INTRODUCED: February 8, 2021

AN ORDINANCE No. 2021-025

To direct the sale of the City-owned real estate located at 500 North 10th Street and known as the Public Safety Building to Capital City Partners, LLC, for $3,520,456.00 for the purpose of facilitating the redevelopment thereof.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: FEB 22 2021 AT 6 P.M.

WHEREAS, by Resolution No. 2020-R034, adopted June 22, 2020, in accordance with section 8-60 of the Code of the City of Richmond (2020), as amended, the City-owned real estate known as 500 North 10th Street and identified as Tax Parcel No. E000-0235/001 in the 2021 records of the City Assessor was declared surplus real estate and the Chief Administrative Officer was authorized to seek proposals for its sale pursuant to section 8-62 of the Code of the City of Richmond (2020), as amended, and other applicable provisions of Chapter 8, Article III of the Code of the City of Richmond (2020), as amended;

NOW, THEREFORE,

THE CITY OF RICHMOND HEREBY ORDAINS:

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: MAR 1 2021 REJECTED: _____ STRICKEN: _____

§ 1. That the City-owned real estate known as 500 North 10th Street and identified as Tax Parcel No. E000-0235/001 in the 2021 records of the City Assessor, being hereinafter referred to as the "Property," is hereby directed to be sold to Capital City Partners, LLC, for $3,520,456.00 for the purpose of facilitating the redevelopment of the Property, notwithstanding any provision to the contrary of Chapter 8 of the Code of the City of Richmond (2020), as amended, but otherwise in accordance with the applicable provisions of Chapter 8 of the Code of the City of Richmond (2020), as amended, the Code of Virginia (1950), as amended, the Charter of the City of Richmond (2020), as amended, and the Constitution of Virginia.

§ 2. That the sale of the Property shall be conditioned on the satisfaction of all conditions precedent and other conditions applicable thereto set forth in a development agreement authorized by Ordinance No. 2021-_____, adopted _____ _____, 20____, hereinafter referred to as the "Development Agreement," and any document referred to in such Development Agreement.

§ 3. That, pursuant to section 8-65(b) of the Code of the City of Richmond (2020), as amended, the Chief Administrative Officer is hereby directed to execute, on behalf of the City, the deed and such other documents, all of which first must be approved as to form by the City Attorney, as may be necessary to consummate the sale of the Property upon the satisfaction of all conditions for which section 2 of this ordinance provides.

§ 4. This ordinance shall be in force and effect upon adoption.

A TRUE COPY:
TESTE:

Camelia D. Reid

City Clerk

2021-233

CITY OF RICHMOND
INTRACITY CORRESPONDENCE

O&R REQUEST

DATE: February 1, 2021 **EDITION:** 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: Lincoln Saunders, Acting Chief Administrative Officer JELS

THROUGH: John B. Wack, Director of Finance JPD for JBW

THROUGH: Jay A. Brown, Director of Budget and Strategic Planning JAB

THROUGH: Sharon L. Ebert, DCAO – Planning & Economic Development Portfolio

FROM: Leonard L. Sledge, Director of Economic Development

RE: Sale and redevelopment of the surplus City-owned real estate located at 500 N. 10th Street (Public Safety Building)

ORD. OR RES. No. _____

PURPOSE: This O&R request is for the following ordinances associated with the conveyance and development of 500 N. 10th Street (Tax Parcel No. E0000235001):

1. To direct the conveyance of the surplus City-owned real estate known as 500 North 10th Street for $3,520,456.00 to Capital City Partners, LLC.

2. To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute the Development Agreement between the City of Richmond, Virginia, and Capital City Partners, LLC, for the purpose of providing for the private development of a mixed-use project located at 500 North 10th Street and the construction and dedication of certain public improvements in the vicinity thereof.

3. To declare a public necessity for and to authorize the Chief Administrative Officer to accept the dedication of right-of-way improvements consisting of 22,277± square feet and property consisting of 6,067± square feet for the purpose of facilitating the redevelopment of the property known as 500 North 10th Street.

REASON: Ordinances are necessary to convey the Property to Capital City Partners, LLC (CCP) and facilitate private redevelopment that yields a higher and better use on city-owned property and creates tax revenue.

RECOMMENDATION: The City Administration recommends approval.

BACKGROUND:

Public Safety Building

Built in 1954, the Public Safety Building houses offices and operations for the Department of Justice Services, the Adult Drug Court, and the Department of Public Works. The building has a "Critical" facility condition rating, accounts for approximately $389,000 in annual operating expenses, and has $20.9 million in immediate deferred maintenance needs. The property does not generate any General Fund Real Estate Tax revenue for the City.

Timeline

On May 1, 2020, the City received an unsolicited offer from CCP for the Public Safety Building Property. On June 22, 2020, City Council declared the Property to be surplus real estate and authorized the CAO to seek proposals for the Property via its adoption of Resolution No. 2020-R034. During the June 22, 2020 City Council Meeting, DCAO Sharon Ebert and Director of Economic Development Leonard Sledge recommended that the City negotiate with Capital City Partners, LLC on its unsolicited offer to purchase and redevelop the Property. This recommendation was reiterated in a June 24th memorandum to City Council, individual meetings with City Councilmembers, and discussions in Closed Session City Council Meetings. This recommendation was made in lieu of issuing a request for proposals (RFP) to redevelop the site for the following reasons:

- The Navy Hill Development Advisory Commission's final report stated, "Regardless of the outcome of the Navy Hill project as a whole…make Parcel D [Public Safety Building Site] available for sale to a private party for use by VCU hospital for a taxable project substantially as contemplated in the Navy Hill Project…";
- 80% of the 693 responses from a Richmond 300 virtual meeting and online survey state that the Capital City Partners, LLC's, "…proposal is an appropriate set of uses for the particular block";
- Capital City Partners, LLC has secured Virginia Commonwealth University Health System as a master tenant in the redeveloped project that will also include new facilities for The Doorways, Ronald McDonald House Charities, and a childcare center; and
- The Project will generate new real estate tax revenue.

Summary of Terms and Community Benefits

- **Purchase Price**
  - $3,520,456.00

- **Infrastructure/Cost Avoidance**
  - CCP, at its sole expense shall demolish the Public Safety Building and make infrastructure improvements that include connecting E. Clay Street from N. 9th St. to N. 10th St. in compliance with the Department of Public Works' Complete Streets policies and process.

- **Mixed-use Development**
  - A minimum $325 million private capital investment (both hard and soft costs)
  - A minimum of 150,000 sq.ft. of Class-A office space for use by the Virginia Commonwealth University Health System
  - A minimum of 90,000 sq.ft. of Class-A speculative office space that may increase to 150,000 sq.ft.
  - A minimum of 125,000 sq.ft. (145 guest rooms) for the The Doorways to include office space and guest rooms for patients, their families and caregivers, who are receiving treatment at VCU Health Systems
  - A minimum of 65,000 sq.ft. (60 guest rooms) for Ronald McDonald House Charities to guest rooms for families whose children are receiving medical care
  - A minimum of 35,000 sq.ft. for a child care facility
  - A minimum of 20,000 sq.ft. for ground level street facing retail
  - A minimum of 1,200 structured parking spaces

- **Projected Tax Revenues**
  - $55.9 million in real estate tax revenues over 25 years
  - Note - Taxable parcel –land and all improvements will be taxable; CCP or any owner or user will not apply for any type of tax abatement, tax exemption or other kind of relief from the payment of real estate taxes
    - If for any reason CCP or any owner or user are not subject to real estate taxes they shall pay the City annually an amount equal to the real estate taxes that would be required if subject to taxation
    - The taxable nature of the land and improvements will be conditioned in the deed
    - Following Closing and on an annual basis (unless the property has reverted back to the City), CCP or its successor shall pay the real estate taxes levied on the Property. If the real estate taxes levied on the Property falls short of the amount of revenues projected for such year as shown Exhibit G of the Agreement, CCP or its successor in interest is required to pay additional funds to equal the revenue projected in Exhibit G

- **Community Benefits**
  - CCP will create a $500,000 fund "Fund" with minimum $250,000 initial investment on the date of the Closing and additional $50,000 investments in each of the following five years. The Fund will be managed by an existing Richmond-based organization that will be determined by CCP. The Fund will be disbursed to:
    - Offset the cost of micro or small businesses in need of financial assistance to lease office or retail space in the Project;

- Fund organizations based in the City of Richmond whose missions are to support the start-up and growth of micro or small business enterprises; and
- Fund scholarships for graduates of Richmond Public Schools who reside in public housing to attend a trade/technical school, community college, or college/university to pursue a post-secondary credential.

- CCP shall to the greatest extent possible require contractors and subcontractors to set a goal to achieve the following hiring targets such that city residents comprise the following:
  - 100% of construction laborers not previously employed by the contractors or subcontractors;
  - 60% of contractors' or subcontractors' existing construction laborers;
  - 50% of skilled construction trades workers not previously employed by contractors or subcontractors but hired to work on the Project; and
  - 15% of the contractors' or subcontractors' existing skilled construction trades workers not previously employed by contractors or subcontractors but hired to work on the Project.

- CCP will require its general contractor to use a minimum of 42,000 man-hours from union laborer personnel and to use a minimum of 225,000 man-hours from union craft personnel.

- CCP will require all contractors and sub-contractors working on the Project, regardless of the existence of labor agreements, to pay at a minimum the prevailing wage rates for the City of Richmond as determined by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C.S. § 276a, as amended.

- CCP, for itself and its successors and assigns, will agree to make good faith efforts towards a goal of 40% minority business enterprise and emerging small business participation in the construction and operation of the Project.

- CCP will design and construct the Project to LEED Silver standards.

- CCP will relocate the angled bus bays and bus shelters or construct (or fund the construction) of angled bus bays and bus shelters of a same quantity and similar quality at a location to be determined jointly by the City and GRTC

- CCP will ensure that the childcare facility in the Project has a minimum of 20% of the available childcare slots available to Richmond citizens who are not employed by VCU Health System, Virginia Premier, or VCU and at the same costs paid by the employees of the aforementioned organizations

- CCP will ensure that VCUHS and Virginia Commonwealth University agree to make available up to 200 parking spaces in the Project for use by employees of the City of Richmond, Richmond Public Schools, and the judges, clerks, and per-

sonnel of the Circuit Court of the City of Richmond working in the John Marshall Courts Building

- CCP will ensure that the contractors, VCU Health Systems, Ronald McDonald House Charities, and The Doorways coordinate recruitment efforts with the city's Office of Community Wealth Building. CCP will also ensure that its Workforce Coordinator convene job fairs and information sessions in the city.

FISCAL IMPACT / COST:
Please see attached the Fiscal Impact Statement and the Economic Impact Statement, both as required by City Code §2-302.

FISCAL IMPLICATIONS: Please see attached the Fiscal Impact Statement and the Economic Impact Statement, both as required by City Code §2-302.

BUDGET AMENDMENT NECESSARY: No

REVENUE TO CITY: The sale will create immediate direct revenues of $3,520,456.00 to the City from the purchase price and is anticipated to create at least $55.9 million in increased real estate tax revenues over the next 25 years. For more detailed impacts, please see attached the Fiscal Impact Statement and the Economic Impact Statement, both as required by City Code §2-302.

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: February 8, 2021

CITY COUNCIL PUBLIC HEARING DATE: February 22, 2021

REQUESTED AGENDA: Regular

RECOMMENDED COUNCIL COMMITTEE: Land Use, Housing and Transportation Standing Committee; and Finance and Economic Development Standing Committee

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: Planning Commission

AFFECTED AGENCIES: Economic Development, Budget and Strategic Planning, Finance, Public Works, Public Utilities, Justice Services, Adult Drug Court, City Attorney's Office, Office of Minority Business Development, and Office of Community Wealth Building

RELATIONSHIP TO EXISTING ORD. OR RES.: Res. No. 2020-034, adopted on June 22, 2020 (declared the Property surplus real estate).

REQUIRED CHANGES TO WORK PROGRAM(S): None

ATTACHMENTS:

Purchase and Sale Agreement
Development Agreement
Fiscal Impact Statement
Economic Impact Statement

STAFF:

Sharon L. Ebert, DCAO – Planning and Economic Development Portfolio
Leonard L. Sledge, Director of Economic Development
Matt Welch, Senior Policy Advisor – Planning & Economic Development Portfolio
Paul McClellan, Administrator for Real Estate Services

FISCAL IMPACT STATEMENT & ECONOMIC IMPACT STATEMENT– PUBLIC SAFETY BUILDING

Per City Code Section 2-302, "Upon introduction to the Council of each ordinance authorizing an economic development project, there shall be provided to the Council and the City Clerk a fiscal impact statement and an economic impact statement." This document serves as the Fiscal Impact Statement and Economic Impact Statement for the Ordinances authorizing the sale and redevelopment of the Public Safety Building (Tax Parcel No. E0000235001 – 500 N. 10th Street).

Fiscal Impact Statement

A. Sources of Information

Information for this Fiscal Impact Statement was derived from the unsolicited offer received from Capital City Partners, LLC for the purchase and redevelopment of the Public Safety Building Site, the City of Richmond Geographic Information System, and the City of Richmond's deferred maintenance summary.

B. Debt Capacity Schedule

This project does not require any City debt to cause the sale and redevelopment of the Public Safety Building.

C. Comparison of Funding and Financing Options Available

The City is not required to or recommending that general obligation bonds or revenue bonds be issued for the project. Capital City Partners, LLC is proposing to purchase the Public Safety Building and cause the mixed-use redevelopment of the site using their own funding and financing. The City has no obligations to the developer to provide any funding or financing for the redevelopment project including the demolition of the Public Safety Building and the construction of public infrastructure.

To facilitate the sale and redevelopment of the Public Safety Building site, the City is required to relocate existing City operations in the Public Safety Building to other facilities. The City is not recommending that general obligation bonds, revenue bonds, or debt be issued to facilitate the relocation of existing City operations to other facilities. The City is recommending that CIP funds in the amount of $2,067,000 be used to design and complete the renovation of an existing City-owned building for relocated operations. The source of CIP funds is a portion of the proceeds from the sale of the Public Safety Building. In addition, the City is recommending that operational expenses, lease expenses, and one-time expenses to facilitate the relocated operations estimated at $3,650,044 over the

next ten fiscal years (FY21 – FY30) be General Fund expenses for the relocated operations. The spreadsheet in Section E of this Fiscal Impact Statement shows that the 10-year estimated net new General Fund Revenue to the City is $16,812,895.

D. Cost Analysis

The cost to the City for this project are cost associated with relocating City operations in the Public Safety Building to other facilities as outlined in Section E of this Fiscal Impact Statement.

The Public Safety Building (Tax Parcel No. E0000235001 – 500 N. 10th Street) has a 2021 total assessed value of $15,386,000 (Land Value = $4,327,000; Improvement Value = 11,059,000).

Capital City Partners, LLC included an appraisal for the parcel with its unsolicited offer. The appraisal valued of the land area at $8.5 million. After deducting estimated costs to demolish the Public Safety Building ($1,555,232), profit for the developer's risk ($342,431), and constructing public offsite infrastructure ($3,424,312) the appraisal submitted by Capital City Partners values the shovel ready parcel at $3,175,000. The appraisal values the land more than the current assessment does.

The City also had an appraisal done that values the land area at $6,425,000. After deductions for unknown market conditions due to the COVID-19 pandemic ($642,500) and to demolish the Public Safety Building ($2,750,000), the City's appraisal values the shovel ready parcel at $3,030,000. The appraisal done on behalf of the City did not include deductions for constructing public offsite infrastructure. The appraisal values the land more than the current assessment does.

It is important to note that while the assessed value of the improvements on the parcel is $11,059,000, the value of the improvements (the building) is significantly less than the building's immediate deferred maintenance needs. The building has a "Critical" facility condition rating and has $20.9 million in deferred maintenance needs. The building will be demolished to enable the taxable redevelopment project. In addition, selling the building creates an operational and CIP cost savings for the City moving forward. The operational expenses for the Public Safety Building was $389,000 in FY20.

The City is not providing Capital City Partners, LLC any incentives, exemptions, abatements, financing, or funding for the project.

Public infrastructure improvements for the project are estimated to cost $3,424,312. Capital City Partners, LLC is solely responsible for funding the infrastructure improvements.

E. Projected Revenue and Expenditure Estimates (10 Years)

The projected net new revenue over the first 10 years of the project is $20,111,091. This projection includes a one-time deduction for loss lease revenue from the termination of the Virginia Credit Union lease. The projected net new expenses over the first 10 years of the project is $1,844,740. Deducting funds from the sale of the property that are required to be used for CIP project, the net General Fund revenue over the first 10 years of the project is $16,812,895.

PUBLIC SAFETY BUILDING
10-YEAR FISCAL ANALYSIS

		YEAR 1 FY21	YEAR 2 FY22	YEAR 3 FY23	YEAR 4 FY24	YEAR 5 FY25	YEAR 6 FY26	YEAR 7 FY27	YEAR 8 FY28	YEAR 9 FY29	YEAR 10 FY30	10-YEAR TOTAL
REVENUE												
	PUBLIC SAFETY BUILDING SALE PROCEEDS	$3,520,456.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$3,520,456.00
	VIRGINIA CREDIT UNION LEASE TERMINATION LOSS REVENUE	$0.00	($63,438.00)	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	($63,438.00)
	REAL ESTATE TAX REVENUE	$77,017.00	$546,731.00	$1,297,918.00	$2,015,893.00	$2,015,893.00	$2,056,210.00	$2,097,334.00	$2,139,281.00	$2,182,067.00	$2,225,708.00	$16,654,054.00
	SUBTOTAL	$3,597,473.00	$483,293.00	$1,297,918.00	$2,015,893.00	$2,015,893.00	$2,056,210.00	$2,097,334.00	$2,139,281.00	$2,182,067.00	$2,225,708.00	$20,111,091.00
EXPENSE												
	PUBLIC SAFETY BUILDING (OPERATING COST SAVINGS)	$0.00	$389,000.00	$398,725.00	$408,693.00	$418,910.00	$429,383.00	$440,117.00	$451,120.00	$462,398.00	$473,958.00	$3,872,304.00
	GRTC TEMPORARY TRANSFER STATION	($18,000.00)	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	($18,000.00)
	NEW STAFF, OPERATING, AND SERVICE DELIVERY EXPENSES	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
	730 BUILDING RENOVATION DESIGN & CONSTRUCTION	($2,067,000.00)	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	($2,067,000.00)
	RELOCATION EXPENSES	($383,575.00)	($146,425.00)	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	($530,000.00)
	ADDITIONAL OPERATING COST FOR THE 730 BUILDING	($7,500.00)	($7,687.50)	($7,879.69)	($8,076.68)	($8,278.60)	($8,485.56)	($8,697.70)	($8,915.14)	($9,138.02)	($9,366.47)	($84,925.26)
	PUBLIC WORKS BUILDING LEASE AND OPERATING EXPENSES	$0.00	($301,963.50)	($309,513.09)	($317,251.92)	($325,183.22)	($333,312.80)	($341,645.62)	($350,186.76)	($358,941.43)	($367,914.96)	($3,105,913.30)
	SUBTOTAL	($2,476,075.00)	($91,186.00)	$81,333.00	$83,365.00	$85,450.00	$87,586.00	$89,775.00	$92,019.00	$94,320.00	$96,678.00	($1,844,740.00)
	LESS REMAINING SALE PROCEEDS THAT CAN ONLY BE USED FOR CIP PROJECTS	$1,453,456.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$1,453,456.00
	NET REVENUE (ANNUAL)	($126,058.00)	$398,127.00	$1,379,251.00	$2,099,258.00	$2,101,343.00	$2,143,796.00	$2,187,110.00	$2,231,300.00	$2,276,387.00	$2,322,386.00	$16,812,895.00
	NET REVENUE (CUMULATIVE)	($126,058.00)	$272,069.00	$1,651,320.00	$3,750,578.00	$5,851,916.00	$7,995,712.00	$10,182,822.00	$12,414,122.00	$14,690,509.00	$17,012,895.00	

NOTE 1: PROCEEDS FROM THE SALE OF THE PUBLIC SAFETY BUILDING ARE REQUIRED TO BE USED FOR FOR CAPITAL PROJECTS
NOTE 2: LOSS REVENUE FROM THE VIRGINIA CREDIT UNION LEASE IS SHOWN IN FY22 AS THE EXACT TERMINATION DATE IN FY21 HAS NOT YET BEEN DETERMINED
NOTE 3: NO REVENUE ESTIMATES FOR SALES TAX, MEALS TAX, BUSINESS PERSONAL PROPERTY TAX, OR BUSINESS LICENSE TAX WERE FACTORED INTO THIS ANALYSIS
NOTE 4: PROJECTED 25-YEAR REAL ESTATE TAX REVENUE IS $55,913,946
NOTE 5: IMMEDIATE DEFERRED MAINTENANCE FOR THE PUBLIC SAFETY BUILDING IS $20,974,000

THE REDEVELOPMENT OF THE PUBLIC SAFETY BUILDING SITE IS PROJECTED TO GENERATE POSITIVE CASHFLOW TO THE CITY'S GENERAL FUND (NON CIP FUNDS) STARTING IN YEAR 2 OF THE PROJECT

F. Actions Affecting Future Revenue and Expenditures

The proposed Ordinance to amend Ordinance No. 2020-051 establishes a new Capital Improvement Project (CIP) in the amount of $2,067,000 to fund the design and renovation of City's Theater Row Building (730 East Broad Street). The funding source for the new CIP project is a portion of the proceeds from the sale of the Public Safety Building.

G. Variables Affecting Revenue and Cost Estimates

The primary variables affecting revenue estimates include changing real estate market conditions that may impact the assessed value of land and improvements; and whether or not a special use permit is issued that will allow the square footage of the Speculative Class-A office space to increase from 90,000 square feet to 150,000 and effectively impacting future assessed values of the property.

The cost estimates for project involve only costs to relocate City operations to other facilities. Variables affecting the cost estimates to relocate City operations include timing to complete design and renovation construction in an existing City-owned building. In addition, the annual growth in the additional operating cost for the 730 building is estimated to increase 2.5% annually.

H. Staff Time and Cost Estimate

Given the nature and scope of the proposed project, staff time and cost estimates to implement the proposed Ordinances are not abnormal and do not require

additional funding for staffing or operations. The estimated staff time and cost to implement the proposed Ordinances through the completion of the project is – 3,164 hours / $137,070 for the Department of Economic Development, Department of Fire and Emergency Services, Department of Planning and Development Review, Department of Public Utilities, Department of Public Works, Office of Community Wealth Building, Office of Minority Business Development, and Office of the City Attorney.

I. Explanation of the Impact of Costs and Duties for New Staff
New staff are not required for the project. All required work associated with the project will be carried out using existing staff resources, duties, functions, and funding.

J. Ranges of Revenue or Expenditures that are Uncertain or Difficult to Project
The revenue and expenditures for the project are not uncertain or difficult to predict.

K. Explanation for the Determination of the Project Not Having a Fiscal Impact
The sale of the Public Safety Building and subsequent mixed-use redevelopment is projected to generate $16,812,895 in net new General Fund (non-CIP) revenue for the City over the next 10 years. The project is not likely to have a negative fiscal impact for the following reasons:

- The property is being sold to the developer based on an appraised value;
- The City is not responsible or liable to provide any funding, financing, guarantees, incentives, abatements, or any other public funding for the project, the demolition of the Public Safety Building, or the construction of public infrastructure; and
- The property currently does not produce real estate tax revenue for the City, accounts for approximately $389,000 in annual operating expenses, has a "Critical" facility condition rating, and has $20.9 million in immediate deferred maintenance needs.

Economic Impact Statement

A. Sources of Information
Information for this Economic Impact Statement was derived from the unsolicited offer received from Capital City Partners, LLC for the purchase and redevelopment of the Public Safety Building Site, the City of Richmond Geographic Information System, and the City of Richmond's deferred maintenance summary.

