		\$ 278,812.00	
Transfer to General Expenditures budget <sup>3</sup>		50,000.00	
<b>Total</b>		\$ 595,389.33	\$ 328,812.00
			\$ 266,577.33

<sup>1</sup> A portion of the rent received from the IALR for the Hawkins Research Building was Board-restricted for the SEnTeC project. RIFA disbursed \$278,812.00 to the IALR to fully satisfy this commitment made by the Board at the June 11, 2008 meeting

<sup>2</sup> Please note that this is only interest received on RIFA's general money market account.

<sup>3</sup> The RIFA Board approved to transfer \$50,000 from rental income realized to the General Expenditures budget at its March 14, 2011 meeting.

<sup>4</sup> Please note that these rent proceeds must be used in accordance with the U.S. Economic Development Administration's (EDA) Standard Terms and Conditions

<sup>5</sup> Please note that Browning & Associates has paid a \$1,000 security deposit per the lease agreement that is not included in rental income above.

<sup>6</sup> Please note that Axxor N.A. LLC has paid a \$500 security deposit per the lease agreement that is not included in rental income above.

*Danville-Pittsylvania Regional Industrial Facility Authority*  
*Statement of Net Assets*<sup>1, 2</sup>  
*December 31, 2011\**

	<b>Unaudited FY 2012</b>
<b>Assets</b>	
<i>Current assets</i>	
Cash - checking	\$ 161,332
Cash - money market	389,789
<i>Total current assets</i>	551,121
<i>Noncurrent assets</i>	
Restricted cash - project fund	1,046,436
Restricted cash - debt service fund	613,443
Capital assets not being depreciated	24,962,931
Capital assets being depreciated, net	27,244,055
Construction in progress	1,930,750
Unamortized bond issuance costs	272,899
<i>Total noncurrent assets</i>	56,070,514
<b>Total assets</b>	<b>56,621,635</b>
<b>Liabilities</b>	
<i>Current liabilities</i>	
Due to City of Danville	10,479,073
Bonds payable - current portion	285,000
Accounts Payable	164,118
Retainage payable	55,396
Security deposit	1,500
<i>Total current liabilities</i>	10,985,087
<i>Noncurrent liabilities</i>	
Bonds payable - less current portion	5,895,000
<i>Total noncurrent liabilities</i>	5,895,000
<b>Total liabilities</b>	<b>16,880,087</b>
<b>Net Assets</b>	
Invested in capital assets - net of related debt	39,138,542
Unrestricted	603,006
<b>Total net assets</b>	<b>\$ 39,741,548</b>

<sup>1</sup> Please note that this balance sheet does not include the Due to/Due from between the County and the City since it nets out and only changes at fiscal year-end.

<sup>2</sup> Please note that this balance sheet does not include all general accounts receivable or accounts payable at the month-end date. This is because information regarding accrued receivables/payables is not available at the time of statement preparation.

\*Please note that these statements are for the period ended December 31, 2011 as of December 29, 2011, the date of preparation. Due to statement preparation occurring in close proximity to month-end, these statements may not include some pending adjustments for the period.

*Danville-Pittsylvania Regional Industrial Facility Authority  
Statement of Revenues and Expenses and Changes in Fund Net Assets  
December 31, 2011\**

	<b>Unaudited FY 2012</b>
<b>Operating revenues</b>	
Virginia Tobacco Commission grants	54,554
Rental income	120,593
Other grants	-
<b>Total operating revenues</b>	<b>175,147</b>
<b>Operating expenses<sup>4</sup></b>	
Mega Park expenses <sup>3</sup>	25,877
Cane Creek Centre expenses <sup>3,5</sup>	1,320,842
Cyber Park expenses <sup>3</sup>	3,210
Professional fees	39,385
Insurance	5,729
Other operating expenses	2,584
<b>Total operating expenses</b>	<b>1,397,627</b>
<b>Operating loss</b>	<b>(1,222,480)</b>
<b>Non-operating revenues (expenses)</b>	
Interest income	255
Interest expense	(5,384)
<b>Total non-operating expenses, net</b>	<b>(5,129)</b>
<b>Net loss before capital contributions</b>	<b>(1,227,609)</b>
<b>Capital contributions</b>	
Contribution - City of Danville	337,392
Contribution - Pittsylvania County	337,392
<b>Total capital contributions</b>	<b>674,784</b>
<b>Change in net assets</b>	<b>(552,825)</b>
<sup>6</sup> <b>Net assets at July 1,</b>	<b>40,294,373</b>
<b>Net assets at December 31,</b>	<b>\$ 39,741,548</b>

<sup>3</sup> A portion or all of these expenses may be capitalized at fiscal year-end.

<sup>4</sup> Please note that most non-cash items, such as depreciation and amortization, are not included here until year-end entries are made.

<sup>5</sup> Please note that this line item includes \$24,911 for fees related to the \$7.3M bonds for Cane Creek.

<sup>6</sup> Please note that this item is updated to reflect audit adjustments for FY2011.

*Danville-Pittsylvania Regional Industrial Facility Authority*  
*Statement of Cash Flows*  
*December 31, 2011\**

	<b>Unaudited FY 2012</b>
<b>Operating activities</b>	
Receipts from grant reimbursement requests	\$ 336,995
Receipts from leases	117,895
Payments to suppliers for goods and services	(1,611,619)
<b>Net cash used in operating activities</b>	<b>(1,156,729)</b>
<b>Capital and related financing activities</b>	
Capital contributions	674,784
Interest paid on bonds	(6,350)
Principal repayments on bonds	-
<b>Net cash provided by capital and related financing activities</b>	<b>668,434</b>
<b>Investing activities</b>	
Interest received	255
<b>Net cash provided by investing activities</b>	<b>255</b>
<b>Net decrease in cash and cash equivalents</b>	(488,040)
<b>Cash and cash equivalents - beginning of year (including restricted cash)</b>	<b>2,699,040</b>
<b>Cash and cash equivalents - through December 31, 2011 (including restricted cash)</b>	<b>\$ 2,211,000</b>
<b>Reconciliation of operating loss before capital contributions to net cash used in operating activities:</b>	
Operating loss	\$ (1,222,480)
Changes in assets and liabilities:	
Change in prepaids	10,113
Change in due from other governments	282,441
Change in other receivables	3,500
Change in accounts payable	(224,103)
Change in unearned income	(6,700)
Change in security deposit	500
<b>Net cash used in operating activities</b>	<b>\$ (1,156,729)</b>

<b>Components of cash and cash equivalents at December 31, 2011:</b>	
American National - Checking	\$ 161,332
American National - General money market	389,789
Wachovia - \$7.3M Bonds CCC Debt service fund	613,443
Wachovia - \$7.3M Bonds CCC Project fund	1,046,436
	<b>\$ 2,211,000</b>

# Danville-Pittsylvania Regional Industrial Facility Authority

## Litigation Expense Detail

As of December 31, 2011

---

Fiscal Year 2009 Litigation Fees	\$	43,891.33
Fiscal Year 2010 Litigation Fees		11,814.15
Fiscal Year 2011 Litigation Fees		28,128.30
Fiscal Year 2012 Litigation Fees		3,364.80
<b>Total litigation fees</b>		<u>87,198.58</u>
Sanctions received		4,370.62
Interest on sanctions received		42.00
<b>Total received</b>		<u>4,412.62</u>
<b>Net</b>		<u><u>82,785.96</u></u>

**CLOSED SESSION  
AGENDA  
ITEM NUMBER 7B**

**Proposed Subordination Agreement and Recorded  
Credit Line Deed of Trust – for public posting**

Prepared by and  
after recording return to:  
Troutman Sanders LLP  
1660 International Drive, Suite 600  
McLean, Virginia 22102  
Margaret Ann Brown, Esq.

