

Exhibit C to the Development Agreement

Form of Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made this _____ day of _____, 2019 (the “**Effective Date**”), between the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia (the “**City**”) and **THE NH DISTRICT CORPORATION**, a Virginia corporation (the “**Developer**”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Development Agreement (defined below).

RECITALS

- A. The City seeks to revitalize the downtown community through the development of an identified project area that is currently not utilized to its full market potential, and that results in additional taxable value in both the project area and in surrounding properties;
- B. The City seeks to replace the existing Richmond Coliseum, the operation of which is no longer economically viable for the City as a result of age, limited seating capacity and operational deficiencies, with a new state-of-the-art arena (the “**Arena**”) which the Developer seeks to design, construct, finance, operate, commercialize and maintain (the “**Arena Project**”) in accordance with the Arena Lease to be entered into by and between the Economic Development Authority of the City of Richmond (the “**EDA**”) and the Developer;
- C. Pursuant to the Financing Documents to be entered into at the Financial Close, the EDA will issue one or more series of its revenue bonds (the “**Bonds**”) and will make the proceeds of the Bonds available to the Developer to finance a portion of the Arena Project;
- D. The City seeks to rehabilitate the historic Blues Armory and program uses therein that support the Richmond community (the “**Armory**”) and the Developer seeks to perform such rehabilitation, invest private capital in the Armory and subsequently operate, commercialize and maintain the Armory in accordance with the Armory Lease to be entered into by and between the EDA and the Developer;
- E. The City Council adopted Ordinance No. 201_____, which closes to public use and travel certain right-of-way areas, retains a temporary full-width easement for public use and travel in certain closed right-of-way areas, and authorizes the dedication of certain real estate for public right-of-way purposes and authorizes the Developer to complete the Work necessary to design, construct and handback to the City such right-of-way configuration work as further described in Exhibit H (*Right-of-Way Reconfiguration Conditions*) to the Development Agreement (the “**Road Projects**”);
- F. The City seeks the development of a new hotel to support the programs of the Greater Richmond Convention Center (the “**Hotel**”), and the Developer seeks to design, construct, finance, operate and maintain the Hotel, with no financial obligation to the City;

- G. The City seeks to encourage the development of a full spectrum of new, privately financed affordable housing in its downtown; new job creation and job training, new retail and office uses; and new infrastructure that connects the project area with adjacent communities, Jackson Ward, Bio+Tech, VCU Health Systems, the Pulse corridor business core, and the entire City, and the Developer wishes to design, construct, finance, commercialize, operate and maintain such improvements, all in accordance with and as further described in the Master Plan (the “**Mixed-Use Development**”);
- H. The City memorialized the above intent on November 9, 2017, by issuing a Request for Proposals for the “North of Broad/Downtown Neighborhood Redevelopment Project” seeking proposals for the redevelopment of an area generally bounded on the west by North 5th Street, on the north by East Leigh Street, on the east by North 10th Street, and on the south by East Marshall Street, which area includes the site of the Richmond Coliseum (the “**Project Area**”);
- I. On or about February 9, 2018, the Developer responded with a proposal for a substantial mixed-use redevelopment of the aforementioned area to include those features and benefits outlined in the aforementioned Request for Proposals;
- J. The City and the Developer negotiated to further refine this proposal to include a new GRTC Transit Center; a \$300,000,000 (or expressed as a percentage 30%) target for minority business enterprise and emerging small business in the proposed development; job training initiatives; investment resulting in 480 Affordable Housing Units in downtown Richmond, all as further described in the Development Agreement; and investment resulting in certain additional Mixed-Used Development on sites in the Project Area to be purchased by the Developer from the City under this Agreement;
- K. The City and the Developer entered into that certain Navy Hill Redevelopment Project Development Agreement (the “**Development Agreement**”) dated [_____], 2019 to establish each Party’s obligations, rights and limitations with respect to delivering the Arena, the Armory, the Mixed-Use Development, the GRTC Transit Center, the Affordable Housing Commitment, the Road Projects and any other improvements or commitments expressly provided in the Lease, this Agreement or the Development Agreement (collectively, the “**Project**”);
- L. Based on the economic impact analysis prepared by Virginia Commonwealth University L. Douglas Wilder School of Government and Public Affairs Center for Urban and Regional Analysis entitled “Downtown Redevelopment Economic Impact Summary” dated February 2018 for the proposed redevelopment of the ten-block area surrounding and including the site of the Richmond Coliseum, the Project is estimated to create 12,500 direct, indirect and induced jobs during the construction phase of the Project, and approximately 9,000 direct, indirect and involved jobs following construction of the Project.

- M. Pursuant to the Development Agreement, the City and the Developer agreed to enter into this Agreement pursuant to which the City would sell to the Developer, and the Developer would purchase from the City, certain parcels of real property located within the Project Area for redevelopment and development of the Mixed-Use Development and the Hotel, all in accordance with the terms of the Development Agreement; and
- N. In accordance with the Development Agreement, the City and the Developer now desire to enter into this Agreement, which the City and the Developer acknowledge and agree shall constitute the Purchase and Sale Agreement or PSA pursuant to the Development Agreement.

NOW, THEREFORE, in consideration of the covenants and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer agree as follows:

1. Agreement to Sell and Purchase; Property Defined. The City agrees to sell to the Developer, and the Developer agrees to purchase from the City, subject to the terms and conditions of this Agreement and the Development Agreement, all of the City's rights, title and interest in and to those parcels of real property identified as Blocks A2, A3, B, C, D, E, F1, I, N and U, respectively, identified on Exhibit A hereto (each such parcel being hereinafter referred to, individually, as a "**Private Development Parcel**" and, collectively, as the "**Private Development Parcels**"), together with all appurtenances pertaining thereto and all the buildings and other improvements situated thereon, if any (collectively, the "**Property**"), in accordance with the Project Schedule.

2. Purchase Price.

a. Purchase Price. The purchase price for the Property shall be FIFTEEN MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$15,800,000.00) (the "**Purchase Price**") and shall be payable as set forth herein.

b. Allocation of Purchase Price. The current allocations of the Purchase Price among the Private Development Parcels are set forth on Schedule 1 attached hereto. From and after the Effective Date, the Developer may, from time to time, request modifications to such allocations by providing written notice of such requested modifications to the City, for the City's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. In the event the City approves any requested modifications, Schedule 1 hereto shall be modified to reflect such modifications.

c. Developer Performance Security. On or prior to Financial Close, the Developer shall deposit the Purchase Price with either an escrow agent or the Title Company (defined below) (as may be agreed by the City) to be held in escrow for the benefit of the City pursuant to an escrow agreement to be mutually agreed upon by the Developer, the City and the Title Company or escrow agent, as applicable (the "**Developer Performance Security**") and all in accordance with Section 6.7 (Developer Performance Security) of the Development Agreement. In connection with the Closing on each Private Development Parcel, funds (to the extent available) from the Developer Performance Security shall be disbursed by the Title Company or

escrow agent, as applicable, to the City for the benefit of the Developer to pay that portion of the Purchase Price allocated to such Private Development Parcel in satisfaction of the Developer's payment obligations under this Agreement with respect to such Private Development Parcel. Otherwise, funds from the Developer Performance Security shall be disbursed by the Title Company or escrow agent, as applicable, (i) to the City as and when the City becomes entitled to draw on the Developer Performance Security in accordance with the terms and conditions set forth in the Development Agreement or this Agreement or (ii) to the Developer as and when the Developer becomes entitled to receive the Developer Performance Security or any portion thereof in accordance with terms and conditions set forth in the Development Agreement or this Agreement.

3. Closing; Conditions to Closing.

a. Closing. Closing on the purchase and sale of each Private Development Parcel (the “**Closing**”) shall occur on or before the Outside Closing Date set forth in the Project Schedule for the acquisition of such Private Development Parcel by the Developer, subject to the satisfaction of the conditions precedent to Closing set forth on Schedule 2 hereto and to any extensions permitted under the Development Agreement. Notwithstanding the foregoing, the City acknowledges and agrees that the Developer shall have the right to request an extension of the Outside Closing Date for any Private Development Parcel for up to twelve (12) months for good cause shown and, in such case, the City may, in its sole discretion, grant such extension, which extension will not be unreasonably withheld. The date on which Closing occurs with respect to each Private Development Parcel shall be referred to as the “**Closing Date**” for such Private Development Parcel. In the event Closing with respect to one or both of the Private Development Parcels identified on Exhibit A to this Agreement as Blocks N and U does not occur due to the condition precedent to Closing on such Private Development Parcels set forth in Section 1(d) and Section 2(g) on Schedule 2 hereto having not been satisfied on or before the applicable Outside Closing Date for each such Private Development Parcel (as such Outside Closing Date may have been extended pursuant to this Section 3(a)), this Agreement shall terminate as to such Private Development Parcel(s), the Purchase Price shall be reduced by the portion of the Purchase Price then allocated to such Private Development Parcel(s), and the Title Company or escrow agent, as applicable, shall, after the Closing of the last Private Development Parcel, disburse funds from the Developer Performance Security to the Developer in an amount equal to the portion of the Purchase Price then allocated to such Private Development Parcel(s) (assuming there are sufficient remaining funds in the Developer Performance Security at such time for the Title Company or escrow agent to make such disbursement).

b. Payment of Purchase Price. Payment of the Purchase Price shall take place on the Closing Date and in the amounts set forth on Schedule 1 attached hereto (as the same may be modified from time to time pursuant to Section 2(b) above).

c. Deeds of Trust. At the Closing for each Private Development Parcel, the Developer shall execute a Construction Deed of Trust for the benefit of the City in the form of Exhibit E (Form of Deed of Trust) hereto. The Construction Deed of Trust for each Private Development Parcel shall secure the Developer's performance of its obligations under the applicable Construction Covenant (as defined in Exhibit E (Form of Deed of Trust)) (the “**Obligations**”) required with respect to such Private Development Parcel.

d. Affordable Housing Covenant. At the Closing for each Private Development Parcel containing affordable housing, the Developer shall record or cause to be recorded the Affordable Housing Covenant attached to this Agreement as Exhibit F.

e. Hotel Use Covenant. At the Closing for the Private Development Parcel or Parcels on which the Hotel will be developed, the Developer shall record or cause to be recorded the Hotel Use Covenant attached to this Agreement as Exhibit G.

4. Access to the Property.

Prior to the Effective Date, the Developer has been provided limited access to the Property pursuant to that certain Right of Entry Agreement dated ____, 2019 (the “**Right of Entry Agreement**”) for the purpose of making its preliminary determinations regarding the Condition of the Property (as hereinafter defined). From and after the Effective Date, if the Developer determines that it requires access to the Property in order to conduct additional studies, tests, evaluations and investigations of the Property in order to determine the Condition of the Property, the Developer shall be entitled to enter and access the Property pursuant to the terms of Section 9.1(*Right to Enter Development Parcels*) of the Development Agreement.

5. Title and Survey.

a. Title. Prior to the Effective Date, the Developer, at its sole cost and expense, has obtained and reviewed a commitment for title insurance for each Private Development Parcel (each, a “**Commitment**”) from First American Title Insurance Company (the “**Title Company**”). Prior to the Closing for each Private Development Parcel, the Developer shall have the right, at its sole cost and expense, to have the Commitment for such Private Development Parcel updated. Promptly following the Effective Date, to the extent the Developer has not previously done so, the Developer shall, at no cost to the City, deliver copies of each Commitment, together with copies of all documents and instruments referred to therein, to the City (and, if applicable, the Developer shall, at no cost to the City, deliver copies of any updates thereto, together with copies of all documents and instruments referred to therein, to the City promptly following the Developer’s receipt of the same).

b. Survey. At least six (6) months prior to the Outside Closing Date set forth in the Project Schedule for the acquisition of each Private Development Parcel by the Developer, the Developer shall, at its sole cost and expense, (i) obtain a current ALTA survey for such Private Development Parcel (each, a “**Survey**”) from a surveyor that is duly licensed in the Commonwealth of Virginia and reasonably acceptable to the City (provided that any surveyor that is identified as an approved surveyor in the City’s Annual Engineering and Construction Related Non-Professional Services for the City’s Capital Improvement Plan shall be deemed approved by the City) and (ii) submit the Survey for such Private Development Parcel to the City for the City’s review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Prior to the Closing for each Private Development Parcel, the Developer shall have the right, at its sole cost and expense, to have the Survey for such Private Development Parcel updated, in which case the Developer shall submit such update to the City for the City’s review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Each Survey (and, if applicable, any update thereto) shall be certified to the Developer, the City, the Title Company and any other parties designated by the Developer.

Each Private Development Parcel shall be conveyed by the City to the Developer using the legal description for such Private Development Parcel appearing on the Survey for such Private Development Parcel.

c. Permitted Exceptions. The City and the Developer acknowledge and agree that title to each Private Development Parcel shall be conveyed by the City to the Developer subject to the Permitted Exceptions (as hereinafter defined). For the purposes of this Agreement, with respect to each Private Development Parcel, “**Permitted Exceptions**” shall mean (i) liens for real estate taxes and assessments not yet due and payable, (ii) applicable zoning regulations and ordinances, (iii) easements, conditions and restrictions of record, as the same may lawfully apply to such Private Development Parcel, including those required by the Development Agreement, (iv) such state of facts disclosed by the Survey, (v) any exceptions caused by the Developer or any of its agents, employees, affiliates, contractors, advisors or representatives, (vi) any exception that the Title Company agrees to affirmatively insure over at standard rates and in a manner acceptable to the Developer and, if applicable, any lender providing financing for the construction and development of such Private Development Parcel, and (vii) any matters set forth on each Commitment, as applicable, as of the Effective Date or of which Developer has knowledge prior to Closing. Notwithstanding the foregoing, with respect to each Private Development Parcel, in no event shall Permitted Exceptions include (1) any monetary liens or encumbrances on such Private Development Parcel (other than liens for real estate taxes and assessments not yet due and payable), (2) any conditions or restrictions first placed of record by the City after the Effective Date that would prevent the Developer from materially developing and operating such Private Development Parcel for the Developer’s intended use in accordance with and subject to the Development Agreement (excluding any covenants required by the Development Agreement) or (3) the matter described in Section 1(e) of Schedule 2 hereto, which must be addressed as provided therein (collectively, “**Prohibited Exceptions**”). To the extent the Developer identifies any matters constituting Prohibited Exceptions with respect to any Private Development Parcel(s), the Developer shall notify the City in writing of such Prohibited Exceptions, and the City shall work in good faith with the Developer to have such Prohibited Exceptions removed of record prior to the Closing(s) for such Private Development Parcel(s); provided, however, the City shall be obligated, at or prior to the Closing(s) for such Private Development Parcel(s), to cause any such monetary liens or encumbrances created by or arising out of the actions of the City to be released of record and to release any such conditions or restrictions of record benefitting the City. In no event shall the Developer be obligated to take title to any Private Development Parcel(s) for which there are Prohibited Exceptions that neither the City nor the Developer are able to obtain releases prior to the Closing(s) for such Private Development Parcel(s). To the extent the Developer elects not to take title to any Private Development Parcel(s) pursuant to this Section 5(c), the Purchase Price shall be reduced by the portion of the Purchase Price then allocated to such Private Development Parcel(s), and the Title Company or escrow agent, as applicable, shall, after the Closing of the last Private Development Parcel, disburse funds from the Developer Performance Security to the Developer in an amount equal to the portion of the Purchase Price then allocated to such Private Development Parcel(s) (assuming there are sufficient remaining funds in the Developer Performance Security at such time for the Title Company or escrow agent to make such disbursement).

d. Covenants of the City. From and after the Effective Date and until the Closing Date for each Private Development Parcel, the City shall not enter into any new occupancy

agreements or leases for all or any portion of the Private Development Parcel or place any encumbrance upon all or any portion of the Private Development Parcel or the title thereto without the prior written consent of the Developer, such consent not to be unreasonably withheld, conditioned or delayed.

6. “As Is” Sale; Release.

The Developer hereby expressly agrees and acknowledges, and represents and warrants to the City, that the Developer has not entered into this Agreement based upon any representation, warranty, statement or expression of opinion by the City or any person or entity acting or allegedly acting for or on behalf of the City with respect to the City, the Property, or the Condition of the Property. Except as otherwise expressly provided in this Agreement, the Developer acknowledges and agrees that the Property is and shall be sold and conveyed (and accepted by the Developer at each Closing) **AS IS, WHERE IS, WITH ALL DEFECTS AND WITHOUT ANY WRITTEN OR ORAL REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW.** Without limiting the foregoing, the City makes no representation, warranty or covenant, express, implied or statutory, of any kind whatsoever with respect to the Property, including, without limitation, any representation, warranty or covenant as to title, survey conditions, use of the Property for the Developer’s intended use, the physical condition of the Property or any improvements thereon or any repairs required thereto, past or present use, development, investment potential, tax ramifications or consequences, compliance with law, present or future zoning, the presence or absence of hazardous substances or other environmental conditions (including, without limitation, with regard to any underground or above-ground storage tanks on or about the Property), the availability of utilities, access to public roads, habitability, merchantability, fitness or suitability for any purpose, or any other matter with respect to the Property (collectively, the “**Condition of the Property**”), all of which are hereby expressly disclaimed by the City. The Developer acknowledges that the City has made no representations, warranties or covenants as to the Condition of the Property or compliance of the Property with any federal, state, municipal or local statutes, laws, rules, regulations or ordinances including, without limitation, those pertaining to construction, building and health codes, land use, zoning, hazardous substances or toxic wastes or substances, pollutants, contaminants, or other environmental matters.

7. Inspection of the Property.

a. Responsibility. The Developer shall independently confirm to its satisfaction all information that it considers material to its purchase of the Property. The Developer acknowledges and agrees that, as set forth in Section 4 above, it has had and will continue to have the opportunity to inspect and investigate, utilizing experts as Developer deems necessary in its sole discretion, each and every aspect of the Property, including without limitation the Condition of the Property.

b. Developer's Environmental Investigation. Subject to the provisions of Section 4 above, during the first 180 days following the Effective Date (such time period subject to extension by mutual written agreement of the Parties) (the “**Investigation Period**”), the Developer, at its option and sole cost and expense, may conduct “Phase I” (as such term is commonly used in the industry) environmental testing of the Property or any portion thereof. Any “Phase II” (as such term

is commonly used in the industry), or other materially invasive testing shall require the prior written consent of the City, which consent may be granted or withheld in the City's sole but reasonable discretion.

c. Developer's Reports. The Developer shall, within five (5) business days of the Developer's receipt of the same, deliver to the City copies of any reports or other results of the Developer's experts' environmental investigation of the Property or any portion thereof (collectively, "**Developer's Environmental Report(s)**"). The Developer shall have no responsibility or liability with respect to the results or any inaccuracies in any of the Developer's Environmental Reports.

d. Unknown Hazardous Environmental Condition. If, during the Investigation Period, any of the Developer's Environmental Reports conclusively determines the existence of any Hazardous Environmental Condition (as defined in the Arena Lease) that existed in, on or under a portion of the Property prior to the expiration of the Investigation Period that is not a Hazardous Environmental Condition that was identified in Exhibit D to this Agreement, such Hazardous Environmental Condition shall constitute an "**Unknown Hazardous Environmental Condition**". Notwithstanding the foregoing, an Unknown Hazardous Environmental Condition shall not include any (a) release of Hazardous Material (as defined below) by the Developer or any Developer Party, or (b) the presence of any Hazardous Materials on, in, under or about the Private Development Parcel at concentrations or in quantities that are required to be removed or remediated by any applicable law or any governmental entity, that prior to the Effective Date should have been reasonably identified or discovered by an appropriately qualified and experienced contractor, engineer or expert working in that field exercising due care and skill and Good Industry Practice in the same or equivalent circumstances.

For purposes of this Agreement "**Hazardous Materials**" means any material that is regulated under law, because of its quantity, concentration, or physical or chemical characteristics, is defined or included within the definition of a "hazardous substance," "hazardous waste," "hazardous material," "toxic chemical," "toxic substance," "hazardous chemical," "extremely hazardous substance," "pollutant," "contaminant," "solid waste" or any other words of similar meaning or significance within the context used under any applicable laws. "**Hazardous Material**" includes, without limitation, any material or substance defined as a "hazardous substance" or a "pollutant or contaminant" under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., including asbestos-containing materials and lead-based paint, as well as petroleum, including crude oil or any fraction thereof.

e. Right to Terminate for Unknown Hazardous Environmental Condition. The Developer may terminate its obligation to acquire and take title to any Private Development Parcel where it discovers the existence of an Unknown Hazardous Environmental Condition during the Investigation Period that (i) will cause the Developer to not be able to develop and operate such Private Development Parcel for the purpose described in the Master Plan and (ii) the reasonable cost of Remediation (as defined in the Arena Lease) exceeds at least 35¹% of the portion of the Purchase Price then allocated to such Private Development Parcel (a "**No-Fault Termination**"). Where the

¹ **NTD:** Parties to agree a percentage.

Developer has exercised its No-Fault Termination right, and there is no outstanding good faith City dispute regarding such No-Fault Termination, then (A) the Purchase Price shall be reduced by the portion of the Purchase Price then allocated to such Private Development Parcel and the Title Company or escrow agent, as applicable, shall, after the Closing of the last Private Development Parcel, disburse funds from the Developer Performance Security to the Developer in an amount equal to the portion of the Purchase Price then allocated to such Private Development Parcel (assuming there are sufficient remaining funds in the Developer Performance Security at such time for the Title Company or escrow agent, as applicable, to make such disbursement) and (B) the Developer's obligation to proceed to Closing on such Private Development Parcel shall terminate. Any such No-Fault Termination right shall be without claim or liability to the City and shall expire if a notification has not been delivered to the City within thirty (30) days of expiration of the Investigation Period.

