

INTRODUCED: October 13, 2014

AN ORDINANCE No. 2014-203-211

As Amended

To declare surplus and to direct the sale of City-owned real estate located at 313 North 24<sup>th</sup> Street and 2407 East Marshall Street for [~~\$250,000~~] \$325,000 to Sterling Bilder, LLC, for the purpose of the construction of a mixed-use development including commercial, residential and civic space.

\_\_\_\_\_  
Patron – Mayor Jones

\_\_\_\_\_  
Approved as to form and legality  
by the City Attorney  
\_\_\_\_\_

PUBLIC HEARING: OCT 27 2014 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That real estate owned by the City of Richmond located at 313 North 24<sup>th</sup> Street and 2407 East Marshall Street and identified as Tax Parcel Nos. E000-0338/022 and E000-0338/028 in the 2014 records of the City Assessor hereby is declared surplus real estate and is directed to be sold for the purchase price of [~~\$250,000~~] \$325,000 to Sterling Bilder, LLC, for the purpose of the construction of a mixed-use development including commercial, residential and civic space in accordance with the applicable provisions of Chapter 26 of the Code of the City of Richmond (2004), as amended, the Charter of the City of Richmond (2010), as amended, the Code of Virginia (1950), as amended, and the Constitution of Virginia.

AYES:            9            NOES:            0            ABSTAIN:        \_\_\_\_\_

ADOPTED:      DEC 8 2014    REJECTED:        \_\_\_\_\_    STRICKEN:        \_\_\_\_\_

§ 2. That, pursuant to section 26-86(b) of the Code of the City of Richmond (2004), as amended, the sale described in section 1 of this ordinance shall be conditioned upon the purchaser's agreement, in a form approved as to terms by the Director of Parks, Recreation and Community Facilities and approved as to form by the City Attorney, to maintain Patrick Henry Park.

§ 3. That, pursuant to section 26-86(b) of the Code of the City of Richmond (2004), as amended, the Chief Administrative Officer is hereby directed to execute, on behalf of the City, the deed or deeds and such other documents, all of which must first be approved as to form by the City Attorney, as may be necessary to consummate the sale of such property.

~~§ 3.~~ § 4. This ordinance shall be in force and effect upon adoption.



Chief Administration Office  
City of Richmond

# CITY OF RICHMOND

SEP 18 2014

INTRACITY CORRESPONDENCE

O & R REQUEST



O&R REQUEST OCT 08 2014

OFFICE OF CITY ATTORNEY EDITION: 1

DATE: September 15, 2014

TO: THE HONORABLE MEMBERS OF CITY COUNCIL

THROUGH: THE HONORABLE DWIGHT C. JONES, MAYOR *DCJ*

THROUGH: CHRISTOPHER L. BESCHLER, INTERIM CHIEF ADMINISTRATIVE OFFICER *CLB*

THROUGH: NORMAN BUTTS, DEPUTY CHIEF FINANCIAL OFFICER, FINANCE & ADMINISTRATION *NButts*

THROUGH: JAY A. BROWN, INTERIM DIRECTOR, BUDGET AND STRATEGIC PLANNING *JAB*

THROUGH: PETER H. CHAPMAN, DEPUTY CHIEF ADMINISTRATIVE OFFICER, ECONOMIC DEVELOPMENT & PLANNING *PCH*

FROM: PETER L. DOWNEY, DIRECTOR, ECONOMIC & COMMUNITY DEVELOPMENT *PLD*

RE: TO DECLARE AS SURPLUS AND AUTHORIZE THE CHIEF ADMINISTRATIVE OFFICER TO CONVEY THE CITY-OWNED PROPERTY LOCATED AT 313-315 N. 24<sup>TH</sup> STREET AND 2407 E. MARSHALL STREET

ORD. OR RES. No. \_\_\_\_\_

**PURPOSE:** To declare as surplus and authorize the conveyance of the City-owned property located at 313-315 N. 24<sup>TH</sup> STREET (Tax Parcel # E0000338022) and 2407 E. MARSHALL STREET (Tax Parcel # E0000338028) to Sterling Bilder, LLC a Virginia limited liability company (Purchaser).

**REASON:** This property was formerly part of the Nolde Bakery's property portfolio and is now owned and maintained by the Department of Parks, Recreation and Community Facilities (DPR&CF). Currently, the property is underutilized and DPR&CF stores a

Tmp-667

## O & R Request

small amount of old decorations and sporting equipment. The building is in need of significant repairs and alterations. DPR&CF reports that the property is not being actively used and they agree to sell the property. The building has been used as storage and the parking lot has been used for event and tour bus parking since the City acquired the parcels by gift from the J. Fulmer Bright Memorial Foundation in June of, 1990. The J. Fulmer Bright Memorial Foundation had hoped the property would be redeveloped as the Liberty Center, a visitor center focused on Patrick Henry's vision and Church Hill's history but that vision was never realized. A viable offer has been made to acquire and develop this property as more fully described below. By selling this property the City will stimulate private investment, job creation and economic development in the area.

**RECOMMENDATION:** The City Administration, Economic Development and Community Development recommend approval.

### **BACKGROUND:**

The property adjoins Patrick Henry Memorial Park and is in close proximity to Saint John's Episcopal Church. The subject property consists of two parcels: 313-315 North 24<sup>th</sup> Street which includes an existing brick building estimated at 7,320 square feet on 0.168 acres and 2407 East Marshall which includes a parking lot and contains 0.322 acres with both parcels totaling 0.49 acres.

The Purchaser proposes to develop two floors of row-house style multi-family residences and ground floor commercial space at 2407 East Marshall Street with surface parking at the rear of the buildings. Also as part of the development, the existing Nolde building at 313 -315 N 24<sup>th</sup> Street would be renovated and receive an addition to incorporate 2 ground floor commercial units fronting 24<sup>th</sup> Street, a multi-purpose flex/ community room facing Patrick Henry Memorial Park and two floors of residential units at the east end of the building. The multipurpose room may be reserved for private or public events/meetings throughout the year.