PIN(s)/Tax Map Reference Number(s): # 78471, part of 77831

### SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (the "Agreement") is made and entered into this     day of ~~December, 2011~~ January, 2012, by DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY, a political subdivision of the Commonwealth of Virginia ("RIFA"), and CITY OF DANVILLE, VIRGINIA, a municipal subdivision of the Commonwealth of Virginia ("City"; City together with RIFA are sometimes hereinafter individually and collectively referred to as "Subordinate Lienholder"), for the benefit of BANK OF AMERICA, N.A. a national banking association ("Bank of America"); and acknowledged and agreed to by BDJN, LLC, a Virginia limited liability company ("Borrower").

### RECITALS

WHEREAS, Bank of America is the owner and holder of (i) that certain Promissory Note dated of even date herewith made by Borrower payable to the order of Bank of America in the original principal amount of One Million Nine Hundred Ninety-Seven Thousand Five Hundred and No/100 Dollars (\$1,997,500.00) and (ii) that certain Promissory Note dated of even date herewith made by Borrower payable to the order of Bank of America in the original principal amount of One Million Nine Hundred Ninety-Seven Thousand Five Hundred and No/100 Dollars (\$1,997,500.00) (each, as renewed, extended, modified, amended or restated from time to time, collectively, the "Bank of America Notes"); and

WHEREAS, the Bank of America Notes and the indebtedness evidenced thereby is secured by that certain Deed of Trust, Assignment, Security Agreement and Fixture Filing dated of even date herewith, and to be recorded among the land records of the City of Danville, Virginia (the "Land Records") (the same, as amended, supplemented, modified, restated, renewed or extended from time to time, the "Bank of America Deed of Trust"), granting a first priority lien on the real estate more particularly described in Exhibit A attached hereto and incorporated herein (the "Real Estate"), and all other Property as defined in the Bank of America Deed of Trust, including, without limitation, the Improvements, the Fixtures and the Personalty, as such terms are defined in the Bank of America Deed of Trust (collectively the "Property"). The Bank of America Notes, the Bank of America Deed of Trust and all other documents issued in connection therewith are herein referred to collectively as the "Bank of America Documents"; the obligations created under and pursuant to the Bank of America Documents are herein referred to collectively as the "Bank of America Obligations"; and

WHEREAS, pursuant to that certain Performance Grant Agreement dated February 7, 2011 by and among Electronic Instrumentation and Technology, LLC, a Virginia limited liability company ("EIT"), RIFA and City (the "Performance Agreement"). RIFA agreed to convey the Real Estate to Borrower (as an affiliate of EIT) and City agreed to provide certain grant funds to

EIT, and EIT agreed to satisfy certain performance obligations as more particularly set forth in the Performance Agreement;

WHEREAS, to secure EIT's obligations under the Performance Agreement, Borrower executed that certain Credit Line Deed of Trust dated February 7, 2011 in favor of Subordinate Lienholder, which is recorded among the Land Records as Instrument No. 11-356 (the "Subordinate Lienholder Deed of Trust"). The Subordinate Lienholder Deed of Trust, the Performance Agreement and all other documents issued in connection therewith are herein referred to collectively as the "Subordinate Lienholder Documents"; the obligations created under and pursuant to the Subordinate Lienholder Documents are herein referred to collectively as the "Subordinate Lienholder Obligations"; and

WHEREAS, the Subordinate Lienholder Deed of Trust is subordinate and inferior to the Bank of America Deed of Trust in all respects; and

WHEREAS, in connection with the making of the loan evidenced by the Bank of America Notes, and secured by the Bank of America Deed of Trust, the Subordinate Lienholder has agreed to subordinate and make inferior: (i) the right, title, lien and interest created by the Subordinate Lienholder Deed of Trust to the right, title, lien, and interest of the Bank of America Deed of Trust; and (ii) Subordinate Lienholder's rights to receive any payments under or on account of the Subordinate Lienholder Obligations to Bank of America's rights to receive payments under or on account of the Bank of America Obligations.

#### AGREEMENTS

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00), the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt, adequacy, and sufficiency of all of which are hereby acknowledged, Subordinate Lienholder hereby covenants and agrees as follows:

1. Recitals; Certain Defined Terms. The Recitals set forth above are incorporated herein by reference to the same extent and with the same force and effect as if fully set forth herein; provided, however, that such recitals shall not be deemed to modify the express provisions hereinafter set forth. Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Bank of America Deed of Trust.

2. Subordination. Subordinate Lienholder, for itself, its successors, and assigns (including, without limitation, all subsequent holders of the Subordinate Lienholder Deed of Trust) does hereby subordinate (a) the Subordinate Lienholder Deed of Trust, (b) all of the indebtedness now or hereafter secured by the Subordinate Lienholder Deed of Trust, and (c) all of its right, title, lien, and interest in and to the Property and the rents, issues, and profits therefrom, to (i) the Bank of America Deed of Trust, (ii) all of the indebtedness now or hereafter secured by the Bank of America Deed of Trust, and (iii) all of the right, title, lien and interest held by Bank of America, its successors, and assigns (including, without limitation, all subsequent holders of the Bank of America Notes and the Bank of America Deed of Trust), in and to the Property and the rents, issues, and profits therefrom, under and pursuant to (X) the

Bank of America Notes, (Y) the Bank of America Deed of Trust, and (Z) all other of the Bank of America Documents, and any and all extensions, renewals, modifications, and replacements thereof. From and after the date hereof, all of the documents, indebtednesses, right, title, lien, and interest described in clauses (a), (b) and (c) hereinabove shall be subject and subordinate to all of the documents, indebtednesses, right, title, lien, and interest described in clauses (i), (ii) and (iii) hereinabove.

~~Subordinate Lienholder, for itself, its successors, and assigns (including, without limitation, all subsequent holders of the Subordinate Lienholder Deed of Trust) does hereby agree that, notwithstanding anything provided in the Subordinate Lienholder Documents to the contrary, so long as the Bank of America Obligations remain outstanding, unless Bank of America shall consent in writing: (A) all of the Bank of America Obligations shall be paid and satisfied in full before any payment is made on account of the Subordinate Lienholder Obligations; and (B) no prepayment of the Subordinate Lienholder Obligations shall be made. In the event that any payment is made to Subordinate Lienholder on account of the principal, interest, fees, or other amounts on or with respect to the Subordinate Lienholder Obligations which is not permitted hereunder, such payment shall be held by Subordinate Lienholder in trust for the benefit of Bank of America and shall be paid forthwith over and delivered to Bank of America for application to the payment of all of the Bank of America Obligations remaining unpaid.~~

3. Acknowledgements. Notwithstanding anything contained in the Performance Agreement or the Subordinate Lienholder Deed of Trust to the contrary, Subordinate Lienholder hereby acknowledges and agrees that Subordinate Lienholder consents to the subordination of the Subordinate Lienholder Obligations as provided in Section 2 of this Agreement and acknowledges that this Agreement shall constitute adequate and formal written notice of such subordination in accordance with Section 5 of the Subordinate Lienholder Deed of Trust and the terms and conditions of the Performance Agreement. For the avoidance of doubt, neither Borrower nor Bank of America shall be required to provide any other oral or written notice to Subordinate Lienholder with respect to the subordination of Subordinate Lienholder Obligations as provided in this Agreement.

4. Amendments to the Subordinate Lienholder Loan Documents. Subordinate Lienholder hereby agrees that, notwithstanding anything provided in the Subordinate Lienholder Documents to the contrary, so long as the Bank of America Obligations remain outstanding, unless Bank of America shall consent in writing, Subordinate Lienholder shall not (a) amend or modify the provisions of the Subordinate Lienholder Deed of Trust, the Performance Agreement or any other Subordinate Lienholder Document; or (b) seek to foreclose the Subordinate Lienholder Deed of Trust or otherwise enforce its lien against the Property.