8. Indemnity.

a. By accepting the Deed (as hereinafter defined) for and Closing on each Private Development Parcel, the Developer, on behalf of itself and its successors and assigns, shall thereby release each of the City, any City Affiliate and their Agents (collectively, the "**Indemnified Parties**") from, and waive any and all claims that the Developer may have against each of the Indemnified Parties for, attributable to, or in connection with such portion of the Property, whether arising or accruing before, on or after the Closing and whether attributable to events or circumstances which arise or occur before, on or after the Closing, including, without limitation, the following: (a) any and all statements or opinions heretofore or hereafter made, or information furnished, by any Indemnified Parties with respect to such portion of the Property; (b) with respect to such portion of the Property, any and all liabilities with respect to the Condition of the Property, including, without limitation, all liabilities relating to the release, presence, discovery or removal of any hazardous or regulated substance, chemical, waste or material that may be located in, at, about or under such portion of the Property, or connected with or arising out of any and all claims or causes of action based upon CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§9601 *et seq.*, as amended by SARA (Superfund Amendment and Reauthorization Act of 1986) and as may be further amended from time to time), the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§6901 *et seq.*, or any other Federal, State or municipal Laws relating to environmental contamination, or any other related claims or causes of action (collectively, "**Environmental Liabilities**"); and (c) any implied or statutory warranties or guaranties of fitness, merchantability or any other statutory or implied warranty or guaranty of any kind or nature regarding or relating to such portion of the Property. Notwithstanding anything contained in this Section 8(a) to the contrary², in no event shall the Developer be deemed to have indemnified any of the Indemnified Parties from any Environmental Liabilities that any of the Indemnified Parties may have under applicable Law as a result of any environmental conditions existing on such portion of the Property as of the Closing.

b. By accepting the Deed for and Closing on each Private Development Parcel, the Developer shall thereby assume and take responsibility and liability for the following: (a) any

² No closing will occur if the Developer exercise its no fault temination right, so this clause is unnecessary.

and all liabilities attributable to such portion of the Property to the extent that the same arise or accrue on or after the Closing and are attributable to events or circumstances which arise or occur on or after the Closing; (b) with respect to such portion of the Property, any and all liabilities with respect to the Condition of the Property, whether such liabilities are latent or patent, whether the same arise or accrue before, on or after the Closing, and whether the same are attributable to events or circumstances which may arise or occur before, on or after the Closing, including, without limitation, all Environmental Liabilities; and (c) any and all liabilities that arose or accrued prior to the Closing or are attributable to events which arose or occurred prior to the Closing. The Developer acknowledges and agrees that the Liabilities to be assumed by the Developer pursuant to each of the foregoing clauses are intended to be independent of one another, so the Developer shall assume liabilities described in each of the clauses even though some of those liabilities may be read to be excluded by another clause.

c. The provisions of this Section 8 shall be deemed reaffirmed upon and shall survive Closing on each of the Private Development Parcels and the delivery of the Deed for each of the Private Development Parcels or any expiration or termination of this Agreement.

9. Closing Deliverables; Apportionments and Closing Costs.

a. On or prior to each Closing Date, the City shall deliver the following to the Title Company for the benefit of the Developer:

(i) a quitclaim deed for the applicable Private Development Parcel, duly executed and acknowledged by the City, in substantially the form attached hereto as Exhibit B, describing such Private Development Parcel using the legal description therefor on the Survey for such Private Development Parcel, and otherwise in proper form for recording (the “**Deed**”);

(ii) a duly executed Nonforeign Person Certification in the form required under Section 1445 of the Internal Revenue Code, and information necessary for the Title Company to complete an IRS Form 1099;

(iii) all keys to any improvements located on the applicable Private Development Parcel, to the extent applicable and to the extent in the City’s possession;

(iv) a duly executed and acknowledged affidavit addressed to the Title Company regarding mechanics’ liens and possession, in substantially the form attached hereto as Exhibit C (the “**Owner’s Affidavit**”);

(v) a duly executed counterpart original of a settlement statement reflecting the portion of the Purchase Price allocated to the applicable Private Development Parcel, any and all prorations and adjustments required hereunder, if any, and the closing costs as allocated among the parties pursuant to Section 9 (d) below (the “**Settlement Statement**”); and

(vi) any additional documents required by the Title Company, provided such additional documents are customary in commercial real estate transactions in the

Commonwealth of Virginia and are otherwise in a form acceptable to the City in its sole but reasonable discretion, duly executed and acknowledged by the City, if applicable.

b. On, or prior to, each Closing Date, the Developer shall deliver the following to the Title Company for the benefit of the City:

(i) a duly executed counterpart original of the Settlement Statement;

(ii) any additional documents required by the Title Company, provided such additional documents are customary in commercial real estate transactions in the Commonwealth of Virginia and are otherwise in a form acceptable to the Developer in its sole but reasonable discretion, duly executed and acknowledged by the Developer, if applicable;

(iii) any additional documents for the applicable Private Development Parcel, if any, that may be required in order to satisfy the conditions precedent to Closing for such Private Development Parcel set forth on Schedule 2 hereto, duly executed and acknowledged by the Developer, if applicable; and

(iv) any covenants required by the Development Agreement governing the construction and use of any particular Private Development Parcel and required to be recorded with the Deed.

c. Possession of each Private Development Parcel shall be given to the Developer at the Closing for such Private Development Parcel, subject to the Permitted Exceptions, by delivery of the Deed.

d. With respect to each Private Development Parcel, the Developer shall pay for the cost of the Commitment for such Private Development Parcel, the cost of the Survey for such Private Development Parcel, title insurance premiums and other expenses for such Private Development Parcel, all costs associated with the Feasibility Studies (or any other diligence) conducted by the Developer with respect to such Private Development Parcel, the cost associated with the Developer's acquisition financing for such Private Development Parcel (if any), the cost of recording the Deed for such Private Development Parcel (including any transfer and recordation taxes, if any), the cost of recording the Construction Deed of Trust for such Private Development Parcel, if applicable, its own attorneys' fees, all escrow fees, and all settlement fees of the Title Company. The City shall pay its own attorneys' fees and shall pay the cost of the preparation of the Deed for each Private Development Parcel.

10. Condemnation. If prior to the Closing for any Private Development Parcel(s) any condemnation proceeding or other proceeding in the nature of eminent domain is commenced with respect to such Private Development Parcel(s), the City agrees to promptly notify the Developer thereof. In the event that such proposed taking is with respect to (a) all of such Private Development Parcel(s), or (b) any material portion of such Private Development Parcel(s) such that it would be impractical for the Developer's intended use in accordance with the Development Agreement, the Developer then shall have the right, at the Developer's option, to elect not to take title to such Private Development Parcel(s). To the extent the Developer elects not to take title to any Private Development Parcel(s) pursuant to this Section 10, the

Purchase Price shall be reduced by the portion of the Purchase Price then allocated to such Private Development Parcel(s), and the Title Company or escrow agent, as applicable, shall disburse funds from the Developer Performance Security to the Developer in an amount equal to the portion of the Purchase Price then allocated to such Private Development Parcel(s) (assuming there are sufficient remaining funds in the Developer Performance Security at such time for the Title Company or escrow agent to make such disbursement).

11. Casualty.

a. If prior to the Closing for any Private Development Parcel(s) all or any part of such Private Development Parcel(s) is destroyed or damaged, then the City agrees to promptly notify the Developer thereof. If damage to such Private Development Parcel(s) is such that it would prevent the Developer from developing and operating such Private Development Parcel(s) for the Developer's intended use in accordance with the Development Agreement, the Developer then shall have the right, at the Developer's option, to elect not to take title to such Private Development Parcel(s). To the extent the Developer elects not to take title to any Private Development Parcel(s) pursuant to this Section 11(a), the Purchase Price shall be reduced by the portion of the Purchase Price then allocated to such Private Development Parcel(s), and the Title Company or escrow agent, as applicable, shall disburse funds from the Developer Performance Security to the Developer in an amount equal to the portion of the Purchase Price then allocated to such Private Development Parcel(s) (assuming there are sufficient remaining funds in the Developer Performance Security at such time for the Title Company or escrow agent to make such disbursement).

b. It is expressly agreed and acknowledged by the parties that in no event shall the City have any obligation to repair or rebuild any improvements located on any Private Development Parcels as of the Effective Date in the event of any damage thereto.

12. Default by the Developer. Subject to and in accordance with the Development Agreement, if the Developer fails to timely proceed to Closing on any Private Development Parcel in accordance with the terms and conditions of this Agreement and the Development Agreement or otherwise materially breaches any of its other covenants and agreements hereunder, which failure is not cured within ten (10) days following receipt of written notice from the City, the City shall have all rights and remedies set out in the Development Agreement and at law and in equity, including, without limitation and the right to terminate this Agreement as to all Private Development Parcels for which Closing has not previously occurred and to receive the balance of the funds constituting the Developer Performance Security from the Title Company or escrow agent, as applicable (for the avoidance of doubt, any amounts that may otherwise be payable to the Developer following Closing on the last Private Development Parcel included in the Master Plan due to the Developer terminating its obligation to Close on any Private Development Parcel as provided in this Agreement pursuant to this Section 12, shall not be payable to Developer following early termination of this Agreement, and the City shall be entitled to retain the full amount of the Developer Performance Security at the time of early termination). Notwithstanding the foregoing, the City hereby waives all claims that the City may have against the Developer for consequential and punitive damages as a result of any default by the Developer hereunder.

13. Default by the City. If the City fails to timely proceed to Closing on any Private Development Parcel in accordance with the terms and conditions of this Agreement or otherwise materially breaches any of its other covenants and agreements hereunder to either (i) satisfy any conditions precedent to achieve Closing or (ii) sell any Private Development Parcel, which failure is not cured within ten (10) days following receipt of written notice from the Developer, then, subject to the Development Agreement, the Developer shall have all rights and remedies available at law and in equity, including, without limitation, (a) the right to terminate this Agreement as to all Private Developer Parcels for which Closing has not previously occurred and to receive the then remaining balance of the funds constituting the Developer Performance Security (if any) from the Title Company or escrow agent, as applicable, and (b) to the extent available under applicable law, the right to pursue specific performance. Notwithstanding the foregoing, the Developer hereby waives all claims that the Developer may have against the City for consequential and punitive damages as a result of any default by the City hereunder.

14. Dispute Resolution. Notwithstanding anything contained in this Agreement to the contrary, in the event any major dispute arises between the Developer and the City pursuant to this Agreement that the Developer and the City are unable to resolve after good faith negotiations between the parties, the Developer and the City hereby covenant and agree to settle such dispute in accordance with Article 13 (*Dispute Resolution Provisions*) of the Development Agreement.

15. Brokerage. The City represents and warrants to the Developer that it has dealt with no broker, agent, finder or other intermediary in connection with this Agreement. The Developer represents and warrants to the City that it has dealt with no broker, agent, finder or other intermediary in connection with this Agreement. The Developer agrees to indemnify, defend and hold the City harmless from and against any broker's claim arising from any breach by the Developer, respectively, of its representations and warranties in this paragraph. The foregoing indemnification obligations of the Developer shall survive each Closing hereunder.

16. Notice. All notices, requests and other communications under this Agreement shall be given in accordance with the terms of Section 18.12 (*Notices*) of the Development Agreement.

17. Miscellaneous.

a. Time is and shall be of the essence with respect to each of the terms and conditions hereof. If any date herein set forth for the performance of any obligation by the City or the Developer or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligation or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used herein, the term "**legal holiday**" means any state or federal holiday on which financial institutions, city or state government offices, or post offices are generally closed in the City of Richmond, Virginia.

b. This Agreement includes the captions, headings and titles appearing herein for convenience only, and such captions, headings and titles do not affect the construal, interpretation, or meaning of this Agreement or in any way define, limit, extend, or describe the scope or intent of any provisions of this Agreement.

c. The Developer may not assign this Agreement (and no transfer by the Developer of any interest in this Agreement and no transfers of direct or indirect interests in the Developer shall be permitted) without the prior consent of the City, which consent the City may grant or withhold in its sole but reasonable discretion. Notwithstanding the foregoing, the Developer may, upon prior notice to the City but without the necessity of obtaining the City's consent thereto, designate Capital City Partners or an entity established, owned and controlled by Capital City Partners to hold title to any Private Development Parcel(s) for purposes of facilitating Capital City Partners' undertaking development activities on such Private Development Parcel(s) to take title to such Private Development Parcel(s), in which case, the City shall convey such Private Development Parcel(s) to Capital City Partners or such other entity owned and controlled by Capital City Partners.

d. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, subject to the terms of Section 17(c) above.

e. This Agreement and the Development Agreement, including the exhibits and schedules attached hereto, contains the whole agreement between the City and the Developer as to the sale and purchase of the Property, and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise of any kind whatsoever concerning this sale and purchase. This Agreement shall not be altered, amended, changed or modified except in writing executed by the parties hereto.

f. All issues and questions concerning the construction, enforcement, interpretation and validity of this Agreement, or the rights and obligations of the City or the Developer in connection with this Agreement, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia. Subject to the dispute resolution clause in Article 13 (Dispute Resolution Provisions) of the Development Agreement, any and all disputes, claims and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. Each party shall be responsible for its own attorneys' fees in the event of any litigation or other proceeding arising from this Agreement.

g. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Agreement.

h. No director, officer, employee or agent of the City or the Developer shall be personally liable to another party hereto or any successor in interest in the event of any default or breach under this Agreement or on any obligation incurred under the terms of this Agreement.

i. The failure of the City or the Developer to insist upon the strict performance of any provision of this Agreement shall not be deemed to be a waiver of the right to insist upon the strict performance of such provision or of any other provision of this Agreement at any time. The waiver of any breach of this Agreement shall not constitute a waiver of a subsequent breach.

j. The City and the Developer acknowledge and agree that this Agreement and any other records furnished, prepared by or in the possession of the City may be subject to the retention and disposition requirements of the Virginia Public Records Act and the public disclosure requirements of the Virginia Freedom of Information Act. Notwithstanding the foregoing, Developer agrees that neither this Agreement nor any memorandum or notice hereof shall be recorded by Developer and Developer agrees not to file any notice of pendency or other instrument against the Property or any portion thereof in connection herewith. This provision shall survive the Closing on each of the Private Development Parcels.

*[Remainder of Page Intentionally Left Blank]
[Signatures on Following Page]*

IN WITNESS WHEREOF, intending to be legally bound, the parties have caused this Agreement to be duly executed as of the Effective Date.

THE CITY:

CITY OF RICHMOND, VIRGINIA, a municipal corporation and political subdivision of the Commonwealth of Virginia

By: _____
Chief Administrative Officer

APPROVED AS TO FORM:

City Attorney

THE DEVELOPER:

THE NH DISTRICT CORPORATION, a
Virginia corporation

By: _____
Name: _____
Title: _____

[Signature Page to Purchase and Sale Agreement]

4164-3156-9947.12

Exhibits and Schedules

Schedule 1 – Allocation of Purchase Price

Schedule 2 – Conditions Precedent to Closing on Private Development Parcels

Exhibit A –Map Depicting Private Development Parcels

Exhibit B – Form of Deed

Exhibit C – Form of Affidavit

Exhibit D - Know Hazardous Environmental Conditions

Exhibit E - Form of Construction Deed of Trust

Exhibit F – Affordable Housing Covenant

Exhibit G – Hotel Use Covenant

**Schedule 1 to Purchase and Sale
Agreement**

Allocation of Purchase Price

SCHEDULE 1

ALLOCATION OF PURCHASE PRICE

Purchase Price: FIFTEEN MILLION EIGHT HUNDRED THOUSAND DOLLARS
(\$15,800,000.00)

Purchase Price Allocation:

Private Development Parcels	Purchase Price Allocation	Private Development Parcels	Purchase Price Allocation
A2	\$470,000.00	E	\$393,000.00
A3	\$2,161,000.00	F1	\$2,516,000.00
B	\$688,000.00	I	\$1,465,000.00
C	\$1,687,000.00	N	\$585,000.00
D	\$4,744,000.00	U	\$1,091,000.00

**Schedule 2 to Purchase and Sale
Agreement**

**Conditions Precedent to Closing on
Private Development Parcels**

SCHEDULE 2

CONDITIONS PRECEDENT TO CLOSING ON PRIVATE DEVELOPMENT PARCELS

Section 1. The Developer's Conditions. The obligation of the Developer to proceed to Closing on each Private Development Parcel pursuant to this Agreement is subject to the City's satisfaction (or waiver by the Developer, if applicable) of all of the following conditions precedent:

(a) the City shall not be in breach of any of its covenants and agreements under this Agreement in any material respect;

(b) the City shall have complied with all of its obligations required to be performed by it under the Development Agreement prior to the Closing on such Private Development Parcel;

(c) the representations and warranties made by the City in the Development Agreement shall be true and correct in all material respects as of the Closing Date;

(d) with respect to the Private Development Parcels identified on Exhibit A to this Agreement as Blocks N and U, any development rights previously granted to ECI Development Advisors, Inc. shall have been released and terminated; and

(e) with respect to the Private Development Parcel identified on Exhibit A to this Agreement as Block E, the rights of the owner of the Richmond Marriott Hotel to the exclusive use of the Access Ramp (as defined in that certain Second Amended and Restated Parking Easement Agreement dated as of January 3, 2000, by and among Richmond Redevelopment and Housing Authority, Mutual Benefit/Marriott Hotel Associates-I, L.P. and First Union Real Estate Equity and Mortgage Investments, as the same has been subsequently amended from time to time) shall have been released and terminated on terms and conditions acceptable to the Developer and the City.

Section 2. The City's Conditions. The obligation of the City to proceed to Closing on each Private Development Parcel pursuant to this Agreement is subject to the Developer's satisfaction (or waiver by the City, if applicable) of all of the following conditions precedent:

(a) Financial Close shall have occurred on or prior to the Closing Date;

(b) the Developer shall not be in breach of any of its covenants and agreements under the Contract Documents, any Subcontract, or any Financing Documents in any material respect;

(c) the Developer shall have complied with all of its obligations then required to be performed by it under the Development Agreement, including that the Developer has delivered the Concept Plans for the applicable Private Development Parcel;

(d) the development of each of the Private Development Parcels for which a Closing has previously occurred in accordance with the terms of this Agreement shall be proceeding in accordance with the Development Agreement, any Subcontract or any Financing Documents in all material respects, subject to any delays due to the occurrence of any Delay Event;

(e) the Developer shall have obtained, or has taken all reasonable steps to obtain, all boundary line adjustments, lot consolidations and right-of-way vacations and Regulatory Approvals required to commence development of such Private Development Parcel in accordance with the terms of the Development Agreement and applicable Law and has provided copies thereof to the City;

(f) the Developer shall have obtained and delivered to the City sufficient equity commitments pursuant to executed equity contribution agreements and sufficient debt evidenced by final debt term sheets, all of which are for the development of such Private Development Parcel in accordance with the terms of Section 6.1(c) (*Conditions Precedent to Financial Close on the Bonds*) of the Development Agreement;

(g) with respect to the Private Development Parcels identified on Exhibit A to this Agreement as Blocks N and U, any development rights previously granted to ECI Development Advisors, Inc. shall have been released and terminated;

(h) with respect to the Private Development Parcel identified on Exhibit A to this Agreement as Block I, the Developer has satisfied its obligations in accordance with Section 2.2(i) (*Department of Social Services Offices*) of the Development Agreement;

(i) with respect to Private Development Parcel identified on Exhibit A to this Agreement as Block C, the Developer has satisfied its obligations in accordance with Section 2.2(g) (*Transit Center*) and entered into the GRTC Lease with GRTC, all in accordance with the Development Agreement;

(j) with respect to the Private Development Parcel identified on Exhibit A to this Agreement as Block E, the rights of the owner of the Richmond Marriott Hotel to the exclusive use of the Access Ramp (as defined in that certain Second Amended and Restated Parking Easement Agreement dated as of January 3, 2000, by and among Richmond Redevelopment and Housing Authority, Mutual Benefit/Marriott Hotel Associates-I, L.P. and First Union Real Estate Equity and Mortgage Investments, as the same has been subsequently amended from time to time) shall have been released and terminated on terms and conditions acceptable to the Developer and the City;

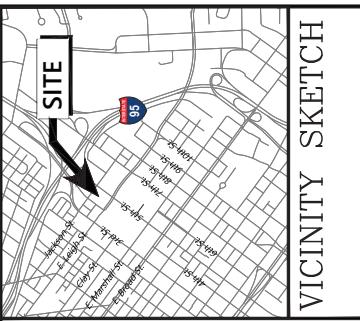
(k) the representations and warranties made by the Developer in the Development Agreement shall be true and correct in all material respects;

(l) a Survey for each of the Private Development Parcels shall have been obtained by the Developer and approved by the City in accordance with the terms of Section 5(b) of this Agreement; and

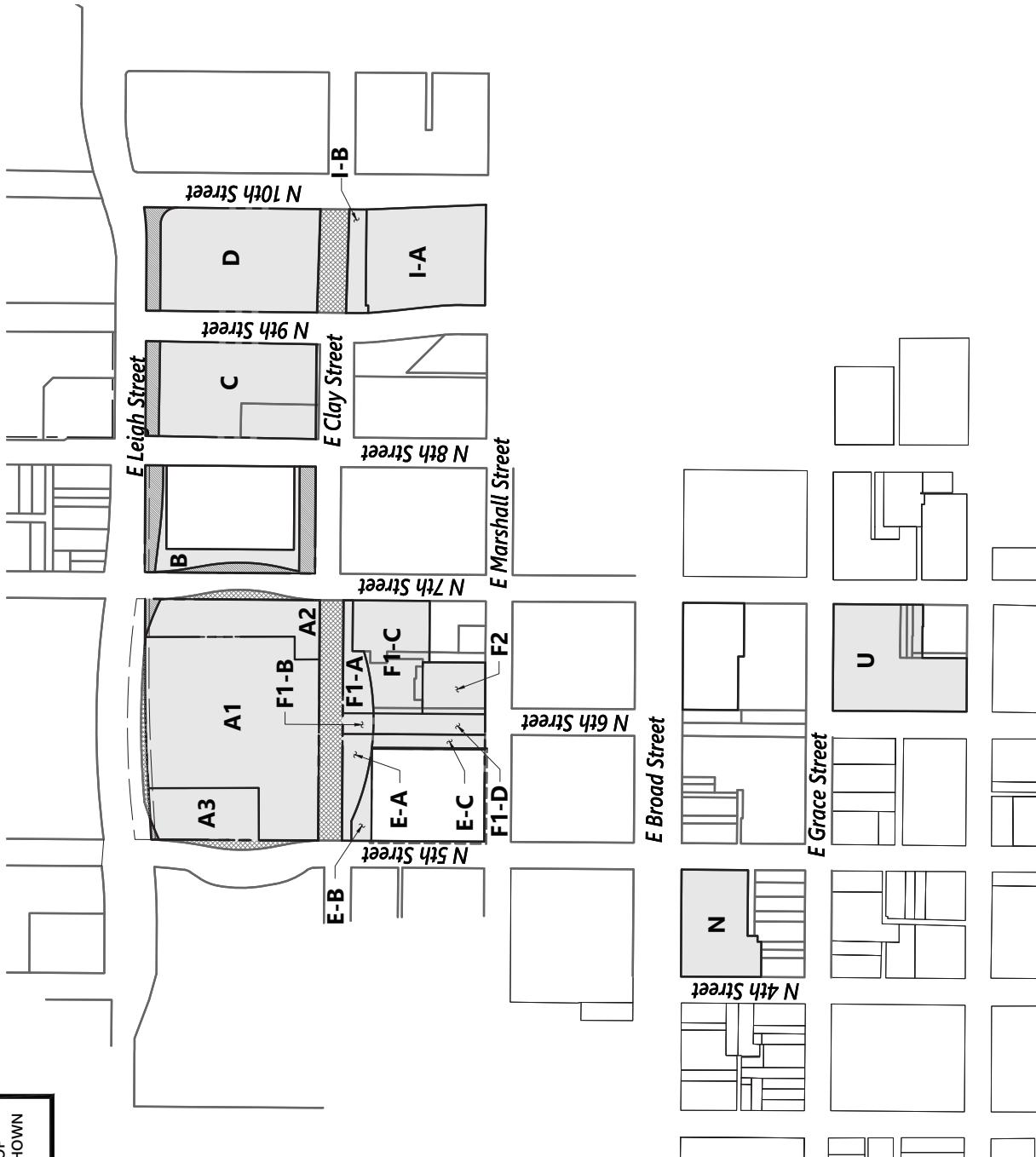
(m) with respect to the Private Development Parcel identified on Exhibit A to this Agreement as Block F-1, each of the Hotel Key Contracts, are in full force and effect.