The purchaser has offered \$250,000 for the property. The offer is more than the \$170,000 appraised fair market value of the property based on an appraisal completed in 2012 by the Purchaser. The two parcels including existing improvement are currently assessed at \$188,000.

It is recommended that the City sell the subject surplus property to Sterling Bilder, LLC to stimulate private investment, job creation and economic development in the area.

**FISCAL IMPACT/COST TO CITY:** The sale of this property will result in \$250,000 in sales proceeds which will be allocated to the Reserved for Public Improvement (RPI) Fund and the property will be placed on the tax rolls.

**REVENUE TO CITY:** The City will receive sale proceeds in the amount of \$250,000, which will be deposited into the RPI Fund. In addition, the property will become taxable real estate on the City's real estate tax rolls. Funds will be earmarked in a special

**O & R Request**

reserve assigned to fund improvements, enhancements and upgrades to parks, recreation and community facilities properties as related to ordinance 2013-180-224

**DESIRED EFFECTIVE DATE:** Upon adoption.

**REQUESTED INTRODUCTION DATE:** October 13, 2014

**CITY COUNCIL PUBLIC HEARING DATE:** November 10, 2014

**REQUESTED AGENDA:** Consent

**RECOMMENDED COUNCIL COMMITTEE:** Land Use; October 18, 2014

**CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES:** None

**AFFECTED AGENCIES:** Mayor, Chief Administrative Officer, Parks Recreation & Community Facilities, Public Utilities, Finance, Budget, Public Works, Economic Development and Community Development

**RELATIONSHIP TO EXISTING ORD. OR RES.:** 2013-180-224

**REQUIRED CHANGES TO WORK PROGRAM(S):** None

**ATTACHMENTS:** Purchase & Sale & Development Agreement; Deed

**STAFF:** Jane Ferrara, Economic & Community Development 646-6737  
Paul McClellan, Economic & Community Development 646-6031



**roth doner jackson gibbons condlin, plc**  
attorneys at law

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919 East Main Street, Suite 2110, Richmond, VA 23219-4625  
(804) 441-8440 (main) - (804) 441-8438 (fax)  
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**Jennifer D. Mullen**  
(804) 977-3374 (direct)  
jmullen@rothdonerjackson.com

November 10, 2014

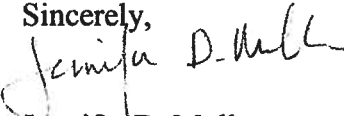
Mr. Paul McClellan  
Department of Economic and Community Development  
Main Street Station  
1500 E. Main Street  
Richmond, Virginia 23219

RE: Unsolicited Bid of 313 N. 24<sup>th</sup> Street; 2401 E. Marshall Street (collectively, the  
"Property")

Dear Mr. McClellan:

This firm represents Sterling Bilder, LLC, which has authorized the increase the current unsolicited bid for the Property. The revised offer is as follows: \$325,000 purchase price, in addition, we renew our offer to maintain Patrick Henry Park. All other terms and conditions remain unchanged.

If you have questions regarding the revisions, please feel free to contact me.

Sincerely,  
  
Jennifer D. Mullen

## PURCHASE & SALE & DEVELOPMENT AGREEMENT

**THIS PURCHASE AND SALE AND DEVELOPMENT AGREEMENT** ("Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2014 by and between the City of **Richmond**, a municipal corporation of the Commonwealth of Virginia ("Seller") and **Sterling Bilder, LLC**, a Virginia limited liability company ("Purchaser").

### RECITALS

A. The Seller owns fee simple title to certain real property located in the City of Richmond, Virginia, known as **Tax Parcel No. E0000338022, known as 313-315 N. 24<sup>th</sup> Street, Richmond, Virginia (the "Nolde Garage")** and **Tax Parcel No. E0000338028, known as 2407 E. Marshall Street Richmond, Virginia (the "Parking Lot")** together with all improvements thereon and all rights, easements and appurtenances now or hereafter belonging thereto, and which will be more particularly described by a current survey to be obtained by Purchaser prior to Closing, as hereinafter defined, (collectively, the "Property").

B. The Seller desires to sell the Property to Purchaser and require that the Purchaser develop the Property pursuant to certain terms and conditions set out herein; and Purchaser, in order to induce the Seller to sell the Property to the Purchaser, desires to purchase the Property subject to said terms and conditions set out herein and to develop the Property pursuant to certain terms and conditions set out herein.

C. The Seller's required development of the Property is defined as follows (the "Development"):

(i) The Purchaser shall rehabilitate and renovate the Nolde Garage and develop the Parking Lot into a mixed-use development including commercial, residential and civic space in accordance with the plans prepared by Lawrence Group, dated August 20, 2014, entitled "**24<sup>th</sup> Street Development**", attached hereto as Exhibit A (the "Plans").

(ii) The Property is within the St. John's Old and Historic District of the City of Richmond and the Development is therefore subject to the City of Richmond's Commission of Architectural Review ("**CAR**") review and issuance of a Certificate of Appropriateness based on the Richmond Old and Historic Districts Handbook and Design Review Guidelines. Purchaser and Seller agree that a denial of a Certificate of Appropriateness, in part or whole, may not be appealed to the City Council of the City of Richmond, Virginia ("**City Council**"); provided, however, the Purchaser may amend its application for a Certificate of Appropriateness to revise any elements of the Development not approved by CAR during the term of this Agreement.

(iii) The Development shall incorporate environmental sustainability and conservancy measures whenever possible; and

(iv) The Purchaser shall rehabilitate and renovate the Property and operate and use the Property so as to allow for public access, meeting and educational opportunities in the space identified as "**Civic/Commercial**" on sheet A01 of the Plans as a portion of the Development of the Property.

D. Seller and Purchaser desire that the Development be ensured and enforced through this Agreement and in the deed transferring the Property from the Seller to the Purchaser which shall fully incorporate this Agreement and shall be in the form attached hereto as "Exhibit B" ("the Deed").

The following terms and conditions apply.