5. Bankruptcy. ~~Upon any distribution of the assets or properties of Borrower or upon any dissolution, winding up, liquidation, bankruptcy or reorganization involving Borrower (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors or otherwise, herein referred to as a "Proceeding"):~~

~~(a) — Bank of America shall first be entitled to receive payment in full of the principal of and interest on the Bank of America Obligations and all fees and any other payments (including post-petition interest and all costs and expenses) due pursuant to the terms of the Bank of America Documents, before Subordinate Lienholder is entitled to receive any payment on account of the Subordinate Lienholder Obligations; and~~

~~(b) — any payment or distribution of the assets or properties of Borrower of any kind or character, whether in cash, property, or securities, to which Subordinate Lienholder would be entitled except for the provisions of this Agreement, shall be paid by the debtor in possession, liquidating trustee or agent or other person making such payment or distribution directly to Bank of America; and~~

~~(c) — in the event that, notwithstanding the foregoing, any payment or distribution of the assets or properties of Borrower of any kind or character, whether in cash, property, or securities, shall be received by Subordinate Lienholder on account of principal, interest, fees, or other amounts on or with respect to the Subordinate Lienholder Obligations before all of the Bank of America Obligations are paid in full, such payment or distribution shall be received and held in trust for and shall be paid over to Bank of America forthwith, for application to the payment of the Bank of America Obligations until all such Bank of America Obligations shall have been paid in full in accordance with the terms of the Bank of America Documents.~~

~~To effectuate the foregoing, Subordinate Lienholder does hereby: (i) irrevocably assign to Bank of America all of Subordinate Lienholder's rights as a secured or unsecured creditor in any Proceeding and authorizes Bank of America to take, or refrain from taking, any action to assert, enforce, modify, waive, release or extend Subordinate Lienholder's lien and/or claim in such Proceeding, including but not limited to (a) filing a proof of claim arising out of the Subordinate Lienholder Obligations, (b) voting or refraining from voting claims arising from the Subordinate Lienholder Obligations, either in Bank of America's name or in the name of Bank of America as attorney in fact of Subordinate Lienholder, (c) accepting or rejecting any payment or distribution made with respect to any claim arising from the Subordinate Lienholder Obligations and applying such payment and distribution to payment of Bank of America's claim until the Bank of America Obligations are paid and satisfied in full in accordance with their terms, and (d) taking any and all actions and executing any and all instruments necessary to effectuate the foregoing and, inter alia, to establish Bank of America's entitlement to assert Subordinate Lienholder's claim in such Proceeding; and (ii) release and indemnify Bank of America and hold Bank of America harmless from and against any claims, causes of action, losses, costs or damages arising out of or with respect to Bank of America's actions in a Proceeding as set forth in this Agreement.~~

6.5. Continuing Benefits. No right of Bank of America or any present or future holder of the Bank of America Obligations to enforce the subordination as provided herein shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of Borrower or any other party, whether borrower, guarantor or otherwise, or by any act or failure to act, in good faith, by the holder of the Bank of America Obligations, or by any noncompliance by Borrower or any borrower, guarantor or otherwise with the terms of the Bank of America Notes or any

other of the Bank of America Documents regardless of any knowledge thereof which such holder may have or be otherwise charged with.

~~7. — Enforcement of Subordination. Subordinate Lienholder, by its execution of this Agreement, authorizes and expressly directs Bank of America to take such action as may be necessary or appropriate, in Bank of America's sole discretion, from time to time to effectuate the subordination provided herein and hereby appoints Bank of America its attorney-in-fact for such purpose, including, without limitation, in the event of any dissolution, winding up, liquidation, or reorganization of Borrower (whether in bankruptcy, insolvency, or receivership proceedings or upon an assignment for the benefit of creditors or otherwise) tending toward liquidation of the business or the assets of Borrower, the immediate filing of a claim for the unpaid balance of the Subordinate Lienholder Obligations in the form required in such proceedings, the voting of such claim during the pendency of such proceedings, and the taking of all steps necessary to cause such claim to be approved.~~

~~8. — Subordinate Lienholder Documents. Subordinate Lienholder hereby warrants and represents to Bank of America that (a) attached hereto as Exhibit B is a true, correct and complete copy of the Subordinate Lienholder Deed of Trust, and all amendments thereto, in effect on the date hereof, (b) attached hereto as Exhibit C is a true, correct and complete copy of the Performance Agreement and all amendments thereto, in effect on the date hereof, and (c) Subordinate Lienholder has no knowledge of any default or event of default under the Subordinate Lienholder Deed of Trust or the Performance Agreement which has not been cured or waived. Subordinate Lienholder hereby warrants and represents that none of the documents and instruments referred to in this Section have been modified or amended except as set forth in the relevant exhibits hereto.~~

~~9. — Representations, Warranties and Covenants of Subordinate Lienholder. Subordinate Lienholder hereby covenants, agrees, warrants, represents, and certifies unto Bank of America that:~~

~~(a) — Subordinate Lienholder is the owner and holder of the Subordinate Lienholder Deed of Trust;~~

~~(b) — The Subordinate Lienholder Deed of Trust has not been extended, renewed, amended, transferred, or otherwise modified except as set forth herein;~~

~~(c) — This Agreement has been duly authorized by Subordinate Lienholder, the persons executing, acknowledging, and delivering this Agreement on behalf of Subordinate Lienholder are fully authorized to do so, and all of the terms and provisions of this Agreement are fully enforceable against Subordinate Lienholder and its successors and assigns;~~

~~(d) — To the knowledge of Subordinate Lienholder, there exists no default or event of default of any nature under the terms and provisions of the Subordinate Lienholder Deed of Trust, the Performance Agreement or combination thereof, and no condition which, with the giving of notice and/or the passage of time, would result in such an event of default;~~

~~(e) — Subordinate Lienholder agrees and covenants that copies of all notices, communications, or designations required or permitted under the Subordinate Lienholder Deed of Trust shall be sent to Bank of America at the address specified in Section 16 hereof, or at such other address as Bank of America shall furnish to Subordinate Lienholder in the manner provided in Section 16 hereof;~~

~~(f) — In no event shall the terms and provisions of the Subordinate Lienholder Deed of Trust be modified, amended, renewed, or extended, unless Bank of America shall first consent in writing to such modification, amendment, renewal, or extension, which consent may be withheld in Bank of America's sole judgment;~~

~~(g) — In the event that on the date of this Agreement any default shall exist under the terms and provisions of the Subordinate Lienholder Deed of Trust or the Performance Agreement, neither Subordinate Lienholder nor its successors or assigns shall exercise any of the remedies which, under the terms and provisions of the Subordinate Lienholder Deed of Trust or the Performance Agreement, would be otherwise exercisable by them as a consequence of the occurrence of such default;~~

~~(h) — Subordinate Lienholder acknowledges and understands that Bank of America will rely upon the certifications, warranties, representations, covenants, and agreements contained herein as a material consideration and inducement in making, extending or modifying the loan evidenced by the Bank of America Notes and secured by the Bank of America Deed of Trust.~~

~~11.6. Dealings with Borrower.~~ Bank of America may extend, renew, modify, or amend the terms of the Bank of America Obligations and any of the Bank of America Documents, or extend, renew, modify, or amend the terms of any security therefor and release, transfer, assign, sell, or exchange such security and otherwise deal freely with Borrower to the same extent as could any person, all without notice to or consent of Subordinate Lienholder and without affecting the liabilities and obligations of Subordinate Lienholder, pursuant to the provisions hereof.

~~11.7. Assignment of the Bank of America Obligations.~~ Bank of America may assign or transfer any or all of the Bank of America Obligations and/or any interest therein or herein and, notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, such Bank of America Obligations shall be and remain senior to the Subordinate Lienholder Obligations, and the Subordinate Lienholder Obligations shall be and remain subject and subordinate to the Bank of America Obligations for the purposes of this Agreement, and every immediate and successive assignee or transferee of any of the Bank of America Obligations or of any interest therein or herein shall, to the extent of the interest of such assignee or transferee in the Bank of America Obligations, be entitled to the benefits of this Agreement to the same extent as if such assignee or transferee were Bank of America; provided, however, that, unless Bank of America shall otherwise consent in writing, Bank of America shall have an unimpaired right, prior and superior to that of any such assignee or transferee, to enforce this Agreement, for the benefit of Bank of America, as to those portions of the Bank of America Obligations which Bank of America has not assigned or transferred.