B. Outline of Ordinances, Resolutions, or Actions Required for the Project
Each Ordinance below is requested to be introduced during the February 8, 2021 City Council meeting and referred to be on the agenda for the following meetings – Planning Commission (February 16, 2021); Land Use, Housing and

Transportation Standing Committee (February 16, 2021); and Finance and Economic Development Standing Committee (February 18, 2021). Capital City Partners, LLC as indicated their willingness to close on the property shortly after the Ordinances are adopted by City Council and upon successful completion of the conditions precedent to closing.

The Ordinances related to the project are:

1. To declare surplus and direct the conveyance of the City-owned real estate known as 500 North 10th Street for $3,520,456 to Capital City Partners, LLC.
2. To authorized the Chief Administrative Officer, for an on behalf of the City of Richmond, to execute the Development Agreement between the City of Richmond, Virginia, and Capital City Partners, LLC, for the purpose of providing for the financing, construction, maintenance, and operation of public improvements and private development of City-owned real estate located at 500 North 10th Street private development of a mixed-use project located at 500 North 10th Street and the construction and dedication of certain public improvements in the vicinity thereof.
3. To amend Ord. No. 2020-051, adopted May 11, 2020, which accepted a program of proposed Capital Improvement Projects for Fiscal Year 2020-2021 and the four fiscal years thereafter, adopted a Fiscal Year 2020-2021 Capital Budget, and determined a means for financing the same by (i) establishing a new project in the City Facilities category called the "Theatre Row Building (730 E. Broad Street) – DJS/ADC Renovations" project, (ii) increasing anticipated revenues from the sale of City-owned real estate located at 500 North 10th Street and the amount appropriated to the Fiscal Year 2020-2021 Capital Budget by $2,067,000, and (iii) appropriating such anticipated revenues to the Fiscal Year 2020-2021 Capital Budget by increasing revenues and the amount appropriated to the new Department of Economic Development's Public Works' Theatre Row Building (730 E. Broad Street) – DJS/ADC Renovations project by $2,067,000 for the purpose of renovating a portion of City-owned real property estate located at 730 East Broad Street for use by the City's Department of Justice Services and the Richmond Adult Drug Treatment Court.
4. To declare a public necessity for and to authorize the Chief Administrative Officer to accept the dedication of right-of-way improvements consisting of 22,277± square feet and property consisting of 6,607± square feet for the purpose of facilitating the redevelopment of the property known as 500 North 10th Street.

In addition, Exhibit D of the Development Agreement lists milestones for the project and timing for each:

Schedule Milestones	
Submit POD Application	Within 8 months after Closing
Submit Demolition Permit	Within 10 months after Closing
Submit Excavation Permit Application	Within 10 months after Closing
Submit Foundation-to-Grade Package	Within 13 months after Closing
Submit Building Permit Application	Within 17 months after Closing
Building Completion	Within 45 months after Closing

C. Variables that can Affect Economic Impact Estimates

The annual assessed value of the redeveloped parcel is the variable that can affect the economic impact estimates. The estimated economic impact is based solely on the proceeds from the sale of the Public Safety Building and the estimated General Fund Real Estate Tax revenue generated by the project. Other potential General Fund revenue sources (i.e. Sales Tax, Meals Tax, Business Personal Property Tax, and Business License Tax) were not factored into the estimates for the project in order to conservatively analyze the project.

D. Stakeholders in the Project

The following organizations are stakeholders in the project authorized by the proposed Ordinances:

- Capital City Partners, LLC is the proposed purchaser of the Public Safety Builder and developer of the mixed-use redevelopment project.
- VCU Health Systems will be the master leaseholder and tenant in the project. VCU Health Systems will also be causing the operation of a 35,000 square feet child care facility that will be operating at the project. VCU Health System will also occupy 150,000 square feet of office space in the project.
- The Doorways, a non-profit organization, "...provides lodging and support for patients and their loved ones who need to be close to the hospital...". The organization will lease 125,000 square feet for 145 guest rooms and office space.
- Ronald McDonald House Charities, a non-profit organization, "...provide[s] a 'home-away-from-home' for families with children receiving care at local hospitals...". The organization will lease 65,000 square feet for 60 guest rooms and office space.

E. Positive or Negative Impact on Employment

In the unsolicited offer submitted by Capital City Partners, LLC, Virginia Commonwealth University's L. Douglas Wilder School of Government and Public Affairs Center for Urban and Regional Analysis (CURA) estimates that 3,767 direct jobs (including one-time construction jobs), will be created by the project with total payroll of $212,630,000.

City staff did not analyze job creation as a factor to determine the feasibility of the project. The primary reason being the majority of the jobs locating in the project will be relocating from existing locations in the City. Regardless, the City negotiated provisions in the agreements that will position Richmond citizens for job training and employment opportunities.

F. Range of Economic Impact Factors that are Uncertain or Difficult to Project

At the current time it is difficult to project the net number of new jobs that will be created by tenants in the redevelopment project. This is due to the tenants relocating from existing locations in the City. In addition, it is difficult to estimate the number of new jobs created from tenants who will lease the new spec Class-A office space in the redevelopment project.

G. Number of Permanent or Temporary Jobs Anticipated to be Created

In the unsolicited offer submitted by Capital City Partners, LLC, Virginia Commonwealth University's L. Douglas Wilder School of Government and Public Affairs Center for Urban and Regional Analysis (CURA) estimates that 3,767 direct jobs (including one-time construction jobs), will be created by the project with total payroll of $212,630,000.

City staff did not analyze job creation as a factor to determine the feasibility of the project. The primary reason being the majority of the jobs locating in the project will be relocating from existing locations in the City. Regardless, the City negotiated provisions in the agreements that will position Richmond citizens for job training and employment opportunities.

H. Analysis and Timeline Showing Projected Revenues Generated as a Result of the City's Expenditure of Public Funds

The only expenditure of public funds for the project is to relocate existing City operations in the Public Safety Building to other City-owned and leased facilities. The property does not generate any General Fund revenue and has significant operational and deferred maintenance costs. The projected revenue below is made possible by the sale and redevelopment of the public-owned property to a taxable higher and better use. The projected 10-year gross real estate tax revenue is $20,174,499 and the projected 25-year gross real estate tax revenue is $55,913,946.

PUBLIC SAFETY BUILDING
10-YEAR REVENUE PROJECTION

	YEAR 1 FY21	YEAR 2 FY22	YEAR 3 FY23	YEAR 4 FY24	YEAR 5 FY25	YEAR 6 FY26	YEAR 7 FY27	YEAR 8 FY28	YEAR 9 FY29	YEAR 10 FY30	10-YEAR TOTAL
REVENUE											
PUBLIC SAFETY BUILDING SALE PROCEEDS	$3,520,456.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$3,520,456.00
REAL ESTATE TAX REVENUE	$77,017.00	$546,721.00	$1,297,918.00	$2,015,893.00	$2,015,893.00	$2,056,210.00	$2,097,335.00	$2,139,281.00	$2,182,067.00	$2,225,708.00	$16,654,043.00
SUBTOTAL	$3,597,473.00	$546,721.00	$1,297,918.00	$2,015,893.00	$2,015,893.00	$2,056,210.00	$2,097,335.00	$2,139,281.00	$2,182,067.00	$2,225,708.00	$20,174,499.00

NOTE 1: PROCEEDS FROM THE SALE OF THE PUBLIC SAFETY BUILDING ARE REQUIRED TO BE USED FOR FOR CAPITAL PROJECTS
NOTE 2: NO REVENUE ESTIMATES FOR SALES TAX, MEALS TAX, BUSINESS PERSONAL PROPERTY TAX, OR BUSINESS LICENSE TAX WERE FACTORED INTO THIS ANALYSIS
NOTE 3: PROJECTED 25-YEAR REAL ESTATE TAX REVENUE IS $55,913,946

I. Explanation of Compliance to Maintain the Goal of Being a AAA Bond Rated Locality

The project maintains the goal of being an AAA bond rated locality by converting publicly owned tax-exempt real estate to privately-owned taxable real estate. The project also facilitates the growth of one of the City's largest employers and economic development industry clusters. The project does not result in new City debt.

J. Explanation for the Determination of the Project Not Having an Economic Impact

The proposed Ordinances will result in a positive economic impact for the City. The sale of the Public Safety Building and subsequent mixed-use redevelopment is projected to generate $16,812,895 in net new General Fund (non-CIP) revenue for the City over the next 10 years. The project is not likely to have a negative fiscal impact for the following reasons:

- The property is being sold to the developer based on an appraised value;
- The City is not responsible or liable to provide any funding, financing, guarantees, incentives, abatements, or any other public funding for the project, the demolition of the Public Safety Building, or the construction of public infrastructure; and
- The property currently does not produce real estate tax revenue for the City, accounts for approximately $389,000 in annual operating expenses, has a "Critical" facility condition rating, and has $20.9 million in immediate deferred maintenance needs.

CITY OF RICHMOND, VIRGINIA

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF RICHMOND, VIRGINIA

and

CAPITAL CITY PARTNERS, LLC

DATED, [ ] 2021

Exhibits:

A-1. Exhibit A-1 ("Parcel Map")

A-2. Exhibit A-2 ("Form of Purchase and Sale Agreement")

A-3. Exhibit A-3 ("Form of Lease")

B-1. Exhibit B-1 ("Infrastructure and Property Dedication")

B-2. Exhibit B-2 ("Infrastructure Conditions")

C. Exhibit C ("Project Rendering")

D. Exhibit D ("Milestone Schedule")

E. Exhibit E ("Key Professional Project Participants")

F. Exhibit F ("Form of Contract Addendum"")

G. Exhibit G ("Anticipated Minimum Real Estate Tax Revenues")

H. Exhibit H ("Delegation and Assumption Agreement")

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (this "**Agreement**" or this "**Development Agreement**") is entered into as of the _____ day of _____, 2021, by and between the City of Richmond, Virginia, a municipal corporation ("**City**") and political subdivision of the Commonwealth of Virginia, and Capital City Partners, LLC, a Virginia limited liability company ("**Developer**"), collectively referred to in this Agreement as the "**Parties**" or individually, a "**Party**".

RECITALS

A. The City seeks to convey the land, together with all improvements on and appurtenances thereto, located at 500 North 10th Street and identified as tax map parcel number E000-0235/001 in the 2021 records of the City Assessor ("Property"), for purposes of redevelopment resulting in additional taxable value and in certain community benefits;

B. As additional consideration for the Property, Developer will Demolish the improvements existing on the Property on the Closing Date; construct and dedicate Infrastructure Improvements; and prepare the Property to be Shovel-Ready for development (the "Obligations");

C. The City Council adopted Ordinance No. 2021-_____, which authorizes the City to accept Developer's dedication of the Infrastructure Improvements and certain interests in real estate;

D. The City seeks the development of a mixed-use project with a a capital investment of approximately $350 million but in no event less than $325 million ("the Project"), and the Developer seeks to design, construct, finance, operate and maintain the Project, with no financial obligation to the City;

E. The City seeks a 40% target for minority business enterprise and emerging small business; job training initiatives; a commitment to workforce training; payment of prevailing wage rates, a commitment to labor agreements, and certain additional community benefits for the city and for those employed on the Project;

F. The City and the Developer now desire to enter into this 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, City and Developer agree as follows:

ARTICLE 1
PRELIMINARY PROVISIONS

1.1 **Purpose**. The purpose of this Development Agreement is to set forth the terms and conditions governing the Parties' obligations, responsibilities and rights with respect to the successful and timely delivery of the Project.

1.2 **Order of Precedence**. Except as otherwise expressly provided in this Section 1.2 (*Order of Precedence*), if there is any conflict, ambiguity or inconsistency among the provisions of the Development Agreement, the Purchase and Sale Agreement, the Lease, and any City ordinances, the order of precedence will be as follows, from highest to lowest:

(a) the City ordinances adopted by the City Council on <DATE> approving the execution and delivery of the Development Agreement, the PSA, and the Lease;

(b) with respect to the Infrastructure, Exhibit B-2 (*Infrastructure Conditions*);

(c) any amendments to this Development Agreement

(d) the provisions of the main body of this Development Agreement;

(e) the Schedules and Exhibits to this Development Agreement (excluding Exhibit B-2 (*Infrastructure Conditions*)) with respect to the Infrastructure);

(f) any amendments to the Purchase and Sale Agreement;

(g) the main body of the Purchase and Sale Agreement;

(h) the schedules and exhibits to the Purchase and Sale Agreement;

(i) any amendments to the Lease;

(j) the main body of the Lease; and

(k) the schedules and exhibits to the Lease.

1.3 **Definitions**. Capitalized terms used, but not defined in this Development Agreement, shall have the meaning ascribed to them in the PSA or the Lease, as the context requires. The following defined terms shall have the meaning as set forth below in this Agreement:

"***Agreement***" means this Development Agreement.

"***Business Day(s)***" means that 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.

"***Capital Investment***" means a capital expenditure by or on behalf of the Developer, which expenditure includes the purchase price of the Property, all hard and soft construction costs, and financing costs directly incurred in developing the Project.

"***Capital Provider***" whether one or more, means any financial institution, bank, investor or lender identified on any recorded mortgage on the Project who has provided the funding to Developer for the purpose of developing the Project.

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

"***Chief Administrative Officer***" or "***CAO***" means the Chief Administrative Officer of the City of Richmond, Virginia.

"***City***" means the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia.

"***City Code***" means the Code of the City, as that Code may be amended or recodified at any time.

"***City Default***" is defined in Section 10.3.

"***Closing***" means the City's transfer of the Property to Developer following Developer's satisfaction of all applicable conditions precedent in the PSA.

"***Closing Date***" is defined in Section 3.3.

"***Contractor***" means a Person contracted by Developer to perform services or work on the Property in connection with the construction and operation of the Project.

"***Construction Performance Security***" any performance bond or payment bond procured by a Construction Contractor for the Project.

"***Community Benefits***" means those requirements contained in Article 8.

"***Day(s)***" means a calendar day; provided that if any period of Days referred to in this Agreement shall end on a Day that is not a Business Day, then the expiration of such period shall be automatically extended until the end of the first succeeding Business Day.

"***D&C Work***" means the design and construction Work required for the Project.

"***Demolition***" or "***Demolish***" means the dismantling, leveling and razing of all existing improvements on the Property as of the Closing Date, including, without limitation, buildings, below-grade foundations, parking areas, driveways, utility installations located on or under the Property, removal and property disposal of all debris resulting from such work, and proper compaction and grading of the Property following the removal of all improvements and debris therefrom. Demolition expressly includes identification and remediation, removal, and proper disposal of asbestos, polychlorinated bi-phenyls, and other hazardous materials.

"***Developer***" is Capital City Partners, LLC.

"***Developer Default***" is defined in Section 10.1.

"***Effective Date***" is defined in Section 13.1.

"***Good Industry Practice***" means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would

reasonably and ordinarily be expected from a skilled and experienced Person engaged in a similar type of undertaking under the same or similar circumstances.

"***GRTC***" means the Greater Richmond Transit Co., a Virginia public service company.

"***Indemnified Parties***" or "***Indemnified Party***" means the City and all of its agents, employees, officers, volunteers, contractors, legal representatives, successors and assigns, and each of them.

"***Infrastructure Improvements***" is defined in Exhibit B-2 ("Infrastructure Conditions").

"***Key Professional Project Participant***" is defined in Section 4.8.

"***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 Parties; the Property or any portion thereof; or the Project, or any portion thereof, including, without limitation, hazardous materials Laws, whether or not in the present contemplation of the Parties, and 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.

"***Lease***" means the lease to be entered into by the Parties at Closing to allow City to continue possession of and operation at the Property for up to 150 days following Closing, in the form attached as Exhibit A-3.

"***LEED Silver Certification***" means the silver level of the Leadership in Energy and Environmental Design green building certification, in place as of the date of this Development Agreement.

"***Loss***" or "***Losses***" when used with reference to any indemnity means, with respect to any Person, any and all claims, demands, losses, liabilities, damages, liens, obligations, interest, injuries, penalties, fines, lawsuits, and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable attorneys' fees, costs of litigation, and reasonable consultants' fees and costs) that may be directly incurred by such Person.

"***Milestone Schedule***" means the proposed schedule for the development of the Project attached hereto as Exhibit D.

"***Obligations***" means the Demolition of the improvements existing on the Property on the Closing Date; the construction and dedication of Infrastructure Improvements; and placing the Property in Shovel-Ready condition.

"***Party***" or "***Parties***" is defined in the preamble.

"***Person***" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, business trust, joint venture, government, political subdivision or

any other legal or commercial entity and any successor, representative, agent, agency or instrumentality thereof.

"***Project***" means a mixed-use project with a capital investment of approximately $350 million but in no event less than $325 million designed, constructed, financed, operated, and maintained in accordance with this Agreement. "Project" includes the Obligations.

"***Property***" means that parcel of real property known as 500 North 10th Street and identified as Tax Parcel Number E000-0235/001 in the 2021 records of the City Assessor and as shown on Exhibit A-1.

"***Purchase and Sale Agreement***" or "***PSA***" means the fully-executed Purchase and Sale Agreement between the City and the Developer with respect to the Property in the form of Exhibit A-2.

"***Regulatory Approval***" means any authorization, approval or permit required or granted by any governmental organization having jurisdiction over the Property, the Project or the Work including, but not limited to, the City and the Commonwealth of Virginia.

"***Ronald McDonald House Charities***" means Ronald McDonald House Charities of Richmond, VA, Incorporated, a Virginia non-stock corporation.

"***Shovel-Ready***" means completion of Demolition and performance of all planning, site preparation, and engineering activities such that construction work on the Property can begin immediately.

"***Square Footage***" means the square footage designed for occupancy and exclusive use of the Developer or any tenant, including storage areas that produce rental income, expressly excluding stairs, escalators, elevator shafts, flues, pipe shafts, vertical ducts, balconies, mechanical rooms, public access areas, and other areas set aside for the provision of facilities or services to the floor or building where such facilities are not for the exclusive use of occupiers of the floor or building.

"***Subcontract***" means any contract or subcontract entered into by the Developer's Contractors or Subcontractors to construct or operate the Project.

"***Subcontractor***" means a Person subcontracted to perform a portion of a contract by a Contractor or another Subcontractor.

"***The Doorways***" means Hospital Hospitality House of Richmond, Inc., d/b/a The Doorways.

"***VCUHSA***" means Virginia Commonwealth University Health System Authority.

"***Work***" means collectively, the development, planning, financing, funding, demolition, design, acquisition, installation, construction, draining, dredging, excavation, grading, completion, management, renovation, major repair, operation, ordinary repair,

maintenance and similar activities and any other services be performed by Developer in connection with delivering the Project.

ARTICLE 2
PROJECT DESCRIPTION

2.1 **Project Site.** The Project is located on that parcel of real property known as 500 North 10th Street and identified as Tax Parcel Number E000-0235/001 in the 2021 records of the City Assessor.

2.2 **Project.**

(a) **Mixed-Use Development.** The Developer shall design, construct, finance, operate and maintain on the Property a mixed-use Development (or, alternatively, the Developer shall cause the same to occur) in accordance with and conforming to the scale and massing shown in the Project Rendering attached as "Exhibit C", with the Milestone Schedule attached as "Exhibit D" and with the terms of this Agreement.

(b) **Capital Investment.** The Developer shall make a Capital Investment of approximately $350,000,000 but in no event less than $325,000,000. Developer shall provide to City evidence of all hard and soft costs expended on the Project.

(c) **Obligations.** Developer shall perform the D&C Work (or, alternatively, the Developer shall cause the same to occur) necessary to develop and deliver the Obligations in accordance with the Milestone Schedule, this Agreement, the Infrastructure Conditions, as applicable, and applicable Law.

(d) **Uses and Minimum Square Footages.** Developer shall develop and deliver the following uses and minimum Square Footage associated with each:

(i) 150,000 Square Footage of Class A office space for use by the Virginia Commonwealth University Health System.

(ii) 90,000 Square Footage of Class A speculative office space, unless such minimum Square Footage increases to 150,000 pursuant to Section 3.2 of this Agreement.

(iii) 125,000 Square Footage, including 145 guest rooms and office space, for use by The Doorways.

(iv) 65,000 Square Footage, including 60 guest rooms and office space, for the Ronald McDonald House Charities.

(v) 35,000 Square Footage for a child care facility to be operated, or caused to be operated, by VCUHSA.

(vi) 20,000 Square Footage to be used as ground level, street facing retail.

(vii) approximately 1,900 but not less than 1,200 structured parking spaces.

(e) **Design Standards.**

(i) Developer shall design and construct all buildings within the Project such that the design and construction is consistent with the standards for LEED Silver Certification.

(ii) Developer shall adhere to the following urban design standards, in addition to any zoning or other regulatory requirements:

A. Buildings must "hold the corner" by having active ground floors that wrap around the corner.

B. Main entrances to buildings must face the street and otherwise be designed to foster pedestrian activity.

C. Façade fenestration must allow visibility to and from the street, particularly on the ground floors where fenestration must occupy a higher percentage of the building face.

D. Façade articulation must break up long, monolithic facades and be designed to human-scale by variation in the streetwall plane, height, colors, and materials.

E. Screening must be employed such that landscaping is pushed to the sidewalk to maintain a streetwall to mitigate the disruptive appearance of the structured parking and any utilitarian services.

(f) **GRTC Temporary Transfer Station.** Within 90 days from and after written notice to Developer from the City and GRTC that the City and GRTC have designated a location for the temporary transfer station, Developer shall either relocate the angled bus bays and the bus shelters serving the current temporary transfer station located on the Property or on the rights of way adjacent to or abutting the Property, or construct (or fund the construction) of angled bus bays and bus shelters of the same quantity and similar quality at a location to be determined by the City and GRTC. In accordance with the designation by the City and GRTC, the Developer shall submit to City and GRTC the design and construction plans for any new bus bays and bus shelters and the quantity of such bus bays and bus shelters to be constructed, to City and GRTC for approval, which approval will be in the sole discretion of City and GRTC.

(g) **Gas Service.** Developer acknowledges City's desire that Developer use the City's Richmond Gas Works gas utility enterprise supplied natural gas ("Natural Gas") to serve various utility needs within the buildings at the Property, including without

limitation, space heating, hot water, commercial dryers, cooking and other appliances. At a minimum, Developer shall use Natural Gas on the Project's ground level for space heating, hot water, commercial dryers, cooking and other appliances. Additionally, Developer shall use Natural Gas where reasonable elsewhere in the Project, and shall use Natural Gas when requested by a tenant; provided that in each instance where Developer or a tenant uses Natural Gas it shall be supplied by Richmond Gas Works.

(h) **Stormwater Detention.**

(i) **15-year Storm Peak Flow Rate Control.** Developer shall utilize stormwater management and green infrastructure practices to maintain detention of the peak discharge from the 15-year Storm, which is 24-hour, 15-year frequency storm event, for the Property. More specifically, Developer shall maintain detention of the post-development peak discharge rate for the 15-year Storm for the Property at a level that is equal to or less than the pre-development peak discharge rate for the 15-year Storm for the Property.

(ii) **Sanitary Sewer Peak Flow Rate Control.** In addition to accounting for the 15-year Storm on the Property, the Developer shall reduce peak stormwater flows by the amount of the projected sanitary sewer flows that will be generated on the Property by the Project calculated pursuant to Sections 2.2.3.B and 2.2.4.C of the City of Richmond, Department of Public Utilities, Sanitary Sewer System Design Guidelines, Standards Specifications and Details, revised: December 1, 2010, as such sections may be amended or modified. Developer shall provide to the City the sanitary sewer flow projections, in accordance with the provisions of Exhibit B (*Infrastructure Conditions*), along with plans to detain the volume of stormwater equal to such projected sanitary sewer flows.

(iii) Developer shall install and maintain on the Property, at Developer's expense, stormwater management and green infrastructure practices (collectively "best management practices") to achieve Developer's stormwater detention and reduction obligations under this Section 2.2(h).

