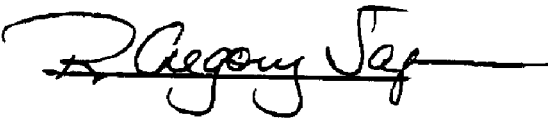


**ACTION ITEM  
BOARD OF SUPERVISORS**

**DATE:** April 17, 2007


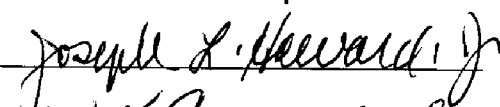
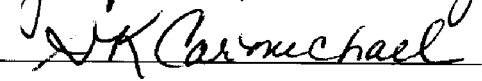
**TO:** Board of Supervisors   
**FROM:** R. Gregory Sager  
Director of Parks and Recreation  
**ISSUE:** Deed Restriction Regarding Purchase of Tax Map Parcel 45-220E

**RECOMMENDATION:** Approval

**BUDGET IMPACT:** N/A

**ATTACHMENTS:** (4)

- [1] Background Report [4] Reso/Ord/Proc # R07-169
- [2] Agreement of Purchase & Sale [ ] Reso/Ord/Proc #
- [3] Adopted Resolution R05-97 [ ] Reso/Ord/Proc #

**REVIEW:** [X] County Administrator's Office   
[X] Legal   
[X] Finance 

[X] **Consent Agenda** [ ] **Other Business** [ ] **Public Hearing**  
[ ] **Discussion Item** [ ] **Presentation** [ ] **Unfinished Business**  
[ ] **New Business**

**PRESENTATION BY:** N/A

**ELECTION DISTRICT:** Hartwood

**BACKGROUND REPORT**

In November 2003, the Parks and Recreation Commission designated five priorities for park land acquisition in the County. One of these priorities was property owned by Daniel Chichester. This 37-acre parcel is located adjacent to Stafford Senior High School in the Hartwood Election District. The purchase price is \$8,000 per acre.

The appraisal and survey have been completed. At a meeting on February 15, 2005, the Board voted 7-0 to approve Resolution R05-97, authorizing the County Administrator to execute all documents necessary to purchase approximately 38.725-acres of Tax Map Parcel 45-220E. The funds for this purchase have been identified within the proceeds of the 2001 Parks Bond Referendum.

Daniel Chichester has requested that language be inserted into the deed indicating that the property would be used for public park and recreational purposes. The Board has intended to use the property for park purposes, but the contract was not worded in this manner, and the value exceeded the purchase price.

The Department is ready to proceed with the purchase of this property for future park development, pending Board approval of this language.

## AGREEMENT OF PURCHASE AND SALE

Attachment 2

R07-169

Page 1 of 4

THIS AGREEMENT, dated as of the 8 day of April, 2005, between DANIEL M. CHICHESTER, (the Seller), and the BOARD OF SUPERVISORS OF THE COUNTY OF STAFFORD, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the Purchaser), provides:

### ARTICLE I PURCHASE AND SALE: PAYMENT OF PURCHASE PRICE

For and in consideration of the mutual promises contained herein, the parties agree as follows:

(1) **Purchase and Sale.** The Seller agrees to sell and the Purchaser agrees to acquire for the sum of Eight Thousand Dollars (\$8,000.00) per acre, (the Purchase Price) and in accordance with the other terms and conditions set forth herein that certain lot, piece or parcel of land containing 37 acres more or less, and a fifty foot non-exclusive access easement as shown on Exhibit "A" attached hereto, together with all improvements thereon, appurtenances and appliances thereunto belonging, being located in the Hartwood Magisterial District of Stafford County, Virginia, and identified as a portion of Stafford County Parcel Identification Number 45-220E, being a portion the property acquired by the Seller by Deed Number 010012785 recorded among the land records of Stafford County, Virginia (the Property). (The exact metes and bounds and acreage of the Property and the access easement shall be determined by a plat prepared by a certified land surveyor and paid for by the Purchaser.)