12.8. Waiver; Modification. No delay on the part of Bank of America in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Bank of America of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy; nor shall any modification or waiver of any of the provisions of this Agreement be binding upon Bank of America except as expressly set forth in a writing duly signed and delivered by or on behalf of Bank of America.

13.9. Waiver of Rights. Borrower hereby waives (a) notice of acceptance of this Agreement by Bank of America, (b) notice of the existence or creation or nonpayment of all or any of the Bank of America Obligations, and (c) all diligence in the collection or protection of or realization upon the Bank of America Obligations or the collateral therefor.

14.10. Legend. Subordinate Lienholder and Borrower hereby agree to cause all instruments evidencing indebtedness or other obligations of Borrower to Subordinate Lienholder which are or may be subject to the provisions of this Agreement to be subject to an appropriate legend to the effect that such indebtedness or other obligation evidence by such instrument in subordinated to the Bank of America Obligations in the manner and to the extent set forth in this Agreement, and Subordinate Lienholder will make appropriate entries in the books and records of Subordinate Lienholder to indicate that the Subordinate Lienholder Obligations is subject to the Bank of America Obligations.

15.11. Notices. Any notice, demand, designation, or other communication which is required or permitted to be given under the terms and provisions of this Agreement shall be deemed to be duly given and received on the date the same shall be personally delivered to the party to whom the same is addressed at the address below specified (including delivery by a professional overnight courier service), or on the third day after the same shall be deposited in the United States mail, certified mail, return receipt requested postage prepaid, addressed to the party to whom the same is addressed at the address below specified:

If to RIFA:

Danville-Pittsylvania Regional Industrial Facility Authority  
427 Patton Street, Room 428  
Danville, Virginia 24541  
Attention: Chairman  
Fax Number: (434) 799-5041

If to City:

City of Danville, Virginia  
427 Patton Street  
Danville, Virginia 24541  
Attention: City Manager  
Fax Number: (434) 799-6549

If to Bank of America:

Bank of America, N.A.

1101 Wootton Parkway, Suite 400  
Rockville, Maryland 20852  
Attention: Robin K. Toomey  
Fax Number: (301) 517-4962

with copies to:

Troutman Sanders LLP  
1660 International Drive, Suite 600  
McLean, Virginia 22102  
Attn: Margaret Ann Brown, Esq.  
Fax Number: 703-448-6506

Any party hereto may by written notice given to the others in the manner herein provided change the address to which any such notice, demand, designation, or other communication shall be thereafter given to it.

~~16.12.~~ Priority. The priorities herein specified are applicable irrespective of the time of creation of the Bank of America Obligations or the Subordinate Lienholder Obligations.

~~17.13.~~ No Modification to Senior Loan Documents. This Agreement is not intended to modify and shall not be construed to modify any term or provision of the Bank of America Notes, the Bank of America Deed of Trust or any other documents or instruments evidencing, securing, guaranteeing the payment of, or otherwise relating to the indebtedness evidenced by the Bank of America Notes or secured by the Bank of America Deed of Trust, or both.

~~18.14.~~ Further Assurances. So long as the Bank of America Deed of Trust shall affect the Property or any portion thereof, Subordinate Lienholder, its successors or assigns, or any other legal holder of the Subordinate Lienholder Deed of Trust, as the case may be, shall execute, acknowledge, and deliver upon the demand of Bank of America, at any time or times, any and all further documents or instruments in recordable form for the purpose of further confirming the subordination and the agreements herein set forth.

~~19.15.~~ Estoppel Certificate. Subordinate Lienholder hereby agrees that within ten (10) days after written demand of Bank of America, it shall execute, acknowledge and deliver a certification setting forth the total amount of indebtedness owed to it which shall be then secured by any portion of the Property, and any and all such certifications shall be conclusive as to the matters set forth therein, and shall be fully binding upon Subordinate Lienholder, its successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]





The undersigned have set its respective hand and seal hereto to acknowledge and agree to the terms and conditions of the foregoing Subordination Agreement dated ~~December~~, ~~2011~~ January, 2012, by Danville-Pittsylvania Regional Industrial Facility Authority, a political subdivision of the Commonwealth of Virginia, and the City of Danville, Virginia, a municipal subdivision of the Commonwealth of Virginia, for the benefit of Bank of America, N.A., a national banking association, and acknowledged and agreed to by the undersigned:

BORROWER:

WITNESS/ATTEST:

BDJN, LLC, a Virginia limited liability company

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

Name:  
Title:

COMMONWEALTH OF VIRGINIA: )

) ss.

CITY/COUNTY OF \_\_\_\_\_, TO WIT: )

I, the undersigned Notary Public, in and for the Commonwealth and County aforesaid, do hereby certify that, \_\_\_\_\_, known to me to be, or satisfactorily proven to be the person whose name is subscribed to the foregoing document, personally appeared before me in the jurisdiction set forth above and acknowledged himself/herself to be the \_\_\_\_\_ of BDJN, LLC, a Virginia limited liability company, and that he/she, in such capacity, being authorized so to do, executed the foregoing document for the purposes therein contained, by signing his/her name on behalf of the limited liability company.

GIVEN under my hand and seal this \_\_\_\_ day of ~~December, 2011~~ January, 2012.

\_\_\_\_\_  
Notary Public (SEAL)

My Notary Registration number is: \_\_\_\_\_

My commission expires: \_\_\_\_\_

EXHIBIT A  
LEGAL DESCRIPTION

All of that certain lot, tract, or parcel of land, together with improvements thereon and appurtenances thereunto belonging, situate in Danville, Virginia, and more particularly described as follows:

NEW LOT 3F, containing 16.648 acres, located on the northwestern margin of Stinson Drive, as shown on a plat entitled "River View Industrial Park, Plat of Subdivision Showing New Lots 3E & 3F, "Cyber Park" For: Danville Pittsylvania Regional Industrial Facility Authority", dated February 3, 2011, prepared by Crane Surveying PLLC (the "Plat"), and recorded in the Clerk's Office of the Circuit Court of Danville, Virginia (the "Clerk's Office") as Instrument No. 11-355, at page 96; **AND BEING**, in fact, the same property conveyed to BDJN, LLC, a Virginia limited liability company, from Danville Pittsylvania Regional Industrial Facility Authority, a political subdivision of the Commonwealth of Virginia, by deed dated February 7, 2011, and recorded in the Clerk's Office as Instrument No. 11-354, at page 93,

The real estate herein described is subject to all easements, conditions, restrictions and agreements of record affecting the real estate herein described or any part thereof. The real estate herein described is specifically subject to that certain Restrictive Covenants for the Cyber Park dated September 17, 2004, adopted by Danville Pittsylvania Regional Industrial Facility Authority, a political subdivision of the Commonwealth of Virginia on September 20, 2004, recorded in the Clerk's Office as Instrument 05-1671, at page 107,

← Formatted: Left, Indent: Left: 0.5", Right: 0.44"

Formatted: Font: Not Bold

11-356  
INSTRUMENT NO.  
CITY OF DANVILLE, VA

Prepared by and return to:  
Clement & Wheatley  
549 Main Street, P.O. Box 8200  
Danville, VA 24543-8200

Send tax bill to:  
P.O. Box 3300  
Danville, VA 24543

PIN#: 78471, part of 77831

**THIS IS A CREDIT LINE DEED OF TRUST ("Deed of Trust")** made and entered into as of the 7th day of February 2011, by and among **BDJN, LLC**, a Virginia limited liability company, whose address is 107 Balch Springs Circle SE, Leesburg, Virginia 20175 ("**BDJN**") (BDJN is sometimes referred to as "**Grantor**"); **CLEMENT & WHEATLEY, A PROFESSIONAL CORPORATION**, a Virginia professional corporation, whose address is 549 Main Street, P.O. Box 8200, Danville, Virginia 24543 ("**Trustee**"); and **DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY**, a political subdivision of the Commonwealth of Virginia, whose address is 427 Patton Street, Room 428, Danville, VA 24541 (address to which notice may be mailed pursuant to Virginia Code Section 55-58.2) ("**RIFA**"); and **CITY OF DANVILLE, VIRGINIA**, a municipal subdivision of the Commonwealth of Virginia, whose address is 427 Patton Street, Danville, VA 24541 (the "**City**") (RIFA and the City are sometimes collectively and individually referred to as, "**Beneficiary**").