(iv) **Stormwater Detention Prerequisite to Sewer Tie-ins.** The City's Director of Public Utilities will have discretion to review, and to approve or reject, the sanitary sewer flow projections and all stormwater detention plans provided by Developer, and to require maintenance agreements and sureties for stormwater detention facilities, before any corresponding sewer tie-in is performed to serve the Project.

ARTICLE 3
REAL ESTATE

3.1 **Sale by City to Developer**. City shall sell and Developer shall buy the Property pursuant to the terms and conditions of the PSA, in the form attached as Exhibit A-2 to this Development Agreement. The City's Chief Administrative Officer and the Developer's duly authorized representative shall execute the PSA in the form attached as Exhibit A-2.

3.2 **Zoning and Land Use Approvals**. Developer will be solely responsible for obtaining any special use permit, rezoning, or zoning modification that may be required in order to permit Developer to proceed with the Project. Developer shall diligently pursue any special use permit, rezoning, or other regulatory approval necessary to increase the building height beyond the height currently permitted by applicable zoning regulations. In the event the Developer receives such special use permit, rezoning, or other regulatory approval, then (i) the scope of the Project described in this Agreement increases the minimum Square Footage of Class A speculative office space set forth in section 2.2(d)(ii) from 90,000 to 150,000 and (ii) the Developer shall revise its development plans accordingly. City agrees to cooperate in good faith with Developer's efforts to satisfy the obligations of Developer set forth in this Section 3.2. Nothing in this Agreement or in the PSA is to be deemed an agreement by City to provide any Regulatory Approval of any kind.

3.3 **Closing**. Closing will occur within 30 days following Developer's satisfaction of the conditions precedent to Closing under the PSA (the "**Closing Date**").

3.4 **City Holdover**. Developer shall allow the City to continue operations at the Property for 150 days following the Closing Date ("**City Holdover Period**"). City, in its sole discretion, may utilize the Property for fewer than 150 days but in any event will ensure it has vacated the Property prior to the end of the City Holdover Period. The terms and conditions of the City Holdover Period are contained in the Lease. The City's Chief Administrative Officer and the Developer's duly authorized representative shall execute the Lease in the form attached as Exhibit A-3.

ARTICLE 4
DEVELOPMENT OF PROJECT

4.1 **General Obligations**.

(a) **General**. Developer shall be solely responsible for performing (or, alternatively, Developer shall cause to be performed any portion of) all Work necessary to design, build, and where applicable, finance, operate and maintain the Project in accordance with the Milestone Schedule, Good Industry Practice, applicable Law, and any other requirements in this Development Agreement and the PSA.

(b) **Cost and Expense**. Developer shall satisfy its obligations under this Agreement, the PSA, and the Lease at its sole cost and expense, without any legal, moral or financial recourse to City.

4.2 **Performance Security.**

(a) **Construction Security.**

(i) Obligations. Prior to commencing construction of those portions of the Obligations consisting of Demolition and work to deliver a Shovel-Ready Site, Developer shall deliver to City a surety bond ensuring the completion of those portions of the Obligations in a form approved by the City Attorney and in an amount equal to the cost of completing those portions of the Obligations, such cost to be determined by City in its sole discretion.

(ii) Infrastructure. Developer shall provide the performance security for the Work with respect to the Infrastructure Improvements (the "***Infrastructure Improvements Work***") in accordance with the provisions of Exhibit B-2 (*Infrastructure Conditions*).

(iii) No Cost to City. Developer or its Construction Contractors, as the case may be, will obtain and furnish all performance security and replacements thereof at its sole cost and expense and will pay all charges imposed in connection with City's presentment of sight drafts and drawing against any such security or replacements thereof (to the extent made in accordance with the terms hereof).

(b) Intentionally omitted.

(c) **Milestone Schedule.** Developer shall perform (or, alternatively, Developer shall cause to be performed) the Work and deliver the Project in accordance with the Milestone Schedule.

4.3 **City Regulatory Approvals.** Developer acknowledges and agrees that the status, rights and obligations of City, in its proprietary capacity under this Agreement, are separate and independent from the status, functions, powers, rights and obligations of City and that nothing in this Agreement shall be deemed to limit, influence or restrict City in the exercise of its governmental regulatory powers and authority with respect to Developer, the Project or otherwise, or to render City obligated or liable under this Agreement for any acts or omissions of the City in connection with the exercise of its independent governmental regulatory powers and authority. Without limiting the preceding sentence, Developer acknowledges that this Agreement does not limit Developer's responsibility to obtain all Regulatory Approvals (and pay all related processing and development fees and satisfy all related conditions of approval) for such uses, including, but not limited to, zoning and building code permits and regulations. Developer understands that the entry by City into this Agreement shall not be deemed to imply that Developer will be able to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Project or the Property or from the City itself. By entering into this Agreement, City is in no way modifying Developer's obligations to cause the Property to be used and occupied in accordance with all Laws, as provided herein. Nothing herein shall be deemed

to limit the rights and obligations of Developer or City under any Law as pertaining to the Project.

4.4 **Approval of Other Agencies; Conditions.** City and Developer acknowledge that the Project, and Developer's contemplated uses and activities on the Property may require that Regulatory Approvals be obtained from governmental agencies with jurisdiction over the Property. Developer shall be solely responsible for obtaining all such Regulatory Approvals as further provided in this Section. In any instance where City will be required to act as a co-permittee, and in instances where modifications are sought from any other governmental agencies in connection with Developer's obligations regarding any hazardous materials release, or where Developer proposes any construction which requires City's approval, Developer shall not apply for any Regulatory Approvals (other than a building permit from the City) without first obtaining the approval of City, which approval (except as otherwise expressly provided herein) will not be unreasonably withheld, conditioned or delayed. Developer shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a Regulatory Approval from any regulatory agency, if City is required to be a co- permittee under such Regulatory Approval or the conditions or restrictions could create any obligations on the part of City whether on or off the Property, unless in each instance City has previously approved such conditions in writing in City's sole and absolute discretion. Except as otherwise expressly set forth herein, no such approval by City shall limit Developer's obligation to pay all the costs of complying with such conditions under this Section. All costs associated with applying for and obtaining any necessary Regulatory Approval must be borne by Developer. With the consent of City (which shall not be unreasonably withheld, conditioned, or delayed), Developer shall have the right to appeal or contest in any manner permitted by law any condition imposed upon any such Regulatory Approval. Developer shall pay and discharge any fines, penalties or corrective actions imposed as a result of the failure of Developer to comply with the terms and conditions of any Regulatory Approval, and City shall have no liability for such fines and penalties. Without limiting the indemnification provisions in this Agreement, the Developer shall indemnify the Indemnified Parties from and against any and all such fines and penalties, together with attorneys' fees and costs, for which City may be liable in connection with Developer's failure to comply with any Regulatory Approval.

4.5 **Cooperation.** Without limiting the requirements set forth in Section 4.3 (*City Regulatory Approvals*), the Parties agree to communicate regularly and to cooperate in good faith regarding Developer's efforts to obtain Regulatory Approvals for the Project from any regulatory agency.

4.6 **Utilities.**

(a) Developer shall ensure that the performance of all Work involving the utility infrastructure owned by or to be dedicated to the City complies with the requirements contained in Exhibit B-2 (*Infrastructure Conditions*) to this Development Agreement.

(b) City shall not be required, under this Agreement, to provide any utility services to the Property, provided that from and after the Closing and during the construction of the Obligations, the Developer may utilize any utility service serving the Property as of the Closing. Thereafter Developer shall be responsible for contracting with, and obtaining, all necessary utility and other services as may be necessary and appropriate to the uses to which the Property is put. Developer will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Project or any part of the Property and will do all other things required for the maintenance and continuance of all such services. Developer agrees, with respect to any public utility services provided to the Property by the City outside of this Agreement, that no act or omission of the City in its capacity as a provider of public utility services shall abrogate, diminish or otherwise affect the respective rights, obligations and liabilities of Developer and City under this Agreement, or entitle Developer to terminate this Agreement or to claim any abatement or diminution of amounts otherwise due and payable under this Agreement. Further, Developer covenants not to raise as a defense to its obligations under this Agreement, or assert as a counterclaim or cross claim in any litigation between Developer and City relating to this Agreement, any losses arising from or in connection with City's provision of (or failure to provide) public utility services.

4.7 **Project Reporting Manager.** During the performance of the Work for the Project, Developer shall ensure that CCP or any other third-party project manager retained to manage and develop the Project (a "**Project Reporting Manager**") shall report to the City and the Developer on a quarterly basis whether the Work is on track with the Milestone Schedule. The Project Reporting Manager shall promptly report any material issues or problems City and Developer. In no event shall City be responsible or incur any liability whatsoever related to report made by, or actions taken by, the Project Reporting Manager.

4.8 **Key Professional Project Participants.** Developer acknowledges that Developer's commitment to engage key entities with whom Developer will contract for the construction, construction management, or operation of the Project is a material consideration to City in entering into this Agreement (the "**Key Professional Project Participants**"). Developer shall not terminate or replace identified on Exhibit E (*Key Professional Project Participants*) without City's prior written approval unless any such Key Professional Project Participant is in material default allowing for such termination or replacement under the Key Professional Project Participant's contract with Developer. In the event such a default is alleged to have occurred, City will have the right to review Developer's contract with such Key Professional Project Participant in order to confirm the occurrence of such default. If such a default has occurred pursuant to the contract terms, the City will have the right to approve the new Key Professional Project Participant, such approval not to be unreasonably withheld, conditioned or delayed.

4.9 **Required Contractor Provisions.**

Each Contractor will be subject at all times to the direction and control of Developer, and any delegation to a Contractor does not relieve Developer of any of its obligations, duties or liability pursuant to this Agreement. As a condition precedent to Closing, Developer shall provide to City a contract addendum in the form attached as Exhibit F to this Development Agreement ("*Form of Contract Addendum*"), which addendum Developer shall include or cause to be included in each construction contract for the Obligations. Developer shall provide City the opportunity to review each such contract to confirm compliance with this provision. Each construction contract for the Obligations must, except as waived by City:

(a) require the construction Contractor to accept the requirements applicable to the scope of work of such construction Contractor under this Agreement and require such construction Contractor to provide the equivalent indemnity under Section 6.1 (*Indemnification of the City*) for the benefit of the Indemnified Parties and make the Indemnified Parties third-party beneficiaries thereof;

(b) establish provisions for prompt payment by Developer or applicable Subcontractor that are at least as stringent as the provisions of Sections 2.2-4347 through 4355 of the Code of Virginia;

(c) require the Construction Contractor to carry out its scope of work in accordance with Law and all Regulatory Approvals;

(d) subject to the rights of the Capital Provider, be fully assignable to the City upon termination of Developer's right to continue performing D&C Work in connection with the Obligations , such assignability to include the benefit of allowing City to step-in and assume the benefit and obligations of Developer's contract rights and the work performed thereunder, with liability only for those remaining obligations accruing after the date of assumption, but excluding any monetary claims or obligations that Developer may have against such construction Contractor that existed prior to the City's assumption of such construction contract;

(e) subject to the rights of the Capital Provider, include express requirements that, if City succeeds to Developer's rights under the subject construction contract (by assignment or otherwise), then the relevant construction Contractor agrees that it will (A) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged in respect of the Obligations (e.g., constructor, equipment supplier, designer, service provider) and (B) permit audit thereof by City, and provide progress reports to City appropriate for the type of construction contract.

ARTICLE 5
INFRASTRUCTURE WORK

Infrastructure Work. Developer shall ensure that the performance of all Work involving the Infrastructure Improvements owned by or to be dedicated to the City complies and is performed

in accordance with the requirements contained in Exhibit B-2 (Infrastructure Conditions). To the extent of any discrepancy or inconsistency between the main body of this Agreement and Exhibit B-2 (Infrastructure Conditions), Exhibit B-2 will prevail.

ARTICLE 6
INDEMNITY

6.1 **Indemnification of the City.** Developer agrees to indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Project, the Property or the City's interest therein, in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of Persons or loss of or damage to property occurring on the Property, the Project, or any part thereof; (ii) any accident, injury to or death of Persons or loss or damage to property occurring immediately adjacent to the Property or the Project which is caused directly or indirectly by the Developer or its invitees, Contractors, Subcontractors, or agents (the "**Indemnifying Parties**"); (iii) any use, possession, occupation, operation, maintenance, or management of the Property, the Project or any part thereof by any Indemnifying Party; (iv) any use, possession, occupation, operation, maintenance, management or condition of property immediately adjacent to the Property or the Project by any Indemnifying Party; (v) any latent, design, construction or structural defect relating to the improvements located on the Property or the Project constructed by the Developer; (vi) any failure on the part of any Indemnifying Party to perform or comply with any of the provisions of this Agreement or with applicable Law or Regulatory Approval in connection with use or occupancy of the Property or the Project and any fines or penalties, or both, that result from such violation (subject to the right of Developer to contest the applicability of any such law or Regulatory Approval to the use or occupancy of the Property or the Project in good faith by appropriate proceedings and at no cost to the City); (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Property, the Project or any part thereof by any Indemnifying Party; (viii) any other legal actions or suits initiated by any Person using or occupying the Property or the Project or any of their agents, Contractors, Subcontractors or suppliers; (ix) any claim or proceeding made or brought against the Indemnified Parties for any patent, trademark, or copyright infringement or other improper appropriation or use by any Indemnifying Party; or (x) any forfeiture of insurance coverage resulting from Developer's error, omission, misdescription, incorrect declaration, failure to advise, misrepresentation or act, and for any expense the Indemnified Parties incurs as a result thereof. Notwithstanding anything contained in this Agreement to the contrary, the Developer shall not be obligated to indemnify the Indemnified Parties to the extent that any of the matters described herein are determined by a final non-appealable judgment of a court of competent jurisdiction to have arisen from any Indemnified Party's gross negligence or willful misconduct.

6.2 **Notice of a Claim.** If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Developer is obliged to indemnify such Indemnified Party, such Indemnified Party will promptly notify Developer of such action, suit or proceeding. Developer may, and upon the request of such Indemnified Party shall, at Developer's sole expense, resist and defend such action, suit or proceeding, or cause the

same to be resisted and defended by counsel designated by Developer and approved by such Indemnified Party in writing.

6.3 **Immediate Obligation to Defend.** Developer specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 6.1 (*Indemnification of the City*) or any other indemnification provision of this Agreement, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Developer by an Indemnified Party and continues at all times thereafter.

6.4 **Control of Defense.** Except as otherwise provided in this Agreement, Developer shall be entitled to control the defense, compromise or settlement of any such matter through counsel of Developer's own choice; provided, however, in all cases in which any Indemnified Party has been named as a defendant, City shall be entitled to (i) approve counsel (such approval not to be unreasonably withheld) and (ii) participate in such defense, compromise or settlement at its own expense. No compromise or settlement by Developer under this section may require City to alter any policy or practice of City as a result thereof. If Developer shall fail, however, in City's reasonable judgment, within a reasonable time (but not less than 15 Days following notice from City alleging such failure) to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, City shall have the right promptly to use counsel of its selection, in its sole discretion and at Developer's expense, to carry out such defense, compromise or settlement, which reasonable expense shall be due and payable to City ten (10) Business Days after receipt by Developer of an invoice therefor. The Indemnified Parties shall cooperate with Developer in the defense of any matters for which Developer is required to indemnify the Indemnified Parties pursuant to this Article 6 (*Indemnity*).

6.5 **Release of Claims Against the City.** Developer, as a material part of the consideration of this Agreement, hereby waives and releases any and all claims against the Indemnified Parties from any Losses, including damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by Persons in, upon or about the Property or the Project for any cause arising at any time, including, without limitation, all claims arising from the joint or concurrent negligence of City or the other Indemnified Parties.

6.6 **Other Obligations.** The agreements to indemnify set forth in this Article 6 (*Indemnity*) and elsewhere in this Agreement are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Developer may have to City in this Agreement, at common law or otherwise.

ARTICLE 7
INSURANCE

7.1 **Insurance Generally.** Developer shall provide and maintain throughout the life of this Development Agreement with respect to the Obligations, insurance in the kinds and amounts specified in this Article 7 with an insurer licensed to transact insurance business

in the Commonwealth of Virginia. All such insurance may, to the extent permitted by applicable Law, provide for a commercially reasonable deductible, subject to City's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Each insurance policy, endorsement and certificate of insurance shall be signed by duly authorized representatives of such insurers. The carrying by Developer of the insurance required shall not be interpreted as relieving Developer of any obligations Developer may have under this Development Agreement. Notwithstanding anything in this Section to the contrary, City acknowledges and agrees that Developer shall be deemed to have satisfied its obligation to maintain the insurance required in this Article 7 if Developer causes its Contractors and Subcontractors, where appropriate, to provide and maintain such insurance for the benefit of Developer and, to the extent required by this Article 7, City.

7.2 **Costs and Premiums**. Developer shall pay all premiums and other costs of such insurance, and City shall not be responsible therefor.

7.3 **Policy Requirements**. All insurance contracts and policies required under this Article 7 (*Insurance*) shall provide, or be endorsed to provide, all of the following:

(a) subrogation against the City shall be waived, to the extent permitted by Law;

(b) the Indemnified Parties and their officers, employees, agents and volunteers shall be listed, on a primary and not contributory basis, as an additional insured for all policies except Professional Liability, Errors and Omissions, and workers' compensation insurance;

(c) coverage will not be canceled, non-renewed or materially modified in a way adverse to the City without 30 days' prior written notice to the City;

(d) other than for workers' compensation insurance, employer's liability insurance, automobile liability insurance, professional liability insurance and contractor pollution liability insurance, all required insurance will contain a provision under which the insurer agrees that the failure of one insured to observe and fulfill the terms of the policy will not prejudice the coverage of the other insureds;

(e) the insolvency or bankruptcy of any of the insured shall not release the insurer from its obligation to satisfy claims otherwise within the coverage of such policies;

(f) no insurance contract or policy shall be expanded to afford coverage which is greater than the maximum coverage approved for writing in the Commonwealth of Virginia;

(g) other than for workers' compensation insurance, employer's liability insurance, commercial general liability insurance, excess liability insurance, professional liability, contractor pollution liability insurance and automobile liability insurance, each policy must be endorsed to contain a standard mortgagee clause to the effect that the City and the other insureds will not be prejudiced by an unintended or inadvertent error, omission, or mistaken description of the risk interest in property

insured under the policies, incorrect declaration of values, failure to advise insurers of any change of risk interest or property insured or failure to comply with a statutory requirement; and

(h) they will not include defense costs within the limits of coverage or permit erosion of coverage limits by defense costs, except that defense costs may be included within the limits of coverage of professional liability and contractor pollution liability policies.

7.4 **Rating Requirements**. Developer shall provide insurance issued only by companies with A. M. Best's Key Rating of at least A: VII.

7.5 **Endorsements**. Developer shall furnish City with a copy of the policy endorsement naming the Indemnified Parties and their officers, employees, agents, and volunteers as an additional insured for each policy for which such endorsement is required under Section 7.3(b) of this Development Agreement. Developer shall furnish City with copies of such other endorsements as may be required under this Development Agreement upon request by City therefor.

7.6 **Certificates of Insurance**. As a condition precedent to commencing Work under this Agreement, Developer shall furnish the City with an original, signed certificate of insurance for such Work: (i) specifically identifying this Development Agreement, (ii) evidencing the above coverage, (iii) indicating that the Indemnified Parties and their officers, employees, agents, and volunteers are listed as additional insured where required, (iv) indicating that such other endorsements as the Development Agreement may prescribe are included and (v) indicating that the coverage will not be canceled, non-renewed or materially modified in a way adverse to the City without thirty (30) Days' prior written notice to the City. If the Developer's or Contractor's insurance agent uses an "ACORD" insurance certificate form, the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" box of the form shall be deleted or crossed out. Prior to the expiration, change or termination of any insurance policy required under this Agreement, Developer shall furnish a new certificate evidencing that all required insurance under this Agreement is in full force and effect, without any period of lapse. The failure of Developer to deliver a new and valid certificate when required will result in the suspension of all applicable Work by Developer until the new certificate is furnished. Except as otherwise provided above, Developer is not required to furnish City with copies of insurance contracts or policies required by Section 7.7 of this Development Agreement unless requested at any time by the City's Chief of Risk Management.

7.7 **Schedule of Liability Coverage**. Developer shall provide and maintain the following types of insurance for the Project, in accordance with the requirements of this Article 7 (*Insurance*):

(a) Commercial General Liability Insurance (including, at a minimum, Premises/Operations Liability, Products and Completed Operations Coverage,

Independent Contractor's Liability, Owner's and Contractor's Protective Liability and Personal Injury Liability) with a combined limit of not less than $1,000,000 per occurrence and not less than $2,000,000 annual aggregate;

(b) Automobile Liability Insurance with a combined limit of not less than $1,000,000 per occurrence;

(c) Statutory Workers' Compensation and Employers' Liability Insurance with the Alternate Employer Endorsement WC 000301;

(d) Umbrella or Excess Liability Insurance with a combined limit of not less than $5,000,000 per occurrence;

(e) Builder's Risk Insurance in the "all-risk" form equal to one hundred percent (100%) of the insurable value of the Work, the Project and improvements required under this Agreement.

7.8 **Blasting**. Should any blasting become necessary to perform the Work, Developer shall provide and maintain liability insurance in the amount of at least $1,000,000 per occurrence, directly or indirectly arising from or during the time blasting is done. Developer may provide such insurance under a separate blasting insurance contract, by endorsement of the Commercial General Liability Insurance contract, or by any other insurance contract. Such insurance shall cover Developer and shall extend to provide coverage for any Contractor or Subcontractor doing blasting.

7.9 **Contractor's and Subcontractors' Insurance**. Developer shall not allow any Contractor or Subcontractor to perform any of the Work until the Contractor or Subcontractor has obtained the same types of insurance required of Developer under this Development Agreement in an appropriate amount determined by Developer and until Developer has approved such Contractor's or Subcontractor's insurance coverage. The furnishing of insurance by a Contractor or Subcontractor shall not create any contractual relationship between the City and the Contractor or Subcontractor.

ARTICLE 8
COMMUNITY BENEFITS

8.1 **Generally**. Developer acknowledges and agrees that the performance by Developer of the requirements of this Article 8 (*Community Benefits*) constitutes an important, material, and substantial inducement to City to enter into this Development Agreement.

8.2 **Assurances and Indemnity**. Developer acknowledges that it is voluntarily agreeing to provide the Community Benefits. Developer warrants that it or its agents, or contractors, will independently analyze the legal basis for its, or their, selected means and methods of performance and implementation of each Community Benefit to ensure that it, or they, do

not engage in any conduct inconsistent with local, state, or federal law in such means and methods of performance and implementation. In addition to the requirements of Article 6 ("Indemnity"), Developer shall indemnify, hold harmless, and defend City from and against any claims and liabilities arising out of, caused by, or resulting from the performance and implementation of the Community Benefits by Developer, its agents, or its contractors. Developer shall release City, its officers, employees, agents and volunteers from and against any and all losses, liabilities, claims, damages, costs, and expenses (including, but not limited to, court costs and attorneys' fees) that Developer may suffer, pay, or incur caused by, resulting from, or arising out of the performance and implementation of the Community Benefits.

8.3 **Minority Business Enterprise, and Emerging Small Business Participation.**

(a) **Definitions.** As used in this Section, the following capitalized terms shall have the meanings set forth below:

"**Contractor**" means a Person contracted by Developer to perform services or work on the Property in connection with the construction and operation of the Project.

"**Developer's MBE/ESB Coordinator**" means the Person identified pursuant to Section 8.1(b).

"**Emerging Small Business**" means a Person certified by the Office of Minority Business Development as meeting the definition of "emerging small business" in section 21-4 of the Code of the City of Richmond or any successor ordinance.

"**Goal**" means the goal set forth in Section 8.3(c).