## AGREEMENT

NOW, THEREFORE, in consideration of the Deposit defined in Section 2 herein, paid simultaneously herewith by the Purchaser to the Seller, the promise of the Development, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Purchaser hereby agrees to purchase and develop, and the Seller hereby agrees to sell, the Property on the following terms and conditions:

1. Recitals. The Recitals above are incorporated herein by reference.
2. Purchase Price. The "Purchase Price" for the Property shall be **Two Hundred and Fifty Thousand and 00/100 Dollars (\$250,000.00)**.
3. Deposit. The Purchaser has provided the Seller with an earnest money deposit ("Deposit") in the amount of **Five Thousand and 00/100 Dollars (\$5,000.00)**, which shall be held in Escrow by Seller in an interest - bearing FDIC insured account. The Deposit with accrued interest will be credited to the Purchase Price at Closing, as hereinafter defined, at which time the Purchaser will provide the balance of the Purchase Price in the form of a wire transfer of funds or by certified or cashier's check. The Deposit with accrued interest shall be returned within ninety (90) days to the Purchaser if this Agreement terminates without a breach of this Agreement by the Purchaser.
4. Effective Date. The date upon which this Agreement is fully executed by the Seller and the Purchaser shall be the Effective Date of this Agreement.
5. Assignment.

(a) It is understood and agreed that Purchaser will not transfer or assign this Agreement nor title to the Property after Closing, as hereinafter defined, prior to completion of the Development without the prior written approval of Seller, which shall not be unreasonably withheld, conditioned or delayed. An exception to this requirement is allowed by Seller if the Purchaser's assignment or transfer is for the sole purpose of assigning or transferring the Property to an entity controlled at least twenty-five (25%) percent by Joshua Bilder or Purchaser and organized for the limited purpose of owning and/or developing the Property under the terms of this Agreement. If the Purchaser chooses to exercise the exception the Purchaser shall provide the Seller a copy of all organizational documents of the transferee or assignee prior to completion of the transaction to verify Purchaser's compliance with this provision.



(b) The Seller's right to liquidated damages shall be subordinate to the lien if any and all financing obtained by Purchasers for the purchase of the property and/or the renovation thereon. Seller agrees to execute any document deemed necessary by Purchaser's lender or lenders to accomplish this subordination.

6. Right of Access. In connection with the Due Diligence as hereinafter defined, Purchaser and its contractors, representatives, agents, and employees shall have the right to access the Property, provided that Purchaser hereby indemnifies and holds harmless the Seller for any acts of negligence that occur on Seller's property during said access. Subject to the conditions set out herein, Seller shall have access to the Property between 8:00 AM and 5:00 PM during the Seller's work days to permit the proper performance of the Due Diligence; provided that Purchaser shall be responsible, at its sole expense, for: (i) ensuring that any of Purchaser's contractors and any other party entering the Property on Purchaser's behalf obtain general liability insurance covering their activities at the Property in the amount of \$1 million per occurrence prior to entering the Property; said policies shall also name the Seller as an additional insured and Purchaser shall provide certificates evidencing said policies to the Seller prior to its contractors and any other party entering the Property on Purchaser's behalf entering the Property; and (ii) returning the Property to its previous condition and repairing any damage to the Property caused as a result of the access granted herein, all as determined by the Seller in its reasonable discretion, if the Property is not purchased. Purchaser's access as set out herein shall be subject to the requirement that Purchaser's contractors and any other party entering the Property on Purchaser's behalf be accompanied by a representative of the Seller as designated by the Seller in its sole discretion. Seller shall make said representative available to accompany Purchaser's contractors and any other party entering the Property on Purchaser's behalf, upon Purchaser's or its contractor's reasonable prior notice, not to be less than twelve (12) hours.

7. Pre-Closing Conditions.

(a) As part of the consideration inducing Seller to enter into this Agreement, the Purchaser hereby agrees to the following pre-closing conditions (individually a "Pre-Closing Condition" and collectively, the "Pre-Closing Conditions") and to submit a copy or acceptable evidence of same, as determined by the Seller in its sole discretion, to Seller by the dates set forth below:

(i) Purchaser shall perform Due Diligence, as hereinafter defined, on the Property. The Purchaser shall have forty-five (45) days from the Effective Date (the "Due Diligence Period") to perform its due diligence on the Property to include but not be limited to, conducting any and all studies, surveys, obtaining a current survey of the Property together with a legal description which is hereby specifically required, tests, evaluations and investigations, including without limitation title, survey, environmental, soil, drainage, utilities and such other similar work, any other requirements to be undertaken during the Due Diligence Period required elsewhere in this Agreement, and making such inquiries of governmental agencies and utility companies to determine the feasibility of the intended use and development, including the Development, thereof (the "Due Diligence"). If the Due Diligence Period terminates on a Saturday, Sunday or legal holiday, the Due Diligence Period shall be deemed to terminate on the next business day thereafter. If, in the sole opinion of the Purchaser, the results of the Due Diligence make its intended development, including the Development, not feasible, then Purchaser shall so notify the Seller in writing prior to the expiration of the Due Diligence Period;

and if said notice is provided, this Agreement shall terminate and the Deposit shall be refunded to the Purchaser and neither party shall have any further obligations hereunder. If Purchaser does not provide said notice, this option to terminate due to feasibility concerns shall be forfeited. Seller does not warrant or guaranty the condition of the Property or whether the Property is suitable for any development, including the Development, or use thereof and Seller incorporates Section 11 of this Agreement herein by reference.

(ii) This Agreement is contingent upon Purchaser providing internal funds or obtaining a written loan commitment, or a combination of both, for acquisition of the Property in its entirety and the development, including the Development, thereof (the "Necessary Funding"). If Purchaser does not have internal funds alone which satisfy the Necessary Funding, Purchaser agrees to make application for financing to obtain the Necessary Funding within thirty (30) days after the satisfaction of the Due Diligence Period and to diligently pursue obtaining same. If Purchaser does not represent that Purchaser has obtained the Necessary Funding and provide Seller with the necessary documentation supporting the same, and so notify Seller in writing within ninety (90) days after the end of the Due Diligence Period, then this Agreement shall terminate and the Deposit shall be refunded to the Purchaser.

