



IV.-A.

Agenda Item

**County of Hanover**

**Board Meeting: September 10, 2014**

**Subject:** Consideration of Proposed Third Amendment to Development/Acquisition Agreement with Lewistown Commerce Center LLC and Lewistown Commerce Center Community Development Authority

**Summary of Agenda Item:** The proposed Third Amendment to the Development/Acquisition Agreement with Lewistown Commerce Center LLC and Lewistown Commerce Center Community Development Authority (“CDA”) recognizes that the development of an outlet center in the Lewistown CDA, as anticipated in the First and Second Amendments to the original Development/Acquisition Agreement, is not likely in the near future. Therefore, the proposed Third Amendment provides for the use of \$1,040,000 of CDA bond proceeds to finance certain specified infrastructure improvements benefiting property within the CDA district, including County park lands, in lieu of the construction of the originally anticipated “ring road” designed to serve the outlet center. The Third Amendment also provides for the phased release of the public access easement recorded for the purpose of the “ring road.”

**County Administrator’s Recommended Board Motion:** Motion to Approve the Third Amendment to Development/Acquisition Agreement with Lewistown Commerce Center LLC and Lewistown Commerce Center Community Development Authority

### **THIRD AMENDMENT TO DEVELOPMENT/ACQUISITION AGREEMENT**

THIS THIRD AMENDMENT TO DEVELOPMENT/ACQUISITION AGREEMENT (this "Third Amendment"), dated as of September \_\_\_, 2014, is by and among the COUNTY OF HANOVER, VIRGINIA (the "County") and LEWISTOWN COMMERCE CENTER, LLC, (the "Developer") and the LEWISTOWN COMMERCE CENTER COMMUNITY DEVELOPMENT AUTHORITY (the "Authority").

#### WITNESSETH:

WHEREAS, the County entered into a Development/Acquisition Agreement, dated as of September 1, 2007 with the Authority and the Developer, as amended by both the First Amendment to Development/Acquisition Agreement, dated as of August 29, 2008 and the Second Amendment to Development/Acquisition Agreement, dated as of March 29, 2011 (the Second Amendment”), each among the County, the Authority and the Developer (as so amended, the "Development Agreement");

WHEREAS, the Development Agreement provides in Section 6.03 for the Development of a planned “Outlet Center” at a location within the CDA District, including provision for expenditure of amounts for specific “Road Improvements” related to the Outlet Center as then planned and for Developer to make efforts to substantially complete that development by specified dates and for the Developer to reimburse certain amounts to the County in the event that the dates set out therein are not met;

WHEREAS, because the developer of the planned Outlet Center has proposed to locate the center outside of the CDA District, the County, the Authority and the Developer agree that the development of an outlet center within the CDA District as provided in the Development Agreement is no longer likely by the specified dates and that construction of the Road Improvements as currently set out in the Development Agreement is not necessary for the development of the real estate for uses other than as an outlet center and might, in fact, interfere with such development;

WHEREAS, Developer has requested that (i) the Authority agree to re-convey the permanent easement for roads it received in accordance with the Development Agreement, (ii) the schedule for developing the real estate addressed by Section 6.03 of the Development Agreement (the “Real Estate”) be extended and (iii) expenditures of funds by or at the request of Developer for the construction of public roads supporting development and use of the real estate be treated as funds reimbursed for the purposes of Section 6.03; and

WHEREAS, in accordance with the Second Amendment, the Majority Holders of the Authority’s \$37,675,000 Revenue Bonds, Series 2007 (the “Bonds”) have consented to the terms of this Third Amendment.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained and other valuable consideration, the parties hereto agree as follows:

Section 1. Amendments to Development Agreement.

(a) The Development Agreement is amended by replacing Section 6.03 thereof, in its entirety, with the following:

Section 6.03 Payment for Additional Facilities.