(2) **Payment of Purchase Price.** The Purchase Price shall be paid to the Seller in the following manner:

(a) The Purchaser shall receive a credit against the Purchase Price in an amount equal to the Deposit (as defined herein). Upon the execution hereof, the Purchaser shall pay to Lawyers Title Insurance Corporation (the Escrow Agent), in escrow, the amount of One Thousand Dollars (\$1,000.00), (the Deposit), to be held in escrow and paid to the Seller after Closing (as defined herein) or paid to the Purchaser upon termination of this Agreement.

(b) The Purchaser shall pay the balance of the Purchase Price, as adjusted by the prorations and expenses required hereunder, to the Seller at Closing by Purchaser's check.

### ARTICLE II SELLER REPRESENTATIONS, WARRANTIES AND COVENANTS

(1) The Seller hereby makes the following representations, warranties and covenants with respect to the Property. If any of such representations are not true when made or at Closing (or if then made), Purchaser may elect to terminate this Agreement and receive back the deposit.

(2) **Environmental/Wetlands.**

(a) To the best of Sellers knowledge, (i) no hazardous or toxic waste is or has been used, generated, stored or disposed of on the Property, (ii) the Property and Seller comply fully with all environmental laws and (iii) the Seller knows of no claim or proceeding against Seller or the Property with respect to environmental matters.

(b) The purchaser acknowledges that all or part of the Property may be subject to or governed by applicable federal, state or local government laws and regulations, including but, not limited to, the Chesapeake Bay Act and local provisions adopted pursuant thereto.

### ARTICLE III TITLE MATTERS

At Closing, title to the Property shall be good and marketable of record and in fact, or Purchaser may elect to clear title by exercise of its power of eminent domain and deduct the cost thereof, including any award, from the proceeds of sale. However, reasonable time shall be allowed the Seller to correct any defects reported by the title examiner. It is understood that the Property is to be conveyed subject to any easements or

#### ARTICLE IV CLOSING

(1) **Closing.** Closing shall be held at the office of RGS Title, 2015 Plank Road, Fredericksburg, Virginia 22401, Phone # 540-372-4100,, within ninety (90) days following final acceptance and ratification of this Agreement by all parties.. Possession of the Property shall be delivered to the Purchaser at Closing. However, the Purchaser and/or its agents shall have the right to enter the Property for testing and surveying prior to Closing. **TIME IS OF THE ESSENCE HEREIN.**

(2) **Seller Deliveries.** At or prior to Closing, the Seller shall deliver to the Purchaser all of the following instruments, in form and substance satisfactory to the Purchaser, each of which shall have been duly executed and, where applicable, acknowledged on behalf of the Seller: (a) a deed, with general warranty and English covenants of title, (the Deed), (b) such agreements, affidavits or other documents as may be required by Purchaser's title insurance company to issue an owner's title insurance policy for the property with no exception for mechanics liens and/or rights of third parties to possession, (c) an affidavit, stating that the Seller is not a foreign entity under the Foreign Investment in Real Property Tax Act, and (d) an affidavit, stating the information necessary for the Purchaser to comply with applicable of the Internal Revenue Codes.

(3) **Closing Costs.** The Purchaser shall pay the cost of examining title, the title insurance premium, the grantee's tax, and all costs of preparing, recording the Deed and the cost of any release of any deeds of trust or liens on the Property. The Seller shall pay grantor's tax, all taxes and rents up to and including the date of Closing. Except as is otherwise provided in this Agreement, each party hereto shall pay its own legal fees and expenses.

(4) **Expense Allocations.** All taxes, insurance, rents and interest are to be adjusted to date of Closing.

#### ARTICLE V TERMINATION RIGHTS

**Termination by Purchaser.** If any conditions for Purchasers benefit set forth herein will not be satisfied prior to Closing, or upon the occurrence of any other event that would entitle the Purchaser to terminate this Agreement, the Purchaser, at its option, may elect either (a) to terminate this Agreement, in which event the Deposit forthwith shall be returned to the Purchaser and all other rights and obligations of the Seller and the Purchaser hereunder shall terminate immediately, or (b) to waive its right to terminate and, instead, to proceed to Closing. If the Purchaser terminates this Agreement as a consequence of the Seller misrepresentation, breach of a warranty or covenant by the Seller or failure of the Seller to perform their obligations hereunder, the Purchaser shall retain all remedies accruing as a result thereof including, but not limited to, the right to specific performance of this Agreement.