(iii) If applicable, Purchaser shall file an application for the necessary Special Use Permit, and/or rezoning within thirty (30) days after the end of the Due Diligence Period to accommodate the Development

(iv) Prior to the expiration of the Due Diligence Period, Purchaser shall at its own expense submit an application for a zoning compliance letter for the proposed Development of the Property with the Zoning Administrator of the City (the "Zoning Conformance Letter"). Purchaser shall provide the City Department of Economic and Community Development a copy of the Zoning Conformance Letter in the event the Zoning Administrator determines a portion of the proposed Development is not in conformance with the Zoning Ordinance, Purchaser may amend or modify its plans within the Due Diligence Period and/or file an application for a Special Use Permit and/or rezoning to address such conformance. In such case the approval of the Special Use Permit and/or the rezoning shall be included as a Pre-Closing condition.

(v) Purchaser shall obtain final approval certifying that its intended development and use of the Property, including the Development, will meet all necessary zoning requirements prior to the end of the Due Diligence Period. The final approval shall be given in the form of a zoning compliance letter issued by the Zoning Administrator for the City of Richmond or other certification deemed acceptable by the Seller in its sole discretion. If the zoning compliance application is not approved within the timeframe set out herein and if Seller fails to grant an extension of the timeframe as allowed herein, this Agreement shall be terminated and the Deposit shall be returned to the Purchaser.

(vi) Within ninety (90) days after the issuance of the zoning compliance letter, Purchaser shall provide architectural and engineering plans and specifications as demonstrated by fifty percent (50%) complete construction documents or 75% design/build documents to Seller for approval, which approval shall not be one or the other unreasonably withheld, conditioned or delayed. This submittal of architectural and engineering plans to Seller for approval, shall not relieve Purchaser of its obligation to submit appropriate applications for approval in order to comply with all applicable federal, state and local laws governing the

requirements for obtaining any building permits, Special Use Permits or zoning changes or any other conditions that may be imposed by any governmental body or agency having jurisdiction over the Property including the City of Richmond, Virginia.

(b) In the event any of the Pre-Closing Conditions set forth in this Section 6 are not satisfied within the required timeframe as set out herein, Seller may elect in its sole discretion to extend the timeframe by which Seller must comply.

8. Remedies for Default: Pre-Closing. Purchaser's failure to diligently pursue satisfaction of any of the Pre-Closing Conditions, as determined by the Seller in its sole discretion, shall constitute a default hereunder. If any of the Pre-Closing Conditions are not met by the dates specified herein including any extensions granted by the Seller as allowed herein, Seller may, in its sole discretion, terminate this Agreement and the Deposit shall be returned to the Purchaser.

9. Closing. Provided Purchaser is not in default hereunder and this Agreement has not otherwise been terminated, and contingent upon the Purchaser having met all Pre-Closing Conditions, closing shall take place at the offices of the City Attorney, or such other place as the parties may agree upon, within fifteen (15) days notice from the Purchaser that it has satisfied the Pre-Closing Conditions, and in no event later than sixteen (16) months of Effective Date of this Agreement (the "Closing"). The date of Closing may be extended by mutual agreement between the parties except that any extension of the Closing beyond sixteen (16) months of the Effective Date shall be at the Seller's sole discretion. Exclusive possession of the Property shall be delivered to Purchaser at Closing. At Closing, Seller shall deliver the Deed to Purchaser and any and all other documents, instruments, and agreements required by law to transfer and convey the Property and all interests therein to Purchaser, in accordance with this Agreement.

10. Post-Closing Development Covenants.

(a) Purchaser covenants to diligently pursue and satisfy the following as obligations surviving Closing (individually, a "Post-Closing Covenant" and collectively, the "Post-Closing Covenants"):

(i) Purchaser covenants to complete the Development within eighteen (18) months after Closing.

(ii) Purchaser covenants to complete the Development, develop, construct and maintain the Property in compliance with all applicable federal, state and local laws, rules and regulations, including, without limitation, zoning and building codes, and that all work shall be of good quality and shall be made in a workmanlike manner consistent with industry standards.

(iii) Purchaser covenants to file for a building permit within sixty (60) days after Closing.

(iv) Purchaser covenants to, if necessary, file for a land disturbance permit within sixty (60) days after Closing.

(v) Purchaser covenants to commence the Development within the later of the following dates: 30 days after both a building permit and land disturbance permit, if required, are received or ninety (90) days after Closing;

(b) In the event Purchaser fails to satisfy any of the Post-Closing Covenants set forth in this Paragraph 10, Seller shall have all of the rights and remedies set forth in Paragraph 15 of this Agreement entitled "Seller's Remedies." In no event shall the post closing rights affect the rights or authority of any lender. In the event any of the Post-Closing Conditions set forth in this Section 10 are not satisfied within the required timeframe as set out herein, Seller may elect in its sole discretion to extend the timeframe by which Seller must comply. Seller agrees to execute any document deemed necessary by Purchaser's lender or lenders to subordinate Seller's rights under the Post-Closing Covenants to a lien on the Property securing the financing of the Property and/or Development. Seller also agrees to execute document(s), in a timely fashion, acknowledging Purchaser's satisfaction of Pre-Closing Conditions and Post-Closing Covenants as the result of accomplishing the task or through the passage of time.

11. No Representations or Warranties. Purchaser warrants and acknowledges to and agrees with Seller that Purchaser is purchasing the Property in an "AS IS" condition "With All Faults" and specifically and expressly without any warranties, representations or guarantees, either express or implied, of any kind, nature, or type whatsoever from or on behalf of the Seller including, without limitation, with respect to the environmental condition of the Property or the availability of tax credits or any other financial assistance in connection with the Property. Without in any way limiting the generality of the preceding, Purchaser specifically acknowledges and agrees that it hereby waives, releases and discharges any claim it has, might have had or may have against Seller with respect to the condition of the Property, either patent or latent, its ability or inability to develop the Property, the actual or potential income or profits to be derived from the Property, the compliance with any federal, state or local environmental protection, pollution or land use laws, rules, regulations or requirements, and any other state of facts which exist with respect to the Property.

12. Pro-rations and Closing Costs. Purchaser shall pay for any recording tax imposed upon grantors as to the Deed, if any.

