



COMMITTEE OF THE WHOLE
MARCH 25, 2013
5:30 PM

Opening of Meeting

Nondenominational Invocation

Roll Call

Approval/Amendments to Agenda

PRESENTATION to Councilman Pitt – NCLM Local Elected Leaders Academy

1. Discussion: 2013-2014 Budget
2. Discussion: Location of County Jail
3. Memo: Industrial Park Zoning Uses (**page 2**)
4. Adopt: Declaration of Covenants, Conditions and Restrictions Associated with Pre-Disaster Mitigation Grant (PDM-PJ-04-NC02010-003) 403 Harvey Street (**page 7**)
5. Discussion: April City Council Meeting Dates
6. Closed Session –Under § NCGS 143-318.11(a)(3) Attorney Client Privilege – including City of Washington vs. Anne & Harry Meredith, et al (08-CVS-105), NCGS 143-318.11(a)(6) Personnel and 143-318.11(a)(4) Economic Development
7. Adjourn – Until Monday, April _____, 2013 at 5:30pm in the Council Chambers at the Municipal Building.



MEMORANDUM

Date: March 18, 2013

To: Mayor and City Council

From: John Rodman, Planning and Development

RE: Industrial Park Zoning Uses

The premise of most zoning ordinances is that compatible land uses should be grouped together so as to minimize conflict. Typically a local government's jurisdiction is divided into two or more zones, with acceptable land uses listed for each zone. Municipalities may zone within their boundaries, as well as, extraterritorially certain lands outside of their boundaries.

Generally, a zoning ordinance permits certain uses, allows some uses on a conditional or special exception basis, and prohibits other uses. For example, a residential district might allow only single family homes and maybe churches and parks. Two-family homes might be a special use – allowed only with a special use permit. All other uses would be prohibited.

The City of Washington has seventeen (17) zoning districts established:

- Eight residential districts
- Five business & commercial districts
- Two industrial districts
- One office & institutional district
- One airport district

The concept of permitting and prohibiting various uses in the aforementioned zoning districts works fairly well. Within each district, specific uses are allowed either by-right (permitted), or with special exception approval. The City established their list of permitted and special uses that are acceptable in each district by consulting the Standard Industrial Classification System (SIC). The SIC was developed for use in the classification of establishments by activity and comparability. The SIC has since been renamed the North American Classification System (NACS).