Exhibit A to Purchase and Sale
Agreement

Map Depicting Private Development
Parcels



VICINITY SKETCH



RIGHT OF WAY CLOSURE AND RIGHT OF WAY EASEMENT DEDICATIONS ARE SHOWN ON DPW DRAWING # N-28848

**North of Broad Redevelopment
Parcel Boundary Exhibit**

Block No.

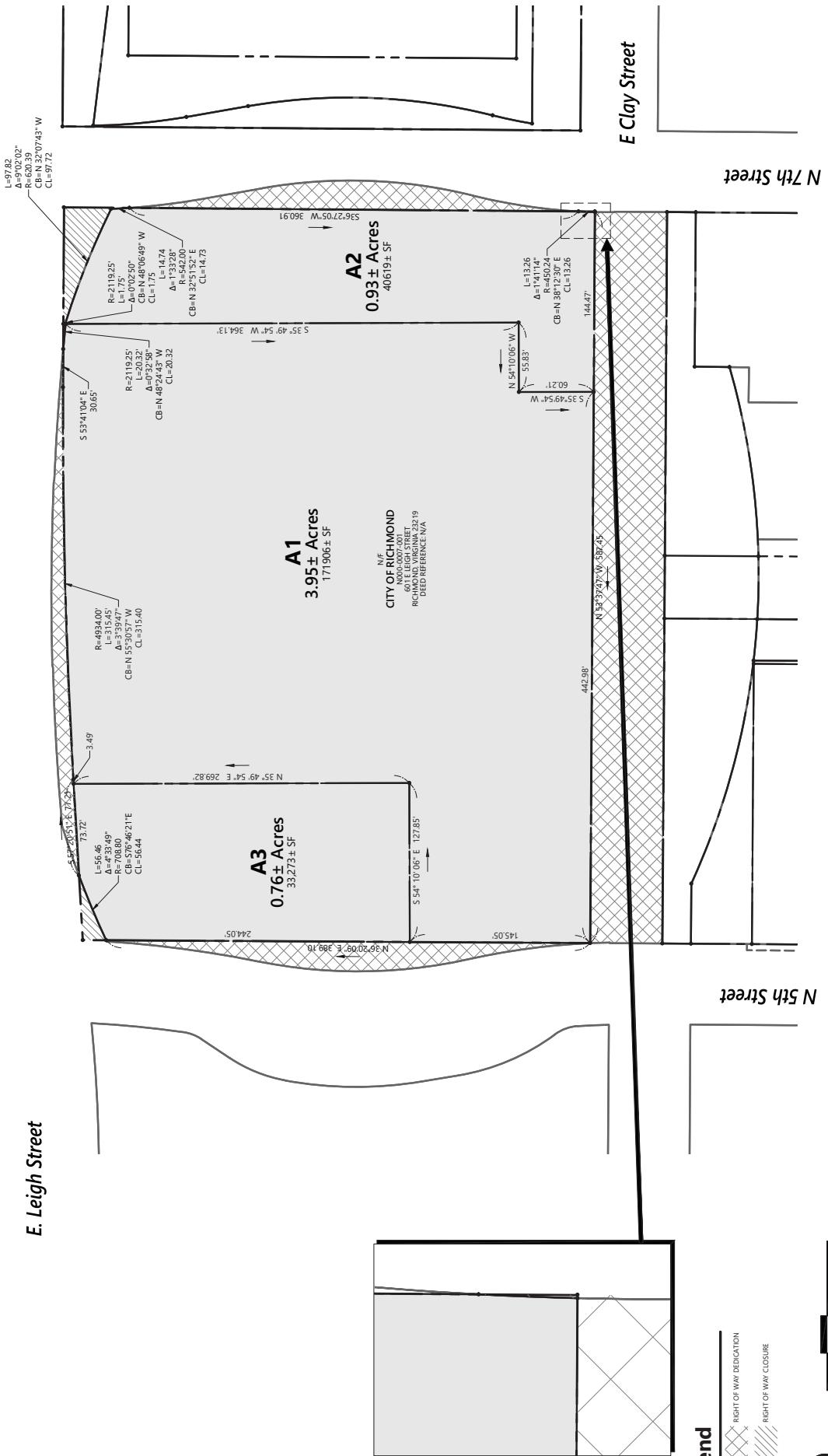
Council District

REVISIONS:	DRAWN BY: MSB CHECKED BY: KH	SCALE: 1"=150'	DATE: July 22, 2019	PROJECT: .	DPW DWG # N-28848 SHEET 1 OF 10
	Surveys Division, Room 600 City Hall 900 E. Broad Street, Richmond, Va. 23219 DEPARTMENT OF PUBLIC WORKS RICHMOND, VIRGINIA	115 South 15th Street Suite 200 Richmond, VA 23219 804.343.7100			

- NOTES**
- Property owners correct as of _____
 - Ordinance _____
 - Adopted _____
 - Accepted _____



Legend
 Right of Way Dedication
 Right of Way Closure



Council District
Block No.

North of Broad Redevelopment Parcel Boundary Exhibit



Surveys Division, Room 600 City Hall
900 E. Broad Street, Richmond, Va. 23219

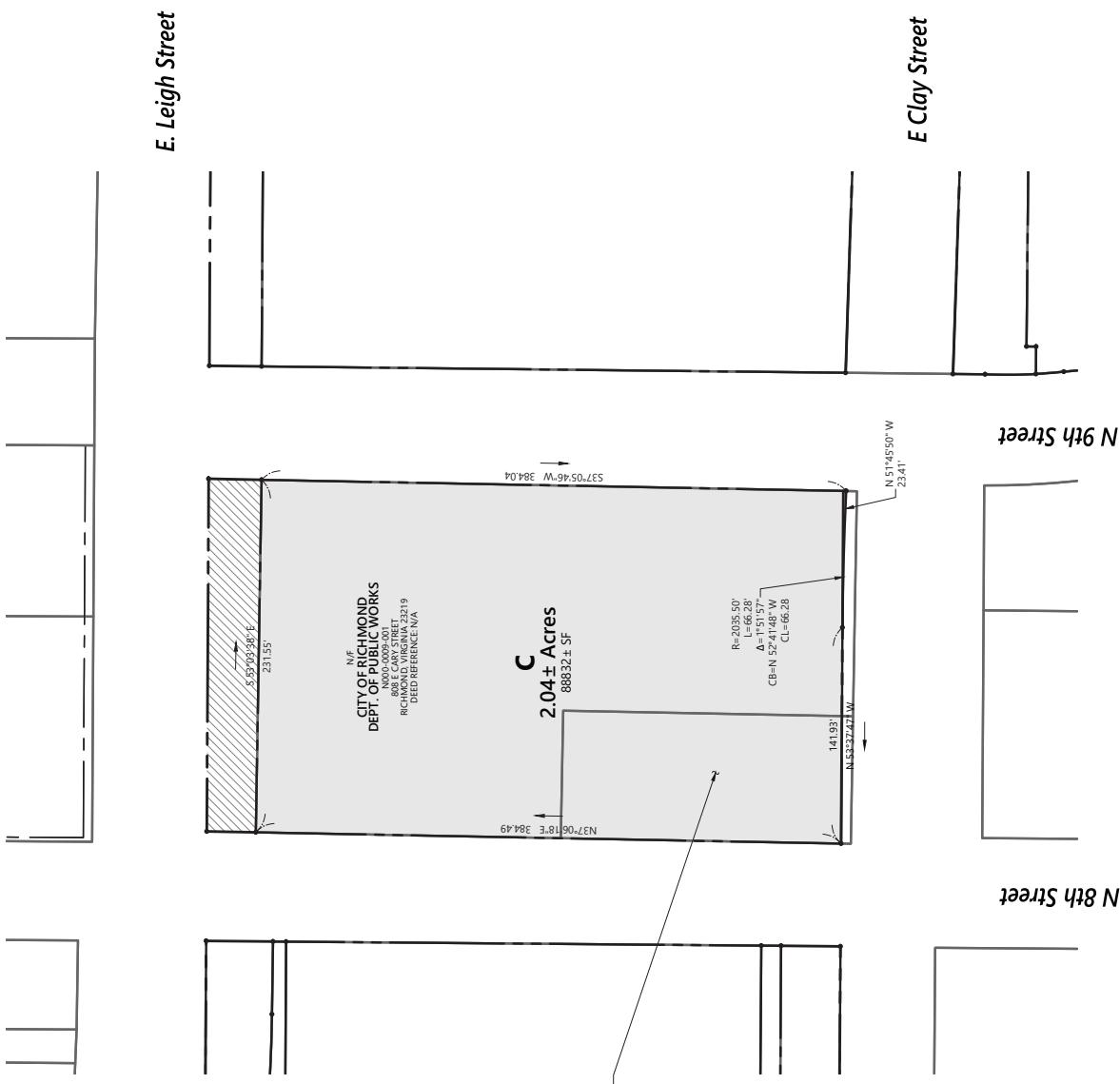
DEPARTMENT OF PUBLIC WORKS
RICHMOND, VIRGINIA

DRAWN BY: MSB
CHECKED BY: KH

SCALE 1"=60'
DATE July 22, 2019
PROJECT .
DWG # N-28853
SHEET 2 OF 10

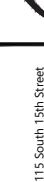
REVISIONS:	NOTES
	1. Property owners correct as of _____
	2. Ordinance _____
	3. Adopted _____
	4. Accepted _____
	Legend: 0 30 60 120 Feet

PROPERTY LINE INFORMATION DEPICTED IN THIS EXHIBIT IS BASED ON COMPILED INFORMATION FROM CITY GIS, PLANS OF RECORDS AND VARIOUS SURVEYS. NO FIELD SURVEY OR PROPERTY RESEARCH WAS COMPLETED AS PART OF THIS EFFORT.



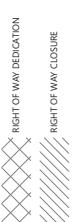
**North of Broad Redevelopment
Parcel Boundary Exhibit**



NOTES		North of Broad Redevelopment Parcel Boundary Exhibit	
1. Property owners correct as of 2. Ordinance _____ 3. Adopted _____ 4. Accepted _____		115 South 15th Street Suite 200 Richmond, VA 23219 804-343-7100	
REVISIONS:	REFERRANCES:	Surveys Division, Room 600 City Hall 900 E. Broad Street, Richmond, Va. 23219	DEPARTMENT OF PUBLIC WORKS RICHMOND, VIRGINIA
		DRAWN BY: MSB CHECKED BY: KH	FIELD NOTE 1"=60' DATE July 22, 2019 PROJECT DPM DNG # N-28853 SHEET 4 OF 10

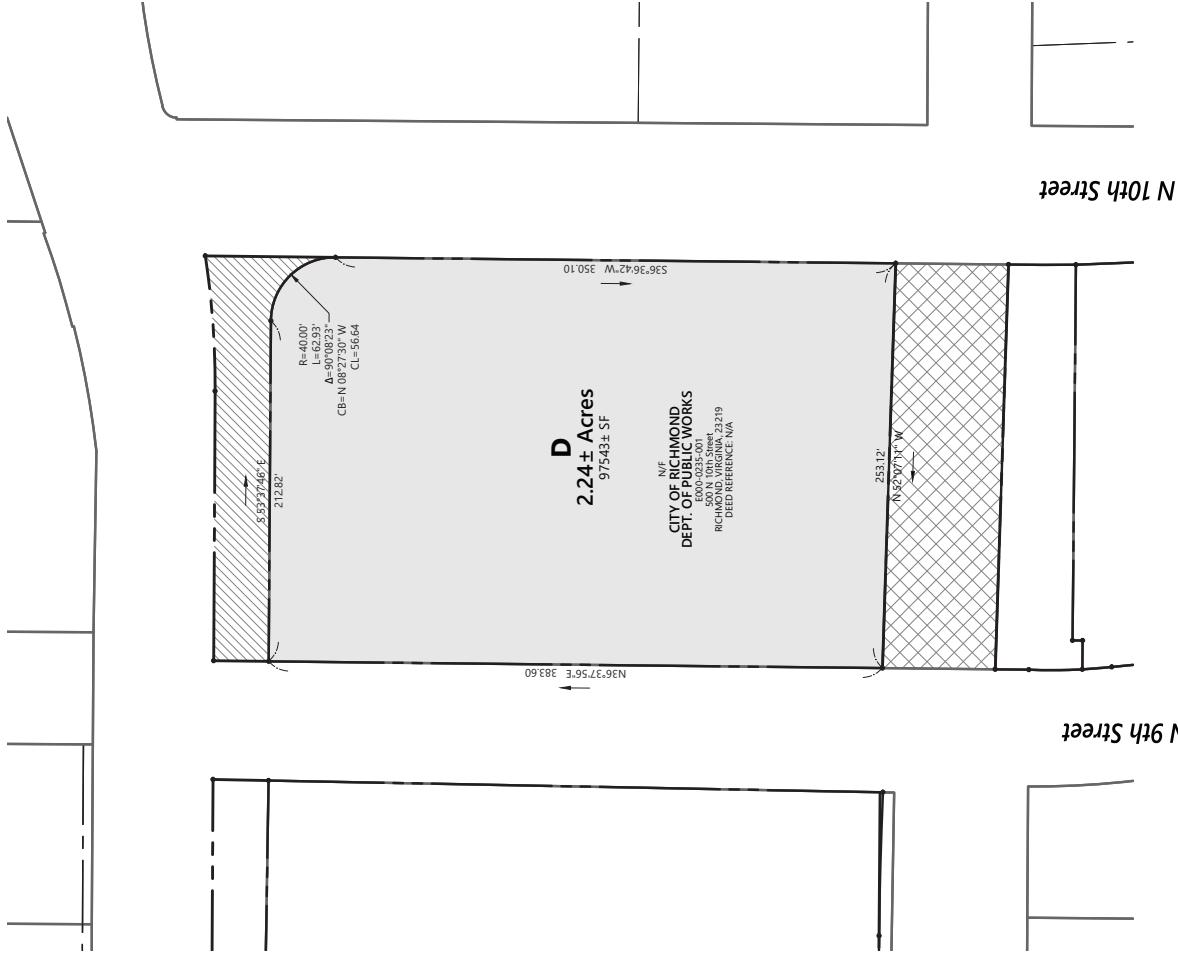
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- NOTES** _____
Property owners correct as of _____
Ordinance _____
2. _____ 3. Adopted _____
4. Accepted _____

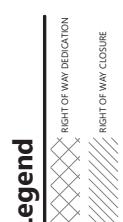


PROPERTY LINE INFORMATION DEPICTED IN THIS EXHIBIT IS BASED ON COMPILED INFORMATION FROM CITY GIS, PLANS OF RECORDS AND VARIOUS SURVEYS. NO FIELD SURVEY OR PROPERTY SURVEY WAS COMPLETED AS PART OF THIS EFFORT.

E. Leigh Street



E Clay Street



5

- NOTES** Property owners correct as of
 2. Ordinance _____
 3. Adopted _____
 4. Accepted _____



North of Broad Redevelopment Parcel Boundary Exhibit

Block No.	Council District	North of Broad Redevelopment Parcel Boundary Exhibit
0 30 60 120 feet		 
NOTES		<p>1. Property owners correct as of _____ 2. Ordinance _____ 3. Adopted _____ 4. Accepted _____</p>
REFERENCES:		REVISIONS:
		<p>DRAWN BY: MSB CHECKED BY: KH</p> <p>DEPARTMENT OF PUBLIC WORKS RICHMOND, VIRGINIA</p> <p>FIELD NOTE 1"=60'</p> <p>SCALE DATE July 22, 2019</p> <p>PROJECT .</p> <p>DPW DNG # N-28853 SHEET 5 OF 10</p>
115 South 15th Street Suite 200 Richmond, VA 23219 804-343-7100		<p>Surveys Division, Room 600 City Hall 900 E. Broad Street, Richmond, Va. 23219</p>

N/F
CITY OF RICHMOND
NO. 000-001-034
500 E MARSHALL STREET
RICHMOND, VIRGINIA 23219
DEED REFERENCE: N/A

N/F
CITY OF RICHMOND
SOLO E MARSHALL STREET
RICHMOND, VIRGINIA 23219
DEED REFERENCE: N/A

E Clay Street

E-A
0.30± Acres
L=220.32' A=21'02"2" R=600.00' CB=39'99"E CL=219.09'

E-B
0.15± Acres
L=188.18' A=17'58"2" R=400.00' CB=38'27"4" CL=187.41'

N/F
CITY OF RICHMOND
DEPT. OF PUBLIC WORKS
NO. 000-001-033
500 E MARSHALL STREET
RICHMOND, VIRGINIA 23219
DEED REFERENCE: N/A

E-C
0.21± Acres
L=916.01' SF

N/F
RICHMOND REDEVELOPMENT
AND HOUSING AUTHORITY
500 E MARSHALL STREET
RICHMOND, VA 23219
DEED REFERENCE: 00033-0362

E Marshall Street

N 5th Street

N 5th Street



Legend



1. Property owners correct as of _____
2. Ordinance _____
3. Adopted _____
4. Accepted _____



NOTES

North of Broad Redevelopment Parcel Boundary Exhibit

Council District	Block No.	

115 South 15th Street
Suite 200
Richmond, VA 23219
804.343.7100

Surveys Division, Room 600 City Hall
900 E. Broad Street, Richmond, Va. 23219

DEPARTMENT OF PUBLIC WORKS
RICHMOND, VIRGINIA

REVISIONS:

0 30 60 120 Feet

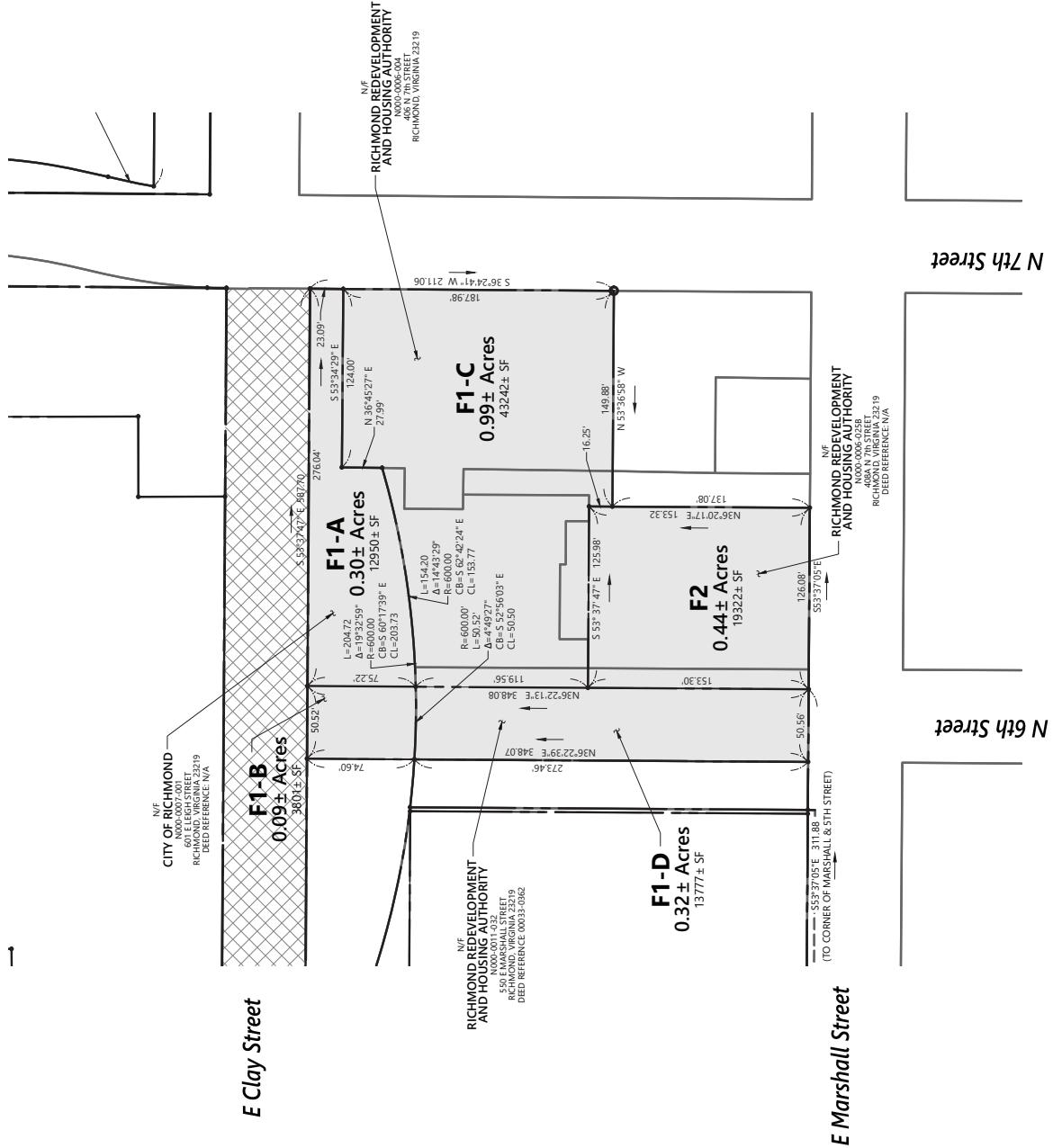
RIGHT OF WAY DEDICATION

RIGHT OF WAY CLOSURE

REFERENCES:

DRAWN BY: MSB KH	FIELD NOTE	SCALE 1"=60'	DATE July 22, 2019	PROJECT	DPW DWG # N-28853
CHECKED BY:					SHEET 6 OF 10

City Seal: RICHMOND, VIRGINIA



Legend

0 30 60 120 Feet

- Property owners correct as of _____
- Ordinance _____
- Adopted _____
- Accepted _____

North of Broad Redevelopment Parcel Boundary Exhibit

Council District

Block No.