**RECITALS:**

Under that certain Performance Agreement, by and among Electronic Instrumentation and Technology, LLC ("EIT"), RIFA, and the City, dated February 7, 2011 (the "Performance Agreement"), RIFA agreed to convey the Land (as hereafter defined) to BDJN (an affiliate of EIT), and the City agreed to pay certain annual grant funds (the "**Grant Funds**") to EIT, and EIT agreed to satisfy certain obligations, as set forth in the Performance Agreement, related to, without limitation, capital improvements and job creation at the Land. In the event that EIT fails to satisfy any of the obligations of EIT under the Performance Agreement, EIT is obligated to repay to Beneficiary the agreed upon value of the Land, in the amount of One Hundred Seventy Four Thousand Nine Hundred and 00/100 Dollars (\$174,900.00) (the "**Land Value**"), plus the amount of any Grant Funds received by EIT.

Grantor desires to secure (a) EIT's obligations under the Performance Agreement, including, without limitation, repayment of the Land Value and any and all Grant Funds received or to be received by Grantor, and (b) the additional payments hereinafter agreed to be made, by the collateral hereinafter described.

**NOW, THEREFORE**, in consideration of the premises and for the purposes aforesaid, and in further consideration of the sum of One Dollar (\$1.00) paid to Grantor by Beneficiary, receipt of which is hereby acknowledged, Grantor has given, granted, bargained and sold, and by

these presents do give, grant, bargain, and convey, with General Warranty and English Covenants of Title unto Trustee, the following property (the "**Premises**");

(a) The real property lying and being in the City of Danville, Virginia, and more particularly described in SCHEDULE A, ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE (the "**Land**");

(b) All buildings and other improvements now or hereafter located in, on or about the Land, and all of Grantor's building materials intended for incorporation but not incorporated into the improvements to the Land, and all furnishings, furniture, fixtures, machinery, and equipment used in connection with the operation of such improvements, specifically including, without limitation, appliances, gas and electric fixtures and systems, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures and systems, carpeting and other floor coverings, water heaters, air conditioning apparatus and systems, window screens, awnings, and storm sashes, whenever acquired by Grantor and now or hereafter located in, upon or under the Land, together with all additions and accessions thereto and replacements and proceeds thereof (the "**Improvements**");

(c) All rents, issues, profits, royalties, income and other benefits derived from the Land and the Improvements (the "**Rents**"), subject to the right, power and authority hereinafter given to Grantor to collect and apply such Rents, and the proceeds from any insurance or condemnation award relating to the Land and the Improvements; and

(d) All easements, rights-of-way and rights used in connection with the Land and the Improvements or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto (collectively "**Appurtenances**").

IN TRUST to secure the payment, performance and satisfaction of all of the obligations of EIT as set forth in the Performance Agreement.

This Deed of Trust shall secure payment of all obligations of EIT to Beneficiary under the Performance Agreement and all future advances of Grant Funds under the Performance Agreement, and all modifications, extensions, and renewals thereof, the aggregate maximum principal amount of all existing obligations, future advances, and all other obligations outstanding at any one time and to be secured by this Deed of Trust not to exceed **TWO HUNDRED TWENTY FOUR THOUSAND NINE HUNDRED AND 00/100 DOLLARS (\$224,900.00)**, plus attorneys' fees and court costs, and any advances necessary for the protection of the security or title thereto, including, but not limited to, advances for taxes and insurance premiums and plus all other payments or liabilities otherwise provided for in this Deed of Trust.

**THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST**, that if EIT shall satisfy all of EIT's obligations under the Performance Agreement, and shall comply with all the covenants, terms and conditions of this Deed of Trust, this conveyance shall be null and void and may be cancelled of record at the request of Grantor and at the cost of Grantor. Grantor hereby further covenants and agrees with Trustee and Beneficiary as follows:

**Section 1. Cross-Collateralization.** In addition to the Performance Agreement, this Deed of Trust secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Beneficiary, or any one or more of them, as well as all claims by Beneficiary against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Performance Agreement, whether voluntary or otherwise, whether due or

not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

**Section 2. Taxes and Other Impositions.** Grantor will pay, or cause to be paid, all taxes, assessments, special assessments, and other charges or levies imposed upon or against or with respect to the Premises or the ownership, use, occupancy, or enjoyment of any portion thereof, or any utility service thereto, as the same become due and payable, including, but not limited to, all real estate taxes assessed against the Premises or any part thereof (hereafter all such taxes, assessments, special assessments, charges, and/or levies shall be referred to as "Impositions"), and shall deliver promptly to Beneficiary upon written request by Beneficiary such evidence of the payment of any and all Impositions as Beneficiary may reasonably require. If the law imposing such Imposition permits the Imposition to be paid in future installments, Grantor may pay or cause to be paid such Imposition in installments as permitted by law; provided such payment in installments does not result in any penalty or imposition of any additional lien or encumbrance against the Premises. Grantor or its designee may in good faith, and with due diligence, contest, at its own cost and expense, by proper legal proceedings, the validity or amount of any such Imposition, on the condition that Grantor shall deposit or cause to be deposited with Beneficiary, as security for such contested Imposition, an amount in cash or other security satisfactory to Beneficiary equal to the contested amount, and on the further condition that no amount so contested may remain unpaid for such length of time as would permit the Premises, or any part thereof, to be sold or otherwise transferred for the nonpayment thereof, or as would permit an action, either of foreclosure or otherwise, to be commenced by the holder of any lien on the Premises created by an Imposition being contested.

**Section 3. Insurance.** Grantor shall obtain and maintain or cause to be obtained and maintained at Grantor's sole expense: (1) a mortgagee title insurance policy issued to Beneficiary by a title insurance company reasonably acceptable to Beneficiary insuring Beneficiary's interest in the Land, Improvements, and Appurtenances in an amount equal to the Land Value; (2) all-risk insurance with respect to all insurable property constituting a portion of the Premises, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado, and such hazards as are presently included in so-called "all-risk" coverage and against such other insurable hazards as Beneficiary may reasonably require, in an amount not less than 100% of the full replacement cost, including the cost of debris removal, without deduction for depreciation, and sufficient to prevent Grantor or Beneficiary from becoming a coinsurer (such insurance to be in Builder's Risk (non-reporting) form during and with respect to any construction on the Premises); (3) if, and to the extent any portion of the Premises is in a special flood hazard area, a flood insurance policy in an amount equal to the Land Value; and (4) comprehensive general public liability insurance, on an "occurrence" basis, for the benefit of Grantor and Beneficiary as named insureds. All insurance policies shall be issued and maintained by insurers, in amounts, with deductibles, and in form reasonably satisfactory to Beneficiary, and shall require not less than fifteen (15) days' prior written notice to Beneficiary of any cancellation or change of coverage. All insurance policies maintained, or caused to be maintained, by Grantor with respect to the Premises, except for public liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by Grantor or Beneficiary and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. If any insurer which has issued a policy of title, hazard, liability, or other insurance required pursuant to this Deed of Trust becomes insolvent or the subject of any bankruptcy, receivership, or similar proceeding or if in