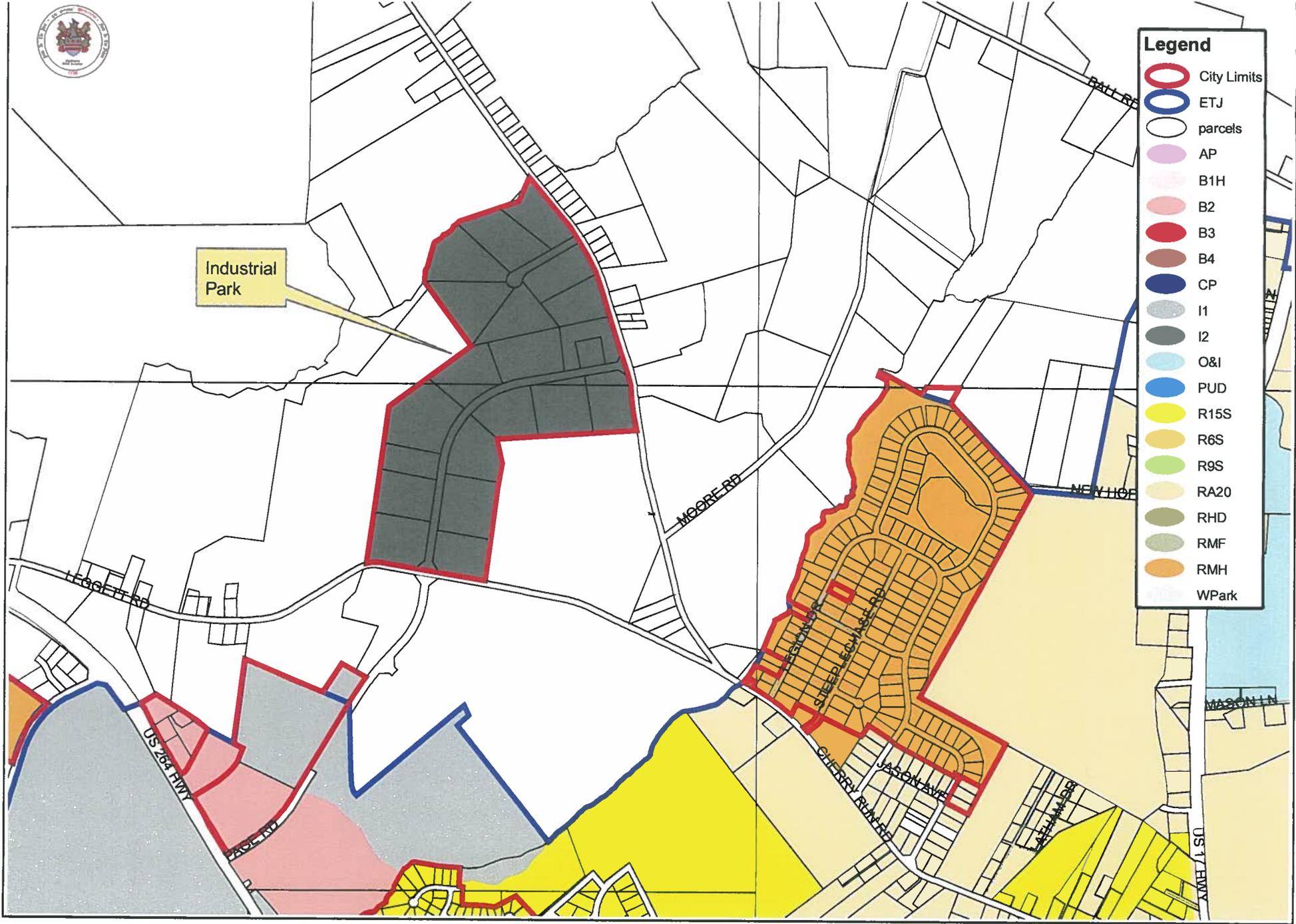
According to the Standard Industrial Classification System, Government Jails are established under the category of Education and Institutional Uses. Jails are further listed under the term "Correctional Institutions" (#9223 under SIC).

The Washington/Beaufort County Industrial Park has been established as an I-2 (Light Industrial) zoning classification. As stated earlier, this zoning classification has a list of *Permitted Uses* and *Special Uses* that are allowed within that zoning district.

According to the City of Washington's Table of Permitted Zoning Uses, Correctional Institutions are **not allowed** in the I-2 Zoning District as a permitted or a special use. Therefore, the proposed county jail is **not allowed** as a use in the Industrial Park.

However, sometimes exceptions to strict adherence to zoning regulations or the need for zoning changes are allowed. The exceptions generally fall within the following categories: Rezoning, Variances, or Text Amendments. These exceptions can be discussed if needed.

If you have any questions or I may assist you in any way please don't hesitate to let me know

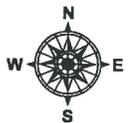


City of Washington

Zoning Map

March 25, 2013

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1 inch = 1,300 feet

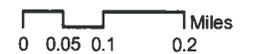


Table of Uses

USE TYPES P = Permitted Use S = Special Use D = Subject to Developmental Standards Blank = Not Permitted	REF SIC	R A 2 0	R 1 5 S	R 9 S	R 6 S	R M F	R M H	R H D	O & I	B 1 H	B 2	B 3	B 4	I 1	I 2	A P	C P
Swim and Tennis Clubs	7997	S	S	S	S	S	S		P					P			D
(Ord. No. 99-1, 1-11-99)																	
EDUCATIONAL & INSTITUTIONAL USES																	
Ambulance Services	4119								P	P	P	P	P	P	P		P
Auditoriums, Coliseums, or Stadiums	0000									P	P	P	P	P			
Cemeteries/Mausoleums	0000	S	S	S	S	S	S	S									
Churches	8661	P	S	S	S	P	P	P	P	D	P	P	P	P	P		P
Colleges or Universities	8220									P	P						
Correctional Institutions	9223													P			
Day Care Centers, Adult (5 or less)	8322	D	D	D	D	D	D	D	D		P						
Day Care Centers, Adult (6 or more)	8322			D		S			S		P			S	S		
Day Care Centers, Child (5 or less)	8351	D	D	D	D	D	D	D	D		P						
Day Care Centers, Child (6 or less)	8351					S			S		P						
Elementary or Secondary Schools	8211	S	S	S	S	S	S		D		D						
Fire Stations	9224	D	D	D	D	D	D	D	P	P	P	P	P	P	P		P
Fraternities or Sororities (Univ. & College)	0000					S			S								
Government Offices	9000								D	D	D	D	D	D	D		P
Hospice Home - Inpatient										S							
Hospitals	8062								P								
Libraries	8231								D	D	D	D	D				P
Museums or Art Galleries	8412								P	P	P	P	P				P
Nursing & Convalescent Homes	8050					S			P								
Orphanages	8361	S							P								
Police Stations	9221	D	D	D	D	D	D	D	P	P	P	P	P	P	P	S	P