13. Risk of Loss. The risk of loss or damage to the Property is assumed by Seller until Closing except for loss or damage to the Property arising from Purchaser's, or its representatives', agents' employees' or contractors' negligent actions or willful misconduct at or to the Property.

14. Purchaser's Remedies. In the event Seller breaches this Agreement or otherwise fails to perform or observe any of the covenants or obligations to be performed or observed by it hereunder, Purchaser shall be entitled to pursue all rights and remedies of Purchaser hereunder or at law or in equity which are expressly declared to be cumulative. The exercise by Purchaser of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. No failure to exercise or delay in the exercise of any such right or remedy shall constitute a waiver of any default by Seller hereunder, any of Purchaser's rights or remedies in connection therewith, or Purchaser's rights to exercise such rights and remedies thereafter in the event of any continuing or subsequent default by Seller. Purchaser shall not be deemed to have waived any default by Seller hereunder unless such waiver is set forth in a written instrument

signed by Purchaser. If Purchaser waives in writing any default by Seller, such waiver shall not be construed as a waiver of any covenant, condition or agreement set forth in this Agreement except as to the specific circumstances described in such written waiver.

15. Seller's Remedies.

(a) In the event Purchaser breaches this Agreement or otherwise fails to perform or observe any of the covenants or obligations to be performed or observed by it hereunder, Seller shall be entitled to pursue any and all remedies available to it at law or in equity.

(b) Purchaser agrees that it will attempt to create a total assessed value of the Property of \$2,560,000.00 within three (3) years of the date of Closing (the "Total Assessment"). If the Total Assessment is not achieved within three (3) years from the date of Closing, then Purchaser shall pay Seller as liquidated damages a one-time additional sum of ten-thousand dollars (\$10,000.00) for each one-hundred thousand dollars (\$100,000.00) by which the assessed value of the Property falls short of the Total Assessment. Seller and Purchaser agree that in the event the Total Assessment is not satisfied, it would be extremely difficult and impractical to ascertain the extent of damages to Seller caused by the failure to satisfy such conditions, and Seller and Purchaser agree that the foregoing sum is a reasonable estimate of the damages that would be suffered by Seller. Seller agrees to pay such sum to Seller within one hundred twenty (120) days of receipt of written notification from Seller that the Total Assessment has not been satisfied. Such sum shall constitute a lien on the Property and any improvements thereon, which lien shall be subject and subordinate to any first lien deed of trust or other first lien financing instrument in favor of an institutional lender. Within thirty (30) days after payment of such sum to Seller, Seller shall deliver to Purchaser a certificate in recordable form evidencing payment of such sum.

(c) All rights and remedies of Seller hereunder or at law or in equity are expressly declared to be cumulative. The exercise by Seller of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. No failure to exercise or delay in the exercise of any such right or remedy shall constitute a waiver of any default by Purchaser hereunder, any of Seller's rights or remedies in connection therewith, or Seller's rights to exercise such rights and remedies thereafter in the event of any continuing or subsequent default by Purchaser. Seller shall not be deemed to have waived any default by Purchaser hereunder unless such waiver is set forth in a written instrument signed by Seller. If Seller waives in writing any default by Purchaser, such waiver shall not be construed as a waiver of any covenant, condition or agreement set forth in this Agreement except as to the specific circumstances described in such written waiver.

16. Notices. All notices hereunder shall be in writing and shall be hand delivered to the parties or sent by registered or certified mail, return receipt requested, postage prepaid, addressed to the parties as follows:

To Seller:

City Attorney  
City of Richmond  
900 East Broad Street, Room 300

Richmond, Virginia 23219

With a Copy to: Director, Economic & Community Development  
City of Richmond  
1500 East Main Street, Suite 400  
Richmond, Virginia 23219

To Purchaser: Sterling Bilder, LLC  
17 S. Belmont Street  
Richmond, Virginia 23221

With a Copy to: Roth Doner Jackson, PLC  
919 E. Main Street  
Suite 2110  
Richmond, Virginia 23219  
Attn.: Jennifer D. Mullen, Esq.

Such notices shall be deemed to have been given upon hand delivery or upon deposit in the mail, prepaid, by registered or certified mail as aforesaid. Any change of address shall be provided in the aforesaid manner.

17. Brokerage Commission. Seller and Purchaser each represents unto the other that no real estate broker, finder, agent or other person has acted for or on its behalf in bringing about this Agreement and that there are no fees or commissions payable to any other person or firm on account of this Agreement or the Closing contemplated herein. It is further agreed that should any claim for any commission or fee be asserted by any real estate broker, finder, agent or person as a result of this Agreement, or Closing pursuant hereto, the same shall be the full responsibility of the party whose actions resulted in such a claim for commission.

18. Purchaser's Standing. Purchaser warrants that itself, its partners, members, and managers are in good standing with the City and are current on any and all City taxes, including but not limited to real estate taxes, owed to the City. With the exception of property located at 420 North 25<sup>th</sup> St., Richmond, Virginia 23223, Purchaser warrants that itself, members, and managers are not currently under a notice of violation for any building or property maintenance codes with respect to other properties Purchaser itself, its partners, members, or managers, any or all, may own in the City of Richmond.

19. Authority. Purchaser warrants that it has full power, authorization and approval to enter into this Agreement and to carry out its obligations hereunder and the parties executing this Agreement on behalf of Purchaser are fully authorized to do so.

20. Costs. In the event that Seller or Purchaser brings an action or proceeding to enforce the terms and conditions of this Agreement, each party shall bear its own costs and expenses.

21. General Provisions. This Agreement constitutes the entire agreement and supersedes any and all other agreements or correspondence between the parties, and may not be modified or changed except by written instrument executed by the parties. This Agreement shall be construed, interpreted and applied in accordance with the laws of the Commonwealth of Virginia. {00235465;v4}Real Estate Services

Virginia, and shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties. In the event any one or more of the provisions contained in this Agreement are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and there will be added in lieu of such provision, a provision as similar in terms to such provision as is possible, which is legal, valid and enforceable.