Beneficiary's reasonable opinion the financial responsibility of such insurer is or becomes inadequate, Grantor shall, in each instance, promptly upon the request of Beneficiary and at Grantor's expense, obtain and deliver to Beneficiary a like policy (or, if and to the extent permitted by Beneficiary, a certificate of insurance) issued by another insurer, which insurer and policy meet the requirements of this Deed of Trust. Without limiting the discretion of Beneficiary with respect to required endorsements to insurance policies, all such policies for loss of or damage to the Premises shall contain a standard mortgage clause (without contribution) naming Beneficiary as mortgagee with loss proceeds payable to Beneficiary notwithstanding (i) any act, failure to act, negligence of, or violation of any warranty, declaration, or condition contained in any such policy by any named insured; (ii) the occupation or use of the Premises for purposes more hazardous than permitted by the terms of any such policy; (iii) any foreclosure or other action by Beneficiary; or (iv) any change in title to or ownership of the Premises or any portion thereof, such proceeds to be held for application as provided herein. A certificate of insurance of each initial insurance policy shall be delivered to Beneficiary at the time of execution of this Deed of Trust, with premiums fully paid, and a certificate of insurance for each renewal or substitute policy shall be delivered to Beneficiary, with premiums fully paid, at least ten (10) days before the termination of the policy that the certificate evidences as being renewed or replaced. Grantor shall cause all premiums to be paid on policies required hereunder as they become due and payable and promptly cause to be delivered to Beneficiary evidence reasonably satisfactory to Beneficiary of the timely payment thereof. If any loss occurs at any time when Grantor has failed to perform Grantor's covenants and agreements in this Section, Beneficiary shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Grantor, to the same extent as if it had been made payable to Beneficiary. Upon any foreclosure hereof or transfer of title to the Premises in extinguishment of the whole or any part of the secured obligations, all of Grantor's right, title, and interest in and to the insurance policies referred to in this Section (including unearned premiums) and all proceeds payable thereunder, shall thereupon vest in the purchaser at foreclosure or other such transferee, to the extent permissible under such policies. Beneficiary shall have the right (but not the obligation) to make proof of loss for, settle, or adjust any claim under, and receive the proceeds of, all insurance for loss of or damage to the Premises, and the expenses incurred by Beneficiary in the adjustment and collection of insurance proceeds shall be a part of the secured obligations and shall be due and payable to Beneficiary on demand. Beneficiary shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any such proceeds or for the obtaining, maintaining, or adequacy of any insurance or for failure to see to the proper application of any amount paid over to Grantor. In the event of loss, Grantor will give prompt notice by mail to Beneficiary, who may make proof of loss if not made promptly by Grantor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Grantor and Beneficiary jointly. If the Premises, or any part thereof, shall be damaged by fire or other hazard against which insurance is held, the proceeds of insurance shall, to the extent of any obligations then remaining unpaid, be paid to Beneficiary, and, at Beneficiary's sole option, may be applied either to the obligations under the Performance Agreement or to the restoration or repair of the property damaged. Beneficiary may, at its option, pay any such insurance premiums or any Impositions against the Premises of which payment, amount and validity thereof the official receipt shall be conclusive evidence and any amounts so expended shall immediately become debts due by Grantor, shall bear interest at the applicable judgment rate and their payment shall be secured by this Deed of Trust.

**Section 4. Maintenance of Premises; Compliance with Laws.** Grantor will keep, or cause to be kept, the Premises in as good order, repair and condition as it is now, reasonable wear and tear excepted and shall not commit or permit any waste. Grantor will also comply with all

applicable laws, statutes, ordinances, codes and judicial decisions of all applicable state, federal or local governmental entities.

**Section 5. Conveyance of Premises.** Grantor will not, except as may occur in the normal course of business, sell, convey, transfer or encumber the Premises, or any part thereof or interest therein, legal or equitable, such that Beneficiary's security is materially impaired, without the prior written consent of Beneficiary; provided, however, that Grantor may dispose of, free and clear of the security interest granted herein and the lien hereof, any personal property or fixtures which, in the reasonable judgment of Grantor, have become obsolete or unfit for use or which are no longer useful in Grantor's operations, on the condition that Grantor shall replace such personal property or fixtures by, or substitute for the same, other personal property or fixtures (not necessarily of the same character) owned by Grantor, which shall (a) be of at least equal value to the personal property or fixtures disposed of by Grantor; (b) perform a function or serve a purpose the same as, similar to or related to that of the original personal property or fixtures (including fulfillment of any material function served on the Premises by the personal property or fixtures disposed of by Grantor); and (c) such substitute property shall be free and clear of all liens and encumbrances other than the lien of this Deed of Trust. Any such replacement personal property or fixtures shall forthwith, without further action, become subject to the security interest granted in, and the lien created by, this Deed of Trust, and such security interest is hereby granted by Grantor. Beneficiary's consent to any conveyance or encumbrance may be conditioned upon a modification of the Performance Agreement or this Deed of Trust. For the purposes of this Section, any transfer of any ownership interest of Grantor shall be deemed a conveyance, and any such transfer without the prior written consent of Beneficiary shall be a default under this Deed of Trust. Notwithstanding any provision of this Deed of Trust to the contrary, the parties agree and acknowledge that Grantor may encumber the Premises with any deed of trust securing the construction of the Improvements, and Beneficiary, at the expense of Grantor, shall subordinate this Deed of Trust to any such deed of trust upon thirty (30) days' prior notice to Beneficiary.

**Section 6. Assignment of Rents; Leases.**

**6.01 Assignment.** As further security for all of the obligations under the Performance Agreement and for the faithful performance of all the covenants, agreements, terms and provisions of this Deed of Trust, Grantor hereby sells, transfers and assigns unto Beneficiary all the right, title and interest of Grantor in and to the Rents, and to that end Grantor hereby assigns and sets over unto Beneficiary all leases of the Premises now made, executed or delivered, whether written or verbal, or hereafter made, whether written or verbal (the "Leases"), and Grantor does hereby authorize and empower Beneficiary to collect the Rents when due, and does hereby direct each tenant of the Premises to pay the Rents to Beneficiary, upon demand for payment thereof by Beneficiary; it being understood and agreed, however, that no such demand shall be made absent the occurrence of an Event of Default hereunder; and until such demand is made, Grantor is authorized to collect or continue collecting the Rents; such privilege to collect or continue collecting the Rents by Grantor shall not operate, however, to permit the collection of any Rents more than thirty (30) days in advance of their due date. This assignment is unconditional, irrevocable and absolute and shall become perfected and enforceable upon recordation of this Deed of Trust and without any further act by Beneficiary, including, but not limited to, without obtaining possession of the Premises, without impounding the Rents, or without securing the appointment of a receiver. Grantor's right to collect Rents on behalf of Beneficiary, as described above, may be revoked at any time by notice of revocation given to Grantor by Beneficiary.

**6.02 Compliance with Leases.** Grantor will promptly and fully keep, perform and comply with all the terms and covenants imposed upon or assumed by Grantor as landlord under the Leases and will not do, permit anything to be done, or omit or refrain from doing anything, the doing or omission of which will entitle any tenant to terminate any of the Leases.

**6.03 Separate Assignment of Leases.** A default under any separate assignment of Grantor's interest in leases given as additional security the obligations under the Performance Agreement shall constitute an Event of Default hereunder.

**Section 7. Additional Rights or Duties.** Grantor hereby waives the rights of presentment, notice of dishonor, and the homestead exemption. "Presentment" means the right to require Beneficiary to demand payment of amounts due. "Notice of dishonor" means the right to require Beneficiary to give notice to other persons that amounts due have not been paid as to the obligations hereby secured and as to all other obligations which may be imposed upon them by the provisions of this Deed of Trust. Grantor hereby consents and agrees that the obligations hereby secured, or any part thereof, may be renewed or extended as often as may be desired by agreement between Beneficiary and any subsequent owner of the Premises, and no such renewal or extension shall in any way affect Grantor's responsibility, whether as surety or otherwise. Grantor grants unto Beneficiary the right and power to appoint a substitute trustee or trustees. Grantor, and all interested in the obligations hereby secured, by accepting the benefits hereof, agrees that all authority, power and discretion hereinabove granted to the Trustee may be exercised by it, without any other, with the same effect as if exercised jointly by all of them.