Standard Industrial Classification System (SIC)

<u>Category</u>	<u>SIC Number</u>	<u>Uses</u>
Major Group	91	General Government
Government Offices	9000	City Classification
	9111	General Government
	9111	City & Town Manager Offices
	9121	City & Town Councils
Major Group	92	Justice and Public Safety
Police Stations	9221	City Classification
		Police Departments
		Sheriff's Offices
		Hwy Patrol
		State Police
Correctional Institutions	9223	City Classification
		Detention Centers – government
		Correctional Institutions – government
		Prison Farms – government
		Jails – government
		Penitentiaries – government



City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, C.F.O.
Date: March 25, 2013
Subject: Declaration of Covenants, Conditions, and Restrictions for Old Health Department Property located at 403 Harvey Street

Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council adopt a Declaration of Covenants, Conditions, and Restrictions for the Old Health Department Property located at 403 Harvey Street associated with Pre-Disaster Mitigation Grant (PDM-PJ-NC02010-003).

BACKGROUND AND FINDINGS:

This declaration to restrict the use of the Old Health Department property (403 Harvey Street) is a requirement of the FEMA mitigation grant we were awarded.

PREVIOUS LEGISLATIVE ACTION

Accepted grant agreement

FISCAL IMPACT

Currently Budgeted (Account _____) Requires additional appropriation
 No Fiscal Impact

SUPPORTING DOCUMENTS

Declaration

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: _____ Concur _____ Recommend Denial _____ No Recommendation
 _____ Date

PREPARED BY AND RETURN TO:
RODMAN, HOLSCHER, PECK & EDWARDS, P.A.
Attorneys at Law
320 North Market Street
Post Office Box 1747
Washington, NC 27889
Telephone: (252) 946-3122

**STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT**

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (“Declaration”) is made this ____ day of March, 2013, by the **CITY OF WASHINGTON**, a municipal corporation organized and existing under the laws of the State of North Carolina, whose address is P.O. Box 1988, 102 E. Second St., Washington, North Carolina 27889 (hereinafter may be referred to as “Declarant” or “Grantee”) pursuant to 44 Code of Federal Regulations Part 80 *et seq.*

WITNESSETH

WHEREAS, Declarant is the owner of that certain tract or parcel of land more particularly described in Exhibit A attached hereto and made a part hereof (“Property”);

WHEREAS, the Property was conveyed by the Deed between Christian Fellowship Enrichment Program, Inc. participating in the federally-assisted acquisition project (the “Grantor”) and the City of Washington, (the “Grantee”), its successors and assigns;

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, (“The Stafford Act”), 42 U.S.C. § 5121 *et seq.*, identifies the use of pre-disaster mitigation grants under § 5133, Pre-Disaster Mitigation, to assist States and local governments in implementing cost-effective hazard mitigation measures to reduce injuries, loss of life, and damage and destruction of property;

WHEREAS, the mitigation grant program provides a process for a local government, through the State, to apply for federal funds for mitigation assistance to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the structures, and to maintain the use of the Property as open space in perpetuity;

WHEREAS, the State of North Carolina has applied for and been awarded such funding from the Department of Homeland Security, Federal Emergency Management Agency and has entered into a mitigation grant program Grant Agreement dated on or about February 15, 2010 for PDM FY 2010 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee;