"**Good Faith Efforts**" has the same meaning as provided in section 21-4 of the Code of the City of Richmond or any successor ordinance for "good faith minority business enterprise and emerging small business participation efforts."

"**Cost**" means all costs expended by Developer to construct and operate the Project, except for the following:

(i) any payment to a grantor of real property as consideration for the acquisition of real property from that grantor, excluding any charges, commissions, fees, or other compensation due to real estate agent, broker or finder on account thereof;

(ii) any payment to a public or private utility to connect to the utility services of that public or private utility; and

(iii) other costs expended by Developer to construct and operate the Project that the Office of Minority Business Development determines cannot be

performed by an Emerging Small Business or a Minority Business Enterprise.

"**Minority Business Enterprise**" means a Person registered by the Office of Minority Business Development as meeting the definition of "minority business enterprise" in section 21-4 of the Code of the City of Richmond or any successor ordinance.

"**Office of Minority Business Development**" means the City's Office of Minority Business Development or its successor agency.

"**Purchaser**" means Developer and any Contractor or Subcontractor of Developer.

(b) **Developer's MBE/ESB Coordinator**. The Developer's MBE/ESB Coordinator shall be Sharon Rheinhart. If, in Developer's sole discretion, such person cannot at any time fulfill her obligations MBE/ESB Coordinator, then within 14 Days after such time, Developer shall furnish City, for City's approval, with the following information about Developer's replacement MBE/ESB Coordinator, a Person either employed or contracted by Developer, who will be responsible for ensuring that all Purchasers make the requisite good faith efforts to achieve the Goal:

(i) The person's name, title and employer's name and State Corporation Commission registration number;

(ii) Number of years that the Person has worked for the Person's prior employers and current employer; and

(iii) A list of projects using the same project delivery method that the Person has worked on, including (i) the position the Person had on each such project; (ii) the scope of work, value, quality, initial and final costs for each such project; (iii) whether each such project met any minority participation or similar goal set for such project; and (iv) the telephone number and electronic mail address of the owner's representative for each such project.

City shall, within 14 Days after receiving all of the aforementioned information from Developer, communicate in writing its approval or disapproval of Developer's MBE/ESB Coordinator. If City disapproves, in City's sole and absolute discretion, the Person selected by Developer as Developer's MBE/ESB Coordinator, Developer shall, within 14 Days of Developer's receipt of such disapproval, submit all of the aforementioned information for a different Person to serve as Developer's MBE/ESB Coordinator.

(c) **Goal**.

(i) **Calculation**. Developer has set a goal that forty percent (40%) of the Cost of the entire Project will be spent with Emerging Small Businesses and

Minority Business Enterprises that perform commercially useful functions towards the construction and operation of the Project.

(ii) **Efforts Cumulative**. The Goal does not apply individually to each contract into which Developer and other Purchasers enter for part of the Cost to which the Goal applies. Rather, Developer will be considered to have met the Goal if the Goal's percentage of the entire Cost is fulfilled even if the Goal is not met for individual contracts that relate to that Cost.

(iii) **Performance Measurement**. The Office of Minority Business Development will use the following rules to determine whether Developer properly has counted particular payments to Contractors and Subcontractors towards meeting the Goal:

(A) Only payments made to a Contractor or Subcontractor (including any vendor or supplier, subject to the provisions of Section 8.3(c)(iii)(F) below) that is an Emerging Small Business or a Minority Business Enterprise will be counted towards the Goal.

(B) The value of work performed by a Contractor or Subcontractor that ceases to be certified by the Office of Minority Business Development as an Emerging Small Business or registered by the Office of Minority Business Development as a Minority Business Enterprise will not be counted, unless such Contractor or Subcontractor is recertified or reregistered, as applicable, within 90 calendar days following the termination of its certification or registration, as applicable.

(C) When an Emerging Small Business or a Minority Business Enterprise subcontracts part of the work of its contract to a Subcontractor, the value of the subcontracted work will be counted towards the Goal only if that Subcontractor is itself an Emerging Small Business or a Minority Business Enterprise.

(D) The entire amount of payments to an Emerging Small Business or a Minority Business Enterprise for "general conditions," as that term is used in the construction industry to describe a category of a construction contractor's costs, will be counted towards the Goal.

(E) When an Emerging Small Business or a Minority Business Enterprise performs as a participant in a joint venture, a portion of the total value of the contract equal to the portion of the work of that contract that the Emerging Small Business or the Minority Business Enterprise performs, as measured by the amount paid to that Emerging Small Business or Minority Business Enterprise and not paid to a Subcontractor thereof will be counted towards the Goal.

(F) Payments to an Emerging Small Business or a Minority Business Enterprise for materials or supplies will be counted towards the Goal as follows:

(i) If the materials or supplies are obtained directly from a manufacturer that is an Emerging Small Business or a Minority Business Enterprise, 100 percent of the cost of those materials or supplies will count towards the Goal; and

(ii) If the materials or supplies are obtained from an Emerging Small Business or a Minority Business Enterprise that has stored or warehoused the materials or supplies, 60 percent of the cost of those materials or supplies so stored or warehoused by the Emerging Small Business or the Minority Business Enterprise will count towards the Goal.

(d) **Good Faith Efforts**. Developer will be deemed to have made Good Faith Efforts to achieve the Goal if Developer has done all of the following:

(i) Developer has employed the MBE/ESB Coordinator required by Section 8.3(b).

(ii) Developer has caused each Purchaser to implement plans and procedures that will require that Purchaser to comply with all elements of this Section 8.3.

(iii) Developer causes implementation of the following:

(A) Contractor controlled insurance programs to cover Subcontractors under a Contractor's insurance policies for each component of the Project.

(B) Payment schedules for Subcontractors that are biweekly instead of monthly.

(iv) Developer has caused all Purchasers to do the following:

(A) Provide and, as needed, update contact information for a point of contact to Developer and City for the purpose of communications required or permitted to be given pursuant to this Section 8.3.

(B) Set individual targets on individual contracts consistent with the Developer's Good Faith Efforts to achieve the Goal.

(C) If the Purchaser is a Contractor, work with Developer to host, plan, adequately advertise, and conduct at least two "meet and greet"

sessions intended to introduce Emerging Small Businesses and Minority Business Enterprises to Contractor.

(D) If the Purchaser is a Contractor, hold a pre-bid or pre-proposal meeting for all Subcontractors prior to any due date for bids or proposals at which the Goal and the requirements of this Section 8.3 are explained.

(E) If the Purchaser is a Contractor, recruit Subcontractors to participate in the pre-bid or pre-proposal.

(v) For each contract the cost of which is part of the Cost:

(A) Developer has used the Office of Minority Business Development's database and other available sources to identify qualified, willing and able Emerging Small Businesses and Minority Business Enterprises.

(B) Developer has participated in outreach efforts and programs designed to assist qualified potential Contractors or Subcontractors in becoming certified as Emerging Small Businesses or registered as Minority Business Enterprises.

(C) Developer has notified potential Contractors or Subcontractors that might qualify as Emerging Small Businesses and Minority Business Enterprises, through meetings, fora, presentations, seminars, newsletters, website notices or other means of the upcoming opportunities available to Emerging Small Businesses and Minority Business Enterprises to participate in the construction or operation of the Project.

(D) Developer has provided Purchasers with assistance and resources to identify and contract with Emerging Small Businesses and Minority Business Enterprises.

(E) Developer has worked with not-for-profit organizations to reduce barriers to Emerging Small Business and Minority Business Enterprise participation in the construction and operation of the Project, including implementation of the requirements of this Section.

(vi) For each contract the cost of which is part of the Cost:

(A) Developer has assisted Purchasers, bidders or offerors and Emerging Small Businesses and Minority Business Enterprises with any questions relating to this Section 8.3.

(B) Developer has provided the City with a copy of all correspondence in which it has informed Purchasers, bidders or offerors and Emerging Small Businesses and Minority Business Enterprises of the Developer's opinion as to whether a particular contract or portion thereof should be counted towards the Goal.

(C) Developer has required Purchasers to submit a form containing all of the information required above for each Emerging Small Business or Minority Business Enterprise the Purchaser is committing to using.

(vii) For each contract the cost of which is part of the Cost:

(A) Developer has resolved any disputes related to Emerging Small Business or Minority Business Enterprise participation in the Project and advised the City in writing of each such dispute and its resolution.

(B) Developer has complied with and caused all Purchasers to comply with all requirements of Section 0.

(e) **Compliance Monitoring and Reporting.**

(i) **Responsibility.** Although all final determinations as to whether the Goal has been met shall be made only by City, in consultation with the Office of Minority Business Development, Developer will be responsible for monitoring and enforcing the compliance of Purchasers with this Section 03. Developer shall cause all Purchasers to gather and report to Developer all data needed to ensure that all Purchasers are complying with the requirements of this Section 8.3. Developer shall furnish City with all data so gathered and reported and all other information required by this Section 8.3 no less frequently than once per month at a time designated by City.

(ii) **Reporting.** Developer shall require all Purchasers to submit, monthly and on a form approved by the Office of Minority Business Development, complete and accurate data on the participation of Emerging Small Businesses and Minority Business Enterprises, including, but not necessarily limited to, the following:

(A) The name, address, identification number and work description of each Emerging Small Business or Minority Business Enterprise that the Purchaser has committed to use, as of the date of the report;

(B) Identification of the Purchaser that has hired each Emerging Small Business or Minority Business Enterprise;

(C) The total contract value for each committed Emerging Small Business or Minority Business Enterprise;

(D) Any changes to the total contract value for each committed Emerging Small Business or Minority Business Enterprise;

(E) The classification of each Emerging Small Business or Minority Business Enterprise by function using classifications prescribed by the Office of Minority Business Development;

(F) The value of each element of work, supplies, or services provided by each Emerging Small Business or Minority Business Enterprise during the reporting period;

(G) The value of each element of work, supplies, or services that the Developer believes should be counted towards the Goal during the reporting period;

(H) The total value of work, supplies, or services invoiced during the reporting period and paid during the reporting period for each Emerging Small Business or Minority Business Enterprise; and

(I) The total amount of invoices during the reporting period and paid during the reporting period.

8.4 **Jobs and Training**. Developer shall work in good faith to create training and outreach programs within the city of Richmond to identify opportunities to secure the job skills needed for both the construction and post-construction phases of the Project, and to employ individuals having such job skills. Developer shall require Developer's Contractors, VCUHSA, Ronald McDonald House Charities, and The Doorways also to undertake all the obligations and activities required of Developer in this Section 8.4. All opportunities for employment in connection with the development of the Project shall be communicated to the City's Office of Community Wealth Building to coordinate recruitment efforts with the Office of Community Wealth Building. As a part of Developer's undertakings pursuant to this Section 8.4 (*Jobs and Training*), Developer will use its best efforts in the commercially ordinary timing for hiring in the Project to (i) conduct job fairs and information sessions in each City Council District of the City on an appropriate date with respect to the staffing needs of the Project, (ii) recruit city residents first for job placement by conducting an outreach program that targets neighborhoods with the highest concentrations of poverty, (iii) work with willing workforce development teams and training providers (including the Community College Workforce Alliance) to conduct a comprehensive training program, (iv) target city residents for employment opportunities, (v) create ongoing hiring opportunities to benefit students in public schools of the school division administered by the School Board of the City of Richmond ("Richmond Public Schools") through recruitment, training and internship programs, (vi) conduct construction and trades job fairs and information sessions in coordination with Richmond Redevelopment and Housing Authority ("RRHA")and (vii) place job advertisements with multiple media outlets, including all newspapers with a print circulation in the city of Richmond.

8.5 **Employment Goals.** To the extent permitted by Law and without establishing preferences for Virginia residents over non-Virginia residents, Developer shall require its construction Contractors and Subcontractors to set a goal to achieve the following targets regarding hiring, such that city residents comprise the following, provided that such residents meet all of the knowledge, skills and eligibility requirements for the available position:

(i) 100% of construction laborers not previously employed by the Contractor or Subcontractor but hired to construct the the Project.

(ii) 60% of the Contractor's or Subcontractor's existing construction laborers employed in the construction of the Project.

(iii) 50% of skilled construction trades workers not previously employed by the Contractor or Subcontractor but hired to work on the construction of the Project.

(iv) 15% of the Contractor's or Subcontractor's existing skilled construction trades workers not previously employed by the Contractor or Subcontractor but hired to work on the construction of the Project.

8.6 **Labor Agreements.** To the extent permitted by Law, Developer shall cause its general Contractor to:

(i) Use a minimum of 42,000 man-hours from union laborer personnel; and

(ii) Use a minimum of 225,000 man-hours from union craft personnel.

(iii) Participate in apprenticeship programs that have been certified by Virginia's Department of Labor and Industry or the U.S. Department of Labor.

(iv) Give consideration or preference to an individual's status as an honorably discharged veteran of the armed forces of the United States in employment on the Project, provided that such veteran meets all of the knowledge, skills and eligibility requirements for the available position.

8.7 **Prevailing Wage.** To the extent permitted by law, and regardless of the existence of a labor agreement, Developer will require its Contractors and Subcontractors to pay to each worker employed on the Project, at a minimum, the prevailing wage rate for the city of Richmond as determined by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C.S. § 276a, as amended.

8.8 **Community Fund.** As of the Closing Date, Developer shall have established with a minimum $250,000 initial investment, a fund ("**Fund**") to be managed by a Richmond-based organization. Developer shall provide, at a minimum, an additional $50,000 to the Fund each year for five years beginning in calendar year 2022. For the avoidance of doubt, Developer's total minimum investment in the Fund must be $500,000. Disbursements from the Fund must be for the following purposes:

(i) to offset the cost of micro- or small Richmond based businesses, to the extent permitted by law, in need of financial assistance for the leasing of office or retail space in the Project;

(ii) to provide financial assistance to city of Richmond organizations that support the start-up and growth of micro or small business enterprises; and

(iii) to fund scholarships for graduates of Richmond Public Schools, which graduates reside in public housing communities, to attend trade or technical school, to attend community college, or to attend a four-year college or university.

ARTICLE 9
TAXABILITY OF PROJECT

9.1 **Payment.** Beginning upon conveyance of the Property to Developer, and at all times thereafter, Developer that the Property, the Project, the improvements and any portions thereof or interests therein will be and remain subject to real estate taxation at the then-current tax rates without any exemptions, credits, or other provisions that would reduce the amount of real estate taxes due and paid to the City.

9.2 **In-Lieu Payments.** If for any reason the Property, the Project, the improvements or any portions thereof are not subject to real estate taxation Developer shall pay to City annually an amount equal to the real estate taxes that would be required to be paid if the Property, the Project, the improvements or any portions thereof were subject to such real estate taxation at the then-current tax rates without any exemptions, credits, or other provisions that would reduce the amount of real estate taxes due and paid to the City.

9.3 **Real Estate Tax Revenues; Guaranty of Payment.** The Developer anticipates that the real estate tax revenues the City receives as a result of the Project will be no less than the amounts shown on Exhibit G (*Anticipated Minimum Real Estate Tax Revenues*) for each year shown on such Exhibit G. For purposes of this Section 9.3, (i) "Anticipated Minimum Tax Revenues" means the amount shown in the column titled "Amount" on Exhibit G and (ii) "Actual Tax Revenues" means the amount of real estate taxes actually paid for the tax parcels that comprise the Project in any given tax year for which tax revenue is anticipated on Exhibit G. On or before June 5 of any tax year the Developer shall pay to the City an amount equal to the amount by which Anticipated Minimum Tax Revenues exceed Actual Tax Revenues, if any (the "Guaranteed Obligation"). As a condition precedent to Closing, Developer shall fully delegate to VCUHSA, and VCUHSA shall fully assume, the Developer's obligation contained in this Section 9.3 to make the payment of the Guaranteed Obligation. Notwithstanding the foregoing delegation and assumption, Developer shall not be released from the Guaranteed Obligation and shall remain jointly and severally obligated with VCUHSA hereunder. The form of the Delegation and Assumption Agreement is attached as Exhibit H (*Delegation and Assumption Agreement*.)

9.4 **Public Improvements.** Notwithstanding the provisions of Sections 9.1, 9.2 and 9.3 above, Developer will not be responsible for payment of taxes on public right-of-way or on any land donated to and accepted by the City, provided that the City is the fee simple owner of such land.

ARTICLE 10
EVENTS OF DEFAULT AND TERMINATION

10.1 **Developer Default.** The occurrence of any one or more of the following shall constitute a "**Developer Default**" under this Agreement:

(a) Developer fails to perform or comply with any commitment, agreement, covenant, term or condition (other than those specifically described in any other subsection of this Section 10.1) contained in this Agreement, the PSA, or the Infrastructure Conditions, and Developer fails to cure any such default within ten (10)days after receipt of written notice of the default; provided that, if such failure cannot be cured within such ten (10) Day period and Developer is diligently and in good faith pursuing a cure, the Developer shall have such additional time as may be necessary to complete the cure, not to exceed 60 days.

(b) Developer fails to complete the Infrastructure Improvements and the dedication of such Infrastructure Improvements no later than the issuance of a Certificate of Occupancy for the Project.

(c) Developer fails to develop the Project in accordance with the Milestone Schedule.

(d) any court of competent jurisdiction enters an order, judgment, or decree approving a petition seeking reorganization of Developer or all or a substantial part of the assets of Developer or any guarantor of Developer or appointing a receiver, sequestrator, trustee or liquidator of Developer, or any guarantor of Developer or any of their property and such order, judgment or decree continues unstayed and in effect for at least 60 Days;

(e) Developer (i) makes a general assignment for the benefit of creditors, (ii) is adjudicated as either bankrupt or insolvent, (iii) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, (iv) either (a) takes advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation Law or (b) admits the material allegations of a petition filed against Developer in any proceedings under such a Law or (v) any guarantor of Developer takes action for the purposes of effecting any item identified in item (iv);

(f) Developer breaches, or fails to strictly comply with, any provision of Article 7 (*Insurance*) and such breach or failure continues for more than five (5) Business Days after written notice thereof from the City;

(g) a writ of execution is levied on the Property that is not released within sixty (60) Days, or a receiver, trustee, or custodian is appointed to take custody of all or any material part of the property of Developer in connection with the Project, which appointment is not dismissed within 60 Days;

(h) Developer suffers or permits an assignment of this Agreement or any interest therein or a conveyance of the Property to occur in violation of this Agreement;

(i) Developer suffers or permits an assignment to occur as prohibited by Section 13.2 of this Agreement;

10.2 **City Remedies Upon Developer Default**. Upon the occurrence and during the continuance of a Developer Default, the City will have the right to avail itself of all rights and remedies at law, in equity, or under this Agreement, including, but not limited to, (i) termination of this Agreement or the PSA; (ii) institution and prosecution of proceedings: to enforce in whole or in part the specific performance of this Agreement or the PSA; to enjoin or restrain Developer from commencing or continuing any Developer Default; and to cause Developer to correct any Developer Default or threatened Developer Default; and (iii) institution and prosecution of proceedings for actual damages caused by a Developer Default. All of City's rights and remedies will be cumulative, and the exercise by City of any one or more of such remedies will not preclude the exercise by it, at the same or different times, of any other such remedies for the same Developer Default.

10.3 **City Default**.

City's failure to perform any material covenant, condition or obligation under this Agreement, which failure causes a material delay, loss or impairment of the Developer's rights under this Agreement, and the continuation of such failure for ten (10) Business Days after the Developer provides written notice thereof to the City will be considered a "**City Default**" provided that, if such failure cannot be cured within such ten (10) Business Day period and the City is diligently and in good faith pursuing a cure, the City shall have such additional time as may be necessary to complete the cure.

10.4 **Developer Remedies in the Event of Default by the City**.

Upon the occurrence and during the continuance of a City Default under this Agreement, Developer will have all rights and remedies provided in this Agreement or available at Law or equity. All of the Developer's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights shall not preclude the exercise of any others.

ARTICLE 11
REPRESENTATIONS AND WARRANTIES

11.1 **Representations and Warranties of the Developer**. As a material inducement to City to enter into this Agreement and the transactions and agreements contemplated hereby,

Developer represents and warrants to City that, as of the date on which Developer executes the PSA, the Development Agreement, and the Lease:

(a) **Valid Existence and Good Standing.** Developer is a corporation duly organized and validly existing under the laws of the Commonwealth of Virginia and duly authorized and registered to transact business in the Commonwealth of Virginia. Developer has the requisite power and authority to own its property and conduct its business as presently conducted.

(b) **Authority to Execute and Perform Contract Documents.** Developer has the requisite power and authority to execute and deliver the PSA, the Development Agreement, and the Lease and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of the PSA, the Development Agreement, and the Lease and the agreements contemplated hereby to be performed by Developer.

(c) **No Limitation on Ability to Perform.** Neither Developer's articles of incorporation, bylaws or other governing documents nor any applicable Law prohibits the Developer's entry into the PSA, the Development Agreement, or the Lease or its performance thereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other Person is required for the due execution and delivery of the PSA, the Development Agreement, and the Lease by Developer, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. Except as may otherwise have been disclosed to City in writing, there are no undischarged judgments pending against Developer, and Developer has not received notice of the filing of any pending suit or proceedings against Developer before any court, governmental agency or arbitrator that might materially adversely affect the enforceability of the PSA, the Development Agreement, the Lease, or the business, operations, assets or condition of Developer.

(d) **Valid Execution.** The execution and delivery of the PSA, the Development Agreement, and the Lease, and the performance by the Developer thereunder have been duly and validly authorized. When executed and delivered by City and the Developer, the PSA, the Development Agreement, and the Lease will be legal, valid and binding obligations of Developer.

(e) **Defaults.** The execution, delivery and performance of the PSA, the Development Agreement, and the Lease (i) do not and will not violate or result in a violation of, contravene, or conflict with or constitute a default by Developer under (A) any agreement, document, or instrument to which Developer is a party or by which Developer is bound, (B) any Law applicable to Developer or its business, or (C) the articles of incorporation, bylaws, or other governing documents of Developer; and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Developer, except as contemplated hereby.

(f) **Financial Matters.** Except to the extent disclosed to City in writing, to Developer's knowledge, (i) Developer is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Developer has not filed a petition for relief under any chapter of the United States Bankruptcy Code, (iii) there has been no event that has materially adversely affected Developer's ability to meet its obligations hereunder or that has occurred that will constitute an event of default by Developer under the PSA, the Development Agreement, and the Lease; and (iv) no involuntary petition naming Developer as debtor has been filed under any chapter of the United States Bankruptcy Code.

The representations and warranties above shall survive the expiration or any earlier termination of the PSA, the Development Agreement, and the Lease.

11.2 **Representations and Warranties of the City.** As a material inducement to Developer to enter into the PSA, the Development Agreement, and the Lease, and the transactions and agreements contemplated hereby, the City represents and warrants to the Developer that, as of the date on which the City executes the PSA, the Development Agreement, and the Lease:

(a) **Valid Existence.** City is a duly created and validly existing municipal corporation and political subdivision of the Commonwealth of Virginia.

(b) **Authority to Execute and Perform Contract Documents.** City has all requisite right, power, and authority to enter into the PSA, the Development Agreement, and the Lease, and has taken all necessary or appropriate actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of, the PSA, the Development Agreement, and the Lease by City. The PSA, the Development Agreement, and the Lease are legal, valid and binding obligations of City, enforceable against it in accordance with its terms.

(c) **Litigation; Condemnation.** To the best of City's knowledge, on or before the Effective Date, except as disclosed in writing by City to Developer, City has received no written notice regarding any, and there are no, actions, proceedings, litigation, administrative challenges or governmental investigations or condemnation actions which are either pending or threatened against the Property as of the Effective Date.

(d) **Violations of Laws.** To the best of City's knowledge, on or before the Effective Date, City has received no written notice from any government authority regarding any, and there are no, violations with respect to any Laws, whether or not appearing in any public records, with respect to the Property, which violations remain uncured as of the Effective Date.