#### ARTICLE VI MISCELLANEOUS PROVISIONS

(1) **Completeness; Modification.** This Agreement constitutes the entire agreement between the parties hereto with respect to the transaction contemplated hereby and supersedes all prior understandings and negotiations. This Agreement may be modified only by a written instrument duly executed by the parties hereto.

(2) **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

(3) **Governing Law.** This Agreement and all documents referred to herein shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Virginia.

(4) **Notices.** All communications hereunder shall be in writing and shall be delivered by hand, or sent by the United States mail, certified, postage prepaid, return receipt requested, to the addresses designated below.

**Seller's Address for Notices:**

Daniel M. Chichester  
P. O. Box 66  
Stafford, Virginia 22555

**Purchaser's Address for Notices:**

Board of Supervisors of Stafford County, Virginia  
1300 Courthouse Road, P. O. Box 339  
Stafford, Virginia 22555-0339  
Attn: County Administrator

(5) **Survival.** All of the representations, warranties, covenants and agreements of the Seller and the Purchaser under this Agreement shall survive Closing.

(6) **Ratification.** This Agreement is subject to ratification by the Purchaser's board, and the failure of such board to ratify this Agreement within 60 days after the date hereof shall render this Agreement null and void, in which event, the Deposit shall be returned to the Purchaser and the parties hereto shall be relieved of any further liability hereunder.

(7) **Real Estate Agent or Broker.** Seller and Purchaser acknowledge, covenant and warrant to each other that no person acting as a real estate agent or broker has been involved in the negotiation and execution of this agreement and that no commissions are due and owing to any person, etc. on account of this agreement.

(8) **Contingency.** Seller acknowledges that the Purchaser is attempting to acquire an access road right-of-way from the Stafford County School. If the Purchaser is unsuccessful in acquiring this right-of-way within Ninety Days (90) after the date hereof it shall render this Agreement null and void, in which event, the Deposit shall be returned to the Purchaser and the parties hereto shall be relieved of any further liability hereunder.

(9) **Access Easement.** Seller will grant at no cost to Purchaser a Fifty Foot (50) non-exclusive access easement from the Property to Truslow Road and any additional easements including but not limited to drainage easement, utility easement, temporary construction/grading easements required for the park and access road development which easements may also be used by seller, his heirs and his assigns for the above mentioned purposes or any other purposes.

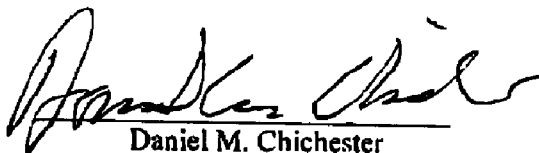
(10) **Escrow Agent:** (a) In the event that any application, delivery or other payment of all or any portion of any deposit hereunder be disputed by a party of this Agreement, the party hereto who receives the deposit or payment from the Escrow Agent shall, by its acceptance thereof, agree to indemnify and hold harmless the Escrow Agent from any and all loss, expense, claim or other cost arising in connection with the Escrow Agent's performance of his duties, including reasonable attorney's fees, excepting only losses, expenses, costs or other damage arising solely as a result of the gross negligence, willful misconduct or fraud of the Escrow Agent.

(b) If any disbursement of deposits be contested by a party hereto, the Escrow Agent may convert any letter of credit to cash and hold same as a stakeholder or pay the cash into court, if the Escrow Agent so chooses. The Escrow Agent shall be reimbursed on an equal basis by Purchaser and Seller for any reasonable expenses incurred in connection with a dispute with respect to the Deposit, including the cost of any legal expenses incurred (including time expenses by attorneys affiliated with Escrow Agent) by the Escrow Agent.

(c) Under no circumstances shall the Escrow Agent be liable for any costs, expenses, losses or other claims incurred in connection with its activities as Escrow Agent, excepting solely any such costs, expenses, losses or other damage as may have resulted from the Escrow Agent's gross negligence, willful misconduct, or fraud.