115 South 15th Street
Suite 200
Richmond, VA 23219
804.343.7100

Surveys Division, Room 600 City Hall

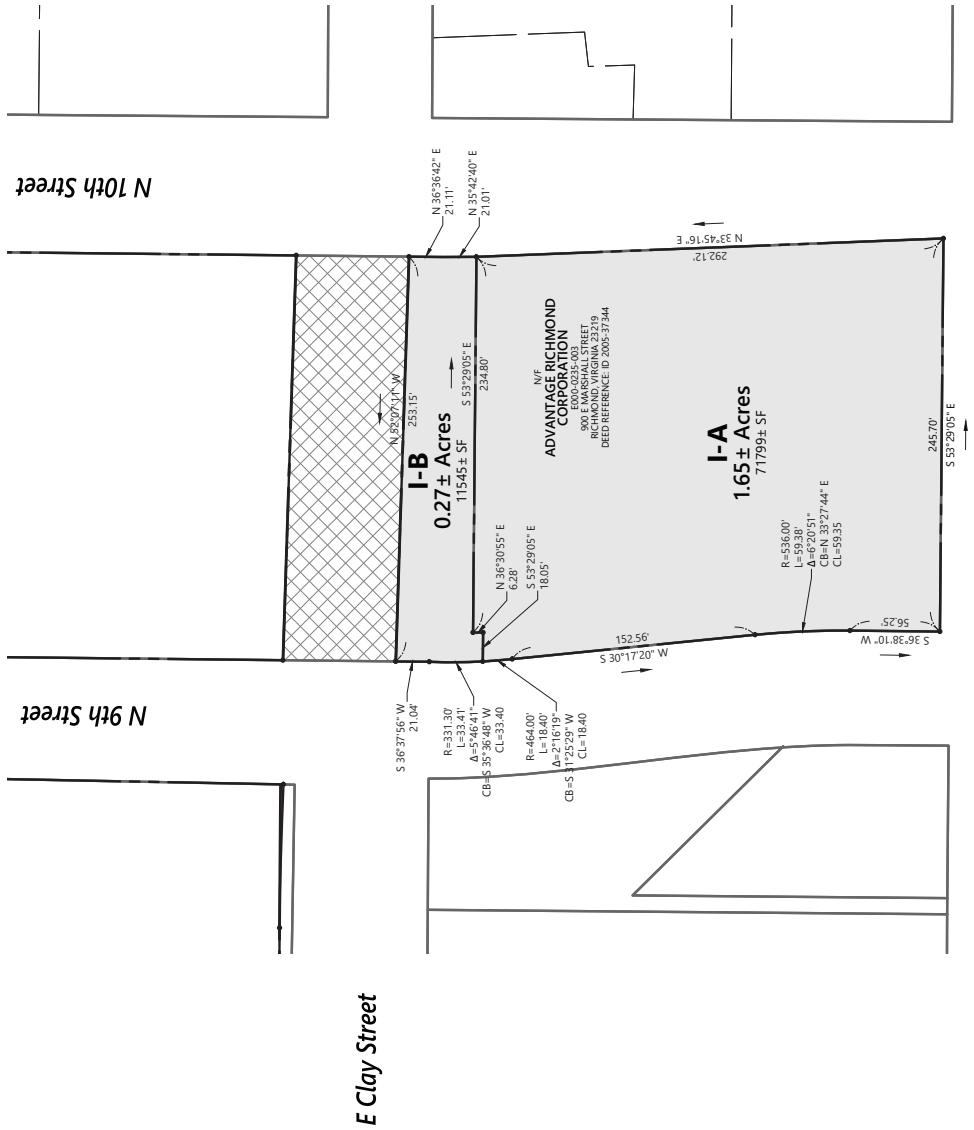
900 E. Broad Street, Richmond, Va. 23219

DEPARTMENT OF PUBLIC WORKS

RICHMOND, VIRGINIA

REVISIONS:	DRAWN BY: MSB CHECKED BY: KH	FIELD NOTE	SCALE $1''=60'$	DATE July 22, 2019	PROJECT	DPW DWG # N-28853 SHEET 7 Of 10

PROPERTY LINE INFORMATION DEPICTED IN THIS EXHIBIT IS BASED ON COMPILED INFORMATION FROM CITY GIS, PLANS OF RECORDS AND VARIOUS SURVEYS. NO FIELD SURVEY OR PROPERTY RESEARCH WAS COMPLETED AS PART OF THIS EFFORT.



E Clay Street

E Marshall Street

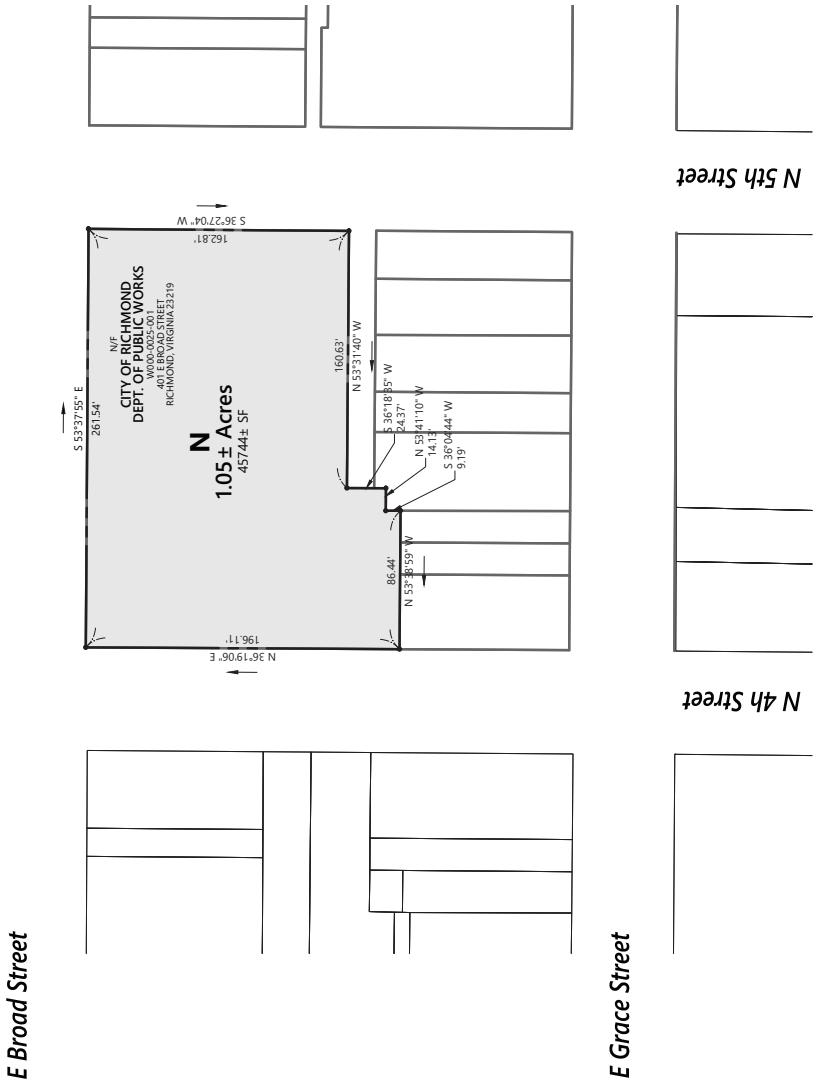
eyetell

- RIGHT OF WAY DEDICATION
RIGHT OF WAY CLOSURE



Block No.			Council District									
0	30	60	120-foot									

PROPERTY LINE INFORMATION DEPICTED IN THIS EXHIBIT IS BASED ON COMPILED INFORMATION FROM CITY GIS, PLANS OF RECORDS AND VARIOUS SURVEYS. NO FIELD SURVEY OR PROPERTY RESEARCH WAS COMPLETED AS PART OF THIS EFFORT.



E Broad Street

Legend

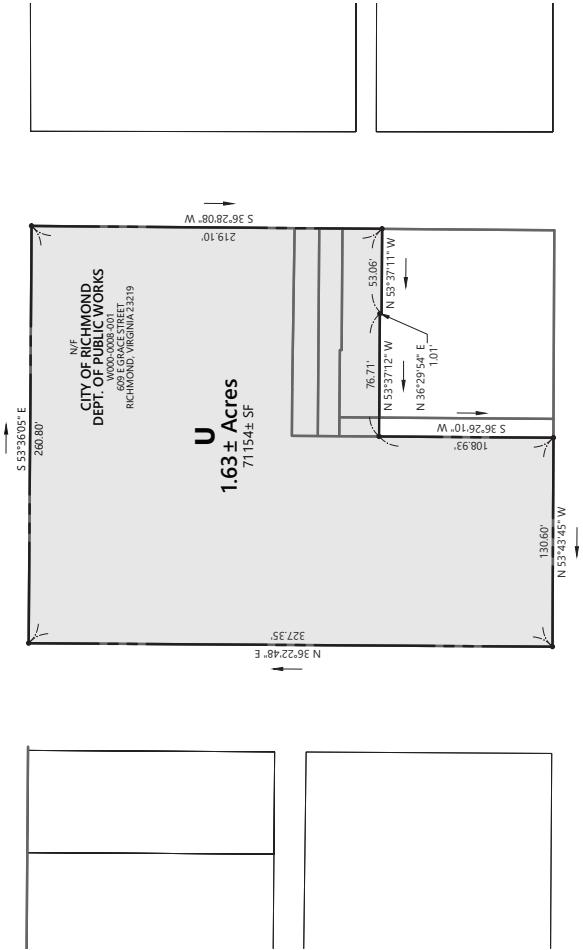
-



		Council District	Block No.
  0 30 60 120 Feet			
NOTES Property owners correct as of _____ 2. Ordinance _____ 3. Adopted _____ 4. Accepted _____	 	North of Broad Redevelopment Parcel Boundary Exhibit	
REFERENCES: . . .	REVISIONS: . . .	DRAWN BY: MSB CHECKED BY: KH	FIELD NOTE 1"-60' SCALE PROJECT DATE July 22, 2019
. . .	SURVEYS DIVISION, ROOM 600, CITY HALL 900 E. BROAD STREET, RICHMOND, VA. 23219	DEPARTMENT OF PUBLIC WORKS RICHMOND, VIRGINIA	DWG # N-28853 SHEET 9 OF 10
. . .	115 South 15th Street Suite 200 Richmond, VA 23219 804.343.7100

PROPERTY LINE INFORMATION DEPICTED IN THIS EXHIBIT IS BASED ON COMPILED INFORMATION FROM CITY GIS, PLANS OF RECORDS AND VARIOUS SURVEYS. NO FIELD SURVEY OR PROPERTY RESEARCH WAS COMPLETED AS PART OF THIS EFFORT.

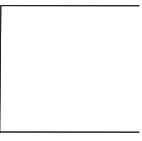
E Grace Street



E Franklin Street



N 6th Street



N 7th Street



Council District



Block No.

North of Broad Redevelopment Parcel Boundary Exhibit



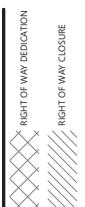
115 South 15th Street
Suite 200
Richmond, VA 23219
804.343.7100

Surveys Division, Room 600 City Hall
900 E. Broad Street, Richmond, Va. 23219

DEPARTMENT OF PUBLIC WORKS
RICHMOND, VIRGINIA

DRAWN BY: MSB
CHECKED BY: KH
FIELD NOTE
SCALE
1"=60'
DATE
July 22, 2019
PROJECT
Block 10
DWG # N-28853
SHEET 10 OF 10

Legend



1. Property owners correct as of _____
2. Ordinance _____
3. Adopted _____
4. Accepted _____

REVISIONS:

REFERENCES:

Exhibit B to Purchase and Sale
Agreement

Form of Deed

EXHIBIT B

FORM OF DEED

Document Prepared By:
Richmond City Attorney's Office
900 East Broad Street, Room 400
Richmond, Virginia 23219

Tax Parcel Nos.: _____

Consideration:

Assessed Value:

QUITCLAIM DEED

THIS DEED, made this _____ day of _____, 201____, between **CITY OF RICHMOND, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia ("Grantor") and _____, a _____ ("Grantee").

RECITAL

This conveyance is exempt from the Virginia grantor's tax, pursuant to Section 58.1-811(C)(4) of the Code of Virginia (1950), as amended.

W I T N E S S E T H :

WHEREAS, by recordation of this Deed, Grantee represents that the conveyance of the Property (hereinafter defined) upon the terms and conditions specified is acceptable to Grantee;

NOW, THEREFORE, for consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor hereby remises, releases and forever quitclaims unto Grantee, all Grantor's right, title and interest in and to the following real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference, including all Grantor's right, title and

interest in and to any and all appurtenances pertaining thereto and any and all buildings and other improvements situated thereon, if any (collectively, the “Property”).

[NOTE: FOR PRIVATE DEVELOPMENT PARCLES B AND E, A PROVISION MUTUALLY ACCEPTABLE TO THE PARTIES WILL BE INCLUDED IN THE DEED THAT RESERVES UNTO THE CITY AN EASEMENT TO THE STAIR TOWERS/ELEVATOR AND ACCESS RAMP, AS APPLICABLE.]

This conveyance is made subject to applicable zoning regulations and ordinances and to all easements, conditions and restrictions of record, as the same may lawfully apply to the Property.

The Property is transferred to Grantee further subject to the condition that the Property shall initially be developed and constructed as a [_____], containing approximately [_____] (the “Initial Improvements”), in accordance with the terms and conditions set forth in that certain Navy Hill Development Agreement dated _____, 2019, by and between Grantor and The NH District Corporation, a copy of which is recorded in the Clerk’s Office of the Circuit Court of the City of Richmond, Virginia as Instrument No. _____ (the “Development Agreement”). Said condition shall be for the benefit of and enforceable by Grantor and shall operate as a covenant binding Grantee, its successors and assigns hereunder, and shall run with title to the Property. Said condition shall be deemed satisfied upon the issuance of a temporary or permanent certificate of occupancy for the Initial Improvements by Grantor, at which time Grantor, acting through the Chief Administrative Officer or his/her designee, shall execute and deliver to

Grantee a certificate, in recordable form, evidencing compliance with said condition and releasing the condition as an encumbrance upon the Property.

The Property is transferred to Grantee further subject to the condition that the Property and all improvements developed and constructed thereon from time to time, including, without limitation, the Initial Improvements, shall be subject to real estate taxes and assessments imposed by the City of Richmond on other similarly situated properties located within the City of Richmond. Said condition shall be for the benefit of Grantor and shall operate as a covenant binding Grantee, its successors and assigns hereunder, and shall run with title to the Property.

[Signatures on Following Page]

Exhibit B - 3

4164-3156-9947.12

IN WITNESS WHEREOF, the Grantor has caused this Deed to be executed on its behalf by its duly authorized representative.

CITY OF RICHMOND, VIRGINIA, a municipal corporation of the Commonwealth of Virginia

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA:

CITY OF RICHMOND, to-wit:

The foregoing Deed was acknowledged before me on the _____ day of _____, 20____, by _____, _____ of the City of Richmond, a municipal corporation of the Commonwealth of Virginia, on behalf of such entity.

Notary Public

Notary Registration Number: _____
My Commission expires: _____

[Notary Seal]

Prepared and approved as to form:

GRANTEE'S ADDRESS

Exhibit B - 4

EXHIBIT A - TO QUITCLAIM DEED
LEGAL DESCRIPTION

[To Be Inserted based on Survey for Applicable Private Development Parcel]

Exhibit C to Purchase and Sale
Agreement

Form of Affidavit

EXHIBIT C

FORM OF AFFIDAVIT

AFFIDAVIT AS TO MECHANICS' LIENS AND POSSESSION

TO: _____

FILE NO.: _____

The undersigned, acting in its capacity as _____ of the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia ("Affiant"), hereby declares as follows with respect to the Property known as _____ (the "Property"), on behalf of the Affiant:

- (a) There has been no work performed, services rendered or materials furnished by or on behalf of Affiant in connection with repairs, improvements, development, construction, removal, alterations, demolition or similar activities with respect to the Property during the 123 days prior to the date hereof, for which payment has not been made or provided for.
- (b) There are no outstanding claims or persons entitled to any claim or right to a claim for a mechanic's or materialman's lien against the Property in connection with work performed, services rendered or materials furnished by or on behalf of Affiant.
- (c) There are no outstanding, unrecorded leases or other similar agreements, written or oral, with respect to the Property and to which the Affiant is a party.

This affidavit is made for the purpose of inducing you to insure title to the Property without exception to (i) claims of mechanics or materialmen or (ii) rights of parties in possession except as set forth above.

[Signatures On Following Page]

IN WITNESS WHEREOF, the undersigned has executed this Affidavit as of the _____ day of _____, 20____.

CITY OF RICHMOND, VIRGINIA, a municipal corporation and political subdivision of the Commonwealth of Virginia

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA:

CITY OF RICHMOND:

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, as _____ of the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia, on behalf of such entity.

My commission expires:

Notary Registration Number: _____

Notary Public

(SEAL)

Exhibit C - 2

Exhibit D to Purchase and Sale
Agreement

Know Hazardous Environmental
Conditions

Exhibit E to Purchase and Sale
Agreement

Form of Construction Deed of Trust

EXHIBIT E
FORM OF DEED OF TRUST

This Document Prepared By:
McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, Virginia 23219
Attn: George Keith Martin, Esq.

Tax Parcel No(s): _____

DEED OF TRUST

THIS DEED OF TRUST (this “Deed of Trust”) is made as of _____, 201_____, among _____, a _____, which has a principal office address of _____, to be indexed as Grantor, and _____, a _____, which has a principal office address of _____, to be indexed as Grantee (“Trustee”).

WITNESSETH: For and in consideration of Ten Dollars (\$10.00), cash in hand paid, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Grantor grants and conveys to the Trustee, the following described real estate:

See Schedule A attached hereto and made a part hereof

Together with all the buildings and improvements now and hereafter erected on the real estate and all easements, rights, and appurtenances thereto, if any (collectively, the “Property”);

IN TRUST, to secure to the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia, having an address of _____ (“City” or the “Beneficiary”), the obligation of the Grantor to comply with the covenant made by the Grantor in that certain Quitclaim Deed dated of even date herewith from the City to the Grantor and recorded in the Clerk’s Office of the City of Richmond, Virginia immediately prior to the recordation of this Deed of Trust, for the benefit of the City to construct Initial Improvements as therein defined in accordance with the terms and conditions of the Development Agreement as therein defined (the “**Construction Covenant**” and, together with the covenants made by the Grantor in Section 1 below, the “**Secured Obligations**”).

1. **Covenants.** For so long as this Deed of Trust remains in full force and effect, the Grantor agrees:

(a) to pay when due all real estate taxes and other assessments and public or private charges on the Property;

(b) the Grantor shall comply with and shall not permit violation of the terms of any law, or regulation, including but not limited to, all applicable environmental laws, rules or regulations, applicable to the use, occupancy or operation of the Property;

(c) to notify the City and Trustee promptly by certified mail of any actual or threatened taking or condemnation of any part of the Property under any power of eminent domain;

(d) to immediately discharge any lien not approved by the City in writing that has or may attain priority over this Deed of Trust, subject to the terms and conditions of Section 5 below.

2. Events of Default. Any one of the following events will constitute an event of default (an “Event of Default”) under this Deed of Trust:

(a) the Grantor’s failure to satisfy the Construction Covenant (as evidenced by the issuance of a certificate of occupancy for the improvements to be constructed on the Property pursuant to the Construction Covenant);

(b) failure by Grantor to duly observe, comply with or perform, within thirty (30) calendar days after written notice of such failure is given to Grantor, any term, covenant or requirement of this Deed of Trust; and

(c) if a petition or complaint under any bankruptcy, insolvency or other law seeking reorganization, liquidation, dissolution or other relief is filed by or against Grantor, or if Grantor becomes unable or admits any inability to pay its debts as they become due.

3. Remedies. Subject to the terms of Section 5 below, whenever an Event of Default shall have occurred, then without prior notice (unless otherwise provided in Section 2 above or as provided below) and in addition to any other rights and remedies provided by law, in equity, or by contract, the Trustee, for the sole benefit of the City, as the case may be, may in their sole discretion exercise the following rights or remedies:

(a) to declare all Secured Obligations to be due and payable, to the extent applicable; and

(b) to cause all or any portion of the Property to be transferred to the City through the exercise of the non-judicial power of [sale] granted hereby, upon giving of notice as required by law.

All rights and remedies of the Trustee and the City under any law, under this Deed of Trust or under any agreement given in connection with this Deed of Trust shall be cumulative and not exclusive and may be exercised successively or concurrently.

This Deed of Trust is governed by and, except as modified elsewhere herein, construed to grant such powers, rights, duties, and obligations as are specified in Sections 55-59 and 55-59.1 through 55-59.4 of the Code of Virginia (1950), as amended, and the following terms as defined in Section 55-60 of the Code of Virginia (1950), as amended, confer the powers, rights, duties, and obligations described therein:

Exemptions waived.

Subject to call on default.

Renewal or extension permitted.

Any trustee may act.

Substitution of trustees permitted.

Advertisement required: TWO (2) times in a newspaper having general circulation in the City of County where the Property or some part thereof may be located, which advertisements need not be successive.

4. Other Provisions.

(a) No lawful act of commission or omission upon the part of the Beneficiary or the Trustee, or any delay in exercising their rights hereunder, shall in any way or at any time affect, impair or waive the rights of the Beneficiary or the Trustee to enforce any right, power or benefit hereunder. The provisions of this Deed of Trust may be amended only by the written agreement of the Beneficiary, the Trustee and the Grantor.

(b) Upon Grantor's satisfaction of the Construction Covenant (as evidenced by the issuance of a certificate of occupancy for the improvements to be constructed on the Property pursuant to the Construction Covenant), the Beneficiary shall, upon request, execute a proper release of this Deed of Trust.

(c) All rights of the Beneficiary hereunder shall inure to the benefit its successors and assigns, and all Secured Obligations hereunder shall bind the Grantor's heirs, successors and assigns.

(d) Nothing in this Deed of Trust shall be construed to impose any obligation upon either the Beneficiary or the Trustee to expend any money or take any other discretionary act

herein permitted, and neither the Beneficiary nor the Trustee shall have any liability or obligation for any delay or failure to take any discretionary act.

(e) This Deed of Trust and all of the rights, remedies and duties of the Beneficiary and the Grantor shall be governed by the laws of the Commonwealth of Virginia.

(f) The titles and section headings herein are included for convenience only and shall not be deemed to be a part of this Deed of Trust. The pronouns and verbs set forth herein shall be construed as being of such number and gender as the context may require.

(g) Wherever possible, each provision of this Deed of Trust shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Deed of Trust shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Deed of Trust.

(h) No previous waiver and no failure or delay by Beneficiary in acting with respect to the terms of this Deed of Trust shall constitute a waiver of any breach, default, or failure of condition under this Deed of Trust or the obligations secured thereby. A waiver of any term of the Development Agreement, the Deed of Trust or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of the Development Agreement and the terms of any other document related to the Development Agreement, the terms of the Development Agreement shall prevail.

5. Lender Cure Rights under Financing; Deed of Trust Subordinate to other Financing.

(a) This Deed of Trust is expressly and automatically subordinate and subject to the cure rights provided for any and all deeds of trust and other liens securing Grantor's construction and/or permanent financing. The foregoing subordination shall be self-operative and shall not require the execution by the Beneficiary of any instruments of subordination; however, upon the request of the holder of any such deeds of trust or other liens, the Beneficiary shall execute an instrument subordinating the lien of this Deed of Trust to such other deeds of trust or other liens.

(b) Whether or not an event of default (as defined in the financing documents) has occurred, if an Event of Default under this Deed of Trust has occurred, the Beneficiary will be entitled to direct Trustee to exercise its rights under and in accordance with this Deed of Trust on the Property; provided, that the Beneficiary first gives written notice of such Event of Default to the senior and junior lenders or their assignees or designees and affords such parties the right to cure or remedy Grantor's Event of Default for a period of up to twelve (12) months (without any obligation to do so) (the "**Lender Cure Period**"). The Beneficiary may not exercise its rights under this Deed of Trust if (i) the lender institutes foreclosure or similar proceedings prior to the expiration of the Lender Cure Period, and (ii) is using commercially reasonable efforts to pursue

the same to conclusion. If the lenders or their assignees or designees fails to cure or remedy Grantor's Event of Default or replace Grantor with a developer capable of remedying the Grantor Event of Default, within the Lender Cure Period, then the Beneficiary may thereafter direct the Trustee to exercise its rights under and in accordance with this Deed of Trust on the Property. However the failure of the lender to exercise its cure rights during the Lender Cure Period, or to do so in a timely fashion, shall not affect the priority of its lien.