**Section 8. Intentionally Omitted.**

**Section 9. Condemnation.** Grantor shall notify Beneficiary immediately of any threatened or pending proceeding for condemnation affecting the Premises or arising out of damage to the Premises, and Grantor shall, at Grantor's expense, diligently prosecute any such proceedings. To the extent Beneficiary's security is materially impaired, Beneficiary shall have the right (but not the obligation) to participate in any such proceeding and to be represented by counsel of its own choice. Beneficiary shall be entitled to receive all sums which may be awarded or become payable to Grantor for the condemnation of the Premises, or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Grantor for injury or damage to the Premises, but only to the extent necessary to satisfy outstanding indebtedness to Beneficiary and all remaining sums shall be paid to Grantor. Grantor shall, promptly upon request of Beneficiary, execute such additional assignments and other documents as may be necessary from time to time to permit such participation and to enable Beneficiary to collect any such sums. All such sums are hereby assigned to Beneficiary, and shall, after deduction therefrom of all reasonable expenses actually incurred by Beneficiary, including reasonable attorneys' fees, at Beneficiary's option be (1) released to Grantor, or (2) applied (upon compliance with such terms and conditions as may be required by Beneficiary) to repair or restoration of the Premises so affected, or (3) applied to the payment of the secured obligations in such order and manner as Beneficiary, in its sole discretion, may elect, whether or not due. In any event, the unpaid portion of the secured obligations shall remain in full force and effect and the payment thereof shall not be excused. Beneficiary is hereby authorized, in the name of Grantor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment, or decree. All reasonable costs and expenses (including, but not limited to, attorneys' fees) incurred by Beneficiary in connection with any condemnation shall be paid in addition to the secured obligations and shall become a part thereof to this Deed of Trust.

**Section 10. Inspection.** Beneficiary may inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose to Beneficiary and its representatives.

**Section 11. Events of Default.** The following, if not cured within a reasonable period, not less than ten (10) days and not greater than thirty (30) days, following written notice by Beneficiary to Grantor, shall constitute defaults or events of default hereunder ("Events of Default"):

(a) The failure to satisfy any obligation under the Performance Agreement, and all applicable cure periods, if any, have expired.

(b) If Grantor (i) files a petition or has a petition filed against it under the Bankruptcy Code or any proceeding for the relief of insolvent debtors; (ii) generally fails to pay its debts as such debts become due; (iii) has a custodian appointed for itself; (iv) benefits from or is subject to the entry of an order for relief by any court of insolvency; (v) makes an admission of insolvency seeking the relief provided in the Bankruptcy Code or any other insolvency law; (vi) makes an assignment for the benefit of creditors; (vii) has a receiver appointed, voluntarily or otherwise, for its property; (viii) suspends business; (ix) permits a judgment in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) or more to be obtained against it which is not promptly paid or promptly appealed and secured pending appeal; or (x) becomes insolvent, however otherwise evidenced.

(c) If any material representation, warranty or certificate given by Grantor in connection with the Performance Agreement or at any time hereafter required to be given by Grantor hereunder shall be false or erroneous in any material respect when made.

(d) A material breach of or a material failure of performance by Grantor of any provision of or the occurrence of any default under the terms and provisions of any documents, instruments, security agreements, mortgages or deeds of trust granting security interests in or liens upon the Premises or any part thereof, whether prior to or subordinate to the lien of this Deed of Trust.

(e) Any attempted enforcement of or realization upon any security interest, lien or judgment affecting the Premises or any part thereof, whether prior to or subordinate to the lien of this Deed of Trust; provided however, the filing, perfection or enforcement of any mechanic's lien as a result of any labor performed or materials provided to the Premises, or any portion thereof, during Donnachaidh Associates, LLC's ownership of the Premises shall not constitute a default or event of default.

(f) Any actual or threatened demolition or injury or waste to the Premises which may impair the value of the Premises.

**Section 12. Power of Sale.** Upon the occurrence of an Event of Default, Beneficiary may notify Trustee to exercise the power of sale granted hereunder and upon such notification it shall be lawful for and the duty of Trustee, and Trustee is hereby authorized and empowered to expose to sale and to sell the Premises or any part thereof as follows:

(a) Trustee shall proceed to sell the same at auction at the premises or at such other place in the county in which the Premises lies, as Trustee may select upon such terms and conditions as Trustee may deem best after first advertising the time, place and terms of sale in at

least three (3) consecutive issues, in advance of the date of such sale, of a newspaper published or having general circulation in the county in which the Premises is located.

(b) The power of sale above granted may be exercised at different times as to different portions of the Premises, and if for any reason any executory contract of sale shall not be performed, then new contracts may be made with respect to the same portion of the Premises (with or without other portions). If the Trustee deems it best for any reason to postpone or continue the sale at any time or from time to time, he may do so, in which event Trustee shall announce, at the time and place last appointed for such sale, the postponement thereof and the time and place for the postponed sale, or shall give such further notice of sale as Trustee may see fit to give, and in either case no other notice shall be required.

(c) Full power and authority is hereby expressly granted and conferred upon the Trustee to make, execute, and deliver all necessary deeds of conveyance for the purpose of vesting in the purchaser or purchasers complete and entire legal and equitable title to the Premises, or the portion thereof so sold, and the recitals therein shall be received in all courts of law and equity as prima facie evidence of the matters therein stated; and at such sale the Beneficiary may become a purchaser, and no purchaser shall be required to see to the proper application of the purchase money.

(d) The proceeds of such sale shall be applied, first, to discharge the expenses of executing the trust, including a reasonable commission to the Trustee not to exceed five percent (5%) of the gross proceeds of sale; next, to discharge all taxes, levies, and assessments on the Premises, with costs and interest if they have priority over the lien of this Deed of Trust, including a proper proration thereof for the current year; next, to reimburse Trustee and Beneficiary for all sums expended by them pursuant to the provisions of this Deed of Trust, with interest thereon; next to pay the obligations under the Performance Agreement secured by this Deed of Trust; next, to discharge in order of their priority, if any, the remaining debts and obligations secured by any liens of record inferior to this Deed of Trust; and any residue of said proceeds shall be paid to Grantor or its assigns, provided, however, that Trustee as to such residue shall not be bound by an inheritance, devise, conveyance, assignment or lien of or upon Grantor's equity, without actual notice thereof prior to distribution.

**Section 13. Right of Collection.** In addition to the right to require Trustee to sell for a breach hereof, Beneficiary shall also have the cumulative right of collecting the obligations secured hereby by suit in equity or action at law, and/or by requiring Trustee to take possession of and rent or operate the Premises, either pending a sale or until the amount secured hereby shall have been paid, but no liability shall attach to Trustee for failure so to do. Rents and/or income collected by Trustee shall be applied as the proceeds of sale are to be applied.

**Section 14. Appointment of Receiver.** Beneficiary shall have the right, after the occurrence of an Event of Default, to the appointment of a receiver to collect the Rents from the Premises without notice to Grantor or any other party (Grantor hereby waiving any right to such notice) and without consideration of the value of the Premises or the solvency of any person liable for the payment of the amounts then owing, and all amounts collected by the receiver shall, after expenses of the receivership, be applied to the payment of the obligations hereby secured, and Beneficiary, at its option, in lieu of an appointment of a receiver shall have the right to do the same. If such receiver should be appointed, or if there should be a sale of the Premises, as provided in Section 12, Grantor, or any person in possession of the Premises thereunder, as tenant or otherwise, shall become a tenant at will of the receiver or of the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

**Section 15. Delay Not to Operate as Waiver; Indemnification of Trustee and Beneficiary.** No delay or forbearance by Beneficiary in exercising any rights hereunder or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder, and all such rights shall be cumulative. In case Beneficiary or Trustee voluntarily or otherwise shall become a party to any suit or legal proceeding to protect the Premises or the lien of this Deed of Trust, Trustee and Beneficiary shall be saved harmless and reimbursed by Grantor for any amounts paid, including all reasonable costs, charges and attorneys' fees incurred in any such suit or proceeding, which obligations shall be secured by this Deed of Trust.