WITNESS the following signatures.

**SELLER:**



Daniel M. Chichester

**PURCHASER:**

Board of Supervisors of Stafford County, Virginia

By Steve Crosby

County Administrator

Approved as to form:

(Acting) Hugh P. Gruber III  
County Attorney

**Consent by Escrow Agent**

The undersigned has executed this Agreement to acknowledge receipt of the Deposit and to consent to and agree to be bound by the provisions hereof applicable to the Escrow Agent and the Deposit.

RGS Title

By \_\_\_\_\_

Its \_\_\_\_\_

\_\_\_\_\_  
Date

R05-97

BOARD OF SUPERVISORS  
COUNTY OF STAFFORD  
STAFFORD, VIRGINIA

RESOLUTION

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, Stafford County Administration Center, Stafford, Virginia, on the 15th day of February, 2005:

MEMBERS:

	<u>VOTE:</u>
Gary D. Pash, Chairman	Yes
Gary F. Snellings, Vice Chairman	Yes
Jack R. Cavalier	Yes
Peter J. Fields	Yes
Robert C. Gibbons	Yes
Kandy A. Hilliard	Yes
Mark W. Osborn	Yes

On motion of Mr. Cavalier, seconded by Ms. Hilliard, which carried by a vote of 7 to 0, the following was adopted:

A RESOLUTION TO AUTHORIZE THE COUNTY  
ADMINISTRATOR TO EXECUTE ALL DOCUMENTS  
NECESSARY TO PURCHASE APPROXIMATELY 38.725  
ACRES OF TAX MAP PARCEL 45-220E

WHEREAS, Parcel 45-220E has been identified as a good location for park land; and

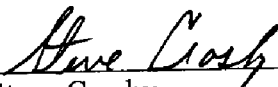
WHEREAS, the owner of the property, Daniel Chichester, has agreed to sell approximately 38.725 acres of the parcel to the County for \$8,000 per acre; and

WHEREAS, bond proceeds are available to purchase the property for use as a park;

NOW, THEREFORE, BE IT RESOLVED by the Stafford County Board of Supervisors on this the 15th day of February, 2005, that the County Administrator be and he hereby is authorized to execute all documents necessary to purchase approximately 38.725 acres of Parcel 45-220E from Daniel Chichester in an amount not to exceed \$320,000;

BE IT FURTHER RESOLVED that the County Administrator shall use bond proceeds to purchase such property.

A Copy, teste:

  
\_\_\_\_\_  
Steve Crosby  
County Administrator

SC:TWE:js

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PROPOSED

BOARD OF SUPERVISORS  
COUNTY OF STAFFORD  
STAFFORD, VIRGINIA

RESOLUTION

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, Stafford County Administration Center, Stafford, Virginia, on the 17th day of April, 2007:

MEMBERS:

Jack R. Cavalier, Chairman  
Mark Dudenhefer, Vice Chairman  
M. S. "Joe" Brito  
Peter J. Fields  
Robert C. Gibbons  
Paul V. Milde III  
George H. Schwartz

VOTE:

On motion of , seconded by , which carried by a vote of , the following was adopted:

A RESOLUTION TO AUTHORIZE THE COUNTY ADMINISTRATOR  
TO REVISE THE DEED REGARDING PURCHASE OF TAX MAP PARCEL  
45-220E

WHEREAS, at a meeting on February 15, 2005, the Board approved Resolution R05-97, which authorized the County Administrator to execute all documents necessary to purchase this parcel; and

WHEREAS, the owner of the property, Daniel Chichester, now desires a deed restriction be placed on the property that states it be used for public park and recreational purposes;

NOW, THEREFORE, BE IT RESOLVED by the Stafford County Board of Supervisors on this the 17th day of April, 2007, that the County Administrator be and he hereby is authorized to revise the Deed regarding purchase of Tax Map Parcel 45-220E with the restriction that the property shall be used for public park and recreational purposes, and concurrence that the value exceeds the purchase price.

SC:RGS:jls