[See Attached Signature Page]

Exhibit E - 5

4164-3156-9947.10

IN WITNESS WHEREOF, the Grantor has caused this Deed of Trust to be executed on its behalf by its duly authorized representative as of the date first above written.

GRANTOR:

_____,
a _____

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA:

CITY/COUNTY OF _____, to-wit:

The foregoing Deed of Trust was acknowledged before me on the ____ day of
_____, 20____, by _____, _____ of
_____, a _____, on behalf of such entity.

Notary Public

Notary Registration Number: _____
My Commission Expires: _____

[Notary Seal]

Exhibit F to Purchase and Sale
Agreement

Affordable Housing Covenant

EXHIBIT F

<INSERT RECORDING INFORMATION>

Draft 07/29/19

<TAX MAP PARCEL NUMBER>

DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS

This DECLARATION OF AFFORDABLE DWELLING UNITS COVENANTS ("Covenant") is made as of the _____ day of _____, 20____ (the "Effective Date"), by <INSERT>, ("Declarant"), identified for indexing purposes as Grantor and Grantee.

RECITALS

R-1. The Declarant is the fee simple owner of certain real property as further described in **Exhibit A** (the "Property").

R-2. The City of Richmond, Virginia (the "City") has determined to further its public policy of increasing the affordable housing stock in that area of the City bounded by Belvidere Street, the Richmond-Petersburg Turnpike, and the James River ("Downtown Richmond") and in particular, on the Property.

R-3. The City and The NH District Corporation (the "Developer") entered into that certain Development Agreement ("Development Agreement") and that certain Purchase and Sale Agreement ("PSA") whereby the City and the Developer agreed upon the terms under which the City agreed to convey the fee simple interest in various parcels of real property located in Downtown Richmond ("Development Parcels") and according to the terms of which the Developer agreed, among other things, to directly develop and construct two hundred and eighty (280) Affordable Housing Units dispersed among several of those parcels more particularly identified in the Development Agreement (the "Affordable Housing Parcels").

R-4. The Property is identified in the Development Agreement as one of the Affordable Housing Parcels.

R-5. The Declarant was formed to acquire title to the Property and to oversee development and construction of the Improvements (as defined in the Development Agreement) on the Property in accordance with the Development Agreement and the PSA, including the Affordable Housing Units (as defined herein).

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, Declarant hereby declares that the Property shall be subject to this Covenant, which shall be binding in accordance with the terms herein on Declarant and on all tenants and purchasers of the Affordable Housing Units and all Transferees (as defined herein) of the Property until expiration of the Affordability Period. For purposes herein, Transferees shall be deemed all persons that may hereafter acquire any interest whatsoever in the Property, or any part thereof, from Declarant, or any successor or assign of Declarant, or any other party, whether by sale, lease, assignment, hypothecation, or any other means of transfer (any and all of the foregoing means of

transfer being herein referred to as “Transfer”), for the Affordability Period. Wherever “Declarant” is used in this Covenant, the term includes any Transferee.

ARTICLE I **DEFINITIONS**

For the purposes of this Covenant, the capitalized terms used herein shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular.

Affordability Period: is defined in Article X.

Affordability Requirement: is the requirement that Declarant develop and construct Affordable Housing Units, subject to the following requirements: (i) no less than forty percent (40%) of the units so constructed and operated on the Property shall be sold or leased for occupancy by households earning up to 60% of Area Median Income, and (ii) the number of Affordable Housing Units on the Property shall be at least ten percent (10%) and no greater than thirty percent (30%) of the number of Residential Units to be developed on the Property.

Affordable Housing Units: are dwelling units that are reserved for occupancy by households earning up to 80% of Area Median Income.

Affordable Unit Owner: means a Qualified Purchaser who own(s) a For Sale Affordable Unit.

Affordable Unit Tenant: means a Qualified Tenant who lease(s) a Rental Affordable Unit.

Area Median Income or AMI: means the most recent annually adjusted median income for the Richmond, VA Metropolitan Statistical Area published by the United States Department of Housing and Urban Development.

Annual Household Income: means the aggregate annual income of a Household as determined by using the standards set forth in 24 CFR § 5.609, as may be amended.

Annual Report: has the meaning given in Section 4.9.

Business Day: means Monday through Friday, inclusive, other than holidays recognized by the City of Richmond, Virginia, the Commonwealth of Virginia, or the United States government.

Certificate of Purchaser Eligibility: means a certification executed by a Household prior to its purchase of an Affordable Housing Unit, in a form approved by the City (such approval not to be unreasonably withheld), that shall be given to the City, or its designee, and Declarant, representing and warranting the following: (a) the Household is a Qualified Purchaser and has disclosed all of its Annual Household Income and has provided reasonably satisfactory documentation evidencing such Annual Household Income, (b) the Household's Annual Household Income is at or below the Maximum Annual Household Income for the applicable

Affordable Housing Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Housing Unit as its principal residence, (e) that the Household size is within the Occupancy Standard for the Affordable Unit, and (f) any other reasonable and customary representations requested by the City or Declarant.

Certificate of Tenant Eligibility: means a certification by a Household at its initial occupancy of an Affordable Housing Unit, in a form approved by the City (such approval not to be unreasonably withheld), that shall be given to the City, or its designee, and Declarant representing and warranting the following: (a) the Household is a Qualified Tenant and has disclosed all of its Annual Household Income, (b) the Household's Annual Household Income is at or below the Maximum Annual Household Income for the applicable Affordable Housing Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Housing Unit as its principal residence, (e) that the Household size is within the Occupancy Standard for the Affordable Unit, and (f) any other reasonable and customary representations requested by the City or Declarant.

Certification of Inspection: means a certification by Declarant that it has performed or caused to be performed an inspection of a Rental Affordable Unit and that, to the best of Declarant's knowledge, such Rental Affordable Unit is in compliance with all applicable statutory and regulatory requirements, in such form as the City approves (such approval not to be unreasonably withheld).

Certification of Residency: means a certification made by an Affordable Unit Tenant or Affordable Unit Owner that states that the Affordable Unit Tenant or Affordable Unit Owner occupies the Affordable Housing Unit as its principal residence, in such form as the City approves (such approval not to be unreasonably withheld).

Designated Affordability Level: means the percentage of AMI assigned to each Affordable Housing Unit, at or below which a Qualified Purchaser's or Qualified Tenant's, as applicable, Annual Household Income must fall.

Declarant: is identified in the preamble of this Covenant, and when used herein includes any Transferee.

For Sale Affordable Unit: means an Affordable Housing Unit that shall be sold to a Qualified Purchaser.

Household(s): means all persons who will occupy the Affordable Housing Unit, including all persons over eighteen (18) years of age whose names will appear on the lease, the purchaser's or tenant's, as applicable, spouse or domestic partner and children under eighteen (18) years of age.

Household Size Adjustment Factor (HAF): means the factor related to the number of individuals in a Household for the purpose of establishing the Maximum Annual Household Income of an Affordable Housing Unit, as set forth in the following table:

Household Size	Household Adjustment Factor
----------------	-----------------------------

1	0.7
2	0.8
3	0.9
4	1
5	1.1
6	1.2

Housing Cost: means (a) the total monthly payments for rent and Utilities for a Rental Affordable Unit, less any rental subsidies paid on behalf of the Qualified Tenant leasing that Rental Affordable Unit, or (b) the total monthly mortgage payments, property tax, hazard insurance, if applicable, and condominium or homeowner fees for a For Sale Affordable Unit.

HUD: means the United States Department of Housing and Urban Development.

Land Records: means the real property records for the City of Richmond, Virginia.

Market-Rate Unit: is each Residential Unit that is not an Affordable Housing Unit.

Maximum Allowable Rent: is defined in Section 4.3.2.

Maximum Annual Household Income or MAXI: is the maximum Annual Household Income of a Household occupying an Affordable Housing Unit as calculated pursuant to (a) Section 4.4.1 for Rental Affordable Units and (b) Section 5.2.1 for For Sale Affordable Units.

Maximum Resale Price: is the maximum resale price of a For Sale Affordable Unit as described in Section 5.1.2 and determined pursuant to the procedures contained in **Schedule 2** attached hereto.

Maximum Sales Price: as defined in Section 5.1.1.

Minimum Annual Household Income or MINI: is the minimum Annual Household Income of a Household occupying an Affordable Housing Unit as calculated pursuant to (a) Section 4.4.2 for Rental Affordable Units and (b) Section 5.2.1. for For Sale Affordable Units.

Mortgage: means a mortgage, deed of trust, mortgage deed, or such other classes of instruments as are commonly given to secure a debt under the laws of the Commonwealth of Virginia.

Mortgagee: means the holder of a Mortgage.

Occupancy Standard: means the minimum number of individuals permitted to occupy any given Affordable Housing Unit, as identified in the following chart:

Affordable Housing Unit Size (Number of Bedrooms)	Minimum Number of Individuals in Affordable Housing Unit
--	--

Studio/Efficiency	1
1	1
2	2
3	4
4	6
5	8
6	10

Occupancy Standard Factor: means the factor related to the assumed number of occupants for the purpose of establishing the Maximum Sales Price of a For Sale Affordable Unit as set forth in the following table:

Size of For Sale Affordable	Occupancy Pricing Standard	Occupancy Standard Factor
Efficiency/Studio	1	.7
1 Bedroom	2	.8
2 Bedroom	3	.9
3 Bedroom	5	1.1

Over-Income Tenant: as defined in Section 4.5.5.

Owner: means, in the context of Rental Affordable Units, Declarant, and in the context of For Sale Affordable Units, Declarant for so long as Declarant owns the applicable For Sale Affordable Unit, and then thereafter, the Affordable Unit Owner that owns such For Sale Affordable Unit.

Person: means any individual, corporation, limited liability company, trust, partnership, association, or other legal entity.

Property: is defined in the Recitals.

Qualified Purchaser: means a Household that (i) has an Annual Household Income less than or equal to the Maximum Annual Household Income for the applicable Affordable Housing Unit, (ii) shall occupy the Affordable Housing Unit as its principal residence during its ownership of such Affordable Housing Unit, (iii) shall not permit exclusive occupancy of the Affordable Housing Unit by any other Person, and (iv) shall use, occupy, hold and sell the Affordable Housing Unit as an Affordable Housing Unit subject to the Affordability Requirement (including the requirement to sell the Affordable Housing Unit to a Qualified Purchaser) and this Covenant.

Qualified Tenant: means a Household that (i) has an Annual Household Income less than or equal to the Maximum Annual Household Income for the applicable Affordable Housing Unit at the time of leasing and subsequent lease renewals, (ii) shall occupy the Affordable Housing Unit as its principal residence during its lease of such Affordable Housing Unit, (iii) shall not permit exclusive occupancy of the Affordable Housing Unit by any other Person, and (iv) shall use and occupy the Affordable Housing Unit as an Affordable Housing Unit subject to the Affordability Requirement and this Covenant.

Rental Affordable Unit: means an Affordable Housing Unit that shall be leased to a Qualified Tenant.

Rental Affordable Unit Lease Rider: is that certain lease rider, which is attached to this Covenant as **Exhibit B** and incorporated herein, as the same may be amended from time to time with the written approval of the City (such approval not to be unreasonably withheld).

Residential Unit: is any dwelling unit developed and constructed on the Property to be sold or leased for Residential Use, including all Affordable Housing Units.

Sale: is defined in Section 5.1.

Successor In Interest: is defined in Section 5.8.

Utilities: means water, sewer, electricity, and natural gas.

ARTICLE II AFFORDABILITY REQUIREMENT

2.1 Requirement of Affordability. Declarant shall construct, reserve, and either maintain and lease as Rental Affordable Units, or sell as For Sale Affordable Units that number of Affordable Housing Units that are required by the Affordability Requirement. Declarant reserves the right, from time to time, in its sole discretion to change the designation of any Affordable Housing Units initially designated as Rental Affordable Units to For Sale Affordable Units and, prior to the initial sale of any Affordable Housing Units initially designated as For Sale Affordable Units, the designation of any Affordable Housing Units initially designated as For Sale Affordable Units to Rental Affordable Units.

2.2 Affordable Unit Standards and Location. [SUSAN TO REVIEW]

2.2.1 *Size.* Each category of Residential Unit (studio, one-bedroom, two-bedrooms, etc.) developed and constructed as an Affordable Housing Unit must be of a size substantially similar to the same category of Residential Unit developed and constructed as Market-Rate Units.

2.2.2 *Exterior Finishes.* Exterior finishes of Affordable Housing Units will be substantially similar to the appearance, finish and durability of the exterior finishes of the Market-Rate Units.

2.2.3 *Interior Finishes.* Interior base finishes, appliances and equipment in the Affordable Housing Units must be equivalent to the Market-Rate Units.

2.2.4 *Affordable Unit Location.* Affordable Housing Units shall be disbursed throughout the Property and shall not be concentrated on any one floor or within a tier or section of the Property and shall float within each residential building.

2.3 Certification. The City, or a designee of the City, may review documentation and verify a Household's Annual Household Income and Household's size in order to determine whether the Household is a Qualified Tenant or Qualified Purchaser, as applicable. The City may require, and

may designate a third party to issue, such certifications as it may deem necessary or desirable to memorialize such qualification. Wherever “City” is used in this Covenant with regard to review, administration, or reporting requirements designed to ensure Household eligibility, “City” will include any such designee.

ARTICLE III USE

3.1 Use. Except as provided herein, all Affordable Unit Owners and Affordable Unit Tenants shall have the same and equal use and enjoyment of all of the amenities of the Property and services provided at the Property as the owners or tenants of the comparable Market-Rate Units. No restrictions, requirements or rules shall be imposed on Affordable Unit Owners or Affordable Unit Tenants that are not imposed equally on the owners or tenants of the comparable Market-Rate Units. If amenities, services, upgrades, or ownership or rental of parking and other facilities are offered as an option at an additional upfront and or recurring cost or fee to the comparable Market-Rate Units, such amenities, services, upgrades, or ownership or rental of parking and other facilities shall be offered to the Affordable Unit Owners and Affordable Unit Tenants of comparable Affordable Housing Units at the same upfront and or recurring cost or fee charged to the Market-Rate Units. If there is no cost or fee charged to the owners or tenants of the comparable Market-Rate Units for such amenities, services, upgrades, or ownership or rental of parking and other facilities, there shall not be a cost or fee charged to Affordable Unit Owners or Affordable Unit Tenants of comparable Affordable Housing Units.

3.2 Demolition/Alteration. Owner shall maintain, upkeep, repair and replace interior components (including fixtures, appliances, flooring and cabinetry) of any Affordable Housing Unit with interior components of equal or better quality than those interior components being replaced. Owner shall not demolish or otherwise structurally alter an Affordable Housing Unit or remove fixtures or appliances installed in an Affordable Housing Unit other than for maintenance and repair (and replacement, if necessary, subject to the terms of the preceding sentence) without the prior written approval of the City, which approval shall be in the sole discretion of the City.

ARTICLE IV RENTAL OF AFFORDABLE HOUSING UNITS

4.1 Lease of Rental Affordable Units. In the event the Property contains Rental Affordable Units, Declarant shall reserve, maintain and lease the Rental Affordable Units to Qualified Tenants (a) in accordance with this Covenant, and (b) at a rental rate at or below the Maximum Allowable Rent.

4.2 Rental Affordable Unit Lease Requirements.

4.2.1 Form of Lease. To lease a Rental Affordable Unit to a Qualified Tenant, Declarant shall use a lease agreement to which is attached and incorporated a Rental Affordable Unit Lease Rider. The Rental Affordable Unit Lease Rider must be executed by Declarant and each Qualified Tenant prior to the Qualified Tenant's occupancy of the Rental Affordable Unit. Any occupant of the Rental Affordable Unit who is eighteen (18) years or older shall be a party to the lease agreement and shall execute the Rental Affordable Unit Lease Rider.

4.2.2 Effectiveness of Lease. The lease of a Rental Affordable Unit will only be effective if a Rental Affordable Unit Lease Rider and a Certificate of Tenant Eligibility are attached as exhibits to the lease agreement. Failure to attach the foregoing shall render the lease null and void *ab initio*.

4.2.3 Declarant to Maintain Copies. Declarant shall maintain or cause to be maintained copies of all initial and renewal leases executed with Qualified Tenants for a period of no less than five (5) years from the expiration or termination of such lease, or for such period of time as required by law, whichever is longer.

4.3 Initial Rental Affordable Unit Lease Terms.

4.3.1 Term. The term of any Rental Affordable Unit lease agreement shall be for a period of one (1) year.

4.3.2 Establishment of Maximum Rent. The maximum allowable monthly rent (**"Maximum Allowable Rent"** or "**MAR**") for each Rental Affordable Unit shall be an amount equal to the equivalent of the then current Maximum LIHTC Gross Rent for such category of Affordable Housing Unit (studio, one-bedroom, two-bedrooms, etc.) permitted to be charged by the Virginia Housing Development Authority by owners of projects in the City of Richmond, Virginia that are participating in the Federal Low-Income Housing Tax Credit (LIHTC) program, without allowance being provided for Utilities in the determination of such rents.

4.4 Income Determinations. The Annual Household Income for a prospective tenant of a Rental Affordable Unit shall be determined as of the date of the lease and any lease renewals for such Rental Affordable Unit. A Household's income eligibility to rent a Rental Affordable Unit is determined by calculating both the Maximum Annual Household Income for a Household occupying the Rental Affordable Unit and the Minimum Annual Household Income for a Household occupying the Rental Affordable Unit.

4.4.1 Maximum Annual Household Income. The Maximum Annual Household Income is determined through the use of the formula: MAXI = (AMI * DAL * HAF).

4.4.2 Minimum Annual Household Income. The Minimum Annual Household Income is determined by multiplying the monthly Housing Cost by twelve (12) and dividing this number by thirty-eight percent (38%).

4.5 Subsequent Lease Years.

4.5.1 Establishment of Maximum Rent. Declarant shall determine the Maximum Allowable Rent in lease years after the first lease year in accordance with Section 4.3.2 above.

4.5.2 Renewal by Affordable Unit Tenant. For each Affordable Unit Tenant who intends to renew its residential lease, no earlier than ninety (90) days and no later than thirty (30) days before each anniversary of the first day of a residential lease, Declarant shall request the following: (i) a Certification of Residency from each such Affordable Unit Tenant; and (ii) a

certification of income. Declarant shall not permit a renewal of an Affordable Unit Tenant's lease unless the Affordable Unit Tenant has provided Declarant with these documents as required herein and the tenant is determined to be a Qualified Tenant. If the Affordable Unit Tenant fails to provide such documents, Declarant shall treat such tenant as an Over-Income Tenant and charge market-rate rent, upon which Developer shall designate another unit as a Rental Affordable Unit, in accordance with Section 4.5.6.

4.5.3 Annual Recertification of Tenants. Upon receipt of an Affordable Unit Tenant's renewal documents at annual recertification, Declarant shall determine the Affordable Unit Tenant's income eligibility pursuant to Section 4.5 for the subject Rental Affordable Unit and notify Affordable Unit Tenant of the same within fifteen (15) days prior to the expiration of the then-current lease term. Any Affordable Unit Tenant whose Annual Household Income remains at or below the Maximum Annual Household Income for the subject Rental Affordable Unit will be eligible to remain in the Rental Affordable Unit and to renew the lease at the then-current lease rate for the particular Rental Affordable Unit.

4.5.4 Annual Recertification of Under Income Tenants. Upon annual recertification, any Affordable Unit Tenant whose Annual Household Income remains at or below the Maximum Annual Household Income for the subject Rental Affordable Unit, but whose Annual Household Income is less than the Minimum Annual Household Income for the subject Rental Affordable Unit, may elect either to (i) remain in the Rental Affordable Unit paying rent, as established by Owner, up to the then-current Maximum Allowable Rent for the subject Rental Affordable Unit or (ii) vacate the Rental Affordable Unit at the end of the tenant's lease term.

4.5.5 Annual Recertification of Over-Income Tenants. Upon annual recertification, if an Affordable Unit Tenant's Annual Household Income is determined to exceed the Maximum Annual Household Income for the subject Rental Affordable Unit (such tenant, an "Over-Income Tenant"), then the Over-Income Tenant may elect to remain in the Rental Affordable Unit and pay the rent applicable to (a) a higher Designated Affordability Level, if a higher Designated Affordability Level exists for the Property, for which the Over-Income Tenant's Annual Household Income qualifies, whereupon Developer shall change the Designated Affordability Level of the Rental Affordable Unit to the higher Designated Affordability Level pursuant to Section 4.5.6, or (b) a like-sized Market-Rate Unit, if the Over-Income Tenant's Annual Household Income does not qualify for a higher Designated Affordability Level, but qualifies for a like-sized Market Rate Unit, whereupon Declarant shall designate a Market-Rate Unit as a Rental Affordable Unit pursuant to Section 4.5.6.

4.5.6 Changes to Unit Location. Declarant may only change the designation of a Rental Affordable Unit to a new Designated Affordability Level or to a Market-Rate Unit as necessary to allow an Over-Income Tenant to remain in the unit. Following any change in designation of a Rental Affordable Unit to a higher Designated Affordability Level or to a Market-Rate Unit, as applicable, Declarant shall designate the next available Rental Affordable Unit at that same higher Designated Affordability Level or Market-Rate Unit of the similar size and location in the Property to the lower Designated Affordability Level from which the original Rental Affordable Unit had been changed in order to bring the Property in conformity with the Affordability Requirement.

4.5.7 Rent from Subsidies. Nothing herein shall be construed to prevent Developer from collecting rental subsidy or rental-related payments from any federal agency paid to Declarant or the Affordable Unit Tenant, or on behalf of an Affordable Unit Tenant, to the extent receipt of such payment is otherwise in compliance with the requirements of this Covenant. Such rental subsidy or rental related payment shall be included in the calculation to determine if a tenant is a Qualified Tenant.

4.6 No Subleasing of Rental Affordable Units. An Affordable Unit Tenant may not sublease any portion of its Rental Affordable Unit or assign its lease to any other Household and Declarant shall not knowingly allow such Rental Affordable Unit to be subleased.

4.7 Representations of Affordable Unit Tenant. By execution of a lease for a Rental Affordable Unit, each Affordable Unit Tenant shall be deemed to represent and warrant to the Declarant, whom may rely thereon, that the Affordable Unit Tenant meets, and will continue to meet, all eligibility requirements contained in this Covenant for the rental of a Rental Affordable Unit.

4.8 Representations of Declarant. By execution of a lease for a Rental Affordable Unit, Declarant shall be deemed to represent and warrant to the City, which may rely on the following, that: (i) the Household is determined to be a Qualified Tenant, and (ii) Declarant is not collecting more than the Maximum Allowable Rent.