**Section 16. Beneficiary's Powers.** Without affecting the liability of any other person liable for the obligations under the Performance Agreement, and without affecting the lien or charge of this Deed of Trust upon any portion of the Premises not then or theretofore released as security for Performance Agreement, Beneficiary may, from time to time upon the written consent of Grantor, (i) release any person so liable, (ii) extend the maturity or alter any of the terms of the Performance Agreement, (iii) grant other indulgences, (iv) release or re-convey (or cause to be released or re-conveyed at any time at Beneficiary's option) any part or all of the Premises, (v) take or release any other or additional security for any obligation hereby secured, (vi) make compositions or other arrangements with debtors in relation thereto, or (vii) advance additional funds to protect the security hereof or pay or discharge the obligations of Grantor hereunder, or under the Performance Agreement or any document executed in connection with or securing the Performance Agreement, and all amounts so advanced, with interest thereon at the applicable judgment rate, shall be secured hereby.

**Section 17. Waivers.** Grantor hereby waives any rights or remedies on account of any extensions of time, releases granted or other dealings between Beneficiary and any subsequent owner of the Premises herein conveyed or pledged. Grantor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisal before sale of any portion of the Premises and (ii) in any way extending the time for the enforcement of the obligations under the Performance Agreement. To the full extent Grantor may do so, Grantor agrees that Grantor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, redemption or extension, and Grantor, and Grantor's successors and assigns, and for any and all persons ever claiming any interest in the Premises, to the extent permitted by law, hereby waives and releases all rights of valuation, appraisal, redemption, stay of execution, notice of election to mature or declare due the whole of the secured obligations and marshalling in the event of foreclosure of the liens hereby created. Grantor further waives any and all notices.

**Section 18. Interest Not to Exceed Maximum Allowed by Law.** The parties hereto shall in no event be deemed to have contracted for a greater rate of interest than the maximum rate permitted by law. Should a greater amount be collected, it shall be construed as a mutual mistake of the parties and the excess shall be returned to the party paying same.

**Section 19. Substitution of Trustee.** Beneficiary shall at any time have the irrevocable right to remove any Trustee herein named without notice or cause and to appoint his successor by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to record in the Clerk's Office of the Circuit Court of Danville, Virginia, and in the event of the death or resignation of any Trustee herein named, Beneficiary shall have the right to appoint his successor by such written instrument. Any Trustee so appointed shall be vested with the title to the Premises, and shall possess all the powers, duties and obligations herein conferred on Trustee

in the same manner and to the same extent as though he was named herein as Trustee. If two trustees are named herein, all powers, rights, and duties herein conferred and imposed upon trustees may be exercised or discharged by either or both of them. A prior election to act jointly or severally shall not prevent either or both of trustees from subsequently executing jointly or severally any or all of the provisions hereof. Beneficiary shall have the right to substitute a Trustee at Beneficiary's discretion for any reason whatsoever.

**Section 20. Notices.** All notices and other communications required under this Deed of Trust shall be in writing and shall be deemed to have been properly given, if personally delivered, on the date of such delivery, or, if sent by Certified or Registered U.S. Mail, return receipt requested, on the third (3rd) business day following deposit in the U.S. Mail, postage prepaid or if sent by overnight courier with guaranteed overnight delivery, on the day following the date delivered to such overnight courier. All notices shall be addressed to the party to whom it is intended at its address set forth on the first page of this Deed of Trust. Any party may designate a change of address by written notice to the other, given at least ten (10) business days before such change of address is to become effective.

**Section 21. Remedies Cumulative.** All rights and remedies provided for herein and in the Performance Agreement are cumulative of each other and of any and all other rights and remedies existing at law or in equity, and Trustee and Beneficiary shall, in addition to the rights and remedies provided herein or in the Performance Agreement, be entitled to avail themselves of all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the secured obligations and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any right or remedy provided for hereunder or under the Performance Agreement or provided for by law or in equity shall not prevent the concurrent or subsequent employment of any other appropriate right or rights or remedy or remedies.

**Section 22. Beneficiary's Discretion as to Security.** Beneficiary may resort to any security given by this Deed of Trust, in whole or in part, and in such portions and in such order as may seem best to Beneficiary in its sole and uncontrolled discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits, liens, or security interests evidenced by this Deed of Trust.

**Section 23. Successors and Assigns.** The covenants, terms and conditions herein contained shall bind, and the benefits and powers shall inure to the respective successors and assigns of the parties hereto. Whenever used herein, the singular number shall include the plural, the plural the singular, and the term "Beneficiary" shall include any payee of the obligations hereby secured and any transferee or assignee thereof, whether by operation of law or otherwise. All rights herein created for the benefit of Beneficiary shall inure to the benefit of and may be exercised by Beneficiary's successors and assigns.

**Section 24. Governing Law.** THIS DEED OF TRUST SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA. THIS DEED OF TRUST SECURES PRESENT AND FUTURE ADVANCES AND IS GOVERNED BY THE PROVISIONS OF VIRGINIA CODE SECTION 55-58.2.

**Section 25. Severability.** If any provisions of this Deed of Trust or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent under applicable law, the remainder of this Deed of Trust and the application of such provisions to

other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**Section 26. Headings.** The headings of the sections, paragraphs, and subparagraphs of this Deed of Trust are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

**Section 27. Addenda.** The terms and provisions of any addendum attached hereto are incorporated herein by reference and made a part hereof.

**Section 28. Obligations Secured Subject to Call.** THE OBLIGATIONS SECURED HEREBY ARE SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.

IN WITNESS WHEREOF, Grantor has caused this Deed of Trust to be executed under the day and year first above written.

BDJN, LLC, a Virginia limited liability company

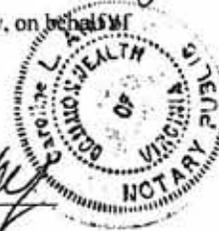
By: *David Fabiskie*  
Title: President

COMMONWEALTH OF VIRGINIA  
~~CITY~~/COUNTY OF Loudoun, to-wit:

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of February 2011, by David Fabiskie, in his/her capacity as President of BDJN, LLC, a Virginia limited liability company, on behalf of said company.

My commission expires: 31st July 2013

*Kevin D. Boyd*  
Notary Public  
Registration No. 302161



SCHEDULE A

All of that certain lot, tract, or parcel of land, together with improvements thereon and appurtenances thereunto belonging, situate in Danville, Virginia, and more particularly described as follows:

**NEW LOT 3F**, containing 16.648 acres, located on the northwestern margin of Stinson Drive, as shown on a plat entitled "River View Industrial Park, Plat of Subdivision Showing New Lots 3E & 3F, "Cyber Park" For: Danville Pittsylvania Regional Industrial Facility Authority", dated February 3, 2011, prepared by Crane Surveying PLLC (the "Plat"), and recorded in the Clerk's Office of the Circuit Court of Danville, Virginia (the "Clerk's Office") as Instrument No. 11-355, at page 96; AND BEING, in fact, the same property conveyed to BDJN, LLC, a Virginia limited liability company, from Danville-Pittsylvania Regional Industrial Facility Authority, a political subdivision of the Commonwealth of Virginia, by deed dated February 7, 2011, and recorded in the Clerk's Office as Instrument No. 11-354, at page 93.

This conveyance is made subject to all easements, conditions, restrictions and agreements of record affecting the real estate hereby conveyed or any part thereof. This conveyance is further made specifically subject to that certain Restrictive Covenants for the Cyber Park dated September 17, 2004, adopted by Danville-Pittsylvania Regional Industrial Facility Authority, a political subdivision of the Commonwealth of Virginia on September 20, 2004, recorded in the Clerk's Office as Instrument 05-1671, at page 107.

State Tax	039	<u>562.25</u>
City Tax	214	<u>187.42</u>
Transfer	212	
<del>Transfer Tax</del>	<del>039</del>	<del>23.00</del>
DPF	036	<u>20.00</u>
OPF	035	<u>1.00</u>
Clerk	301	<u>28.50</u>
VSLF	145	<u>1.50</u>
TFF	106	<u>5.00</u>
Total	\$	<u>828.67</u>

VIRGINIA: CLERK'S OFFICE OF THE CIRCUIT COURT OF CITY OF DANVILLE

The foregoing Instrument with acknowledgement was admitted to record on Feb 7, 2011 at 4:22 P.M.

TESTE: GERALD A. GIBSON, CLERK

*Gerald A. Gibson*  
 (Given/Mailed to: C+W)