11.3 **No Liability for Other Party's Action or Knowledge**. Notwithstanding any provision of this Article 11 (*Representations and Warranties)* or any other provision this Agreement to the contrary, neither Party shall have any liability for a breach of the representations or warranties set forth in this Article 111 (*Representations and Warranties*) caused by or resulting from (i) any act or omission of the other Party or (b) any fact, circumstance or matter known by the other Party on or before the Effective Date. As used in this Section 11.3 (*No Liability for Other Party's Action or Knowledge*), "known by" means actual knowledge, and not imputed or constructive knowledge, without any requirement of inquiry or investigation by the Party to which such knowledge is attributed.

11.4 **Additional Developer Representation and Warranties.**

Developer represents and warrants to City that:

(a) its Contractors for the Project will be sophisticated, qualified and experienced contractors capable of performing the Work required to be performed with respect to the Project and independently assessing all available documents and any other information provided by City with respect to the Project; and

(b) Developer and each of its Contractors for the Project has evaluated or will evaluate, in accordance with Good Industry Practice, the required Work to be performed with respect to the Project and the constraints affecting the Work, including the Property and surrounding locations (based on the available documents and a visible inspection of the Property and surrounding locations), applicable Laws, applicable standards and the conditions of the Regulatory Approvals in effect.

ARTICLE 12
LIMITATION ON LIABILITY

12.1 **Consequential Loss Waiver**. As a material part of the consideration for this Agreement, and notwithstanding any provision herein to the contrary, neither City nor Developer shall be liable for, and each Party hereby waives any claims against the other for, any consequential damages incurred by either Party and arising out of any default by the other Party hereunder.

12.2 **Exceptions to Waiver**. The foregoing limitation will not, however, in any manner:

(a) limit Developer's liability for any type of damage arising out of Developer's obligation to indemnify, protect, defend and hold each Indemnified Parties harmless under this Agreement;

(b) limit any losses arising out of fraud, gross negligence, criminal conduct, intentional misconduct, recklessness or bad faith on the part of the relevant Party;

(c) limit Developer's liability for any type of damage to the extent covered by the proceeds of insurance required hereunder; or

(d) limit the amounts expressly provided to be payable by either Party pursuant to this Agreement.

12.3 **Assignment by City.**

The City may freely transfer or assign any or all of its interest in this Agreement to any government entity or political subdivision of the Commonwealth without the prior consent of the Developer. Any other transfers or assignments of the City interest under this Agreement will be subject to the Developer's prior written approval, which approval will not be unreasonably withheld, conditioned, or delayed. In the event of any assignment or other transfer of City's interest in and to this Agreement, City (and in case of any subsequent transfers thereof, the then transferor), subject to the provisions hereof, automatically shall be relieved and released, from and after the date of such assignment or transfer, of all liability with regard to the performance of any covenants or obligations contained in this Agreement thereafter to be performed on the part of City (or such transferor, as the case may be), but not from liability incurred by City (or such transferor, as the case may be) on account of covenants or obligations to be performed by City (or such transferor, as the case may be) hereunder before the date of such assignment or transfer; provided, however, that City (or such subsequent transferor) also automatically shall be relieved and released from liability on account of covenants and obligations to be performed hereunder before the date of such assignment or transfer if and to the extent City (or such subsequent transferor) has transferred to the transferee any funds in City possession (or in the possession of such subsequent transferor) in which City (or such subsequent transferor) has an interest, in trust, for application to such liability, and such transferee has assumed all liability for all such funds so received by such transferee from City (or such subsequent transferor).

12.4 **No City Liability.**

Except to the extent of the willful misconduct of City and subject to the Developer's indemnification obligations, the City shall not be liable or responsible in any way for:

(a) any Loss or damage whatsoever to any property belonging to Developer or to its representatives or to any other person who may be in or upon the Property; or

(b) any Loss, damage or injury, whether direct or indirect, to persons or property resulting from any failure, however caused, in the supply of utilities, services or facilities provided or repairs made to the Project under any of the provisions of this Agreement or otherwise.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 **Duration.** This Development Agreement will be in full force and effect following the City Council's approval of this Agreement and the execution of this Agreement by both Parties (the "**Effective Date**") and shall terminate or expire on the earlier of (i) any early

termination of this Agreement in accordance with Article 9 (*Events of Default and Termination*) or (ii) the date when all obligations have been performed and all rights have been fully exercised by the City and the Developer.

13.2 **Assignment by Developer.** Developer may not assign this Agreement (and no transfer by Developer of any interest in this Agreement and no transfers of direct or indirect interests in Developer shall be permitted) without the prior consent of City, which consent will not be unreasonably withheld, conditioned, or delayed. In the event of such approved assignment, Developer will not be relieved of any of its duties, obligations or liabilities hereunder, instead Developer, as assignor, and Developer's assignee shall therefore be jointly and severally liable hereunder. Notwithstanding the foregoing, Developer may, upon prior written notice to City but without the necessity of obtaining the City's consent thereto, assign its interest or any part thereof in this Agreement to a bankruptcy remote limited liability company created by Developer for the sole purpose of the financing and development of the Project. Developer will not be relieved of any of its duties, obligations or liabilities hereunder, instead Developer, as assignor, and Developer's assignee shall therefore be jointly and severally liable hereunder. Developer shall provide City with all relevant information and documentation regarding such bankruptcy remote limited liability company and the assignment thereto as necessary to ensure City's ability to enforce this provision.

13.3 **Survival**. The following provisions of this Agreement shall survive following any early termination of this Agreement: Article 6 (*Indemnity*); and Section 11.1.1 (*Representations and Warranties of the Developer*)

13.4 **Availability of Funds for the City's Performance**. All payments and other performances by City under this Agreement are subject to annual appropriations by the City Council of the City of Richmond, Virginia. It is understood and agreed between the parties that City will be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement. Under no circumstances shall the City's total liability under this Agreement exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Agreement.

13.5 **Captions**. This Development 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 Development Agreement or in any way define, limit, extend or describe the scope or intent of any provisions of this Development Agreement.

13.6 **Counterparts**. This Development 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 Development Agreement.

13.7 **Entire Agreement**. This Development Agreement, including the Exhibits attached hereto, and the PSA contain the entire understanding between the City and the Developer with

respect to the Work to be performed by the Developer with respect to the Project and supersedes any prior understandings and written or oral agreements between them respecting such subject matter.

13.8 **Governing Law and Forum Choice**. All issues and questions concerning the construction, enforcement, interpretation and validity of this Development Agreement, or the rights and obligations of the City or the Developer in connection with this Development 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. Any and all disputes, claims and causes of action arising out of or in connection with this Development 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 or any litigation or other proceeding arising from this Development Agreement.

13.9 **Modifications**. This Development Agreement may be amended, modified and supplemented only by the written consent of the City and the Developer preceded by all formalities required as prerequisites to the signature by each party of this Development Agreement.

13.10 **No Agency, Joint Venture, or Other Relationship**. Neither the execution of this Development Agreement nor the performance of any act or acts pursuant to the provisions of this Development Agreement shall be deemed to have the effect of creating between the City and the Developer, or any of them, any relationship of principal and agent, partnership, or relationship other than the relationship established by this Development Agreement.

13.11 **No Individual Liability**. 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 Development Agreement or on any obligation incurred under the terms of this Development Agreement.

13.12 **No Third-Party Beneficiaries**. Notwithstanding any other provision of this Development Agreement, the City and the Developer hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Development Agreement; (ii) the provisions of this Development Agreement are not intended to be for the benefit of any individual or entity other than the City and the Developer; (iii) no individual or entity shall obtain any right to make any claim against the City and the Developer under the provisions of this Development Agreement; and (iv) no provision of this Development Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this Section 13.12, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, contractors, subcontractors, vendors, subvendors, assignees, licensors and

sublicensors, regardless of whether such individual or entity is named in this Development Agreement.

13.13 **No Waiver**. The failure of the City or the Developer to insist upon the strict performance of any provision of this Development 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 Development Agreement at any time. The waiver of any breach of this Development Agreement shall not constitute a waiver of a subsequent breach.

13.14 **Severability**. Each clause, paragraph and provision of this Development Agreement is entirely independent and severable from every other clause, paragraph and provision. If any judicial authority or state or federal regulatory agency or authority determines that any portion of this Development Agreement is invalid or unenforceable or unlawful, such determination will affect only the specific portion determined to be invalid or unenforceable or unlawful and will not affect any other portion of this Development Agreement which will remain and continue in full force and effect. In all other respects, all provisions of this Development Agreement will be interpreted in a manner which favors their validity and enforceability and which gives effect to the substantive intent of the parties.

13.15 **Notices**. All notices, offers, consents or other communications required or permitted to be given pursuant to this Development Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified U.S. mail with return receipt requested, and addressed to the address of the intended recipient at the following addresses:

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:

Capital City Development LLC
c/o Concord Eastridge
3160 Fairview Park Drive
Suite 110
Falls Church, VA 22042 Attention: Susan H. Eastridge,
Chief Executive Officer & President

Capital City Partners, LLC
1 East Broad Street
Richmond, Virginia 23219
Attention: Michael Hallmark

Each party may change any of its address information given above by giving notice in writing stating its new address to the other parties.

13.16 **Interpretation**

(a) In this Agreement:

(i) headings are for convenience only and do not affect interpretation;

(ii) unless otherwise stated, a reference to any agreement, instrument or other document is to that agreement, instrument or other document as amended or supplemented from time to time;

(iii) a reference to this Agreement or any other agreement includes all exhibits, schedules, forms, appendices, addenda, attachments or other documents attached to or otherwise expressly incorporated in this Agreement or any other agreement (as applicable);

(iv) reference to an Article, Section, subsection, clause, Exhibit, schedule, form or appendix is to the Article, Section, subsection, clause, Exhibit, schedule, form or appendix in or attached to this Agreement, unless expressly provided otherwise;

(v) a reference to a Person includes a Person's permitted successors and assigns;

(vi) a reference to a singular word includes the plural and vice versa (as the context may require);

(vii) the words "including," "includes" and "include" mean "including, without limitation," "includes, without limitation" and "include, without limitation," respectively;

(viii) an obligation to do something "promptly" means an obligation to do so as soon as the circumstances permit, avoiding any delay; and

(ix) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" mean "to and including."

(b) This Agreement is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Agreement or some provision of it or because that Party relies on a provision of this Agreement to protect itself.

(c) The Parties acknowledge and agree that:

(i) each Party is an experienced and sophisticated party and has been given the opportunity to independently review this Agreement with legal counsel;

(ii) each Party has the requisite experience and sophistication to understand, interpret and agree to the language of the provisions of this Agreement; and

(iii) in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement will not be interpreted or construed against the Party preparing it.

13.17 **Signatures.** This Agreement is signed when a party's signature is delivered by facsimile, email, or other electronic medium. These signatures must be treated in all respects as having the same force and effect as original signatures.

13.18 **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 Agreement, the PSA, and the Lease.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the City and the Developer have executed this Development Agreement as of the day and year written first above.

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

By: _____
Acting Chief Administrative Officer

APPROVED AS TO FORM:

_____
Deputy City Attorney

CAPITAL CITY PARTNERS, LLC,
a Virginia limited liability company

By: _____
Title: _____

Exhibit A-1

Parcel Map

EXHIBIT A-2 TO DEVELOPMENT AGREEMENT

FORM OF PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**," this "**PSA**," or this "**Purchase and Sale Agreement**") is made this ____ day of _____, 2021 (the "**Effective Date**"), between the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia ("**City**") and **CAPITAL CITY PARTNERS, LLC**, a Virginia limited liability company ("**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. City seeks to convey the land, together with all improvements on and appurtenances thereto, located at 500 North 10th Street and identified as tax map parcel number E000-0235/001 ("Property"), for purposes of redevelopment resulting in additional taxable value and in certain community benefits;

B. As additional consideration for the Property, Developer will Demolish the improvements existing on the Property as of the Closing Date; construct and dedicate Infrastructure Improvements; and prepare the Property to be Shovel-Ready for development (the "Obligations");

C. The City Council adopted Ordinance No. 2021-_____, which authorizes the City to accept Developer's dedication of the Infrastructure Improvements and certain interests in real estate;

D. The City seeks the development of a mixed-use project with a capital investment of approximately $350 million but in no event less than $325 million ("the Project"), and the Developer seeks to design, construct, finance, operate and maintain the Project, with no financial obligation to the City;

E. The City seeks a 40% target for minority business enterprise and emerging small business; job training initiatives; a commitment to workforce training; payment of prevailing wage rates, a commitment to labor agreements, and certain additional community benefits for the city and for those employed on the Project;

F. The City and the Developer entered into that certain Development Agreement (the "Development Agreement") dated [_____], 2021 to establish each Party's obligations, rights and limitations with respect to delivering Project;

G. In accordance with the Development Agreement, the City and the Developer now desire to enter into this Purchase and Sale 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**. City agrees to sell to Developer, and Developer agrees to purchase from City, subject to the terms and conditions of the this Purchase and Sale Agreement ("**PSA**") and the Development Agreement, all of the City's rights, title and interest in and to that parcel of real property known as 500 North 10th Street and identified as Tax Parcel Number E000-0235/001 in the 2021 records of the City Assessor, together with all appurtenances pertaining thereto and all the buildings and other improvements situated thereon, if any, all as more particularly described in Schedule A attached hereto (collectively, the "**Property**").

2. **Purchase Price and Deposit**.

a. Purchase Price. The purchase price for the Property shall be THREE MILLION FIVE HUNDRED TWENTY THOUSAND FOUR HUNDRED FIFTY-SIX DOLLARS ($3,520,456.00) (the "**Purchase Price**") and shall be payable as set forth herein.

b. Deposit. Developer has paid to City a deposit in the amount of THREE HUNDRED FIFTY-TWO THOUSAND FORTY-SIX DOLLARS ($352,046.00) ("**Deposit**") in accordance with section 8-59 of the Code of the City of Richmond and subject to the provisions of the escrow letter provided with such Deposit (the "Escrow Letter"), which Deposit the City shall apply to the Purchase Price at Closing or return to Purchaser if Closing does not occur pursuant to the Escrow Letter.

c. Forfeit of Deposit. Subject to the Escrow Letter, should Developer fail to close, Developer will forfeit the Deposit unless (i) City's material default of this Agreement or the Development Agreement caused the failure to close or (ii) Developer exercises its right not to close as provided in section 4 of this PSA, "Due Diligence."

d. Additional Consideration. As additional consideration for the Property, Developer shall Demolish all improvements existing on the Property as of the Closing Date; make certain Infrastructure Improvements; and ensure that the Property will be Shovel-Ready for development (the "**Obligations**") all in accordance with the Development Agreement.

3. **Closing; Conditions to Closing**.

a. Closing. Closing shall occur within 30 days following Developer's satisfaction of the conditions precedent to Closing set forth in Exhibit A ("Conditions Precedent to Closing"). The date on which Closing occurs is referred to herein as the "**Closing Date.**"

b. Payment of Purchase Price. Developer shall pay to City the Purchase Price, less the amount of the Deposit, in immediately available funds on the Closing Date.

c. Deed Reversion and Restrictions. Developer acknowledges that the Deed will provide that title to the Property will revert to the City, subject only to the rights of any

financial institution, bank, investor or lender identified on any recorded mortgage on the Project who has provided the funding to Developer for the purpose of developing the Project (whether one or more, a "**Capital Provider**"), in the event Developer does not submit project plans meeting the requirements of the plan of development application for review within six months from the Closing Date or if Developer fails to commence construction of the Project within 90 Days of the date on which the City issues a building permit; provided, however, that any such period shall be extended for a day for day basis if any holdover by the City occurs with respect to the Lease . Developer further acknowledges that, in order to ensure compliance with Article 9 of the Development Agreement ("Taxability of Project"), the Deed will contain certain restrictions or conditions requiring City approval of any conveyance of the fee simple interest in the Property.

d. City Holdover. Developer shall allow the City to continue operations at the Property for 150 days following the Closing Date ("**City Holdover Period**"). City, in its sole discretion, may utilize the Property for fewer than 150 days but in any event will ensure it has vacated the Property prior to the end of the City Holdover Period. The terms and conditions of the City Holdover Period are contained in a Lease, the form of which is attached to the Development Agreement as Exhibit A-3 and into which City and Developer will enter at Closing ("**Lease**"). This section 3(d) shall survive Closing.

4. Due Diligence.

a. Generally. Developer will have 60 days commencing upon the Effective Date (the "**Due Diligence Period**") to perform its due diligence on the Property to include but not be limited to, (i) conducting any and all studies, (ii) surveys, (iii) tests, (iv) evaluations and (v) investigations, including without limitation (a) title, survey, environmental, soil, drainage, and utilities studies and such other similar work ("**Studies**"), (b) any other requirements to be undertaken during the Due Diligence Period required elsewhere in this Agreement, and (c) making such inquiries of governmental agencies and utility companies to determine the feasibility of the intended use and development of the Property (the "**Due Diligence**"). If the Due Diligence Period terminates on a Saturday, Sunday or legal holiday, the Due Diligence Period will be deemed to terminate on the business day immediately prior thereto. Immediately upon receipt of same and without demand, Developer shall provide City with any and all information Developer acquires relating to or resulting from its Due Diligence.

b. Right of Entry. For the duration set forth in section 4(a) and pursuant to the terms of this Agreement, City grants to Developer, and its agents, contractors, employees, and officers, the non-exclusive right to enter upon the Property for the purpose of enabling Developer to perform its Due Diligence thereon. Developer understands, acknowledges, and agrees that this grant conveys no interest or estate in the Property but merely grants to Developer the personal privilege to enter the Property for the purposes and on the terms set forth herein. The right of entry hereby granted, and all terms and conditions contained herein, will terminate automatically upon the earlier of (i) the completion of Developer's Due Diligence or (ii) the expiration of the Due Diligence Period.

c. Access. Developer shall provide two business days prior written notice to City and shall schedule the timing of access to the Property with City's point of contact identified

in section 15(l). Developer shall permit City to have a representative present during every entry upon the Property. Developer shall abide by reasonable security, safety, and access restrictions as may be required by City. If the intended inspection includes intrusive physical or environmental testing of the Property, or any portion thereof, Developer's notice shall include a reasonably detailed description of the type, scope, manner, and duration of the inspections to be conducted. Developer shall not undertake any such physically or environmentally intrusive inspections without the prior written consent of City, which will approval will be given within two business days of such request and will not be unreasonably withheld, conditioned, or delayed.

d. No Disruption. , Developer shall not unreasonably disrupt or interfere with City's business activities or ordinary traffic flow. Developer shall not alter, damage, discard, remove, or allow the alteration, damage, discarding, or removal of any fixture or personal property located in or on the Property. Developer shall not move any equipment that is not a fixture located in or on the Property without City's prior consent, which may be given by the City representative to which section 4(c) refers. Developer may move, within or on the Property, personal property other than equipment as Developer may require to perform the Due Diligence provided Developer complies with all other requirements of this section.

e. Utility Protection. Developer shall protect all privately and publicly owned utilities located within the Property and shall not permit any utilities interruption.

f. Condition of Property. Upon completion of the Due Diligence and upon the termination or cancellation of this PSA, Developer shall, at its sole expense: (i) repair any damage to the Property, or to any equipment, fixture or personal property located therein or thereon, caused by the Due Diligence or any activities conducted in connection therewith; (ii) remove all materials and equipment from the Property which Developer brought or caused to be brought onto the Property; and (iii) otherwise restore the Property and any equipment, fixture or personal property located therein or thereon to a condition satisfactory to City in City's reasonable discretion. If Developer fails to comply with this section 4(f), City may undertake repair, removal, or restoration at Developer's cost. This section 4(f) will survive any expiration or termination of this PSA.

g. Termination. If prior to the expiration of the Due Diligence Period, Developer determines that the Property is unsuitable for Developer's use of the Property for the Project due to a material defect in the condition of the Property, in Developer's reasonable discretion, then Developer will have the right to terminate this PSA by giving written notice to City of such termination and neither Party will have any further rights or obligations hereunder except as may be expressly provided herein. If City does not receive such termination notice on or before the expiration of the Due Diligence Period, then Developer will be deemed to have waived the right to terminate this Agreement.

h. Liability.

(i) Release. City will not be liable for any personal injury or property damage to Developer or its agents, contractors, employees, invitees, licensees, officers, or volunteers irrespective of how the injury or damage is caused, and Developer hereby

releases City from any liability, real or alleged, for any personal injury or property damage to Developer or its agents, contractors, employees, invitees, licensees, officers, or volunteers irrespective of how the injury or damage is caused. Nothing herein shall be construed as a waiver of the sovereign immunity of City. This section 4(h)(i) will survive any expiration or termination of this PSA.

(ii) Indemnity. Developer shall indemnify and defend City and its agents, contractors, employees, officers, and volunteers from and against any and all losses, liabilities, claims, damages and expenses, including court costs and reasonable attorneys' fees, caused by, resulting from, or arising out of any claim, action, or other proceeding, including any claim, action or other proceeding initiated or maintained by any of Developer's agents, contractors, employees, invitees, licensees, officers, or volunteers, that is based on or related to: (i) use of the Property by Developer or its agents, contractors, employees, invitees, licensees, officers, or volunteers; (ii) the performance of the Due Diligence on or outside of the Property by Developer or its agents, contractors, employees, invitees, licensees, officers, or volunteers; (iii) the presence on or about the Property of Developer or its agents, contractors, employees, invitees, licensees, officers, or volunteers; (iv) the conduct or actions of Developer or its agents, contractors, employees, invitees, licensees, officers, or volunteers within or outside the scope of the conduct of Due Diligence; (v) any error, omission, negligent act, or intentional act of Developer or its agents, contractors, employees, invitees, licensees, officers, or volunteers. Without limiting the generality of the foregoing obligation, Developer further agrees that it shall indemnify City and its agents, contractors, employees, officers, and volunteers from all liabilities, remedial costs, environmental claims, fees, or other expense related to, arising from, or attributable to, any hazardous materials introduced by Developer (including effluent discharged on the Property) or disturbed as a result of Developer's activities on the Property. This section 4(h)(ii) will survive any expiration or termination of this Agreement.

(iii) Insurance.

A. Prior to engaging in any Due Diligence, Developer shall carry and maintain, and shall cause its agents, contractors, invitees, licensees and volunteers to carry and maintain the following insurance, in a form reasonably acceptable to City, which insurance shall be primary to all insurance coverage City may possess. Notwithstanding anything in this section to the contrary, City acknowledges and agrees that Developer shall be deemed to have satisfied its obligation to maintain the insurance required in this section 4(h)(iii) if Developer causes its Contractors and Subcontractors, where appropriate, to provide and maintain such insurance for the benefit of Developer and, to the extent required by this section 4(h)(iii), City:

(1). To the extent required by the Code of Virginia and other applicable Virginia Laws, Workers' Compensation and Employers' Liability Insurance in an amount no less than $100,000, or in amounts not less than the minimum required by the Code of Virginia and other applicable Laws; and

(2). Commercial General Liability occurrence-based (not claims-made) in an amount not less than Three Million Dollars ($3,000,000.00) per occurrence and Three Million Dollars ($3,000,000.00) in the aggregate; and

(3). Business Automobile Liability insurance, to include Auto Physical Damage coverage, in the amount of One Million Dollars ($1,000,000.00) combined single limit covering all owned, non-owned borrowed, leased, or rented motor vehicles operated by Grantee or its contractors. In addition, all motorized equipment, both licensed and not licensed for road use, operated or used by Developer or its agents, contractors, invitees, licensees and volunteers in or on the Property will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The foregoing provisions relating to automobile insurance shall not apply to privately-owned or leased motor vehicles of Developer's employees or business invitees.

B. The following terms shall be applicable to the policies of insurance:

(1). The insurance shall be issued by companies admitted within the Commonwealth of Virginia, with Best's Key Rating of at least A: VI. Foreign markets, including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis, are exempt from this requirement provided that Developer provides financial data to establish that a market is equal to or exceeds the financial strengths associated with Best's Key Rating of A or better.