4.9 Annual Reporting Requirements. Beginning with the first occupancy of any Affordable Housing Unit and on each anniversary date thereafter, Declarant shall provide an annual report ("Annual Report") to the City regarding the Rental Affordable Units. The Annual Report shall include the following:

(a) the number and identification of the Rental Affordable Units, by bedroom count, that are occupied;

(b) the number and identification of the Rental Affordable Units, by bedroom count, that are vacant;

(c) for each Rental Affordable Unit that is vacant or that was vacant for a portion of the reporting period, the manner in which the Rental Affordable Unit became vacant (e.g. eviction or voluntary departure) and the progress in re-leasing that unit;

(d) for each occupied Rental Affordable Unit, the names and ages of all persons in the Household, the Household size, date of initial occupancy, and total Annual Household Income;

(e) a sworn statement that, to the best of Declarant's information and knowledge, the Household occupying each Rental Affordable Unit meets the eligibility criteria of this Covenant;

(f) a copy of each new or revised Certification of Residency for each Household renting a Rental Affordable Unit; and

(g) a copy of each inspection report and Certification of Inspection for each Rental Affordable Unit; and

(h) a copy of all forms, policies, procedures, and other documents reasonably requested by the City related to the Rental Affordable Units.

The Annual Reports shall be retained by Declarant for a minimum of five (5) years after submission and shall be available, upon reasonable notice, for inspection by the City's Chief Administrative Officer or a designee thereof. The City may request Declarant to provide additional information in support of its Annual Report, and the Declarant shall make reasonable efforts to provide such information.

4.10 Confidentiality. Except as may be required by applicable law, including, without limitation, the Virginia Freedom of Information Act, Declarant will not disclose to third parties the personal information of the Households, including the identity of the Households, submitted as a part of the Annual Report.

4.11 Inspection Rights. The City's Chief Administrative Officer or a designee thereof shall have the right to inspect the Rental Affordable Units, upon reasonable advance notice to Declarant. If Declarant receives such notice, Declarant shall, in turn, give reasonable advance notice of the inspection to the tenant(s) occupying the specific Rental Affordable Unit(s). Subject to the rights of the tenants occupying the applicable Rental Affordable Units, the City's Chief Administrative Officer or a designee thereof shall have the right to inspect a random sampling of the Rental Affordable Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements and as otherwise permitted under this Covenant. The City's Chief Administrative Officer or a designee thereof shall have the right to conduct audits of a random sampling of the Rental Affordable Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

ARTICLE V

SALE OF AFFORDABLE UNITS

5.1 Sale of For Sale Affordable Units. In the event the Property contains For Sale Affordable Units, the Owner shall comply with the provisions of this Article V for the sale of such Affordable Housing Units. Owner shall not convey all or any part of its fee interest ("Sale"), whether or not for consideration, in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Owner shall only sell to a buyer who has provided a certification of income and who is a Qualified Purchaser. Any Sale of a For Sale Affordable Unit to a Person who is not a Qualified Purchaser shall be null and void.

5.1.1 Maximum Sales Price. The sale price of each For Sale Affordable Unit upon an initial Sale shall not exceed an amount (the "Maximum Sales Price") that is affordable to a Household with an Annual Household Income at the Designated Affordability Level, adjusted by the Occupancy Standard Factor, spending not more than thirty percent (30%) of their Annual Household Income on Housing Cost. The Housing Cost includes mortgage payments, property taxes, condominium and homeowner fees, and hazard insurance, if applicable, and shall be calculated in accordance with Schedule 1 attached hereto and incorporated herein. The Declarant shall submit to the City the proposed sales price for each For Sale Affordable Unit for approval

prior to the marketing and sale of such For Sale Affordable Unit, such approval or disapproval not to be unreasonably withheld or delayed.

5.1.2 *Maximum Resale Price*. The Maximum Resale Price for each Sale subsequent to the initial Sale shall be calculated in accordance with Schedule 2 attached hereto and incorporated herein. The City shall approve the Maximum Resale Prices for each For Sale Affordable Unit prior to the marketing and resale of such For Sale Affordable Unit.

5.1.3 *Subsidized funding*. The Maximum Sales Price and Maximum Resale Price of a For Sale Affordable Unit shall be determined as described in Sections 5.1.1 and 5.1.2, regardless of the prospective buyer's use of any available subsidized funding for the purchase of the For Sale Affordable Unit.

5.2 **Procedures for Sales.** The following procedures shall apply to (i) Declarant with respect to the initial Sale of a For Sale Affordable Unit, and (ii) an Affordable Unit Owner of a For Sale Affordable Unit desiring to sell his or her For Sale Affordable Unit.

5.2.1 *Income Eligibility*. For any Qualified Purchaser, the Annual Household Income shall be determined as of the date of the sales contract for such For Sale Affordable Unit. To the extent settlement for a For Sale Affordable Unit will not occur within 90 days after the sales contract, the Annual Household Income of the prospective Qualified Purchaser shall be determined again within 90 days prior to settlement. A Household's eligibility to purchase a For Sale Affordable Unit is determined by calculating both the Maximum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and the Minimum Annual Household Income for a Household seeking to occupy the For Sale Affordable Unit and verifying that the prospective Household's Annual Household Income is between the MAXI and MINI. The Maximum Annual Household Income is determined through the use of the formula: MAXI = (AMI * DAL * HAF). Examples of the calculation of Maximum Annual Household Income are included in the attached Schedule 1. The Minimum Annual Household Income is determined by multiplying the total Housing Cost by twelve (12) and dividing this number by forty one percent (41%). Examples of the calculation of Minimum Annual Household Income are included in the attached Schedule 1. The Housing Cost is determined by calculating the monthly mortgage payments using the actual terms of the Household's approved mortgage, and adding all applicable property taxes, homeownership or condominium fees, and hazard insurance, if applicable.

5.2.2 *Sale*. A Sale of a For Sale Affordable Unit shall only be effective if a Certificate of Purchaser Eligibility submitted by a Household to Owner and dated within ninety (90) days of the closing of such Sale is recorded prior to or contemporaneous with the deed conveying the For Sale Affordable Unit and (b) a certification of income is completed within ninety (90) days before closing of such Sale. Owner, Mortgagee(s), City and any title insurer shall each be a third party beneficiary of each such Certificate of Purchaser Eligibility.

5.2.3 *Resale*. Prior to selling or otherwise transferring a fee interest in a For Sale Affordable Unit, the Affordable Unit Owner intending to re-sell such unit shall (i) contact the City to obtain the Maximum Resale Price and (ii) shall refer the prospective purchaser to the City to determine their eligibility to purchase the For Sale Affordable Unit.

5.3 Closing Procedures and Form of Deed.

5.3.1 Owner to Provide Copy of Covenant. Owner shall provide the Qualified Purchaser with a copy of this Covenant prior to or at the closing on the Sale of the For Sale Affordable Unit.

5.3.2 Form of Deed. All deeds used to convey a For Sale Affordable Unit must have a fully executed Certificate of Purchaser Eligibility attached, and shall include the following statement in twelve (12) point or larger type, in all capital letters, on the front page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS
AND CONDITIONS SET FORTH IN THAT CERTAIN DECLARATION OF AFFORDABLE
DWELLING UNITS COVENANTS, DATED AS OF 20 RECORDED AMONG THE
LAND RECORDS OF THE CITY OF RICHMOND, VIRGINIA, AS INSTRUMENT
NUMBER ON 20 , WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS
ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

5.3.3 Deed for For Sale Affordable Unit. A deed for a For Sale Affordable Unit shall not be combined with any other property, including parking spaces or storage facilities, unless the price of such property is included in the Maximum Sales Price (for initial Sales) or Maximum Resale Price (for subsequent Sales).

5.3.4 Post-Closing Obligations. The purchaser of a For Sale Affordable Unit shall submit to the City within thirty (30) days after the closing a copy of the final executed settlement statement, a copy of the deed recorded in the Land Records, the Certificate of Purchaser Eligibility, and the certification of income.

5.4 Rejection of Applicants. In connection with the Sale of a For Sale Affordable Unit, Owner may reject any applicant seeking to acquire a For Sale Affordable Unit who has provided a certification of income or other evidence of eligibility, if, based on such applicant's application, background, or creditworthiness (including, without limitation, the applicant's inability to provide credible evidence that such applicant will qualify for sufficient financing to purchase the For Sale Affordable Unit), Owner determines in good faith that such applicant does not meet the criteria to purchase or occupy a For Sale Affordable Unit, provided that such criteria does not violate applicable laws and is the same criteria as Market-Rate Units, except as required by this Covenant. In the event any rejected applicant raises an objection or challenges Owner's rejection of such applicant, Owner shall be solely responsible for ensuring that its rejection of any applicant is not in violation of law. Owner shall provide the City with all documents evidencing Owner's review and rejection of an applicant, upon the request of the City.

5.5 Representations of Owner. By execution of a deed for a For Sale Affordable Unit, Declarant (for initial Sales) and the Affordable Unit Owner (for subsequent Sales) shall be deemed to represent and warrant to the City and, if applicable, the title company, each of whom may rely on the following: that (i) the Household is determined to be a Qualified Purchaser at the Designated Affordability Level, and (ii) the sale price satisfies the terms of this Covenant.

5.6 Annual Certification of Residency. During the Affordability Period, the Affordable Unit Owner shall submit to the City annually on the anniversary of the closing date for a For Sale

Affordable Unit, a Certification of Residency. The Certification of Residency shall be submitted on or with such form as may be prescribed by City.

5.7 Leasing For Sale Affordable Units. An Affordable Unit Owner shall not lease, or permit a sublease of, a For Sale Affordable Unit.

5.8 Succession. Except as provided in Article VIII, in the event an Affordable Unit Owner voluntarily or involuntarily transfers all or part of the For Sale Affordable Unit pursuant to operation of law, court order, divorce, or death to a transferee, heir, devisee or other personal representative of such owner of a For Sale Affordable Unit (each a "Successor in Interest"), such Successor in Interest, shall automatically be bound by all of the terms, obligations and provisions of this Covenant; and shall either: (i) occupy the For Sale Affordable Unit if he or she is a Qualified Purchaser, or (ii) if the Successor in Interest does not wish to or is unable to occupy the For Sale Affordable Unit, he or she shall promptly sell it in accordance with this Covenant.

5.9 Prohibition on Occupancy. In no event shall a Successor in Interest who is not a Qualified Purchaser reside in a For Sale Affordable Unit for longer than ninety (90) days.

5.10 Progress Reports. Until all initial Sales of For Sale Affordable Units are completed, Declarant shall provide City with annual progress reports, or more frequently upon request, on the status of its sale of the For Sale Affordable Units.

ARTICLE VI **DEFAULT; ENFORCEMENT AND REMEDIES**

6.1 Default; Remedies. Except as otherwise provided in Section 6.2, in the event Owner, Affordable Unit Tenant, a Person or a Household defaults under any term of this Covenant and does not cure such default within thirty (30) days following written notice of such default from the City, the City shall have available to it all remedies at law and in equity, including the right to seek specific performance, injunctive relief, or other equitable remedies, including compelling the re-sale or leasing of an Affordable Housing Unit and the disgorgement of rents and sale proceeds in excess of the rental rates and sale prices permitted hereunder, for defaults under this Covenant.

6.2 Right to Cure Period. Notwithstanding anything contained in Section 6.1 above to the contrary, if a default by the Declarant occurs under this Covenant, the City shall provide the Declarant with written notice setting forth the alleged violation with particularity and shall provide at least forty-five (45) days to cure the alleged violation, prior to exercising its remedies. The City may extend the cure period in its sole discretion, provided that the cure period shall be extended for an additional ninety (90) days if the Declarant commences to cure the alleged violation within the initial forty-five (45) day period and diligently pursues the cure during such period.

6.3 No Waiver. Any delay by the City in instituting or prosecuting any actions or proceedings with respect to a default hereunder, in asserting its rights or pursuing its remedies hereunder shall not operate as a waiver of such rights.

6.4 **Right to Attorney's Fees.** If the City shall prevail in any such legal action to enforce this Covenant, then Owner, Affordable Unit Tenant, Person or Household against whom the City prevails, shall pay City all of its costs and expenses, including reasonable attorney fees (to include the cost of attorneys employed in the Office of the City Attorney), incurred in connection with City efforts to enforce this Covenant.

ARTICLE VII COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

This Covenant is and shall be binding upon the Property and each Affordable Housing Unit and shall run with the land as of the Effective Date through the Affordability Period. The rights and obligations of City, Declarant, Affordable Unit Owner, and their respective successors, heirs, and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors, heirs, and assigns; provided however that all rights of City pertaining to the monitoring and enforcement of the obligations of Declarant or Affordable Unit Owner hereunder shall be retained by City, or such designee of the City as the City may so determine. No Sale, transfer or foreclosure shall affect the validity of this Covenant, except as provided in Article VIII.

ARTICLE VIII MORTGAGES

8.1 **Subordination of Mortgages.** All Mortgages placed against the Property, or any portion thereof, shall be subject and subordinate to this Covenant, except as provided in Section 8.3.

8.2 **Amount of Mortgage.** In no event shall the aggregate amount of all Mortgages placed against a For Sale Affordable Unit exceed an amount equal to one hundred five percent (105%) of the Maximum Resale Price for such unit. Prior to obtaining any Mortgage or refinancing thereof, the Affordable Unit Owner shall request from the City the then-current Maximum Resale Price for its For Sale Affordable Unit.

8.3 **Default of Mortgage and Foreclosure.**

8.3.1 *Notice of Default.* The Mortgagee shall provide to the City written notice of any notice of default and notice of intent to foreclose under the Mortgage on the For Sale Affordable Unit. Notwithstanding the foregoing, in no event shall failure to provide such notices preclude the Mortgagee's right to proceed with its remedies for default under the Mortgage.

8.3.2 *Termination Upon Foreclosure and Assignment.* In the event title to a For Sale Affordable Unit is transferred following foreclosure by, or deed in lieu of foreclosure to a Mortgagee in first position, or a Mortgage in first position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall automatically terminate subject to Sections 8.3.3.

8.3.3 *Apportionment of Proceeds.* In the event title to a For Sale Affordable Unit is transferred according to the provisions of Section 8.3.2, the proceeds from such foreclosure or transfer shall be apportioned and paid as follows: first, to the Mortgagee, in the amount of debt secured under the Mortgage, including commercially reasonable costs and expenses, if any, incurred by Mortgagee and due and payable by the Affordable Unit Owner under the terms of

the Mortgage; second, to any junior Mortgagees, in the amount of the debt secured under such Mortgages; and third, to the For Sale Affordable Unit Owner, up to the amount of the Maximum Resale Price as of the date of such sale or transfer.

8.3.4 Effect of Foreclosure on this Covenant. Except as provided in Section 8.3.2. in the event of foreclosure or deed in lieu thereof, this Covenant shall not be released or terminated and the Mortgagee or any Person who takes title to an Affordable Unit through a foreclosure sale shall become a Successor in Interest in accordance with Section 5.8.

ARTICLE IX AMENDMENT OF COVENANT

Neither this Covenant, nor any part hereof, can be amended, modified or released other than as provided herein by an instrument in writing duly authorized by the City, and by a duly authorized representative of Owner of such Affordable Housing Unit affected by such amendment. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it shall be deemed effective.

ARTICLE X AFFORDABILITY PERIOD

All Affordable Housing Units on the Property shall be sold or leased in accordance with the terms of this Covenant for a period of twenty (20) years (“the Affordability Period”). The Affordability Period for each For Sale Affordable Unit shall begin on the date of the Sale to the initial Affordable Unit Owner. The Affordability Period for each Rental Affordable Unit shall begin on the commencement date of the initial lease of the Rental Affordable Unit.

ARTICLE XI

NOTICES

Any notices given under this Covenant shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service to the applicable Person at the addresses specified in this Article, or to such other persons or locations as may be designated by the City or the Declarant from time to time. All notices shall be sent to the following address:

A. To the City:

Chief Administrative Officer
City of Richmond, Virginia
900 East Broad Street, Suite 201
Richmond, Virginia 23219

with a copy to:

City Attorney

City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219

B. To the Developer:

The NH District Corporation
PO Box 280
Richmond, Virginia 23218
Attention: President

C: To the Declarant:

All notices to be sent to the Affordable Unit Owner shall be sent to the address on record with the Office of the Assessor of the City of Richmond. All notices to be sent to any Affordable Unit Tenant shall be sent to the unit number referenced in its lease. It shall be the responsibility of the applicable Person and any successor to the applicable Person to provide the City with a current address. The failure of the applicable Person to provide a current address shall be a default under this Covenant.

Notices shall be deemed delivered as follows: (i) if hand delivered, then on the date of delivery or refusal thereof; (ii) if by overnight courier service, then on the next business day after deposit with the overnight courier service; and (iii) if by certified mail (return receipt requested, postage pre-paid), then on the date of actual delivery or refusal thereof.

ARTICLE XII MISCELLANEOUS

12.1 Applicable Law: Forum for Disputes. This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the Commonwealth of Virginia, without reference to the conflicts of laws provisions thereof. Owner, Affordable Unit Tenants and the Declarant irrevocably submit to the jurisdiction of the Circuit Court of the City of Richmond, Virginia for the purposes of any suit, action or other proceeding arising out of this Covenant or any transaction contemplated hereby. Owner, Affordable Unit Tenants and the Declarant irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Covenant or the transactions contemplated hereby in the Circuit Court of the City of Richmond, Virginia, and hereby further waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

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

12.3 Time of Performance. All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a day other than a Business Day shall automatically be extended to the next Business Day.

12.4 Further Assurances. Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party reasonably may request in order to fully carry out the purposes and intent of this Covenant; provided that such additional documents and instruments do not materially increase the obligations or burdens upon the second party.

12.5 Severability. If any provision of this Covenant is held to be unenforceable or illegal for any reason, said provision shall be severed from all other provisions. Said other provisions shall remain in effect without reference to the unenforceable or illegal provision.

12.6 Limitation on Liability. Provided that Owner has exercised reasonable due diligence in the performance of its obligations and duties herein, no Owner shall be liable in the event a Household submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Covenant. Notwithstanding the foregoing, Owner shall be liable if Owner has knowledge, or should have knowledge, that a Household submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

12.7 City Limitation on Liability. Any review or approval by the City shall not be deemed to be an approval, warranty, or other certification by the City as to compliance of such submissions, the Property, or any Affordable Housing Unit with any building codes, regulations, standards, laws, or any other requirements contained in this Covenant or any other covenant granted in favor of the City that is filed among the Land Records; or otherwise contractually required. The City shall incur no liability in connection with the City's review of any submissions required under this Covenant as its review is solely for the purpose of protecting the City's interest under this Covenant.

12.8 No Third Party Beneficiary. Except as expressly set forth in this Covenant, there are no intended third party beneficiaries of this Covenant, and no Person other than City shall have standing to bring an action for breach of or to enforce the provisions of this Covenant.

12.9 Representations of Declarant. As of the date hereof, Declarant hereby represents and warrants as follows:

(a) This Covenant has been duly executed and delivered by Declarant, and constitutes the legal, valid and binding obligation of Declarant, enforceable against Declarant, and its successors and assigns, in accordance with its terms;

(b) Neither the entering into of this Covenant nor performance hereunder will constitute or result in a violation or breach by Declarant of any agreement or order which is binding on Declarant; and

(c) Declarant (i) is duly organized, validly existing and in good standing under the laws of its state of jurisdiction and is qualified to do business and is in good standing under the

laws of the Commonwealth of Virginia; (ii) is authorized to perform under this Covenant; and (iii) has all necessary power to execute and deliver this Covenant.

12.10 Federal Affordability Restrictions. In the event the Property is encumbered by other affordability restrictions ("**Federal Affordability Restrictions**") as a result of federal funding or the issuance of Low-Income Housing Tax Credits for the Project, it is expressly understood and agreed that in the event the requirements in this Covenant would cause a default of or finding of non-compliance ("**Conflict**") with the Federal Affordability Restrictions during the compliance period for the Federal Affordability Restrictions, then the requirements of the Federal Affordability Restrictions shall control to the extent of the Conflict. In all other instances, the requirements of this Covenant shall control.

12.11 Authorization to Act. The Chief Administrative Officer of the City of Richmond, Virginia or a designee thereof is authorized to act on behalf of the City under this Covenant.

[Signatures on Following Pages]

IN TESTIMONY WHEREOF, Declarant has caused these presents to be signed, acknowledged and delivered in its name by _____, its duly authorized _____ and witnessed by _____ its _____.

WITNESS

By: _____
Name: _____
Title: _____

DECLARANT [SEAL]

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA

CITY OF RICHMOND, to-wit:

_____, a Notary Public in and for the Commonwealth of Virginia, DO HEREBY CERTIFY THAT who is personally known to be (or approved by oaths of credible witnesses to be) the person named as _____ for _____ in the foregoing and annexed Declaration of Affordable Dwelling Units Covenants, bearing the date of _____ personally appeared before me _____ and as _____ acting on behalf of _____, as aforesaid, acknowledged the same to be his/her free act and deed.

Given under my hand and seal this _____ day of _____

Notary Public

My Commission Expires: _____

APPROVED AND ACCEPTED THIS

DAY OF

, 20 :

— — —
CITY OF RICHMOND,

By: _____
Chief Administrative Officer

Approved as to form:

By: _____
City Attorney

EXHIBIT A
Legal Description of Property

[See attached]

EXHIBIT B

Rental Affordable Unit Lease Rider

This Affordable Unit Lease Rider ("Rider") is attached to and incorporated into the lease dated ("Lease") between _____ ("Resident" or "You") and _____, as Management Agent ("Manager") for _____ ("Owner") for Apartment _____ ("Premises"). All capitalized terms not defined in this Rider shall have the meaning provided in the Affordable Housing Covenant (as defined below).

In consideration of the mutual covenants set forth in the Lease and below, you agree that your use and possession of the Premises is subject to the terms and conditions set forth in the Lease and the following terms and conditions, which are in addition to and supplement the Lease. The following terms and conditions are material terms of the Lease and your failure to comply with them will be grounds for lease termination:

AFFORDABLE UNIT: Resident acknowledges that the Premises is subject to that certain Declaration of Affordable Dwelling Units Covenants dated [date], 20_____, as may be subsequently amended (the "Affordable Housing Covenant"). The Premises is currently designated as an Affordable Housing Unit, which requires the Resident's household income to be less than or equal to _____ of the Area Median Income (AMI).

DEFINED TERMS: Those terms not specifically defined herein shall be assigned the definition provided in the Affordable Housing Covenant.

ELIGIBILITY: In order for you, as Resident, to be eligible to rent an Affordable Housing Unit, you must be and remain an "Affordable Unit Tenant" as defined in the Affordable Housing Covenant.

INCOME CERTIFICATION / INCOME RECERTIFICATION: No more than ninety (90) days and no less than thirty (30) days before each anniversary of the first day of the Lease, Manager will request the Resident to provide the following:

- (i) an executed Certification of Residency that states that Resident occupies the Premises as his/her/their principal residence,
- (ii) all information pertaining to the Resident's household composition and income for all household members,
- (iii) a release authorizing third party sources to provide relevant information regarding the Resident's eligibility for the Affordable Housing Unit, as well as how to contact such sources, and
- (iv) any other reasonable and customary representations, information or documents requested by the Manager.