WHEREAS, the Property is located in the City of Washington, Beaufort County, North Carolina and the City of Washington participates in the National Flood Insurance Program and is in good standing with NFIP as of the date of the Deed;

WHEREAS, the City of Washington, acting by and through the City Council for the City of Washington, has applied for and been awarded federal funds pursuant to a North Carolina Pre-Disaster Mitigation Grant Agreement with the State of North Carolina dated August 17, 2012 (“State-Local Agreement”), and herein incorporated by reference, making it a mitigation grant program subgrantee; and

WHEREAS, the terms of the mitigation grant program statutory authorities, Federal program requirements consistent with 44 C.F.R. Part 80, the Grant Agreement, and the State-Local Agreement require that the Grantee agree to conditions that restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values.

NOW THEREFORE the grant is made subject to the following terms and conditions and Declarant hereby declares that all of the Property is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved, subject to the following covenants, conditions, and restrictions, all of which are established and agreed upon for the purpose of complying with 44 Code of Federal Regulations Part 80. All of these restrictions shall run with the land and shall be binding upon the Declarant and upon the parties having or acquiring any right, title, or interest, legal or equitable in and to the Property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of the Declarant and every one of the Declarant’s successors in title to any of the Property.

1. Terms. Pursuant to the terms of the North Carolina Pre Disaster Mitigation Grant program statutory authorities, Federal program requirements consistent with 44 C.F.R. Part 80, the Grant Agreement, and the State-Local Agreement, the following conditions and restrictions shall apply in perpetuity to the Property described in the Deed recorded in Deed Book 1696, Page 785 of the Beaufort County Registry and acquired by the Grantee pursuant to FEMA program requirements concerning the acquisition of property for open space:

a. Compatible uses. The Property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions. Such uses may include: parks for outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking lots; buffer zones; and other uses consistent with FEMA guidance for open space acquisition, Hazard Mitigation Assistance, Requirements for Property Acquisition and Relocation for Open Space.

b. Structures. No new structures or improvements shall be erected on the

Property other than:

- i. A public facility that is open on all sides and functionally related to a designated open space or recreational use;
- ii. A public rest room; or
- iii. A structure that is compatible with open space and conserves the natural function of the floodplain, including the uses described in Paragraph 1.a., above, and approved by the FEMA Administrator in writing before construction of the structure begins.

Any improvements on the Property shall be in accordance with proper floodplain management policies and practices. Structures built on the Property according to paragraph b. of this section shall be floodproofed or elevated to at least the base flood level plus 1 foot of freeboard, or greater, if required by FEMA, or if required by any State, Tribal, or local ordinance, and in accordance with criteria established by the FEMA Administrator.

c. Disaster Assistance and Flood Insurance. No Federal entity or source may provide disaster assistance for any purpose with respect to the Property, nor may any application for such assistance be made to any Federal entity or source. The Property is not eligible for coverage under the NFIP for damage to structures on the property occurring after the date of the property settlement, except for pre-existing structures being relocated off the property as a result of the project.

d. Transfer. The Grantee, including successors in interest, shall convey any interest in the Property only if the FEMA Regional Administrator, through the State, gives prior written approval of the transferee in accordance with this paragraph.

i. The request by the Grantee, through the State, to the FEMA Regional Administrator must include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of this section, and documentation of its status as a qualified conservation organization if applicable.

ii. The Grantee may convey a property interest only to a public entity or to a qualified conservation organization. However, the Grantee may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in paragraph (a), of this section, with the prior approval of the FEMA Regional Administrator, and so long as the conveyance does not include authority to control and enforce the terms and conditions of this section.

iii. If title to the Property is transferred to a public entity other than one with a conservation mission, it must be conveyed subject to a conservation easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth in this section, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

a) The Grantee shall convey, in accordance with this paragraph, a conservation easement to an entity other than the title holder, which shall be recorded with the deed, or

b) At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

iv. Conveyance of any property interest must reference and incorporate the original deed restrictions providing notice of the conditions in this section and must incorporate a provision for the property interest to revert to the State, Tribe, or local government in the event that the transferee ceases to exist or loses its eligible

status under this section.

2. Inspection. FEMA, its representatives and assigns including the state or tribe shall have the right to enter upon the Property, at reasonable times and with reasonable notice, for the purpose of inspecting the Property to ensure compliance with the terms of this part, the Property conveyance and of the grant award.