(2). Before Developer or its employees, agents, contractors, invitees, licensees and volunteers enter upon the Property, Developer shall deliver to City one or more valid Certificates of Insurance which show the foregoing insurance coverage to be in force and effect. Developer shall provide individual insurance policy declarations sheets or pages, or a specimen copy of individual policies to City upon City's request.

(3). Developer shall list and shall cause its agents, contractors, invitees, licensees and volunteers to list City and its employees and officers an additional insured in the Commercial General Liability and Business Automobile Liability policies, which shall be reflected on the Certificate of Insurance therefor delivered to City or in copies of endorsements therefor delivered to City.

(4). Developer shall cause its Commercial General Liability and Business Automobile Liability policies and those of its agents, contractors, invitees, licensees and volunteers to be endorsed to provide that coverage will not be canceled, non-renewed, or materially modified in a way adverse to City without 30 days' prior written notice to the City. Developer shall cause a

copy of each such endorsement to be delivered to City prior to entering the Property and the Certificate of Insurance to reflect the notice provisions set forth herein.

5. **Zoning Compliance**. Prior to the expiration of the Due Diligence Period, Developer shall at its own expense request a Zoning Confirmation Letter for the purpose of verifying that the proposed Project, as described in the Development Agreement, conforms with the City's zoning regulations. Developer's receipt of a Zoning Confirmation Letter shall be a condition precedent to Closing. City will endeavor to provide timely review and processing of Developer's application.

6. **Title and Survey**.

a. Title. Prior to the Effective Date, Developer, at its sole cost and expense, has obtained and reviewed a commitment for title insurance for the Property (the "**Commitment**") from First American Title Insurance Company (the "**Title Company**"). Prior to Closing Developer will have the right, at its sole cost and expense, to have the Commitment updated. Promptly upon receipt Developer shall, at no cost to the City, deliver copies of the Commitment (and, if applicable, any update thereto), together with copies of all documents and instruments referred to therein, to City.

b. Survey. Within 60 days following the Effective Date, Developer shall, at its sole cost and expense, (i) obtain a current ALTA survey for the Property (the "**Survey**") from a surveyor that is duly licensed in the Commonwealth of Virginia and reasonably acceptable to City and (ii) submit the Survey to City for City's review and approval, to which submittal City shall respond within ten (10) business days of the City receiving such Survey. City's approval of the Survey shall not be unreasonably withheld, conditioned or delayed. Prior to Closing, Developer will have the right, at its sole cost and expense, to have the Survey updated, in which case the Developer shall submit such update to City for City's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. The Survey (and, if applicable, any update thereto) must be certified to the Developer, the City, the Title Company and any other parties designated by Developer. The Property shall be conveyed by the City to the Developer using the legal description for the Property appearing on the Survey.

c. Permitted Exceptions. City and Developer acknowledge and agree that the City shall convey title to the Property to Developer subject to the Permitted Exceptions (as hereinafter defined). For the purposes of this Agreement "**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 the Property, including those required by the Development Agreement, (iv) such state of facts disclosed by the Survey, (v) any exception that the Title Company agrees to affirmatively insure over, and (vi) any matters set forth on the Commitment, as applicable, as of the Effective Date or of which Developer has knowledge prior to Closing. Notwithstanding the foregoing, in no event will Permitted Exceptions include any monetary liens or encumbrances on

the Property created by City (other than liens for real estate taxes and assessments not yet due and payable).

7. **"As Is" Sale; Release**.

a. Developer hereby expressly agrees and acknowledges, and represents and warrants to the City, that Developer has not entered into this Agreement based upon any representation, warranty, statement or expression of opinion by City or any person or entity acting or allegedly acting for or on behalf of City with respect to the City, the Property, or the "**Condition of the Property**" (as hereinafter defined). Developer acknowledges and agrees that the Property is and shall be sold and conveyed (and accepted by the Developer at 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, 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 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 City. Developer acknowledges that City has made no representations, warranties or covenants as to the Condition of the Property or compliance of the Property with any Laws.

b. By accepting the Deed and Closing, Developer, on behalf of itself and its successors and assigns, shall thereby release and further agrees to indemnify and defend each of the Indemnified Parties from, and waive any and all liabilities against each of the Indemnified Parties for, attributable to, or in connection with the Property (or applicable portion thereof), 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; (b) 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 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 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 any portion of the Property.

c. By accepting the Deed and Closing, Developer shall thereby assume and take responsibility and liability for the following: (a) any and all liabilities attributable to the Property (or applicable portion thereof) 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; and (b) 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.

d. The provisions of this section 7 shall be deemed reaffirmed upon and shall survive Closing or any expiration or termination of this PSA.

8. **Closing Deliverables; Apportionments and Closing Costs**.

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

(i) a quitclaim deed for the Property, duly executed and acknowledged by the City, in substantially the form attached hereto as Exhibit B (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) 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**");

(iv) a duly executed counterpart original of a settlement statement, including any and all prorations and adjustments required hereunder, if any, and the closing costs as allocated among the parties pursuant to section 8(d) below (the "**Settlement Statement**");

(v) 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; and

(vi) A duly executed counterpart original of the Lease.

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

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

(viii) 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;

(ix) any additional documents, if any, that may be required in order to satisfy the conditions precedent to Closing set forth on Exhibit A hereto, duly executed and acknowledged by Developer, if applicable; and

(x) a duly executed counterpart original of the Lease.

c. Possession of the Property will be given to Developer at Closing, subject to the Permitted Exceptions and the Lease, by delivery of the Deed. The City will pay for preparation of the Deed.

d. Developer shall pay for the cost of the Commitment, the cost of the Survey, title insurance premiums and other expenses for the Property, all costs associated with Due Diligence, the cost associated with Developer's acquisition financing for the Property (if any), the cost of recording the Deed (including any transfer and recordation taxes other than Grantor's Tax, if any), its own attorneys' fees, all escrow fees, and all settlement fees of the Title Company, together with any additional costs customarily paid by a purchaser at or in connection with Closing.

9. **Condemnation.** If prior to the Closing Date any condemnation proceeding or other proceeding in the nature of eminent domain is commenced with respect to the Property, City agrees to promptly notify Developer thereof. In the event that such proposed taking is with respect to (a) all of the Property, or (b) any material portion of the Property such that it would prevent Developer from developing the Property for Developer's intended use in accordance with the Development Agreement, Developer then will have the right, at the Developer's option, to elect not to take title.

10. **Casualty**.

a. It is expressly agreed and acknowledged by the parties that in no event will damage or destruction to the improvements existing on the Property as of the Effective Date give Developer the right to elect not to take title and Developer's obligation to perform the Obligations will not terminate.

b. All risk of loss or damage to the Property by fire or other casualty is assumed by Developer at Closing. The provisions of this section 10 will survive Closing.

11. **Default by the Developer**. Subject to and in accordance with the Development Agreement, if Developer fails to timely proceed to Closing in accordance with the terms and conditions of this PSA, including but not limited to the failure to satisfy the conditions precedent

to Closing, City will 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 and retain the Deposit.

12. **Default by the City.** If City fails to timely proceed to Closing in accordance with the terms and conditions of this PSA, which failure is not cured within ten (10) days following receipt of written notice from Developer, then, notwithstanding any provisions to the contrary in the Development Agreement, Developer will have, as its sole and exclusive remedy the right to terminate this Agreement and receive a refund of the Deposit. Except for the amount of the Deposit, Developer further hereby waives all claims that Developer may have against City for consequential and punitive damages as a result of any default by City hereunder.

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

14. **Notice.** All notices, requests and other communications under this Agreement shall be given in accordance with the terms of section 13.15 (*Notices*) of the Development Agreement.

15. **Miscellaneous**.

a. **Time of the Essence.** 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 City or 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 local, 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. **Captions.** This PSA 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 PSA or in any way define, limit, extend, or describe the scope or intent of any provisions of this PSA.

c. **Assignment.** Developer may not assign this PSA (and no transfer by Developer of any interest in this PSA and no transfers of direct or indirect interests in Developer shall be permitted or effective) without the prior consent of City, which consent will not be unreasonably withheld, conditioned, or delayed. In the event of such approved assignment, Developer will not be relieved of any of its duties, obligations or liabilities hereunder, instead Developer, as assignor, and Developer's assignee shall therefore be jointly and severally liable hereunder. Notwithstanding the foregoing, Developer may, upon prior written notice to City but without the necessity of obtaining the City's consent thereto, assign its interest or any part thereof

in this Purchase and Sale Agreement to (i) a bankruptcy remote limited liability company (a "Special Purpose Entity") created by Developer for the sole purpose of the financing and development of the Project or (ii) a Capital Provider or a Special Purpose Entity formed by a Capital Provider; provided that Developer will not be relieved of any of its duties, obligations or liabilities hereunder, but that instead Developer, as assignor, and Developer's assignee shall therefore be jointly and severally liable hereunder. Developer shall provide City with all relevant information and documentation regarding such Special Purpose Entity or Capital Provider and the assignment thereto as necessary to ensure City's ability to enforce this provision.

d. **Binding Agreement.** This PSA 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 15(c) above.

e. **Entire Agreement.** This PSA, the Development Agreement, and the Lease, including the exhibits and schedules attached hereto, contain the whole agreement between City and 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 PSA shall not be altered, amended, changed or modified except in writing executed by the parties and preceded by all formalities required as prerequisites to the signature by each party.

f. **Severability**. Each clause, paragraph and provision of this Purchase and Sale Agreement is entirely independent and severable from every other clause, paragraph and provision. If any judicial authority or state or federal regulatory agency or authority determines that any portion of this Purchase and Sale Agreement is invalid or unenforceable or unlawful, such determination will affect only the specific portion determined to be invalid or unenforceable or unlawful and will not affect any other portion of this Purchase and Sale Agreement which will remain and continue in full force and effect. In all other respects, all provisions of this Purchase and Sale Agreement will be interpreted in a manner which favors their validity and enforceability and which gives effect to the substantive intent of the parties.

g. **Choice of Law and Forum.** All issues and questions concerning the construction, enforcement, interpretation and validity of this PSA, or the rights and obligations of City or Developer in connection with this PSA, 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. Any and all disputes, claims and causes of action arising out of or in connection with this PSA, 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 PSA.

h. **Counterparts.** This PSA 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 PSA.

i. **No Personal Liability.** 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 PSA or on any obligation incurred under the terms of this PSA.

j. **Waiver.** The failure of the City or the Developer to insist upon the strict performance of any provision of this PSA 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 PSA at any time. The waiver of any breach of this PSA shall not constitute a waiver of a subsequent breach.

k. **Public Document.** The City and the Developer acknowledge and agree that this PSA 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.

l. **Point of Contact.** The City's point of contact for purposes of section 4(c) is

Kenneth W. Hill, SFP, FMP
Operations Manager
City of Richmond, Department Of Public Works
Facilities Management Division
Cell: 804-363-7714
Office: 804-646-2787
Kenneth.Hill@richmondgov.com

City's point of contact may name a designee to perform the functions described in section 4(c) and in the event of such designation shall provide Developer with the name and contact information of such designee.

m. **Cooperation.** Developer shall cooperate with the City after Closing, in case of City's need to respond to any legal requirement, a tax audit, tax return preparation or litigation threatened or brought against City, by allowing City and its agents or representatives access, upon reasonable advance notice (which notice shall identify the nature of the information sought by City), at all reasonable times to examine and make copies of any and all instruments, files and records related to the Property for the period prior to Closing. This provision shall survive the Closing.

n. **Signatures.** This Agreement is signed when a party's signature is delivered by facsimile, email, or other electronic medium. These signatures must be treated in all respects as having the same force and effect as original signatures.

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: _____
Name: _____
Title: _____

THE DEVELOPER:

CAPITAL CITY PARTNERS, LLC, a Virginia limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A TO PURCHASE AND SALE AGREEMENT

CONDITIONS PRECEDENT TO CLOSING

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

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

(b) City has complied with all of its obligations required to be performed by it under the Development Agreement prior to the Closing;

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

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

(a) Developer is not in breach of any of its covenants and agreements under this Agreement in any material respect;

(b) Developer has entered into and complied with all of its obligations then required to be performed by it under the Development Agreement;

(c) Developer has completed or waived its Due Diligence;

(d) Developer has obtained and the City has reviewed to confirm commitments from Capital Providers sufficient to promptly close and to complete the development of the Project;

(e) Developer has requested and obtained a Zoning Confirmation Letter verifying that the proposed Project, as described in the Development Agreement, conforms with the City's zoning regulations;

(f) Developer has provided to City, in a form acceptable to the City in its sole discretion, sufficient evidence from VCUHSA (i) of a master lease between VCUHSA and Developer, which master lease requires VCUHSA, as part of the Project, to (A) operate or cause to be operated a childcare facility with a minimum of 20% of enrollment available at no increased cost to city residents who are not Virginia Commonwealth University, Virginia Premier, or VCUHSA employees and (B) make up to 200 parking spaces in the Project available at no

increased cost to employees of the City of Richmond, Richmond Public Schools, and the judges, clerks, and personnel of the Circuit Court of the City of Richmond working at the John Marshall Courts Building located at 400 North Ninth Street; and (ii) of subleases between VCUHSA and The Doorways and Ronald McDonald House Charities.

(g) Developer has verified to City, to the satisfaction of the City in its sole discretion, that all construction contracts with respect to the Obligations will include by way of an addendum, the form of which is attached as Exhibit F to the Development Agreement, all provisions required by section 4.9 of the Development Agreement;

(h) the representations and warranties made by Developer in the Development Agreement are true and correct in all material respects;

(i) a Survey for the Property has been obtained by the Developer and approved by the City in accordance with the terms of section 6(b) of this Agreement;

(j) Developer has provided to City, in a form acceptable to City in its sole discretion, a written plan to ensure compliance with section 8.4 of the Development Agreement.

(k) Intentionally omitted.

(l) Developer has provided to City, in a form acceptable to City in its sole discretion, a written plan to ensure compliance with section 8.3 of the Development Agreement.

(m) Intentionally omitted.

(n) Intentionally omitted.

(o) Developer has provided, in a form and in substance acceptable to City, evidence that Developer has established with a minimum $250,000 initial investment, the Fund required by section 8.8 of the Development Agreement.

(p) Developer has provided to City the Survey Plat required by Section 2.1 of the Infrastructure Conditions.

EXHIBIT B TO PURCHASE AND SALE AGREEMENT

FORM OF QUITCLAIM DEED

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

Tax Parcel No. E000-0235/001

Consideration:
Assessed Value:
Title Insurer:

QUITCLAIM DEED

THIS QUITCLAIM DEED (this "Deed") is made this ___ day of _____, 2021, by and between the **CITY OF RICHMOND**, a municipal corporation of the Commonwealth of Virginia, to be indexed as grantor ("GRANTOR"), and **CAPITAL CITY PARTNERS, LLC**, a Virginia limited liability company, to be indexed as grantee ("GRANTEE").

EXEMPTION FROM TAXES

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

WITNESSETH:

A. GRANTOR is the owner of a parcel of land situated in the City of Richmond, Virginia known as 500 North 10th Street and identified as Tax Parcel Number E000-0235/001 in the 2020 records of the City Assessor, together with all appurtenances pertaining thereto and all the buildings and other improvements situated thereon, being the same real estate conveyed to Grantor by deed recorded in the Clerk's office of the Circuit Court of Richmond, Virginia in Deed Book __ at page __ (the "Property").

B. The Richmond City Council, by adoption of Ordinance Nos. _____ on _____, authorized (i) conveyance of the Property to GRANTEE pursuant to a purchase and sale agreement (the "PSA") dated _____ and (ii) a development agreement related to this Deed (the "Development Agreement") dated _____ and to which GRANTOR and GRANTEE are parties, with the expectation that GRANTEE and its successors in title will redevelop the Property to benefit the community through construction of a high quality-mixed use development, creation of associated jobs, an increase in taxable value of the Property, and payment of real property taxes.

C. All capitalized terms used in this Deed without definition shall have the meanings given to the same in the PSA.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual benefits to ensue from this Deed, Ten and No/100 Dollars ($10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Grantor hereby remises, releases, and forever quitclaims to GRANTEE all right, title, and interest of GRANTOR in and to the Property located in the City of Richmond, Virginia as described in Schedule "A" attached hereto and made a part hereof.

SEE SCHEDULE "A"

The Property is conveyed subject to (i) all easements, covenants, conditions and restrictions of record, insofar as they may legally affect the Property; (ii) real estate taxes not yet due and payable; and (iii) matters which would be revealed by a current, accurate physical survey of the Property.

The Property is conveyed subject to the terms of that certain Development Agreement between GRANTOR and GRANTEE dated _____, 2021, a copy of which is attached hereto as Schedule B, the terms of which are incorporated herein. The Development Agreement shall be for the benefit of GRANTOR and shall operate as a covenant binding GRANTEE, its successors and assigns, and shall run with title to the Property.

This conveyance is further made SUBJECT TO the following conditions:

The Property, the Project, the improvements and any portions thereof or interests therein will be and remain subject to real estate taxation at the then-current tax rates without any exemptions, credits, or other provisions that would reduce the amount of real estate taxes due and paid to GRANTOR. If for any reason the Property, the Project, the improvements or any portions thereof are not subject to real estate taxation GRANTEE shall pay to GRANTOR annually an amount equal to the real estate taxes that would be required to be paid if the Property, the Project, the improvements or any portions thereof were subject to such real estate taxation at the then-current tax rates without any exemptions, credits, or other provisions that would reduce the amount of real estate taxes due and paid to the GRANTOR. GRANTEE shall not convey the Property without permission from GRANTOR, which permission GRANTOR shall not withhold, condition, or delay where GRANTOR reasonably determines such conveyance will not frustrate this condition.

This condition shall be a covenant that runs with the land.

GRANTEE shall (i) submit project plans meeting the requirements of GRANTOR's plan of development application for GRANTOR's review within six months from the Closing Date and (ii) commence construction of the Project within 90 Days from the date on which GRANTOR

issues GRANTEE a building permit, except that both deadlines shall be extended by a number of days equal to the number of days GRANTOR holds over on the Property with respect to the Lease. If GRANTEE does not satisfy both conditions, all right, title, and interest of GRANTEE in the Property shall cease, and the Property shall immediately and automatically REVERT to GRANTOR, except that such reversion shall be subject to the rights of any Capital Provider, and to which Capital Provider(s) GRANTOR shall subordinate its reversionary interest by executing a subordination agreement in a form acceptable to GRANTOR in its reasonable discretion.

It shall be lawful for GRANTOR to prosecute any proceedings at law or in equity for violations or attempted violations of the covenants, conditions, and restrictions described in this Deed. In the event of any litigation for the enforcement of the covenants, conditions, or restrictions described in this Deed, GRANTOR shall be entitled to be reimbursed by GRANTEE for reasonable attorney's fees and costs incurred in seeking such enforcement. Failure to enforce any covenant, condition, or restriction contained in this Deed shall in no event be deemed a waiver of the right to do so thereafter.

Invalidation of any covenant, condition, or restriction described in this Deed by judgment or court order shall in no way affect any of the other provisions of this Deed, which shall remain in full force and effect.

The provisions of this Deed shall be binding upon, and shall inure to the benefit of, the parties, the property owner, and their respective successors and assigns.

SIGNATURES APPEAR ON THE FOLLOWING PAGES
REMAINDER OF PAGE LEFT BLANK

[SIGNATURE PAGE TO BE INSERTED BEFORE CLOSING]

SCHEDULE A - TO QUITCLAIM DEED
LEGAL DESCRIPTION

[To Be Inserted before Closing based on Survey]

SCHEDULE B - TO QUITCLAIM DEED
DEVELOPMENT AGREEMENT

[To be Inserted before Closing]

EXHIBIT C TO PURCHASE AND SALE AGREEMENT

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)

Schedule A to Purchase and Sale Agreement

Real Property Description

[To be inserted before Closing based on Survey]

EXHIBIT A-3 TO DEVELOPMENT AGREEMENT
FORM OF LEASE

THIS LEASE (this "Lease") is made this ___ day of _____, 2021 by and between Capital City Partners, LLC, hereinafter designated as Landlord, and the CITY OF RICHMOND, a municipal corporation of the Commonwealth of Virginia, hereinafter designated as Tenant. Landlord and Tenant are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

RECITALS

A. Landlord, upon receipt of a deed properly executed by Tenant (the "Deed"), acquired from Tenant certain real property located at 500 North 10th Street in the city of Richmond, Virginia, known as Tax Parcel No. E0000235001 and more particularly shown on the survey attached hereto and made a part hereof as Exhibit A (the "Property").

B. Tenant, having conveyed the Property to Landlord, now desires to lease back from Landlord, and Landlord desires to lease back to Tenant, in accordance with the terms of this Lease, the Property and all building and site improvements, fixtures, and machinery including all existing parking thereon (the "Leased Premises") so that Tenant can temporarily continue its operations on the Property while Landlord prepares to redevelop the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, Landlord and Tenant agree as follows:

1.0 Recitals. The foregoing Recitals are true and correct and are incorporated in this Lease by reference.

2.0 Definitions.

2.1 Commencement Date. "Commencement Date" means the first date by which (i) the Parties have properly executed this Lease and (ii) Tenant, or someone authorized to act on behalf of Tenant, has delivered the properly executed Deed conveying the property to Landlord.

2.2 Development Agreement. "Development Agreement" means the development agreement between the City of Richmond and Capital City Partners, LLC, dated the ____ day of _____, 2021, concerning development of the Property. For purposes of this Lease, "City" as defined in the Development Agreement is synonymous with "Tenant" and "Developer" as defined in the Development Agreement is synonymous with "Landlord."

2.3 Hazardous Substances and Wastes. "Hazardous Substances and Wastes" means those hazardous substances and hazardous wastes as defined in the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., and the Resource

Conservation and Recovery Act, 42 U.S.C. §§9601 et seq., respectively, and in any regulations promulgated thereto.

2.4 Laws. "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 Parties; the Property or any portion thereof; or the Project (as defined in the Development Agreement) or any portion thereof, including hazardous materials Laws, whether or not in the present contemplation of the Parties, and including 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.

2.5 Mortgage. "Mortgage" means deeds of trust, ground leases, and other security interests.

2.6 Landlord Representative. "Landlord Representative" means any agent, officer, employee, contractor, subcontractor, consultant, or vendor of Landlord.

2.7 Permitted Use. "Permitted Use" means use of the Leased Premises as needed by Tenant, including but not limited to use of the Property for adult pretrial, local probation, and reentry services; drug testing; and general storage and parking.

2.8 Person. "Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, business trust, joint venture, government, political subdivision or any other legal or commercial entity and any successor, representative, agent, agency or instrumentality thereof.

2.8 Rent. "Rent" means the sum Tenant shall pay Landlord as consideration for its lease of the Leased Premises for the Term.

2.9 Tenant Related Parties. "Tenant Related Parties" means Tenant's employees, officers, representatives, invitees, and licensees.

2.10 Transfer Event. "Transfer Event" means any instance in which (i) ownership of the Leased Premises (or any portion thereof) is transferred or (ii) Landlord ceases to have the requisite level of control over the Leased Premises (or any portion thereof) necessary to fulfill its obligations under this Lease, including the grant to a third party by easement or other legal instrument of an interest in any portion of the Leased Premises.

3.0 Lease. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Leased Premises, of which Tenant shall have exclusive use and possession during the Term, subject to the conditions of this Lease.

4.0 Term. The term of this Lease (the "Term") will be one hundred fifty (150) days. The Term will commence on the Commencement Date and expire at 11:59 p.m. on its final day.

5.0 Rent. Tenant shall pay Landlord Rent in the amount of **ONE AND NO/100 DOLLARS ($1.00)** on the Commencement Date.

6.0 Utilities and Services. During the Term, Tenant may maintain all services and utilities accounts Tenant established for the Property prior to the Term and shall pay all charges against the Leased Premises for any services and utilities it uses during the Term, including but not limited to water, sanitary sewer, steam, heat, gas, electricity, telephone, coaxial or fiber optic cable, satellite, internet access, data, and janitorial utilities and services. Landlord shall have no obligation to provide such utilities and services.