Resident shall submit the foregoing listed documentation within fifteen (15) days of Manager's request. Within ten (10) days of City's receipt of the foregoing documentation and based on the results of the annual income recertification review, City will determine whether the Resident remains income eligible for the Premises and notify the Resident of his or her household's AMI percentage, and (a) if the Resident is no longer income eligible for the Premises, the income category for which the Resident is income eligible to lease a unit in the apartment community, or

(b) if the Resident is income eligible for the Premises, provide a certification of income verifying that the income of the Resident meets income eligibility for the Premises.

Resident's failure to provide such documents shall be grounds for lease termination and eviction. Pending any such termination and eviction, Declarant shall treat the Resident as an Over Income Tenant and charge market rate rent.

Upon annual recertification, if the Resident remains income eligible for the Premises, the Resident will be eligible to remain in the Premises and to renew this Lease at the then-current lease rate for the Premises. If the Resident's Annual Household Income is determined to exceed the Maximum Annual Household Income applicable to the Premises, then the Resident may remain in the Premises and pay the rent applicable to an Affordable Housing Unit at a higher affordability level for which the Resident's Annual Household Income qualifies. If the Resident's Annual Household Income is determined to exceed the Maximum Annual Income for the Affordable Housing Unit with the highest AMI level in the Property, then the Owner may allow the Resident to remain in the Premises and to pay the applicable market-rate rent for the Premises.

Manager will notify Resident of all options (i.e., an Affordable Housing Unit at a different AMI category or a market rate unit) for which Resident is income eligible prior to the expiration of the Resident's lease term. Prior to the expiration of the Resident's lease term, the Resident shall notify Manager in writing of the Resident's election to either (i) remain in the Premises and pay the rental rate applicable to the Resident's then current AMI category if the Resident's Annual Household Income is at or below the established AMI categories of []AMI or [] AMI, (ii) remain in the Premises paying the market rate rent for that unit if the Resident's then current income is above the highest AMI level, or (iii) vacate the Premises at the end of the Resident's lease term. Resident's failure to notify Manager of Resident's election prior to the expiration of the lease term will be deemed by Manager as Resident's election to vacate the Premises.

In the event that Resident fails to pay the applicable rental rate or vacate the Premises upon expiration of the lease term, Manager shall pursue an action for eviction of Resident. Resident's agreement to pay the applicable rental rate or vacate was a condition precedent to Manager's initial acceptance of Resident's eligibility and Manager has relied on Resident's agreement. Resident acknowledges and agrees that failure to vacate the Premises or pay the applicable rental rate is both a default under the Lease and in violation of the Affordable Housing Covenant.

PROHIBITION ON SUBLETS AND ASSIGNMENTS: Resident may not sublease any portion of the Premises or assign its Lease to any other person.

LEASE EFFECTIVE: The Lease of the Premises shall only be effective if this executed Rider, a certification of income, a Certification of Tenant Eligibility (for initial lease term), and a Certificate of Residency (for lease renewals) are attached as exhibits to the Lease.

Resident Signature

Date

Resident Signature

Date

SCHEDULE 1

Maximum Sales Price

The following assumptions shall be used in calculating the Maximum Sales Price of a For Sale Affordable Unit.

- i. *Condominium Fees, if applicable:* Use the actual monthly condominium fees, or if unknown, estimate monthly condominium fees at \$0.60 per square foot. If the actual size of the For Sale Affordable Unit is unknown, use the square footage estimated in the chart below based on unit type.

Multi-Family Development			
Studio	1-Bedroom	2-Bedroom	3-Bedroom
500	625	900	1,050

- ii. *Homeowner Fees, if applicable:* Use the actual monthly homeowner fees, or if unknown, estimate monthly homeowner fees at \$0.10 per square foot. If the actual size of the For Sale Affordable Unit is unknown, use the square footage estimated in the chart below based on home type.

Single-Family Development		
2-Bedroom	3-Bedroom	4-Bedroom
1,100	1,300	1,500

- iii. *Monthly Hazard Insurance, if single family home:* Estimated to be \$125.00 per month. If a more recent survey or source is available, the City shall instruct Declarant to use a different estimate.

- iv. *Monthly Real Property Taxes:* Base monthly real property taxes on the estimated price of the For Sale Affordable Unit at current real estate tax rates (\$1.20 per \$100 in 2019).

- v. *Mortgage Rate:* Mortgage rates are determined by the most recent monthly average of a 30 year fixed rate mortgage at www.freddiemac.com plus a one percent (1%) cushion. For this example, assume an average rate of 4.40%. After adding the 1% cushion, the rate for calculation of the Maximum Resale Price would be 5.40%.

- vi. *Down payment:* Assume a down payment of 5% on the purchase of the For Sale Affordable Unit.

SCHEDULE 2

Provisions Governing Calculation of Maximum Resale Price

1. The Maximum Resale Price ("MRP") for a subsequent sale of a For Sale Affordable Unit shall be determined through use of the formula $MRP = P \times (F) + V$ ("Formula"), where:

- (a) P = the price Owner paid for the For Sale Affordable Unit;
- (b) V = the sum of the value of the Eligible Capital Improvements and Eligible Replacement and Repair Costs, as determined by the City pursuant to this section; and
- (c) F = the average of the Ten Year Compound Annual Growth Rates of the Area Median Income ("AMI") from the first year of ownership of the For Sale Affordable Unit to the year of the sale of the For Sale Affordable Unit by the Affordable Unit Owner. This average may be expressed:

As the result of the formula $F = (1 + [((AMI \text{ Year } m / AMI \text{ Year } m-10) - 1) + ... + ((AMI \text{ Year } k / AMI \text{ year } k-10) - 1)] / n])^{1/10}$, where m = the year after the For Sale Affordable Unit was purchased by Owner, k = the year in which the For Sale Affordable Unit is sold by Owner, and n = the number of years the For Sale Affordable Unit is owned by Owner.

2. For the purposes of determining the value of "V" in the Formula, the following improvements made to a For Sale Affordable Unit after the date of purchase may be included at the percentage of cost indicated, to the extent they are permanent in nature and add to the market value of the property:

- (a) Eligible Capital Improvements, which will be valued at 100% of reasonable cost, as determined by the City; and
- (b) Eligible Replacement and Repair Costs, which shall be valued at 50% of reasonable cost, as determined by the City.

3. Ineligible costs shall not be included in the determining the value of "V" in the Formula.

4. The value of improvements may be determined by the City based upon documentation provided by the Affordable Unit Owner or, if not provided, upon a standard value established by the City.

5. The City may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if the City finds that the improvement diminished or did not increase the fair market value of the For Sale Affordable Unit or if the improvements make the For Sale Affordable Unit unaffordable to all Qualified Purchasers at the Designated Affordability Level.

6. The City may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.

7. Owner shall permit a representative of the City to inspect the For Sale Affordable Unit upon request to verify the existence and value of any capital improvements that are claimed by Owner.

8. No allowance shall be made in the Maximum Resale Price for the payment of real estate brokerage fees associated with the sale of the For Sale Affordable Unit.

9. The value of personal property transferred to a purchaser in connection with the resale of a For Sale Affordable Unit shall not be considered part of the sales price of the For Sale Affordable Unit for the purposes of determining whether the sales price of the For Sale Affordable Unit exceeds the MRP.

10. Any capitalized terms used in this Schedule that are not defined herein shall have the meanings set forth in the Covenant. As used in this Schedule, the following capitalized terms shall have the meanings indicated below:

Eligible Capital Improvement: major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of a For Sale Affordable Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) smoke detectors; (vii) removal of toxic substances, such as asbestos, lead, mold, or mildew; (viii) insulation or upgrades to double-paned windows or glass fireplace screens; and (ix) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods. Improvements that meet these criteria will be given 100% credit by the City.

Eligible Replacement and Repair Cost: in-kind replacement of existing amenities and repairs and general maintenance that keep a For Sale Affordable Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (viii) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (ix) replacement of window sashes; (x) fireplace maintenance or in-kind replacement; (xi) heating system maintenance and repairs; and (xii) lighting system. Costs that meet these criteria will be given 50% credit for repairs as determined by the City.

Ineligible Costs: means costs of cosmetic enhancements, installations with limited useful life spans and non-permanent fixtures not eligible for capital improvement credit as determined by the City.

**Exhibit G to Purchase and Sale
Agreement**

Hotel Use Covenant

DRAFT FOR CITY COUNCIL REVIEW: July 29, 2019

EXHIBIT G

<INSERT RECORDING INFORMATION>

<TAX MAP PARCEL NUMBER>

DECLARATION OF HOTEL USE COVENANTS

This DECLARATION OF HOTEL USE COVENANTS (“Covenant”) is made as of the _____ day of _____, 20____ (the “Effective Date”), by _____, a _____ corporation (“Declarant”), identified for indexing purposes as Grantor and Grantee.

RECITALS

R-1. Declarant is the fee simple owner of certain real property, known as **<INSERT PARCEL>** and as further described in Exhibit A (the “*Property*”).

R-2. The City of Richmond, Virginia (the “City”) seeks to revitalize the downtown community through the development of an identified project area that is currently not utilized to its full market potential, and that results in additional taxable value in both the project area and in surrounding properties.

R-3. The City and The NH District Corporation (the “Developer”) entered into that certain Development Agreement (the “*Development Agreement*”) and that certain Purchase and Sale Agreement (the “*PSA*”) whereby the City and the Developer agreed upon the terms under which the City agreed to convey the fee simple interest in the Property and according to the terms of which the Developer agreed, among other things, to design, develop and construct a minimum 500 room guest hotel, that shall consist of approximately 320,000 square feet of space, including public space, meeting space, restaurants, retail space, guest rooms, back of house areas and amenities, as described in Schedule F-1 to the Development Agreement (the “*Hotel*”). The Declarant further shall enter into a Franchise Agreement for no less than twenty years with a Selected Hotel Brand as defined in Schedule F-1 of the Development Agreement.

R-4. The Declarant was formed to acquire title to the Property and to oversee development and construction of the Hotel on behalf of the Developer.

R-5. The Hotel shall be developed and constructed in accordance with the Development Agreement, PSA and the Memorandum of Development Agreement (as defined herein).

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Declarant hereby declares that the Property shall be subject to this Covenant, which shall be binding in accordance with the terms herein on the Declarant and on all tenants and purchasers of the Hotel and all Transferees of the Property until the payment in full or defeasance of the Bonds (as defined herein). For purposes herein, Transferees shall be deemed all persons that may hereafter acquire any interest whatsoever in the Property, or any part thereof,

from Declarant, or any successor or assign of Declarant, or any other party, whether by sale, lease, assignment, hypothecation, or any other means of transfer (any and all of the foregoing means of transfer being herein referred to as "**Transfer**"), until the payment in full or defeasance of the Bonds. Wherever "Declarant" is used in this Covenant, the term includes any Transferee.

ARTICLE I

DEFINITIONS AND MISCELLANEOUS PROVISIONS

1.1 **DEFINITIONS.** For the purposes of this Covenant, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular:

"**Affiliate**" means any Person directly or indirectly Controlling, Controlled by, or under Common Control with another Person.

"**Agreements**" shall mean the PSA, the Development Agreement and the Memorandum of Development Agreement as they relate to the Declarant and the development of the Hotel as well as all other agreements required to be entered into by the Declarant thereunder.

"**Bonds**" means obligations, both taxable and tax exempt, issued by the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia, under the Industrial Development and Revenue Bond Act, Va. Code Ann. §§ 15.24900—15.24920, as that law may be amended or re codified in the future.

"**Building Equipment**" shall mean all equipment owned by Declarant or leased or licensed by Declarant (but then only to the extent of Declarant's rights under such lease or license) incorporated in, located within, at or attached to and used or usable in the operation of, or in connection with, the Hotel Property owned by Declarant and shall include, but shall not be limited to: machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; elevators, escalators and hoists; washroom, toilet and lavatory plumbing equipment; window washing hoists and equipment; and all additions or replacements thereof, excluding, however, any personal property that is owned by sublessees, licensees, concessionaires or contractors, and proprietary software, management systems and the like.

"**Business Day**" means any day that is neither a Saturday, a Sunday, nor a day observed as a legal holiday by the City of Richmond, Virginia, the Commonwealth of Virginia, or the United States government.

"**CCD**" Capital City Development, LLC, a Virginia limited liability company.

"**CCP**" Capital City Partners, LLC, a Virginia limited liability company.

“Closely Held Affiliate” shall mean with respect to any Person (the “subject Person”), any other Person substantially all of the Equity interests in which are owned, directly or indirectly, by the same Persons that own, directly or indirectly, all of the Equity Interests of the subject Person.

“Controlling Interest” shall mean (i) the ownership, direct or indirect, by one Person of more than 50 percent of the profits, capital, or equity interest of another Person or (ii) the power to direct the affairs or management of another Person, whether by contract, other governing documents, operation

“Covenant Date” means the date written on the cover page of this Covenant, which date will be the date on which the parties have executed and delivered this Covenant.

“Debt Financer” shall mean any Person providing Debt Financing.

“Debt Financing” shall mean non-equity funds procured from an Institutional Lender to fund the construction and development of the Hotel.

“Declarant” is defined in the introductory paragraph.

“Declarant Party” means the Declarant, any Affiliate of Declarant, a Declarant Subcontractor, CCP, CCD, each Construction Contractor, any Contractor, advisor or agent of Declarant and their successors and permitted assigns.

“Development Agreement” is defined in the Recitals which is recorded in the Land Records.

“Developer” is defined in the Recitals.

“Equity Interest” shall mean with respect to any entity, (A) the legal (other than as a nominee) or beneficial ownership of outstanding voting or non-voting stock of such entity if such entity is a business corporation, a real estate investment trust or a similar entity, (B) the legal (other than as a nominee) or a beneficial ownership of any partnership, membership or other voting or non-voting ownership interest in a partnership, joint venture, limited liability company or similar entity, (C) a legal (other than as a nominee) or beneficial voting or non-voting interest in a trust if such entity is a trust, and (D) any other voting or non-voting interest that is the functional equivalent of any of the foregoing.

“FF&E” shall mean all furniture, furnishings, wall, floor and ceiling coverings, fixtures (other than mechanical systems and similar improvements viewed as part of the Hotel building) and equipment located at or used in connection with the Hotel, including (without limitation): (a) all furniture, furnishings, built in serving or service furniture, carpeting, draperies, decorative lighting, doors, cabinets, hardware, partitions (but not permanent walls), television receivers and other electronic equipment, interior plantings, interior water features, artifacts and artwork, and interior and exterior graphics; (b) office furniture; (c) communications equipment; (d) all fixtures and specialized equipment used in the operation of kitchens, laundries, dry cleaning facilities, bars, restaurants and a hotel; (e) telephone and call accounting systems; (f) rooms management systems, point of sale accounting equipment, front and back office accounting, computer, duplicating systems and office equipment; (g) cleaning and engineering equipment and tools; (h)

vehicles; (i) recreational equipment; and (j) all other similar items which are used in the operation of the Hotel, excluding, however, any personal property which is owned by licensees, concessionaires or contractors, and any proprietary software, management systems and the like.

“Foreclosure Transfer” shall mean a transfer, sale or assignment occurring as a result of the foreclosure of, or other action in enforcement of, a Mortgage, or any transfer, sale or assignment of any or all of the Property, or any other transfer, sale or assignment of all or any part of the Property by judicial or other proceedings under, pursuant or pertaining to a Mortgage, or by virtue of the exercise of any power or right contained in a Mortgage, or by deed, assignment, or other conveyance-in-lieu of foreclosure or other action in enforcement of a Mortgage, or otherwise, or a transfer of some or all of the Equity Interests in Declarant occurring as a result of, or pursuant to, or in connection with a pledge, hypothecation or other collateral assignment of such Equity Interests, or any sale, transfer or assignment of some or all of the Equity Interest in Declarant, or in any Person holding, directly or indirectly, some or all of the Equity Interest in Declarant in any Person holding, directly or indirectly, some or all of the Equity Interests in Declarant by virtue of, or pursuant to, any right or power contained in a Mortgage or in any other document or instrument evidencing or securing a loan secured by a Mortgage, or by deed, assignment or other conveyance of some or all of such equity interests in lieu of a foreclosure, sale or other enforcement action, or otherwise (it being the intention of the parties that the term “Foreclosure Transfer” shall be given the broadest possible interpretation to over, reach, include and permit any sale, assignment or transfer whatsoever, and however effected or structured, of some or all of the Property, some or all of the Equity Interests in Declarant or in any Person holding, directly or indirectly, some or all of the Equity Interests in Declarant following an uncured default under a Mortgage (including any document or instrument, whether or not recorded, that evidences or secures a debt secured by a Mortgage));

(x) to a Mortgagee or its Designee or Foreclosure Transferee: or

(y) to any Person that is not a Prohibited Person and that purchases or otherwise acquires some or all of the Property, or some or all of the Equity Interests in Declarant from a Mortgagee or its designee after such Mortgagee or designee has purchased or otherwise acquired some or all of the Property, or some or all of the Equity Interests in Declarant in a Foreclosure Transfer described in the immediately preceding clause (x).

Each Foreclosure Transfer shall be deemed, for the purposes hereof, to have occurred as of the date of the transfer, sale, assignment or conveyance-in-lieu thereof in question.

“Franchise Agreement” shall mean the Franchise License Agreement by and between the Declarant and _____, dated as of _____, as it may be amended, supplemented, modified, substituted or replaced.

“Hazardous Material Laws” has the meaning set forth in Section 16.1.2 (Hazardous Material Laws) of the Development Agreement.

“Hotel” is defined in the Recitals.

“Hotel Manager” shall mean [insert name] selected to be the Permitted Operator to manage and operate the Hotel prior to the City's obligation to commence the public offering of the Bonds.

“Improvements” means any and all site and vertical improvements, including the systems, cables, materials, equipment, property, buildings, structures, appurtenances, subsystem or other improvement any of which comprises the Hotel on or within the Property.

“Institutional Lender” mean a Person who, at the time it first makes a loan to Declarant, or acquires an interest in any such loan, is a savings bank, savings and loan association, credit union, commercial bank or trust company organized or chartered under the laws of the United States or any state thereof shall an agency) capacity); an insurance company organized and existing under the laws of the United States of America or any state thereof or the City or a foreign insurance company (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an institutional investor such as a publicly held real estate investment trust, an entity that qualifies as a “REMIC” under the Code or other public or private investment entity (in each case whether acting as principal or agent); a brokerage or investment banking organization (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity) as principal or agent); an employees' welfare, benefit, pension or retirement fund; an institutional leasing company; an institutional financing company; any Federal or state governmental agency or entity or any combination of the foregoing entities (other than a Federal or state governmental agency); provided that each of the above entities shall qualify as an Institutional Lender only if (at the time it first makes a loan to Declarant or acquires an interest in any such loan) it (together with such entities, if any, with which its financial statements are consolidated) shall (y) have net assets (determined in accordance with generally accepted accounting principles) of not less than \$100,000,000 and (z) not be an Affiliate of Declarant or the Transferee(s).

“Land Records” means the land records of the City of Richmond, Virginia.

“Law” or **“Laws”** means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders, judgments, and requirements, to the extent applicable to the City, the Declarant, a Declarant Party, the Hotel or to the Property or any portion thereof, including, without limitation, Hazardous Material Laws, whether or not in the present contemplation of the City or the Declarant, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, and local governments, authorities, courts, and any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Property or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and improvements thereon.

“Management Agreement” shall mean the Management Agreement dated _____ being the written agreement between the Declarant and Hotel Manager pursuant to which Hotel Manager has agreed to manage and operate the Hotel in accordance with the terms thereof and the terms of this Covenant that relate to the operation and management of the Hotel, and any replacements, substitutions, restatements or modifications thereof.

“Management Transfer” shall mean any transaction or series of transactions, by operation of law or otherwise, with the result that (I) Hotel Manager has conveyed a greater than fifty percent (50%) ownership interest in the Management Agreement to a Person who is not a Closely Held Affiliate of Hotel Manager or (2) a Controlling Interest of the Hotel Manager is conveyed to a Person who is not a Closely Held Affiliate of the Hotel Manager. The term “Management Transfer” shall not, however, include (i) the transfer of stock of a Public Company on a stock exchange or equivalent (e.g., NASDAQ) in the ordinary course of business or (ii) the merger of one Public Company into another Public Company, provided that (A) the surviving entity is a Public Company and a Permitted Operator and (B) this sentence is subject to and shall not limit the provisions of Section 4.2(a) hereof. In addition, the term “Management Transfer” shall not include (i) a transfer of all of the stock of the ultimate parent company of the Hotel Manager to another Person or (ii) the transfer of all of the assets of the ultimate parent company of the Hotel Manager to another Person; provided, that (A) in the case of the event described in the preceding clause (i), such parent company continues to be operated as a separate entity and remains a Permitted Operator, (13) in the case of the event described in the preceding clause (ii), the transferee organizes all of such transferred assets into a separate entity which remains a Permitted Operator, and (C) in either case, this sentence is subject to and shall not limit the provisions of Section 4.2(a) hereof.

“Management Transferee” shall mean a Person to whom a Management Transfer is made.

“Master Plan” means the master plan for Developer entire project under the Development Agreement developed by Declarant and approved by City, as further described on Exhibit L (Master Plan) attached hereto.

“Member” means any Person with an interest in Declarant.

“Memorandum of Development Agreement” means the Memorandum of Development Agreement to be recorded against title to each Private Development Parcel as set forth in, and as required by, Section 18.15 of the Development Agreement.

“Mortgage” means any mortgage, deed of trust or other similar instrument securing Debt Financing.

“Mortgagee” shall mean the Institutional Lender providing Debt Financing.

“Notice Address” shall mean the address for notice set forth below, as amended from time to time by notice sent to the other party as provided herein:

A. To the City:

Chief Administrative Officer
City of Richmond, Virginia
900 East Broad Street, Suite 201
Richmond, Virginia 23219

with a copy to:

City Attorney
City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219

B. To the Developer:

The NH District Corporation
PO Box 280
Richmond, Virginia 23218
Attention: President

C: To the Declarant:

“Operating Standard” shall mean the standard consistent with the maintenance and operational standards applicable to Selected Hotel Brand initially or if the Hotel is no longer operated as Selected Hotel Brand then the maintenance and operational standards of a Permitted Franchisor or other brand approved by the City.

“Other Equity Investment” shall mean either (i) cash invested in the Hotel under government programs, such as the Federal New Market Tax Credit Program or (ii) any cash contributed to the Hotel that does not qualify as a Declarant Equity Investment.

“Permitted Franchisor” shall mean a Person who is not a Prohibited Person and is a Selected Hotel Brand or other comparable hotel brand approved by the City in accordance with Section 5.1 of this Covenant.

“Permitted Operator” shall mean a Person who (i) has substantial experience in operating consistent with the Operating Standard; (ii) is not a Prohibited Person; and (iii) shall not be a party to material litigation which, if adversely determined, would have a material adverse impact on the ability of the Hotel Manager to operate the Hotel.

“Person” shall mean an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, estate, trust, unincorporated association or other entity, including Declarant; any Federal, state, county or municipal government or any bureau, department, political subdivision or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Private Development Parcels” mean each of the Development Parcels excluding Parcel A-1 (Arena) and Parcel F2 (Armory) and any portion of the Project including the Road Projects.

“Private Development Project” means the portion of the Project developed on the Private Development Parcels.