(a) The County and the Authority agreed in previous amendments to this Development Agreement to use a portion of the amount designated as “Contingency” on Exhibit A to this Development Agreement (the “Contingency”) to finance (i) the acquisition by the Authority of a permanent easement for access over the land identified on Exhibit C to this Development Agreement (the “Road Easement Parcel”); (ii) construction of certain road improvements over the Road Easement Parcel; (iii) the acquisition by the County of certain lands generally described on Exhibit C to this Development Agreement; and (iv) an amount not to exceed \$123,000 to pay interest on the Bonds during the Capitalized Interest Period established under the Indenture. The Developer acknowledges that the County and the Authority have used the Contingency for the purposes described above, including the use of \$1,040,000 of the Contingency to acquire the Road Easement Parcel in consideration of the benefits then expected to be derived by the County from the development of an Outlet Center on land on or near the Road Easement Parcel described generally on Exhibit D to this Development Agreement (the land shown on Exhibit D being referred to as the “Real Estate”, as well as the provision of access to the County’s park lands, including increased employment, expanded tax base and other economic benefits. Although development of an outlet center on the Real Estate in the near term no longer appears likely, the County and the Authority anticipate that benefits to the County may still be realized through development of the Real Estate for other commercial and retail uses. The Developer, the County and the Authority anticipate that the Developer will cause to be constructed a public road, built to Virginia Department of Transportation standards for public roads to be accepted into the state system of highways (being those same standards to which existing public roads within the CDA District have been built) at the location identified on Exhibit D to this Development Agreement (originating at the current curb cut adjacent to the Bass Pro parcel and extending west to the County’s park and with right of way at least 60 feet in width) (the “Park Road”) to support retail and commercial uses of the Real Estate (which is within the CDA area) and to provide public access to the Park. The County, the Authority and the Developer agree hereby that Developer shall be credited against its current reimbursement obligations of \$1,040,000 the amount of \$208,000 (representing 20% of the Authority’s cost for the Road Easement Parcel, which is the portion of the Road Easement Parcel to be utilized for the planned Park Road), thereby reducing the reimbursement obligation to \$832,000 (the “Agreed Reimbursement Amount”).

(b) The County, the Authority and the Developer agree that the Developer will cause to be constructed (either by Developer, Owners or purchasers of the Real Estate, or their respective contractors) by December 31, 2020, the Park Road and, elsewhere on the Real Estate, (in the area indicated on Exhibit D to this Development Agreement), public

roads, built to Virginia Department of Transportation standards for public roads to be accepted into the state system of highways (the "Road Improvements"). The County, the Authority and the Developer agree that the costs of construction of the Road Improvements, when documented as provided in paragraph (c) below, shall be credited against the reimbursement amount when the roads are completed and the County has satisfactorily conducted its final inspection of those Road Improvements. If the Developer and the Owners do not complete or cause to be completed by December 31, 2020 an aggregate of 150,000 square feet of Improvements on the Real Estate described on Exhibit D, then the Developer will pay to the Trustee an amount, if any, equal to the amount by which the Agreed Reimbursement Amount exceeds the sum of the cost of all Road Improvements constructed by that date plus the amount of any payments made to the Trustee described in paragraph (d) below. Any amount so paid by the Developer to the Trustee will be used in accordance with the terms of the Bonds to pay principal of the Bonds.

(c) The Developer agrees to provide, or to cause to be provided, to the Authority evidence reasonably acceptable to the Authority of payment of the actual cost of the Road Improvements, which will include all design, construction and related costs.

(d) The County, the Authority and the Developer agree that promptly upon Developer's request therefor in connection with development of the adjacent Real Estate, the County will, without payment of any additional amount, release the permanent road easement previously granted to the County over that portion of the Road Easement Parcel other than that portion upon which the Park Road will be built (identified on Exhibit D to this Development Agreement as "Road Easement to be Released"). However, the County will not be required to release a portion of the Road Easement to be Released which exceeds (based on acreage) the portion of the Agreed Reimbursement Amount which has been satisfied by the Developer, either through completion of Road Improvements (and submission of evidence of costs, as set out in paragraph (c) above, which has been approved by the Authority) or cash payments to the Trustee.

(b) The Development Agreement is further amended by deleting Section 3 of the Second Amendment, in its entirety; provided that such amendment pursuant to this Section 1(b) shall only become effective upon Developer's payment in full of its Annual Installment of Special Assessments for Assessment Year 2014 pursuant to the Amended and Restated Special Assessment Agreement, dated as of August \_\_, 2014, by and among the County, the Developer, CB Lewistown, LLC, and the Authority.

Section 2. Ratification and Confirmation. All provisions of the Development Agreement are hereby ratified and confirmed by the parties and shall remain in full force and effect.

Section 3. Counterparts. This Third Amendment may be executed in any number of counterparts, each of which shall be an original, all of which together shall constitute but one and the same instrument.

Section 4. Amendment. This Third Amendment may not be modified except in writing signed by the parties under the terms and conditions permitted by the Development Agreement.

Section 5. Governing Law. This Third Amendment shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to Development Agreement to be duly executed as of September \_\_, 2014, by their duly authorized representatives.

LEWISTOWN COMMERCE CENTER, LLC

By: Ameriplex Virginia Partners, L.P.,  
an Indiana limited partnership and  
its Sole Manager

By: Holladay Partners-Midwest II, Inc.,  
an Indiana corporation and  
its General Partner

By: \_\_\_\_\_  
John T. Phair, President

COUNTY OF HANOVER, VIRGINIA

By: \_\_\_\_\_  
Its: County Administrator

LEWISTOWN COMMERCE CENTER  
COMMUNITY DEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
Its: Chairman