22. Time for Performance. TIME IS OF THE ESSENCE HEREUNDER.

23. Force Majeure. The performance by Purchaser of its obligations under this Agreement shall be excused by delays due to acts of God, weather conditions, governmental requirements, restrictions or laws, fire or other damage, war or civil disorder, or any other causes beyond the reasonable control of Purchaser.

23. Survival. All representations, warranties, covenants, indemnifications and agreements herein shall survive and remain enforceable after the consummation of the transactions contemplated herein and shall survive the filing of the deed for a period of five (5) years from the Closing Date or until the requirements of both Section 10-Post Closing Covenants and Section 15(b) of the Agreement are satisfied, whichever occurs first, and shall not be merged therein.

24. Headings. Headings used in this Agreement are used for convenience only and shall not be considered when construing this Agreement.

25. No Partnership. Nothing in this Agreement shall be construed as making either party hereto a partner or joint venture with any other party hereto.

26. Subject to Appropriation. Notwithstanding any provision of this Agreement to the contrary, the Seller shall be liable under this Agreement, financially and otherwise, only to the extent that funds are appropriated by the City Council of the City of Richmond, Virginia on a no-less-frequent basis than once per Seller's fiscal year.

27. Approval by City Council. Purchaser acknowledges that delivery of this Agreement by Seller unsigned to Purchaser does not constitute an offer and that the City Council of the City of Richmond must approve the form of this Agreement before it can be accepted by Seller. Seller shall make a good faith effort to obtain such approval; however, Purchaser acknowledges that no promise or assurance is provided that approval will be obtained.

[Signature Pages to Follow]

WITNESS the following signatures and seals:

**SELLER:**

**THE CITY OF RICHMOND**, a municipal Corporation of the Commonwealth of Virginia

By: \_\_\_\_\_  
Chief Administrative Officer

Under authority granted by Ordinance No.  
\_\_\_\_\_ adopted \_\_\_\_\_

Approved As To Form:

\_\_\_\_\_  
Assistant City Attorney

Approved As To Terms:

\_\_\_\_\_  
Department of Economic and  
Community Development



**PURCHASER: Sterling Bilder L.L.C., a Virginia limited liability company**

By: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

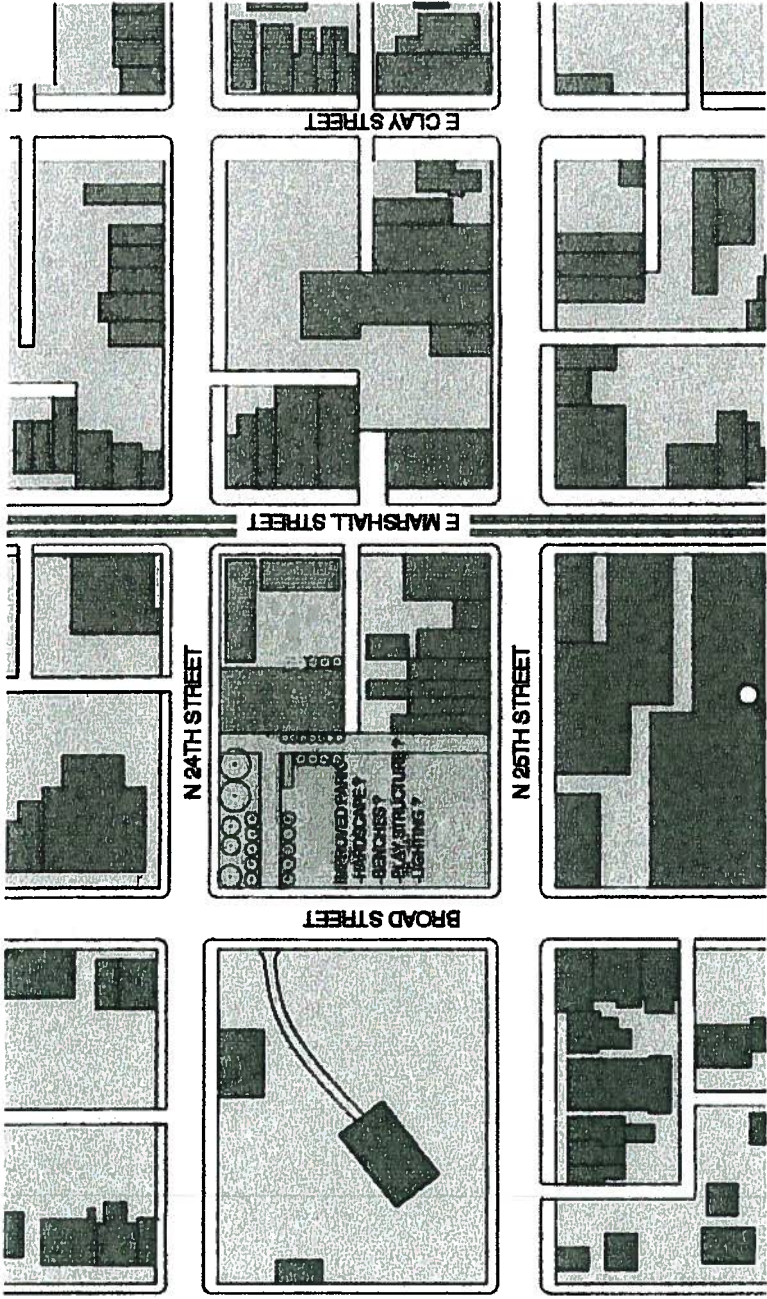
**COMMONWEALTH OF VIRGIHIA**  
**CITY OF RICHMOND \_\_\_\_\_,**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012 by \_\_\_\_\_ acting in his/her capacity as \_\_\_\_\_ of Sterling Bilder, LLC, on behalf of the company.