7.0 Care and Maintenance. Landlord shall deliver the Leased Premises in "as is" condition. During the Term, Tenant may maintain, repair, and replace the Leased Premises as it deems necessary to engage in the Permitted Use. Landlord shall not be responsible for any maintenance of, repairs to, or replacement of any portion of the Leased Premises, except that Landlord shall restore to its prior condition, by repair or replacement, any portion of the Leased Premises damaged in relation to any act or omission of Landlord or any Landlord Representative.

8.0 Termination. This Lease will terminate upon expiration of the Term or earlier upon written notice by Tenant to Landlord that the Leased Premises are no longer suitable or required for the Permitted Use.

9.0 Removal; Holdover.

9.1 Removal. Tenant may, at its sole option during the Term, remove from the Leased Premises (i) any of its personal property and (ii) any fixtures installed by Tenant on the Property, which fixtures, if removed by Tenant, shall be deemed Tenant's personal property. Title to any fixtures or any of its personal property Tenant does not remove from the Leased Premises shall remain with or vest in Landlord.

9.2 Holdover. If Tenant holds over by continuing to occupy the Leased Premises after expiration of the Term, this Lease will immediately terminate. Notwithstanding such termination the Tenant will have fourteen days from the date of termination to vacate the premises after which time the Landlord will have the right to use self-help to secure the Leased Premises.

10.0 Quiet Enjoyment. Landlord covenants that Tenant, on paying the Rent and performing the covenants herein, shall peaceably and quietly have, hold, and enjoy the Leased Premises for its exclusive use during the Term.

11.0 Right of Entry. At any time during the Term, Landlord and any Landlord Representative of Landlord's choosing shall have the right to enter the Leased Premises in order to perform work necessary to the timely advancement of the Project (as defined in and governed by the terms of the Development Agreement), except that Landlord shall not exercise, and shall ensure no Landlord Representative exercises, any right under this Section 11.0 in a way that that does not comply with the Laws or, in Tenant's sole determination, interferes with or disrupts the Permitted Use, disturbs any of the Tenant Related Parties present on the Leased Premises, damages any of Tenant's property, or injures or could reasonably impair the health or safety of any individual present on the Leased Premises. Landlord shall immediately cease or cause to cease any activity by Landlord or any Landlord Representative on the Leased Premises that Tenant alone deems in violation of this paragraph. Landlord shall provide Tenant at least forty-eight (48) hours' prior notice before

any entry onto the Leased Premises, which notice Landlord may give by email to Tenant at the following address: _____.

11.1 Hazardous Substances and Wastes. During the Term, Landlord shall promptly remove and properly dispose of any asbestos and Hazardous Substances and Wastes discovered, uncovered, released, generated, or present within the Leased Premises in relation to Landlord's entry onto the Leased Premises.

11.2 Indemnity. This Lease is subject to the Indemnity provisions of Article 6 of the Development Agreement. This Section 1.2 will survive the expiration or earlier termination of this Lease.

11.3 Insurance. Landlord's insurance under this Lease is subject to the Insurance provisions of Article 7 of the Development Agreement. Tenant shall maintain general commercial liability insurance for the Leased Premises in the minimum amount of five million dollars ($5,000,000). Tenant may satisfy this requirement through any self-insurance program in which it participates.

14.0 Assignment and Subletting. Neither Tenant nor Landlord shall assign or transfer this Lease without the prior written consent of the other, which consent neither Tenant nor Landlord will have any obligation to provide, except that Landlord, subject to applicable terms of Section 13.2 of the Development Agreement, may assign this Lease to a bankruptcy remote limited liability company created by Landlord for the sole purpose of the financing and development of the Project, as that term is defined in the Development Agreement.

15.0 Subordination and Attornment. At Landlord's option, this Lease may be subordinate to any Mortgage which may now or hereafter affect the Leased Premises, provided that any such Mortgage shall (i) recognize the validity of this Lease in the event of foreclosure of Landlord's interest or the termination of such Mortgage and (ii) recognize Tenant's right to remain in possession of and have access to the Leased Premises in accordance with this Lease. In the event the Leased Premises is encumbered by a Mortgage, Landlord shall obtain and furnish Tenant with a non-disturbance and attornment agreement in recordable form and acceptable to Tenant for each such Mortgage. At Landlord's request, Tenant shall, within thirty (30) days of request therefor, execute any instruments that may reasonably be required to give effect to this subordination clause.

16.0 Transfer of Landlord's Interest. Landlord shall not engage in or permit the occurrence of a Transfer Event, unless such Transfer Event is involuntary or permitted under Section 14.0 above. Landlord shall notify Tenant in writing at least thirty (30) days in advance of any Transfer Event and assign its rights and obligations under this Lease to the Person which would be able to comply with Landlord's obligations herein following such Transfer Event. Further, Landlord agrees that any Transfer Event shall not affect, terminate, or disturb Tenant's right to quiet enjoyment and possession of the Leased Premises under the terms of this Lease or any of Tenant's other rights under this Lease.

17.0 Condemnation.

17.1 Notice. Landlord shall give prompt notice to Tenant of any discussions, offers, negotiations, or proceedings with any party regarding condemnation or taking of any portion of the Leased Premises.

17.2 Termination. If all or any portion of the Leased Premises is taken by eminent domain, this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If as a result of a partial condemnation of the Leased Premises or Property, Tenant, in its sole discretion, is unable to use the Leased Premises for the Permitted Use, Tenant may terminate this Lease by giving written notice to Landlord within fifteen (15) days after the condemning authority takes possession. If Tenant does not so terminate this Lease, this Lease shall remain in full force and effect as to the portion of the Leased Premises remaining, and Landlord shall promptly repair any damage to the Leased Premises caused by the condemning authority.

17.3 Rights of Parties. In the event of a taking as described in paragraph 17.2 above, Tenant may on its own behalf make a claim in any condemnation proceeding involving the Leased Premises for losses related to fixtures, its personal property, its relocation costs, and its damages and losses, but not for the loss of its lease.

18.0 No Liens. Neither Tenant nor Landlord has authority to encumber the Premises with any materialmen's or mechanic's lien, nor shall either suffer or permit any such lien to exist. Should any such lien hereafter be filed as a result of either party's actions or failure to act, such party shall at its sole cost within thirty (30) days after the lien is filed, discharge the lien or post a bond on the amount of the lien.

19.0 Representations and Warranties. Landlord represents and warrants to Tenant that, as of the Commencement Date:

(a) **Valid Existence and Good Standing.** Landlord is a corporation duly organized and validly existing under the laws of the Commonwealth of Virginia and duly authorized and registered to transact business in the Commonwealth of Virginia. Landlord has the requisite power and authority to own its property and conduct its business as presently conducted.

(b) **Authority to Execute and Perform Lease.** Landlord has the requisite power and authority to execute and deliver this Lease and to carry out and perform all of its terms and covenants.

(c) **No Limitation on Ability to Perform.** Neither Landlord's articles of incorporation, bylaws or other governing documents nor any applicable Law prohibits the Landlord's entry into this Lease or its performance thereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other Person is required for the due execution and delivery this Lease by Landlord, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. Except as may otherwise have been disclosed to Tenant in writing, there are no undischarged judgments pending

against Landlord, and Landlord has not received notice of the filing of any pending suit or proceedings against Landlord before any court, governmental agency or arbitrator that might materially adversely affect the enforceability of this Lease, or the business, operations, assets or condition of Landlord.

(d) **Valid Execution**. The execution and delivery of this Lease and the performance by Landlord thereunder have been duly and validly authorized. When executed and delivered by Tenant and Landlord, this Lease will be a legal, valid, and binding obligation of Landlord.

(e) **Defaults**. The execution, delivery, and performance of this Lease (i) do not and will not violate or result in a violation of, contravene, or conflict with or constitute a default by Landlord under (A) any agreement, document, or instrument to which Landlord is a party or by which Landlord is bound, (B) any Law applicable to Landlord or its business, or (C) the articles of incorporation, bylaws, or other governing documents of Landlord; and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Landlord.

(f) **Financial Matters**. Except to the extent disclosed to Landlord in writing, to Landlord's knowledge, (i) Landlord is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Landlord has not filed a petition for relief under any chapter of the United States Bankruptcy Code, (iii) there has been no event that has materially adversely affected Landlord's ability to meet its obligations hereunder or that has occurred that will constitute an event of default under this Lease; and (iv) no involuntary petition naming Landlord as debtor has been filed under any chapter of the United States Bankruptcy Code.

The representations and warranties above shall survive the expiration or any earlier termination of this Lease.

20.0 Breach and Default.

20.1 Breach. In the event of a breach by either Party with respect to any of the provisions of this Lease or such Party's obligations under this Lease, the non-breaching Party shall give the breaching Party written notice of such breach. After receipt of such notice, the non-breaching Party shall have ten (10) days in which to cure the noticed breach. Neither Party may maintain any action or effect any remedy for default against the breaching Party unless and until the breaching Party has failed to cure the breach within the time periods provided in this paragraph 20.1. In no event will any cure period extend beyond expiration or termination of this Lease.

20.2 Default. The failure of either Party to cure a breach of this Agreement in accordance with the cure period set forth in paragraph 20.1 above shall result in a default.

21.0 Remedies for Default.

21.1 Non-Defaulting Party May Correct Default. Upon a default, the non-defaulting Party may, at its option but without obligation to do so, perform the defaulting Party's duty or obligation on the defaulting Party's behalf. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. This paragraph will survive termination or expiration of this Lease.

21.2 Non-Defaulting Party May Terminate. In the event of a default by either Party, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate this Lease and pursue any remedy now or hereafter available to the non-defaulting Party under the Laws.

21.3 Parties' Rights Cumulative. The rights of each Party set forth in this Lease upon a breach or default by the other shall be cumulative, and the exercise of any right shall not exclude the exercise of any other right.

22.0 Miscellaneous Provisions.

22.1 Availability of Funds for Tenant's Performance. All payments and other performances by Tenant under this Lease are subject to annual appropriations by the City Council of the City of Richmond, Virginia. It is understood and agreed between the Parties that Tenant will be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Lease. Under no circumstances shall Tenant's total liability under this Lease exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Tenant.

22.2 Captions. This Lease 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 Lease or in any way define, limit, extend, or describe the scope or intent of any provisions of this Lease.

22.3 Counterparts. This Lease 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 Lease.

22.4 Entire Agreement. This Lease, including the Exhibits attached hereto, contains the entire understanding between Tenant and Landlord with respect to Tenant's lease of the Property from Landlord and supersedes any prior understandings and written or oral agreements between them respecting such subject matter.

22.5 Governing Law and Forum Choice. All issues and questions concerning the construction, enforcement, interpretation and validity of this Lease, or the rights and obligations of Tenant or Landlord in connection with this Lease, 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. Any and all disputes, claims and causes of action arising out of or in connection

with this Lease, 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 or any litigation or other proceeding arising from this Lease.

22.6 Modifications. This Lease may be amended, modified and supplemented only by the written consent of Tenant and Landlord preceded by all formalities required as prerequisites to the signature by each party of this Lease.

22.7 No Agency, Joint Venture, or Other Relationship. Neither the execution of this Lease nor the performance of any act or acts pursuant to the provisions of this Lease shall be deemed to have the effect of creating between Tenant and Landlord, or any of them, any relationship of principal and agent, partnership, or relationship other than the relationship established by this Lease.

22.8 No Individual Liability. No director, officer, employee or agent of Tenant or Landlord shall be personally liable to another party hereto or any successor in interest in the event of any default or breach under this Lease or on any obligation incurred under the terms of this Lease.

22.9 No Third-Party Beneficiaries. Notwithstanding any other provision of this Lease, Tenant and Landlord hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Lease; (ii) the provisions of this Lease are not intended to be for the benefit of any individual or entity other than Tenant and Landlord; (iii) no individual or entity shall obtain any right to make any claim against Tenant and Landlord under the provisions of this Lease; and (iv) no provision of this Lease shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this Section 22.9, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, contractors, subcontractors, vendors, subvendors, assignees, licensors and sublicensors, regardless of whether such individual or entity is named in this Lease.

22.10 No Waiver. The failure of Tenant or Landlord to insist upon the strict performance of any provision of this Lease 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 Lease at any time. The waiver of any breach of this Lease shall not constitute a waiver of a subsequent breach.

22.11 Severability. Each clause, paragraph and provision of this Development Agreement is entirely independent and severable from every other clause, paragraph and provision. If any judicial authority or state or federal regulatory agency or authority determines that any portion of this Lease is invalid or unenforceable or unlawful, such determination will affect only the specific portion determined to be invalid or unenforceable or unlawful and will not affect any other portion of this Lease, which will remain and continue in full force and effect. In all other respects, all provisions of this Lease will be interpreted in a manner which favors their validity and enforceability and which gives effect to the substantive intent of the parties.

22.12 Notices. All notices, offers, consents or other communications required or permitted to be given pursuant to this Lease shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service, or by registered or certified U.S. mail with return receipt requested, and addressed to the address of the intended recipient at the following addresses:

A. To Tenant:

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 Landlord:

Capital City Partners LLC
c/o Concord Eastridge
3160 Fairview Park Drive, Suite 110
Falls Church, Virginia 22042
Attention: Susan H. Eastridge,
Chief Executive Officer & President

Capital City Partners, LLC
1 East Broad Street
Richmond, Virginia 23219
Attention: Michael Hallmark

Each party may change any of its address information given above by giving notice in writing stating its new address to the other parties.

22.13 Interpretation

(a) In this Lease:

(i) headings are for convenience only and do not affect interpretation;

(ii) unless otherwise stated, a reference to any agreement, instrument, or other document is to that agreement, instrument, or other document as amended or supplemented from time to time;

(iii) a reference to this Lease or any other agreement includes all exhibits, schedules, forms, appendices, addenda, attachments, or other documents attached to or otherwise expressly incorporated in this Lease or any other agreement (as applicable);

(iv) reference to a, Section, subsection, clause, Exhibit, schedule, form or appendix is to the Section, subsection, clause, Exhibit, schedule, form or appendix in or attached to this Agreement, unless expressly provided otherwise;

(v) a reference to a Person includes a Person's permitted successors and assigns;

(vi) a reference to a singular word includes the plural and vice versa (as the context may require);

(vii) the words "including," "includes," and "include" mean "including, without limitation," "includes, without limitation" and "include, without limitation," respectively;

(viii) an obligation to do something "promptly" means an obligation to do so as soon as the circumstances permit, avoiding any delay; and

(ix) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" mean "to and including."

(b) This Lease is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Lease or some provision of it or because that Party relies on a provision of this Lease to protect itself.

(c) The Parties acknowledge and agree that:

(i) each Party is an experienced and sophisticated party and has been given the opportunity to independently review this Lease with legal counsel;

(ii) each Party has the requisite experience and sophistication to understand, interpret and agree to the language of the provisions of this Lease; and

(iii) in the event of an ambiguity in or dispute regarding the interpretation of this Lease, this Lease will not be interpreted or construed against the Party preparing it.

22.14 Signatures. This Lease is signed when a Party's signature is delivered by facsimile, email, or other electronic medium. These signatures must be treated in all respects as having the same force and effect as original signatures.

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

22.16 Successors. This Lease shall be binding upon the successors and assigns of the Parties.

22.17 Force Majeure. Neither Party shall assume responsibility for any losses or damages caused by acts of God, including, but not limited to, wind, lightning, rain, ice, earthquake, floods, or rising water, or by aircraft or vehicle damage. In the event that either Party shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of acts of God (including, but not limited to, wind, lightning, rain, ice, earthquake, flood, or rising water); aircraft or vehicle damage or other casualty; unforeseen soil conditions; acts of third parties who are not employees, agents, or contractors of either Party; strikes; lock-outs; labor troubles; inability to procure material; failure of power; governmental actions, laws, or regulations; riots; insurrection; war; or other reasons beyond its control, then the performance of such act shall be excused for the period of delay, and the period for performance of any such act shall be extended for a period equivalent to the period of such delay.

22.18 Sovereign Immunity. Nothing in this Lease may be construed as a waiver of the sovereign immunity granted Tenant by the Commonwealth of Virginia Constitution, statutes, and applicable case law, nor may anything herein be construed as an agreement by Tenant to indemnify.

[*REMAINDER OF PAGE LEFT INTENTIONALLY BLANK. SIGNATURES ON NEXT PAGE*]

IN WITNESS WHEREOF, as authorized by Ordinance No. _____ approved by the Richmond City Council on _____, this Lease has been entered into as of the Commencement Date by duly authorized officers of the Parties.

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

By: _____

Acting Chief Administrative Officer

Date: _____

APPROVED TO FORM:

_____
Senior Assistant City Attorney

APPROVED AS TO TERMS:

_____
Manager Real Estate Strategies

CAPITAL CITY PARTNERS, LLC,
a Virginia limited liability company

By: _____
Title: _____
Date: _____

EXHIBIT A TO LEASE

[SURVEY TO BE INSERTED]

Exhibit B-1

Infrastructure & Property Dedication

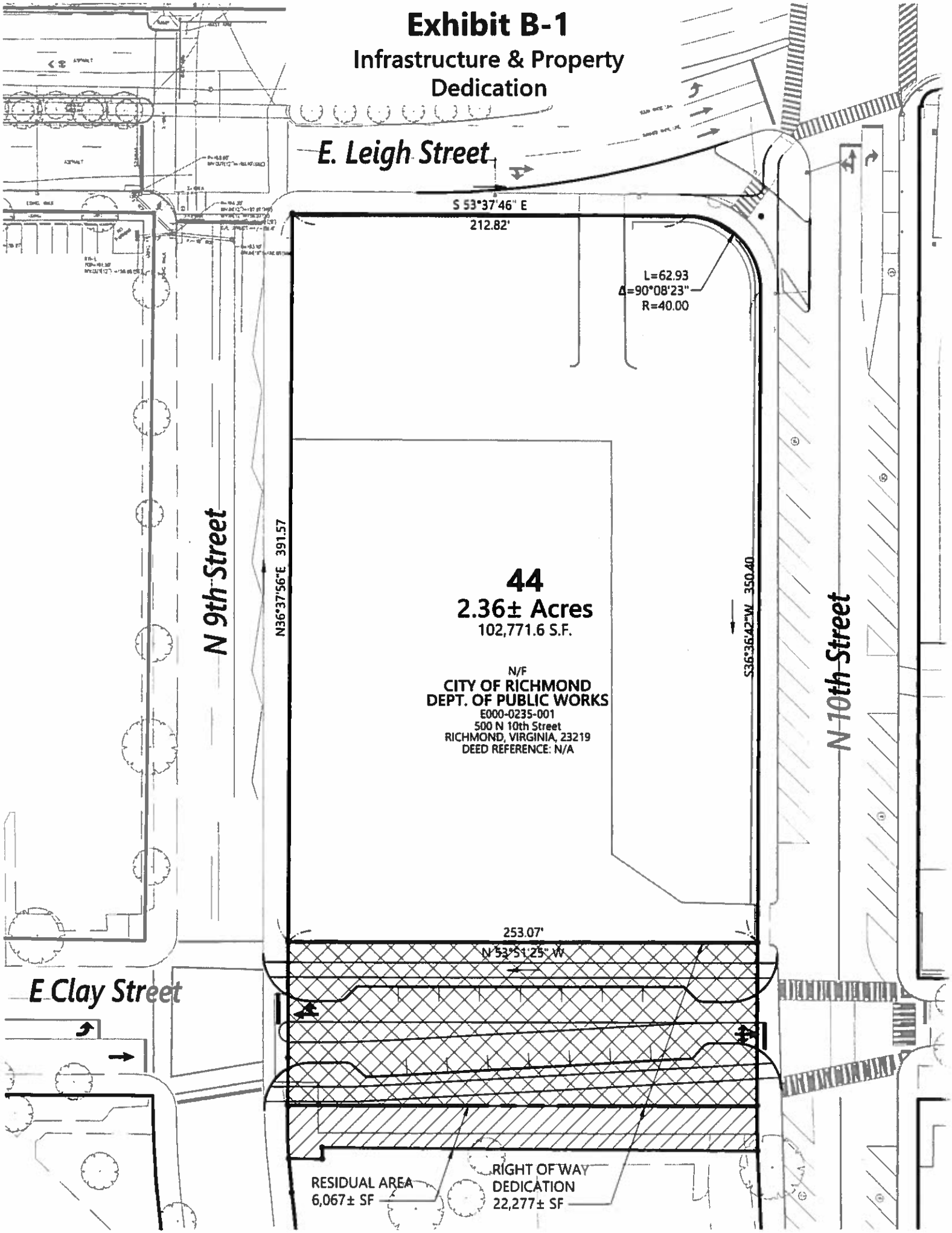

EXHIBIT B-2 TO DEVELOPMENT AGREEMENT
Infrastructure Conditions

1.0 **Preliminary Provisions.**

1.1 **Purpose.** Pursuant to the Development Agreement, these Infrastructure Conditions govern the performance of all work involving the infrastructure to be dedicated to the City as part of the activities contemplated by the Development Agreement. Further, these Infrastructure Conditions set forth the conditions associated with the dedication of property for use as public right-of-way contemplated by the Dedication Ordinance.

1.2 **Definitions.** Capitalized terms used, but not defined in these Infrastructure Conditions have the meanings ascribed to them by the Development Agreement unless the context clearly indicates that another meaning is intended.

1.2.1 **Charter.** "*Charter*" means the Charter of the City of Richmond, Virginia, as amended, and all future amendments thereto.

1.2.2 **City Code.** "*City Code*" means the Code of the City of Richmond, Virginia, as amended, and all future amendments thereto, with all references to the 2015 codification thereof stated in these Infrastructure Conditions deemed to refer to the corresponding section number in the most recent codification thereof.

1.2.3 **Clay Street Improvements.** "*Clay Street Improvements*" means the construction of road and related improvements to connect East Clay Street between North 9th Street and North 10th Street.

1.2.4 **Dedication Area.** "*Dedication Area*" means the portion of the Property comprising approximately 22,277± square feet shown cross-hatched and marked "RIGHT OF WAY DEDICATION" on the drawing designated as Exhibit B-1 to the Development Agreement, and entitled "Infrastructure & Property Dedication," incorporated herein by reference, and to be shown with particularity on the Survey Plat.

1.2.5 **Dedication Ordinance.** "*Dedication Ordinance*" means Ordinance No. 2021____, adopted _____ ____, 2021.

1.2.6 **Director.** "*Director*" means the City's Director of the Department of Public Works (DPW) or the written designee thereof.

1.2.7 **DPU.** "*DPU*" means the City's Department of Public Utilities.

1.2.8 **Final Plans.** "*Final Plans*" means all plans and specifications necessary to perform all work on the Infrastructure Improvements, including but not limited to all construction drawings, in a form and condition that such plans and specifications are 100 percent complete.

1.2.9 **Infrastructure Improvements.** *"Infrastructure Improvements"* means the Clay Street Improvements, and improvements to 9th Street, 10th Street, Leigh Street, and all other required public infrastructure improvements on all sides of the Property necessary to facilitate the development on the Property to include water, sewer, stormwater, gas, and electric (streetlight) utility improvements, as well as pedestrian improvements to facilitate pedestrian and vehicular movements, which public infrastructure improvements shall include but are not limited to: utility installations, utility relocations, utility abandonments, traffic signals, street signs, curb and gutter, sidewalks, crosswalks, decorative pavement, pavement markings, bus shelters for GRTC any bus stops, landscaping, street lighting, street trees and tree wells, and other pedestrian amenities including trash receptacles, benches, and planters, in accordance with all applicable City and Virginia Department of Transportation (VDOT) standards and guidelines.