3. Monitoring and Reporting. Every three (3) years on September 2nd, the Grantee (mitigation grant program subgrantee), in coordination with any current successor in interest, shall submit through the State to the FEMA Regional Administrator a report certifying that the Grantee has inspected the Property within the month preceding the report, and that the Property continues to be maintained consistent with the provisions of 44 C.F.R. Part 80, the property conveyance, and the grant award.

4. Enforcement. The Grantee (mitigation grant program subgrantee), the State, FEMA, and their respective representatives, successors and assigns, are responsible for taking measures to bring the Property back into compliance if the Property is not maintained according to the terms of 44 C.F.R. Part 80, the property conveyance, and the grant award. The relative rights and responsibilities of FEMA, the State, the Grantee, and subsequent holders of the property interest at the time of enforcement, shall include the following:

a. The State will notify the Grantee and any current holder of the property interest in writing and advise them that they have 60 days to correct the violation.

i. If the Grantee or any current holder of the property interest fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

ii. FEMA, its representatives, and assignees may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to 1 or more of the following:

a) Withholding FEMA mitigation awards or assistance from the State or Tribe, and Grantee; and current holder of the property interest.

b) Requiring transfer of title. The Grantee or the current holder of the property interest shall bear the costs of bringing the Property back into compliance with the terms of the grant; or

c) Bringing an action at law or in equity in a court of competent jurisdiction against any or all of the following parties: the State, the Tribe, the local community, and their respective successors.

5. Amendment. This agreement may be amended upon signatures of FEMA, the state, and the Grantee only to the extent that such amendment does not affect the fundamental and statutory purposes underlying the agreement.

6. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this grant and their application shall not be affected and shall remain valid and

enforceable.

IN WITNESS WHEREOF, the City of Washington, a municipal corporation, has caused this instrument to be executed in its name by its Mayor, attested by its City Clerk, and its corporate seal to be hereunto affixed, all by proper corporate authority duly given, this the day and year first above written.

CITY OF WASHINGTON

(corporate seal)

BY: _____(Seal)
N. Archie Jennings, III, Mayor

ATTEST:

Cynthia S. Bennett, City Clerk

**STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT**

I, _____, a Notary Public of the State and County aforesaid, certify that CYNTHIA S. BENNETT personally appeared before me this day and acknowledged that she is City Clerk of the CITY OF WASHINGTON, a North Carolina municipal corporation, and by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by N. ARCHIE JENNINGS, III, its Mayor, sealed with its corporate seal and attested by herself as its City Clerk.

WITNESS my hand and official seal, this the ____ day of March, 2013.

NOTARY PUBLIC

My Commission expires:_____.

EXHIBIT A

LYING AND BEING in the City of Washington, Beaufort County, North Carolina, more particularly described as follows:

Lying on the East side of Harvey Street and on the North side of Fourth Street and beginning at the intersection of the Northern side line of Fourth Street with the Eastern side line of Harvey Street, and running thence North 33° East 391 feet to a ditch; thence with said ditch South 29° 15' East 75 feet (this call is corrected from the erroneous call of South 29° 15' West 75 feet contained in that deed in Book 1389, Page 676, Beaufort County Registry); South 15° 45' East 160 feet; thence South 0° 45' East 68 feet to a marker; thence South 33° West 210 feet to the Northern side line of Fourth Street; thence with the Northern side line of Fourth Street in a Westwardly direction 210 feet to the beginning, containing 1.35 acres according to the survey and plat of W. C. Rodman, Jr., RS, dated December 1949 and being that portion of the above described lands formerly known as the Beaufort County Health Department, BUT SAVING AND EXCEPTING that portion of said lands fronting 50 feet on Fourth Street and running back between parallel lines a distance of 100 feet on which was formerly located the Girl Scout Hut owned by the City of Washington. Further reference is made to Deed dated January 25, 1950 from the City of Washington to the county of Beaufort of record in Book 396, Page 273, Beaufort County Registry.

This being all of that property conveyed to the City of Washington by deed dated September 2, 2009 of record in Book 1696, Page 785, Beaufort County Registry to which deed reference is herein made for a more complete and accurate description.