\_\_\_\_\_  
**Notary Public**  
**My Commission Expires: \_\_\_\_\_**  
**Registration Number: \_\_\_\_\_**

**EXHIBIT "A" – The Plans**

**STERLING BILDER CHURCH HILL PROJECTS- 24th STREET GARAGE AND TOWNHOUSES DEVELOPMENT AREAS**



Include Garage + Townhouses

Lot Area	21781
Parking Area	4970
Hardscape	7723
Soft Landscape	12255
Subj. Areas Existing	9551
Subj. Areas New	13615
Total Subj. Area	23166
Commercial Area	3778
Public/Community	1210
Residential Area	17202
Courtyards, Paths	4124
Parking Courts	12100
Total	140

**RESIDENTIAL AREAS UNIT COUNTS**

Include Garage + Townhouses

Total Res. Area	17202
Total Common Area	175
Total Leasable Area	17227
Units Count	17
Units w/ Garage / Tot. Area Area	2 425 2520
2 BR Units / Area Area	3 742
3 BR Units / Area Area	2 1762
Units Density/Floor	0.45
Units Density/Floor	38

VICINITY PLAN

**LAWRENCE GROUP**

Academy Center - New York, NY

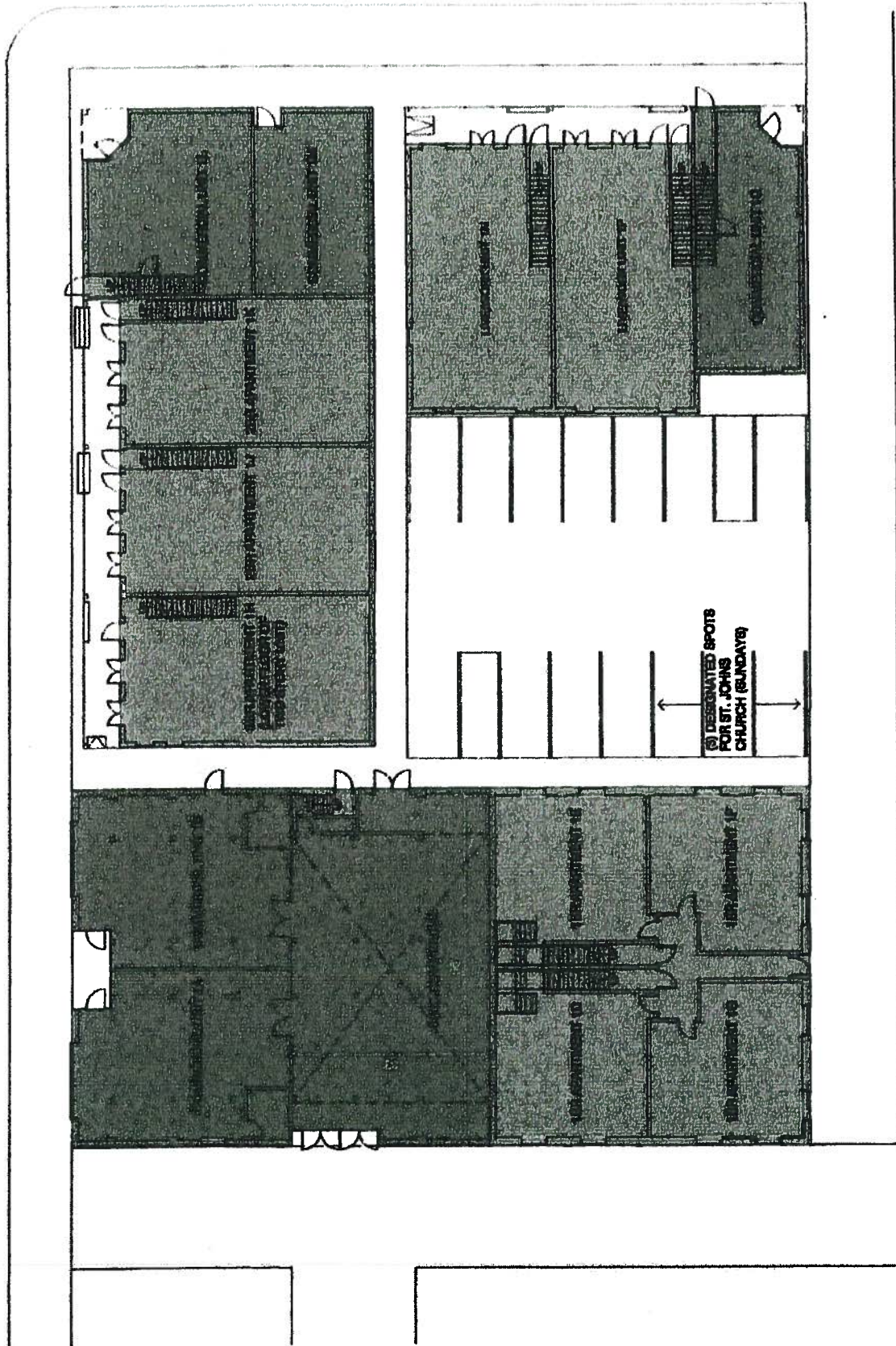