“Project Plans” means the Concept Plans, the Schematic Plans and the Construction Plans and Specifications.

“Prohibited Person” shall mean any of the following Persons:

(a) Any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony or who is an on-going target of a grand jury investigation convened pursuant to applicable Requirements concerning organized crime; or

(b) Any Person organized in or controlled from a country, the effects of the activities with respect to which, are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended (which countries are, as of the date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the date hereof, Iran, Sudan and Syria); or

(c) Any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or

(d) Any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control list located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order; or

(e) Any Affiliate of any of the Persons described in paragraphs (a) through (d) above. “Prohibited Uses” shall have the meaning set forth in Article II.

“Project” shall have the meaning provided in the Development Agreement.

“Project Segment” means each of the individual segments of the Project identified in the Master Plan attached as Exhibit L (Master Plan), including each individual Road Project.

“Property” is defined in the Recitals.

“PSA” is defined in the Recitals.

“Public Company” shall mean a Person that is required to comply with the reporting requirements under the Securities Exchange Act of 1934, as amended, or any successor statute, or is otherwise publicly listed on a recognized stock exchange.

“Selected Hotel Brand” means, initially, a reputable, full-service hotel brand selected by the Declarant that is designated as an Upper-Upscale or a Luxury Chain for the Richmond Region Tourism, Richmond-Petersburg, VA region, in the hotel chain scale published by STR, Inc., and, any time after the 20th year of the completion of the construction of the Hotel, ***“Selected Hotel Brand”*** shall mean a reputable, full-service hotel brand selected by the Declarant that is designated as an Upscale, Upper-Upscale or a Luxury Chain for the Richmond Region Tourism, Richmond-Petersburg, VA region, in the hotel chain scale published by STR, Inc.

“Stabilization” means that the Hotel has achieved percent ([●]%) of occupancy over a [●] period.

“Substantial Controlling Interest” shall mean such ownership of Declarant or a Transferee as to give day-to-day control over Declarant or ownership or control of the votes necessary to elect a majority of the board of directors or other governing body, or appoint the managing member or manager, or such Person.

“Transfer” shall mean (A) any change, by operation of law or otherwise, in ownership of an Equity Interest in Declarant, where such change in ownership directly or indirectly produces any change in the Substantial Controlling Interest of Declarant, or (B) any transaction or series of transactions, by operation of law or otherwise, including, without limitation, the issuance of additional Equity Interests or the direct or indirect revision of the beneficial ownership or control structure of the management or operation of Declarant or any direct or indirect constituent entity of Declarant, which, in either case, produces any change, by operation of law or otherwise, in the Substantial Controlling Interest in Declarant. With respect to the Property, term “Transfer” shall mean any sale, assignment, conveyance, lease, deed of trust or encumbrance on the Property or of any portion of or any interest in the Property; provided, however, “Transfer” shall not include hypothecations or other security arrangements that are required to secure the Debt Financing or Other Equity Investment.

“Transferee” shall mean any Person to which the ownership of the Hotel has been transferred.

1.2 **GOVERNING LAW.** This Covenant shall be governed by and construed in accordance with the laws of the City (without reference to conflicts of law principles).

1.3 **CAPTIONS, NUMBERINGS, AND HEADINGS.** Captions, numberings, and headings of Articles, Sections, Schedules, and Exhibits in this Covenant are for convenience of reference only and shall not be considered in the interpretation of this Covenant.

1.4 **NUMBER; GENDER.** Whenever required by the context, the singular shall include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

1.5 BUSINESS DAY. In the event that the date for performance of any obligation under this Covenant falls on other than a Business Day, then such obligation shall be performed on the next succeeding Business Day.

1.6 COUNTERPARTS. This Covenant may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

1.7 SEVERABILITY. In the event that one or more of the provisions of this Covenant shall be held to be illegal, invalid, or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Covenant shall continue in full force and effect, unless this construction would operate as an undue hardship on City or Declarant or would constitute a substantial deviation from the general intent of the parties as reflected in this Covenant.

1.8 SCHEDULES AND EXHIBITS. All Schedules and Exhibits referenced in this Covenant are incorporated by this reference as if fully set forth in this Covenant.

1.9 INCLUDING. The word “including,” and variations thereof, shall mean “including without limitation.”

1.10 NO CONSTRUCTION AGAINST DRAFTER. This Covenant has been negotiated and prepared by City and Declarant and their respective attorneys and, should any provision of this Covenant require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

1.11 CONFLICTS. In the event of a conflict between this Covenant and the Memorandum of Development Agreement prior to the release of the Memorandum of Development Agreement, the terms of the Memorandum of Development Agreement shall govern.

ARTICLE II

USE COVENANTS

2.1 OPERATION. Subject to the provisions of this Covenant, the Declarant will continue to operate the Property as a Hotel consistent with the Master Plan, the Operating Standard and the other provisions of this Covenant.

2.2 GENERAL USES. Prior to the full repayment or defeasance of the Bonds, the Property shall only be utilized in a manner consistent with Section 2.1 hereof and shall not be used, in whole or in part, for any of the following “Prohibited Uses”: laundromat, check-cashing establishment, adult entertainment, pawn shop and drive thru services. In addition, subject to the provisions of Section 2.3 below, the Property shall not be used in a manner that would alter the Master Plan.

2.3 REQUEST FOR CHANGES. In the event that the Hotel is no longer operationally economically feasible after Completion of Construction (as defined in the

Memorandum of Development Agreement), but prior to the full repayment or defeasance of the Bonds, and if as the result of such event, the Declarant desires to change the use of the Property, the Declarant shall submit a request to change the use of the Property as originally contemplated by the Master Plan for the City's approval, which shall not be unreasonably denied or delayed.

2.4 MAINTENANCE OF HOTEL PROJECT SITE.

(a) *Maintenance and Repair.* Declarant shall take good care of, and keep and maintain, the Hotel in good and safe order and condition, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Hotel in good and safe order and condition consistent with the Operating Standard, however the necessity or desirability therefor may arise, and shall make all such repairs in an expedient manner that is reasonably consistent with prudent hotel operations, so that the Hotel is maintained in prime working condition.

1. Declarant shall not commit, and shall use all reasonable efforts to prevent, waste, damage or injury to the Hotel.

2. All repairs made by Declarant to the Hotel shall be made in compliance with Law and consistent with the Operating Standard.

(b) *Cleaning of Hotel.* Declarant shall keep clean and free from dirt, mud, standing water, snow, ice, vermin, rodents, pests, rubbish, obstructions and physical encumbrances all areas of the Hotel in compliance with Law.

2.5 MAINTENANCE OF BUILDING EQUIPMENT AND FF&E. Declarant hereby covenants and agrees to maintain the Building Equipment and the FF&E during the term of this Covenant in accordance with the Operating Standard.

2.6 FINANCIAL REPORTING. For so long as the Bonds remain outstanding, the Declarant shall, and shall cause any tenants and subtenants and the Hotel's operator to, make the following reports to the City's Director of Finance, with a copy to the City:

(a) once each month, at a time during each month prescribed by the City's Director of Finance which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (i) the sales taxes remitted to the Commonwealth of Virginia attributable to the Hotel, and (ii) the Person who collected and remitted those sales taxes;

(b) once each month, at a time during each month prescribed by the City's Director of Finance which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable Law, a report setting forth (i) the amount of admission taxes remitted to the City attributable to the Hotel, (ii) the name of the Person who collected and remitted those admission taxes to the City, and (iii) the event for which those admission taxes were collected and remitted;

- (c) once each month, at a time during each month prescribed by the City's Director of Finance which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable law, a report setting forth (i) the amount of any lodging taxes remitted to the City attributable to the Hotel and (ii) the name of the Person who collected and remitted those lodging taxes to the City;
- (d) once each month, at a time during each month prescribed by the City's Director of Finance which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable law, a report setting forth (i) the amount of meals taxes remitted to the City attributable to the Hotel and (ii) the name of the Person who collected and remitted those meals taxes to the City; and
- (e) once each calendar year, at a time during the year prescribed by the City's Director of Finance which, if applicable, shall be no earlier than the date such information would otherwise be required to be reported pursuant to applicable law, a report setting forth, for business, professional, and occupational license taxes, (i) the amount of such license taxes paid to the City attributable to the Hotel, (ii) the name of the Person who paid those license taxes, (iii) the type of business, as classified by the City's Director of Finance, for which the Person paid those license taxes.

ARTICLE III TERM

3.1 TERM. All other obligations, liabilities, terms, and conditions set forth herein shall run with the land, binding Declarant and its successors and assigns until the repayment or defeasance of the Bonds in accordance with the Indenture.

ARTICLE IV HOTEL MANAGER AND MANAGEMENT AGREEMENT

4.1 MANAGEMENT AGREEMENT.

(a) Declarant shall cause the Hotel to be operated and managed exclusively by a hotel management company that is a Permitted Operator or a hotel management company approved pursuant to Section 4.2 (a "Hotel Manager") pursuant to a written Management Agreement providing for services, and containing terms and conditions, reasonable and customary for the operation of a hotel in accordance with the terms of this Covenant.

(b) Declarant hereby agrees to incorporate this Covenant in the Management Agreement.

(c) As between the City and Declarant, in the event of any conflict between the obligations of Declarant under the terms of this Covenant and the terms of the Management Agreement, the terms of this Covenant shall govern, and Declarant shall remain responsible for performing all of its obligations hereunder notwithstanding the fact that the Hotel is being managed by the Hotel Manager.

4.2 HOTEL MANAGER.

(a) Declarant shall, at least thirty (30) days prior to (or at such time as the City may agree) each Management Transfer or engagement of a new Hotel Manager for the Hotel (a "Management Engagement") other than with a Permitted Operator submit to the City (in accordance with the notice provisions hereof but subject to Section 4.2(b)) the following information:

1. the name, address and a description of the nature and character of the business operations of the proposed Management Transferee or new Hotel Manager;

2. a certificate of an authorized officer, managing general partner, managing member, trustee or other authorized Person, whichever shall be applicable, of the Management Transferee or new Hotel Manager certifying that the proposed Management Transferee or new Hotel Manager is a Prohibited Person;

(b) In the event of any purported Management Transfer or Management Engagement that does not comply with the provisions of this Covenant, the City shall have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to enjoin such Management Transfer to or Management Engagement with a Person other than a Permitted Operator or to cause the manager to comply with such applicable provisions , it being understood that monetary damages will be inadequate to compensate the City for harm resulting from such noncompliance.

(c) Declarant shall deliver to City, or shall cause to be delivered to City, within thirty (30) business days after the execution thereof, a true and correct copy of the instrument of transfer or engagement and a true and correct copy of (i) in the case of a Management Transfer, the instrument of assumption by the assignee or transferee of Hotel Manager's obligations under the Management Agreement accruing from and after the date of such assignment or transfer and any modifications to the Management Agreement and (ii) in the case of a Management Engagement, the new Management Agreement.

(d) In the event of a Management Transfer to a Permitted Operator, the Declarant shall deliver to the City such of the information specified in Section 4.2(a) with respect to the new Permitted Operator as the City shall request, but the City shall have no right of approval of the new Permitted Operator.

4.3 DECLARANT'S RESPONSIBILITIES.

(a) Declarant will (i) perform or cause to be performed Declarant's material obligations under the Management Agreement, (ii) enforce the performance by Hotel Manager of all of Hotel Manager's material obligations under the Management Agreement, (iii) give the City prompt written notice and a copy of (A) any notice of default, event of default, termination or cancellation sent or received by Declarant in respect of the Management Agreement and (B) any written notice sent or received by Declarant regarding any disagreements as to the funding

of capital improvements to the Hotel or dissatisfaction with the performance of either Declarant or Hotel Manager under the Management Agreement and (iv) promptly deliver to the City executed copies of any amendment or modification of the Management Agreement, or if applicable, any new Management Agreement.

(b) Neither Declarant nor Hotel Manager may terminate the Hotel Management Agreement without providing the City at least thirty (30) days prior notice thereof (or such shorter notice period as may be provided in the Hotel Management Agreement) and the reasons for such termination. If Declarant provides a notice of default to Hotel Manager under the Hotel Management Agreement, Declarant shall simultaneously provide a copy of such notice to the City. If Declarant receives a notice of default from Hotel Manager under the Hotel Management Agreement, Declarant shall promptly provide a copy of such notice to the City.

ARTICLE V

FRANCHISOR; CHAIN AFFILIATION

5.1 FRANCHISOR; CHAIN AFFILIATION.

(a) Declarant shall cause the Hotel to be affiliated with a Selected Hotel Brand that is a Permitted Franchisor (provided that there has been no material adverse change in the financial condition of such Permitted Franchisor since the date of this Covenant) or a chain or “flag” approved by the City pursuant to Section 5.1(c) (a “Franchisor”) in accordance with the terms and conditions of this Covenant pursuant to a written Franchise Agreement providing for a national or international reservation and marketing system to which the Hotel has access and in which the Hotel is included, the use of trademarks, service marks, logos, the “flag” and other identifying items provided to other hotels in such reservation and marketing system of the Franchisor and providing for such other services, and containing terms and conditions, reasonable and customary for license agreements for hotels.

(b) As between City and Declarant, in the event of any conflict between the obligations of Declarant under the terms of this Covenant and the terms of the Franchise Agreement, the terms of this Covenant shall govern and Declarant shall remain responsible for performing all of its obligations hereunder notwithstanding the fact that the Hotel is affiliated with the Franchisor.

(c) Developer shall, at least thirty (30) days prior to engagement of the initial or a new Franchisor for the Hotel (a “Franchisor Engagement”) **other than with a Permitted Franchisor**, submit to the City the following information, for the City approval (which approval shall not be unreasonably withheld, denied or delayed):

1. The application to the Franchisor;
2. the name, address and a description of the nature and character of the business operations of the proposed Franchisor;
3. disclosure of ownership of the Controlling Interest of such proposed Franchisor,

4. a certificate of an authorized officer, managing general partner, managing member, trustee or other authorized Person, whichever shall be applicable, of Owner or the proposed Franchisor stating whether the proposed Franchisor is a Prohibited Person;
5. a proposed form of the instrument effectuating such transaction;
6. a copy of the proposed Franchise Agreement with all exhibits thereto or any modifications thereto then existing Franchise Agreement (in either case, with the economic terms thereof redacted);
7. if the Franchisor Engagement is being proposed because the prior Franchisor has terminated its Franchise Agreement with Developer, the reasons for such termination and copies of all documents pertaining to such termination;
8. a certificate of an authorized officer, managing general partner, managing member, trustee or other authorized Person, whichever shall be applicable, of the proposed Franchisor, setting forth a true, complete and correct list of all properties in the United States in respect of which Franchisor or any Affiliate of Franchisor currently has, or within the past three years had, a franchise, operating or management agreement;
9. such other additional information as the City shall reasonably request, which information may include information regarding ownership, banking and financial matters, in connection with its evaluation of such transaction to the extent reasonably available to Developer, provided the City shall make such request within twenty (20) business days after receipt of the initial information; provided, however, that where a change in any Franchisor Engagement occurs in connection with a Foreclosure Transfer such information shall be submitted the City as soon as practicable but in no event later than thirty (30) days after the Foreclosure Transfer; and
10. if the Hotel is to be managed by the Franchisor, the management agreement with the Franchisor.

(d) If the City approves the Franchisor Engagement, the City shall deliver written confirmation of such approval within twenty (20) days after receipt of the materials provided to the City under Section 5.1(c). If the City disapproves the Franchisor Engagement pursuant to the provisions of Section 5.1(c), then within the aforementioned twenty (20) day period the City shall specify in writing to Developer the reasons for its disapproval. Franchisor Engagements that have not been act upon by the City within sixty (60) days of the request shall be deemed approved.

(e) Owner shall deliver to the City, or shall cause to be delivered to the City, within ten (10) business days after the execution thereof, a true and correct copy of the instrument of transfer or engagement and a true and correct copy of Franchise Agreement.

(f) In the event of any Franchisor Engagement that does not comply with the provisions of this Covenant, the City shall have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to enjoin such Franchisor Agreement or to cause the licensor to comply with such applicable provisions, or, if necessary, to transfer the Covenant Franchise Agreement to another Person in accordance with such applicable provisions, it being understood that monetary damages will be inadequate to compensate the City for harm resulting from such noncompliance. Compliance with the delivery requirements of this Section shall be evidenced by either (i) a written acknowledgment signed by the City, or (ii) proof of delivery of the items required by this Section to the Notice Address for the City (including but not limited to time-stamped copies of the items transmitted or return receipts for certified mail or electronic verification by a reputable courier company), without the necessity for a signature by any City official.

(g) In the event of a Franchise Engagement with a new Permitted Franchisor, the Developer shall deliver to the City such of the information specified in Section 5.1(c) with respect to the new Permitted Franchisor as the City shall request, but the City shall have no right of approval of the new Permitted Franchisor.

5.2 DECLARANT'S RESPONSIBILITIES. Declarant will (a) perform or cause to be performed Declarant's material obligations under the Franchise Agreement, (b) enforce the performance by Franchisor of all of Franchisor's material obligations under the Franchise Agreement, (c) give the City prompt written notice and a copy of any notice of default, event of default, termination or cancellation sent or received by Declarant and (d) promptly deliver to the City executed copies of any amendment or modification of the Franchise Agreement, or if applicable, any new Franchise Agreement.

5.3 HOTEL MANAGER SERVING AS FRANCHISOR. Notwithstanding any other provision of this Covenant, a Person and its Closely Held Affiliate may serve as the Hotel Manager and the Franchisor; provided, however, that (i) such Person shall be subject to and meet the requirements of the provisions of this Covenant applicable to Hotel Manager and the Closely Held Affiliate shall meet the provisions of this Covenant applicable to Franchisor, and (ii) the agreements entered into between such Person and Owner and its Closely Held Affiliate and Declarant shall be subject to and meet the requirements of both the provisions of this Covenant applicable to the Management Agreement and the provisions of this Covenant applicable to the Franchise Agreement, respectively.

5.4 HOTEL MANAGER AS A CLOSELY HELD AFFILIATE OF FRANCHISOR. Notwithstanding any other provisions of this Covenant, if the Hotel Manager is a Closely Held Affiliate of the Franchisor, then the national or international reservation and marketing system required of Franchisor under Section 5.1(a) may instead be provided by the Hotel Manager under the Management Agreement.

ARTICLE VI

DEFAULT AND REMEDIES

6.1 DECLARANT DEFAULT

6.1.1 Events of Default by Declarant. Upon the occurrence of one of the events enumerated in Sections 6.1.1(a)-(g) below and such default shall continue uncured for sixty (60) days after written notice of such default from City, such event shall constitute an “Event of Default” by the Declarant, provided that such sixty (60) day period may be extended for an additional period of time, at the reasonable discretion of City, if the Declarant has timely commenced and is diligently pursuing the cure of the default, but in no event shall any cure period be extended beyond one-hundred twenty (180 days):

- (a) Declarant fails to perform any covenant, obligation, term, or provision under this Covenant;
- (b) if a Transfer occurs in violation of the conditions stated in this Covenant;
- (c) if Declarant admits, in writing, that it is generally unable to pay its debts as such become due;
- (d) until the Memorandum of Development Agreement is released, a default under the Memorandum of Development Agreement relating to the Hotel.

6.1.2 City Remedies to Events of Default by Declarant. If any Event of Default by Declarant occurs and is continuing the City may take any one or more of the following remedial steps as determined in the City's sole and absolute discretion:

- (a) seek any available remedy at law (subject to any limitations set forth in the Development Agreement); or
- (b) seek enforcement of Declarant's obligations hereunder by any and all remedies available in equity, including without limitation, specific performance and injunctive relief.

6.2 RIGHTS AND REMEDIES CUMULATIVE. The rights and remedies of the City under this Covenant, whether provided by law, in equity, or by this Covenant, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise of any other remedies for the same such default or breach.

ARTICLE VII COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

This Covenant is and shall be binding upon the Property and shall run with the land for the period of time stated herein. The rights and obligations of City, Declarant, and their respective successors and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors and assigns; provided, however, that all rights of City pertaining to the monitoring or enforcement of the obligations of Declarant hereunder shall not convey with the transfer of title or any lesser interest in the Property, but shall be retained by City, or such other designee of City as City may so determine.

ARTICLE VIII

AMENDMENT OF COVENANT

This Covenant shall not be amended, modified, or released other than by an instrument in writing executed by a duly authorized official of City on behalf of City and approved by City Attorney for legal sufficiency. Any amendment to this Covenant that materially alters the terms of this Covenant shall be recorded among the Land Records before it shall be deemed effective.

ARTICLE IX

COVENANTS OF DECLARANT

Declarant covenants that, by execution and delivery of this Covenant, the performance of its obligations under this Covenant, including the development and operation of the Hotel, have been duly authorized by all requisite corporate action. Declarant has the authorization from Ground Lessor and the fee owner of the Property to develop the Hotel in accordance with the Master Plan and this Covenant. Upon execution and delivery hereof by Declarant, this Covenant will, assuming enforceability against the City, constitute the legal, valid and binding obligation of Declarant, enforceable in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency or other similar laws of general application or equitable principles relating to or affecting the enforcement of contracts generally against persons similarly situated.

ARTICLE X

NOTICES AND REPRESENTATIVES

Notices served upon Declarant or City at the respective party's Notice Address shall be deemed to have been received for all purposes hereunder: (i) if hand delivered to the other party at the Notice Address, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited to the Notice Address with the overnight courier service; (iii) if given by certified mail to the Notice Address, return receipt requested, postage pre-paid, on the date of actual delivery or refusal thereof at the Notice Address. If notice is tendered under the terms of this Covenant and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Covenant.

ARTICLE XI

MISCELLANEOUS

11.1 **RISK OF LOSS.** Except as otherwise provided herein, the risk of loss with respect to any and all existing and new improvements on the Property shall be borne by the Declarant.

11.2 **INDEPENDENT CONTRACTOR.** Declarant is and shall remain an independent contractor and not the agent or employee of the City. The City shall not be responsible for making payments to any contractor, subcontractor, agent, consultant, employee or supplier of the Declarant.

(Signatures on following page)

IN TESTIMONY WHEREOF, Declarant has caused these presents to be signed,
acknowledged and delivered in its name by _____, its duly authorized
_____ and witnessed by _____ its _____.

WINTESS

By: _____
Name: _____
Title: _____

DECLARANT [SEAL]

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA

CITY OF RICHMOND, to-wit:

_____, a Notary Public in and for the Commonwealth of Virginia, DO
HEREBY CERTIFY THAT who is personally known to be (or approved by oaths of credible
witnesses to be) the person named as _____ for
in the foregoing and annexed Hotel Use Covenant, bearing the date of the
personally appeared before me _____ and as _____ acting on behalf of
_____, as aforesaid, acknowledged the same to be his/her free act and deed.

Given under my hand and seal this _____ day of _____

Notary Public

My Commission Expires: _____

APPROVED AND ACCEPTED THIS

DAY OF

, 20 :

— — —
CITY OF RICHMOND,

By: _____
Chief Administrative Officer

Approved as to form:

By: _____
City Attorney

EXHIBIT 1-A

Legal Description of Property

EXHIBIT 1-B

Legal Description of Property

EXHIBIT 2

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