1.2.10 **Landscaping.** "*Landscaping*" means the landscaping elements of the Infrastructure Improvements.

1.2.11 **Licensee.** *"Licensee"* means the Developer, its successors, and its assigns.

1.2.12 **Preliminary Plans.** *"Preliminary Plans"* means plans and specifications that are approximately 30 percent complete.

1.2.13 **Residual Area.** *"Residual Area"* means the portion of the Property comprising approximately 6,067± square feet marked "Residual Area" on the drawing designated as Exhibit B-1 to the Development Agreement, and entitled "Infrastructure & Property Dedication," incorporated herein by reference, and to be shown with particularity on the Survey Plat..

1.2.14 **Sixty-Percent Plans.** *"Sixty-Percent Plans"* means plans and specifications that are approximately 60 percent complete.

1.2.15 **Survey Plat.** *"Survey Plat"* means a survey plat prepared in accordance with Section 2.1 of these Infrastructure Conditions showing with particularity the Dedication Area and the Residual Area.

1.2.16 **Traffic Impact Analysis**. "*Traffic Impact Analysis*" means the transportation engineering analysis and traffic study required by the Traffic Engineer of the City's Department of Public Works to produce the Final Plans.

1.2.17 **Utility Infrastructure and Capacity Analysis.** *"Utility Infrastructure and Capacity Analysis"* means the utility engineering assessments and capacity modeling studies required by the Director of the City's Department of Public Utilities to produce the Final Plans. Without limitation, the Utility Infrastructure and Capacity Analysis may include assessments of all water, sewer, and gas lines on the Property, modeling studies for water and sewer capacity to serve to the Project, and stormwater discharge calculations for the Project.

1.2.18 **VDOT.** "*VDOT*" means the Virginia Department of Transportation.

1.2.19 **Warranty Period.** "*Warranty Period*" means a period of two-years following the City's acceptance of the Infrastructure Improvements pursuant to Section 5.1 of these Infrastructure Conditions for Landscaping, and a period of one-year following the City's acceptance of the Infrastructure Improvements pursuant to Section 5.1 for all other Infrastructure Improvements.

2.0 **Process for Infrastructure Improvements.**

2.1 **Survey.** Prior to Closing, the Developer shall, at its sole cost and expense prepare, or cause to be prepared, by a surveyor licensed in the Commonwealth of Virginia, the Survey Plat. The Survey Plat shall meet all applicable requirements of the Virginia Department of Professional and Occupational Regulation and all City standards for surveys, and shall be subject to approval by the Director in the Director's reasonable discretion.

2.2 **Generally.** The Developer shall construct (or, alternatively, the Developer shall cause the same to occur), at Developer's sole cost and expense, the Infrastructure Improvements, in accordance with plans submitted to and approved by the Director pursuant to Sections 2.0 and 3.0.

2.3 **Plans.**

A. The Developer represents and warrants that the Preliminary and Final Plans will be designed by a licensed professional engineer or Class B surveyor retained by the Developer ("Developer's Engineer") and that said plans will conform to the standards referenced in these Infrastructure Conditions and to generally accepted engineering practices, except where a specific written exemption has been granted by the Director.

B. Within 60 days following the Closing Date, and prior to the submission of the Preliminary Plans, the Developer shall, at Developer's sole expense, complete the Traffic Impact Analysis and provide a copy to the City. The Developer shall incorporate the Traffic Impact Analysis into its Plans and construct the applicable Infrastructure Improvements in accordance with the Traffic Impact Analysis. The Developer shall submit Preliminary Plans for the Infrastructure Improvements, and ensure that the Preliminary Plans, at the time of submission to the Director, meet all City requirements for Preliminary Plans under the City's then-existing policies. The Preliminary Plans shall be approved only after such a determination is made by the Director.

C. Subsequent to the approval of the Preliminary Plans and prior to the submission of the Final Plans, the Developer shall submit the Sixty-Percent Plans for the Infrastructure Improvements. Prior to the submission of the Sixty-Percent Plans, the Developer shall, at Developer's sole expense, complete the Utility

Infrastructure and Capacity Analysis. Developer shall ensure that the Sixty-Percent Plans, at the time of submission to the Director, meet all City requirements for Sixty-Percent Plans under the City's then-existing policies. The Sixty-Percent Plans shall be approved only after such a determination is made by the Director.

D. Subsequent to submission of its Plan of Development and prior to applying for a building permit, the Developer shall submit Final Plans to the Director for review and approval. The Developer acknowledges and agrees that approval of its Plan of Development will not ensure approval of the Final Plans. The Developer shall ensure that the Final Plans submitted to the Director meet all requirements under the City's then-existing policies for Final Plans, including those necessary for obtaining a Work in Streets permit, if applicable.

2.4 **Plan Review.** Developer may engage, at Developer's sole cost and expense, a licensed professional engineering firm, to review on behalf of and in coordination with the City's Department of Public Works, the Preliminary Plans, Sixty-Percent Plans, and Final Plans, and ensure that said plans meet all requirements referenced in these Infrastructure Conditions. Any such engineering firm engaged by Developer pursuant to this section shall not be affiliated with Developer's Engineer, and shall be approved by the Director in the Director's reasonable discretion. The Developer acknowledges and agrees that final approval of all Plans will be in the discretion of the City.

3.0 **Construction Requirements.**

3.1 **Insurance**. The Developer shall not commence or permit to be commenced any work on the Infrastructure Improvements until first meeting all insurance requirements of Article 7 of the Development Agreement and, for the issuance of any Work in Streets Permit, to the requirements of Section 24-62 of City Code.

3.2 **Indemnification**. These Infrastructure Conditions, and Developer's performance of them, are subject to the indemnity provisions of Article 6 of the Development Agreement and, as a condition to the issuance of any Work in Street Permit required to complete the Infrastructure Improvements, to the provisions of Section 24-62(4) of City Code.

3.3 **Permits.** The Developer shall not commence or permit to be commenced any work on the Infrastructure Improvements until the Developer has obtained, and paid all required fees for, all Regulatory Approvals, including, but not limited to, a Work in Streets Permit.

3.4 **Contractors.** The Developer agrees that all work will be performed by properly licensed Contractors. Each contract for the performance of work contemplated by these Infrastructure Conditions must comply with the provisions of section 4.9 of the Development Agreement.

3.5 **Testing and Monitoring.**

A. The Developer shall provide and pay all costs related to the design, engineering and critical inspections with respect to the Infrastructure Improvements. The Developer shall provide all necessary certifications on the subject construction component of the Developer's construction.

B. The Developer shall provide and pay the cost of all professional engineering and testing services with respect to the Infrastructure Improvements such as: geotechnical engineering, environmental engineering analysis, critical structure engineering inspections (including, but not limited to: retaining walls, abutments, caissons, piles, piers, footings, etc.), daily construction inspection and the various material science testing services, to adequately monitor the ongoing site construction. This includes such items as the daily testing of soils and soil placement, monitoring cuts and cut slopes, testing engineered fills, checking line and grade, testing pipe materials and structures prior to their delivery, monitoring storm inlet and sewer manhole placements and other utility structure installations, certifying structural fills and building pads, conducting proof roll tests on subgrades, testing stone placements, testing concrete, testing asphalt, testing steel, foundation inspections, inspecting reinforcement bar placement and form work, etc.

3.6 **Construction Reports.** All required construction inspection requirements shall follow the applicable standards of the City's Department of Public Works, the City's Department of Public Utilities (DPU), Virginia Department of Transportation Materials Division standards and guidelines, those guidelines set by other utilities, and any other standards as may be deemed necessary by the Director in the Director's reasonable discretion.

3.7 **Construction Meetings and Schedule.** The Developer shall schedule and coordinate a pre-construction conference for the Infrastructure Improvements and shall schedule and attend regular progress meetings with the City. The Developer shall give notice to the City in advance to the actual beginning of construction, and thereafter shall coordinate its construction schedule with the City.

3.8 **Inspections.**

A. The City may, at any time, inspect the Infrastructure Improvements or any portion thereof, protections, and stormwater management to ensure compliance with the Final Plans, erosion and sedimentation control plans, and all applicable specifications and standards.

B. All DPU permits must be paid for and approved prior to start of work. Where applicable, contracts to extend water mains, wastewater mains, and gas mains shall be executed, separate and apart from these Infrastructure Conditions, prior to the issuance of any permits for construction of such extensions.

C. DPW does not intend to charge the Developer for costs related to general visit inspections, typical design review and routine surveying performed by DPW.

D. The City may, in its sole discretion, request that sewer improvements be verified by television (T.V.) inspection. The Developer shall be responsible for all costs associated with any T.V. inspection. The Developer must submit recordings of such inspections for the City's approval prior to any pavement application.

3.9 **Manner of Construction**. All Infrastructure Improvements, erosion and sedimentation controls, and stormwater management features shall be constructed in a sound professional manner, in accordance to the Final Plans. The Developer shall provide adequate materials and supervision of all work. All Infrastructure Improvements shall be constructed in compliance with the current standards and specifications of the VDOT for all materials, workmanship, seasonal limitations and construction procedures; except where specifically superseded by the Final Plans, or current standards and specifications adopted by DPW and DPU. The installation of gas, water, sanitary sewer, storm sewer and street light infrastructure shall be done in compliance with the applicable DPU standards and specifications, latest revisions, which shall be provided in advance and in writing to the Developer upon request.

3.10 **Street Standards**. All Infrastructure Improvements and any other construction or work performed by the Developer, its agents or assigns, pursuant to these Infrastructure Conditions and the Final Plans shall fully comply with all applicable design parameters and construction standards as provided in the DPW Better Streets Manual, DPW standards manual, DPW Geotechnical Guidelines, DPW Constructions Notes, DPW Pavement Design Guidelines, all applicable VDOT requirements, including but not limited to the VDOT Road and Bridge Specifications and all standards and guidelines of the VDOT Materials Division, and any additional guidelines and standards established by the City, latest revisions, which shall be provided in advance and in writing to the Developer upon request.

3.11 **Requirements upon Final Completion.** Upon 100 percent completion of the work on the Infrastructure Improvements, the Developer shall furnish the City with all required documents relating to the Infrastructure Improvements identified in the City's standards applicable to the Infrastructure Improvements:

A. Upon 100 percent completion of the Infrastructure Improvements, the Developer shall submit the following to the Director, who shall review each within ten (10) Business Days of receipt thereof and notify the Developer of any deficiencies, to the extent applicable to Infrastructure Improvements:

1. The final inspection log books.

2. Material testing reports and a fully and properly completed Virginia Department of Transportation Source of Materials Form C-25.

3. A construction inspection report certified by a person licensed as a professional engineer in the Commonwealth of Virginia.

B. Upon the 100 percent completion of the Infrastructure Improvements, the Developer shall, by its engineer, submit the following to the Director, to the extent applicable to the Infrastructure Improvements:

1. Two complete paper copies of the full as-built plan set of the completed Infrastructure Improvements.

2. Intentionally omitted.

3. A digital file, the format of which shall be AutoCAD DWG or DXF format, containing all of the following information, each in a separate layer:

a. Existing right-of-way conditions.

b. The storm sewer system.

c. Water and waste water systems.

d. All easements.

e. Full as-built plan set of the completed Infrastructure Improvements.

The as-built drawings must include notations, modifications to the drawings, and supplemental drawings to accurately reflect actual construction of all improvements. Both the digital file and the report must be labeled with the plan name, plan number, and the engineering firm. All AutoCAD files must be referenced directly to the Virginia State Plane Coordinate system, South Zone, in the NAD83 Datum.

3.12 **Certificates of Occupancy**. The Developer acknowledges that, to the extent consistent with City Code, a certificate of occupancy will not be issued until all underground utilities are installed and field approved with respect to the Project, and the applicable capacity, connection, and inspection charges and fees are paid, and not until the base pavement for the streets are installed and field approved within the Project. In addition, when other facilities such as sidewalks, driveway aprons, and fire hydrants are required, they must be installed to serve each commercial unit, professional office or dwelling unit for which a certificate of occupancy is requested.

4.0. **Surety, Warranty, Default.**

4.1 **Requirement for Surety**. At the time it submits its Plan of Development, the Developer shall prepare and submit to the City an estimate of costs for all Infrastructure Improvements. Developer shall provide any additional information relating to its estimate

of costs as may be requested by the City. Based upon such estimate of costs and any such additional information, the City will determine the amount of security necessary for the construction of the Infrastructure Improvements. The Developer shall then furnish to the City a Letter of Credit (LOC), Surety Bond, or Certified Corporate Check in a form approved by the City Attorney in such amount.

4.2 **Warranties**. The Developer hereby warrants that (i) the Infrastructure Improvements will be constructed in a good and workmanlike manner in accordance with the Final Plans and all City and state standards applicable to the Infrastructure Improvements, (ii) there are no unsatisfied liens on any part of the Infrastructure Improvements, (iii) the Infrastructure Improvements will be free of defects during the Warranty Period, and (iv) the Developer shall repair, at its sole cost and any defects that are discovered or may arise during the Warranty Period. During the course of construction and upon completion of such construction, Developer shall furnish to City evidence, satisfactory to City in City's sole discretion, showing that there has not been filed with respect to the property and improvements to be conveyed to City, or any part thereof, any vendor's, mechanic's, laborer's, materialmen's or similar lien which has not been discharged of record.

4.3 **Default**. The Developer must construct the Infrastructure Improvements in accordance with all requirements of these Infrastructure Conditions. If the Developer fails to meet or honor the agreed upon conditions stated in these Infrastructure Conditions, or any amendments hereto, the Director may declare the Developer in default with the terms of these Infrastructure Conditions. The Director shall advise the Developer of such default in writing. If the Developer fails to rectify such default within 30 days, the Director may take such actions deemed necessary to complete the Infrastructure Improvements, provided that during the Warranty Period Developer may have such addition period of time (not to exceed 90 days) to rectify such default if Developer promptly commences to correct such defect and diligently pursues the same to completion. In such case, the surety amount posted to cover the Infrastructure Improvements, along with all reasonable administrative and legal expenses actually incurred by the City in enforcing these Infrastructure Conditions, shall be forfeited. If upon completion of the work it is found that the City's actual cost to complete the Infrastructure Improvements exceeds the estimated cost secured by the set bonding amounts, the Developer shall pay such deficit to the City upon demand, within 30 days.

4.4 **Release of Surety**. After a warranty inspection by the Director at the end of the Warranty Period, release of the performance bond, letter of credit, or other financial security that the Developer provided pursuant to these Infrastructure Conditions will occur upon the Director's issuance to the Developer of a letter indicating that such performance bond, letter of credit, or other financial security is released. The Director will issue such a letter only if the Director determines that, based on all City and state standards applicable to the Infrastructure Improvements, no defects remain that the Developer is required to correct.

5.0 **Acceptance and Dedication.**

5.1 **Acceptance.** Acceptance of the Infrastructure Improvements will occur upon the Director's issuance to the Developer of a letter indicating that the City accepts the Infrastructure Improvements, but the Director will monitor the Infrastructure Improvements in accordance with the standards set forth in the VDOT Inspection Manual (as amended, as of the time of such monitoring), during the Warranty Period. The Director will issue such a letter only if the Director determines that, based on all City and state standards applicable to the Infrastructure Improvements, the Infrastructure Improvements are complete and the Director has received all required documents relating to the Infrastructure Improvements.

5.2 **Dedication.** Upon acceptance of the Infrastructure Improvements by the Director in accordance with Subsection 5.1 and pursuant to the Dedication Ordinance, the Developer shall dedicate, through a deed or deeds approved by the City Attorney:

A. The Infrastructure Improvements and the Dedication Area to the City, for use as public right-of-way; and

B. The Residual Area, in fee simple.

6.0 **Completion Timeline; Failure to Complete.**

6.1 **Completion Timeline.** Subject to delays caused by the occurrence of an event of Force Majeure, the Developer shall complete, in a manner in which the City can accept them pursuant to Section 5.1, the Infrastructure Improvements, and dedicate the Infrastructure Improvements, the Dedication Area, and the Residual Area to the City in accordance with Section 5.2, no later than the issuance of the first certificate of occupancy for the Project or phase of the Project as set forth herein. Provided, however, to the extent permitted by and subject to applicable law, Developer may apply to obtain temporary certificate(s) of occupancy for such portion(s) of the Project intended for use by The Doorways and Ronald McDonald House Charities prior to completion of the Infrastructure Improvements.

6.2 **Failure to Complete.** Should the Developer fail to timely complete the Infrastructure Improvements in accordance with Section 6.1, Developer, shall be considered in default for purposes of Section 4.3, and, promptly upon written demand therefor by the Chief Administrative Officer or her designee, shall dedicate any completed or partially completed Infrastructure Improvements, the Dedication Area to the City for use as public right-of-way, and the Residual Area in fee simple, through a deed or deeds approved as to form by the City Attorney.

END OF INFRASTRUCTURE CONDITIONS

Exhibit C

Project Rendering

EXHIBIT D
Milestone Schedule

Schedule Milestones	
Submit POD Application	Within 8 months after Closing
Submit Demolition Permit	Within 10 months after Closing
Submit Excavation Permit Application	Within 10 months after Closing
Submit Foundation-to-Grade Package	Within 13 months after Closing
Submit Building Permit Application	Within 17 months after Closing
Building Completion	Within 45 months after Closing

EXHIBIT E TO DEVELOPMENT AGREEMENT

KEY PROFESSIONAL PROJECT PARTICIPANTS

DPR Construction, a General Partnership

Canterbury Enterprises, LLC

DPR-Canterbury, a joint venture between DPR Construction, a General Partnership and Canterbury Enterprises, LLC

EXHIBIT F TO DEVELOPMENT AGREEMENT
FORM OF CONTRACT ADDENDUM

ADDENDUM TO _____ [INSERT CONTRACT NAME]

The following terms and conditions shall hereby supplement, modify and amend that certain _____ (the "Contract") by and between Capital City Partners, LLC, a Virginia limited liability company ("Owner") and _____ ("Contractor") for _____[insert project description]. In the event of any conflict or inconsistency between the terms and conditions of this addendum and the terms and conditions of the Contract, this addendum shall control. All terms not defined herein shall have the same meaning as set forth in the Contract or in that certain Development Agreement between Owner and the City of Richmond, Virginia ("City") dated <INSERT DATE> (the "Development Agreement"), as applicable.

The Contractor acknowledges and agrees that the Owner entered into the Development Agreement and that Section 4.9 of the Development Agreement includes certain requirements of Contractor in addition to the terms and conditions contained in the Contract. The Contract shall incorporate such provisions except as expressly waived by the City. The Contract is hereby supplemented, modified, and amended to include the following provisions:

(a) Contractor accepts the requirements applicable to the scope of work of such Contractor under the Development Agreement and the Contractor shall provide the equivalent indemnity under the Development Agreement for the benefit of the Indemnified Parties. For the avoidance of doubt, the Indemnified Parties are intended third-party beneficiaries of this section (a) of this Addendum;

(b) Prompt Payment.

1. Owner shall promptly pay for completed delivered goods or services under the Contract not more than forty-five days after such goods or services are received or not more than forty-five days after the invoice is rendered, whichever is later.

2. Within seven days after receipt of amounts paid to the Contractor for work performed by a subcontractor under the Contract, Contractor shall:

A. Pay the subcontractor for the proportionate share of the total payment received from the Owner attributable to the work performed by the subcontractor under the contract; or

B. Notify the Owner and subcontractor, in writing, of Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

3. Contractor shall pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from the Owner for work performed by the subcontractor under that

contract, except for amounts withheld as allowed in section (b)(2)(B). Unless otherwise provided under the terms of the Contract, interest shall accrue at the rate of one percent per month.

4. Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

(c) Contractor shall carry out its scope of work in accordance with Law and all Regulatory Approvals;

(d) Subject to the rights of the Capital Providers, the Contract, including this Addendum, is fully assignable to the City in the event of termination of the Owner's right to continue performing under the Contract. The City has the right to step-in and accept and assume the benefit and obligations of Owner's rights and the work performed under the Contract and this Addendum and will have liability only for those remaining obligations accruing after the date of the City's assumption, but excluding any monetary claims or obligations that Owner may have against Contractor that existed prior to the City's assumption of the Contract. Contractor acknowledges that Owner retains all liability for obligations accruing prior to the City's assumption of the Contract and that City will have no liability therefor.

(e) If City succeeds to Owner's rights under the Contract (by assignment or otherwise), Contractor shall (A) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged in respect of the obligations under the Contract; and (B) permit audit thereof by City, and provide progress reports to City as reasonably requested by the City and consistent with reports typically provided in the marketplace for the type of contract similar to the Contract.

EXHIBIT G

ANTICIPATED MINIMUM REAL ESTATE TAX REVENUES

Anticipated Minimum Tax Revenues		
Year		Amount
2020	$	-
2021	$	77,017
2022	$	546,721
2023	$	1,297,918
2024	$	2,015,893
2025	$	2,015,893
2026	$	2,056,210
2027	$	2,097,335
2028	$	2,139,281
2029	$	2,182,067
2030	$	2,225,708
2031	$	2,270,223
2032	$	2,315,627
2033	$	2,361,939
2034	$	2,409,178
2035	$	2,457,362
2036	$	2,506,509
2037	$	2,556,639
2038	$	2,607,772
2039	$	2,659,927
2040	$	2,713,126
2041	$	2,767,389
2042	$	2,822,736
2043	$	2,879,191
2044	$	2,936,775
2045	$	2,995,510
Total	**$**	**55,913,946**

EXHIBIT H TO DEVELOPMENT AGREEMENT
DELEGATION AND ASSUMPTION AGREEMENT

THIS DELEGATION AND ASSUMPTION (this "Delegation") is entered into on this ___ day of February, 2021 between Capital City Partners, LLC, a Virginia limited liability company ("Obligor") and Virginia Commonwealth Health Systems Authority, a political subdivision of the Commonwealth of Virginia ("Delegate").

1. Reference to Development Agreement. Reference is made to that certain Development Agreement dated <INSERT DATE>, 2021 by and between The City of Richmond, Virginia and Obligor ("Development Agreement"). Section 9.3 of the Development Agreement requires the delegation and assumption of the Obligor's obligation to the Guaranteed Obligation as defined in the Development Agreement.

2. Delegation and Assumption. For good and valuable consideration received by Delegate, the receipt and sufficiency of which are hereby acknowledged, Obligor hereby delegates the Guaranteed Obligation pursuant to Section 9.3 of the Development Agreement to Delegate and Delegate assumes the Guaranteed Obligation pursuant to Section 9.3 of the Development Agreement and all liabilities relating thereto, whether contingent or accrued.

3. Binding Effect. This Delegation shall inure to the benefit of, and be binding upon, each of the parties hereto and their respective successors and assigns. This Delegation has been delivered within the Commonwealth of Virginia and shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia without regard to its choice of law provisions.

4. Indemnification. By its acceptance hereof, the Delegate agrees to indemnify, defend and hold Obligor harmless against all losses, damages, claims, demands and liabilities (including reasonable attorney's fees and disbursements) which may be suffered by or asserted against Obligor by reason of Delegate's failure to perform pursuant to the requirements of the Guaranteed Obligation of Section 9.3 of the Development Agreement.

IN WITNESS WHEREOF, Obligor and the Delegate have executed this Delegation on the day and year first above written.

OBLIGOR:

CAPITAL CITY PARTNERS, LLC

By: _____

Name: _____

Title: Manager

STATE OF _____)
) ss.
CITY/ COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____ as Manager of Capital City Partners, LLC, a Virginia limited liability company, on behalf of the limited liability company.

_____
Notary Public

My commission expires: _____

My registration no.: _____

DELEGATE:

_____

By: _____

Name: _____

Title: _____

STATE OF _____)
) ss.
CITY/ COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by _____ as the _____ of _____, a _____ on behalf of the _____.

_____
Notary Public

My commission expires: _____

My registration no.: _____

Seen and accepted:
CITY OF RICHMOND, VIRGINIA

_____
Acting Chief Administrative Officer