STERLING BILDER

**24TH STREET DEVELOPMENT - SITE LOCATIONS AND AREAS**



19010  
August 20, 2014  
Scale: NTS

Search Page 4  
**AOC**

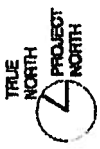


GROUND FLOOR PLAN

STERLING BILDER

**LAWRENCE GROUP**  
 Architecture/Construction, New York, NY, USA

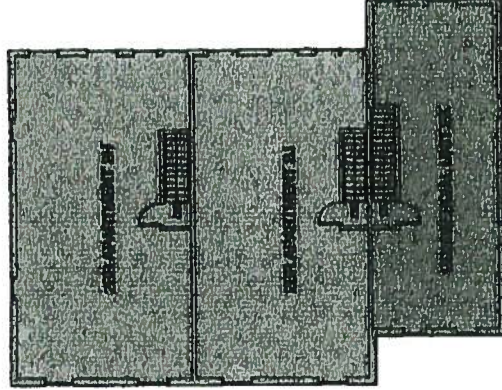
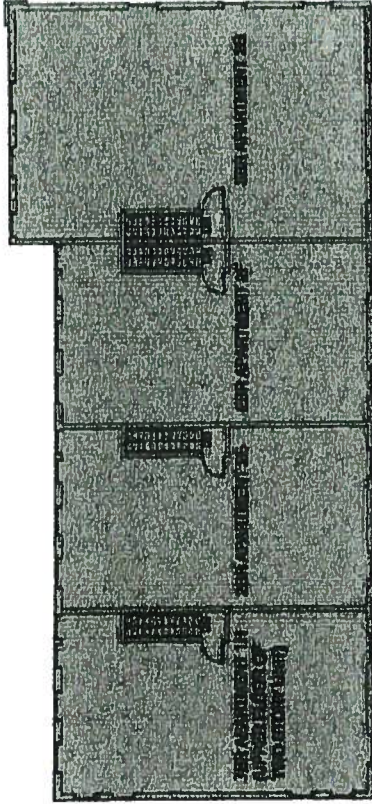
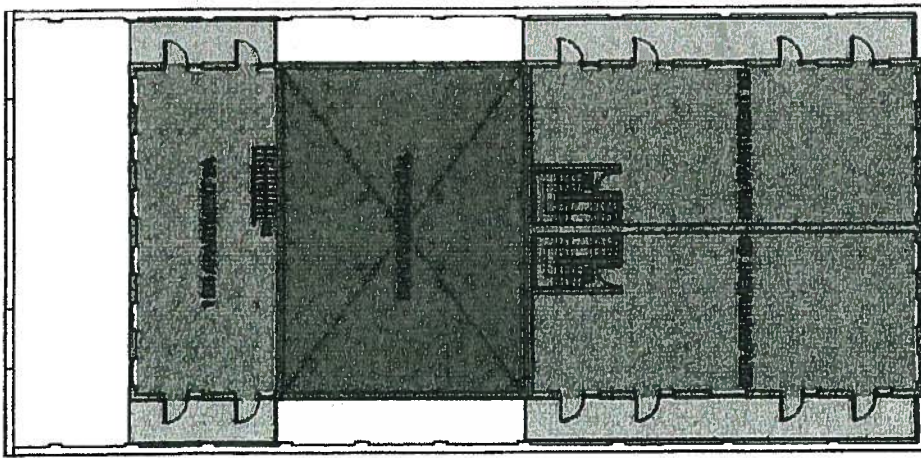
19010  
 August 20, 2014  
 Scale: 1/8" = 1'-0"



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**A01**

**24TH STREET DEVELOPMENT - PROPOSED GROUND FLOOR PLAN**





SECOND FLOOR PLAN

STERLING BILDER

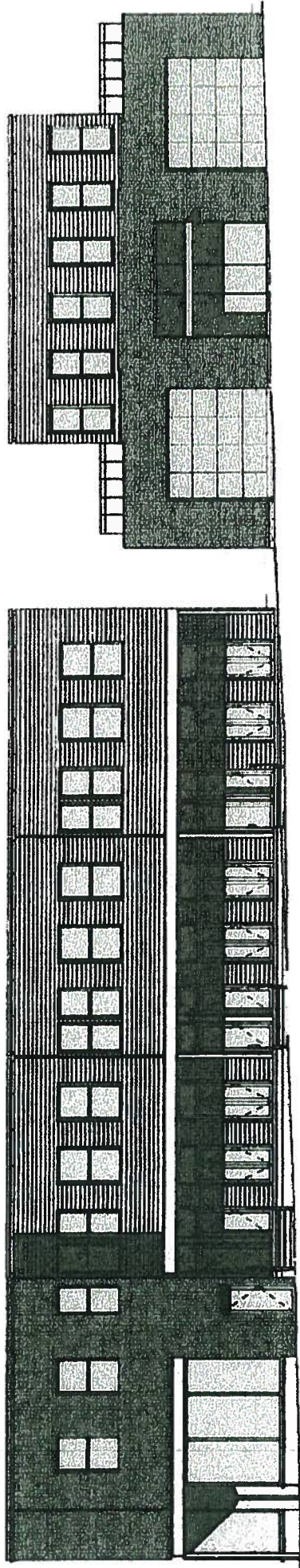
LAWRENCE GROUP  
ARCHITECTS AND INTERIORS

19010  
August 20, 2014  
Scale: 1/8" = 1'-0"

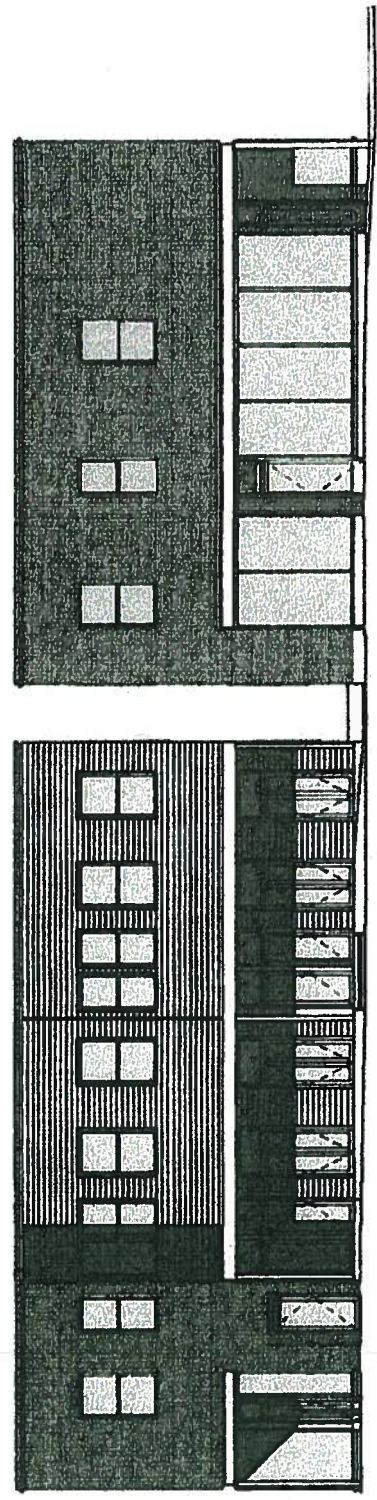


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**A02**

24TH STREET DEVELOPMENT - PROPOSED SECOND FLOOR PLAN

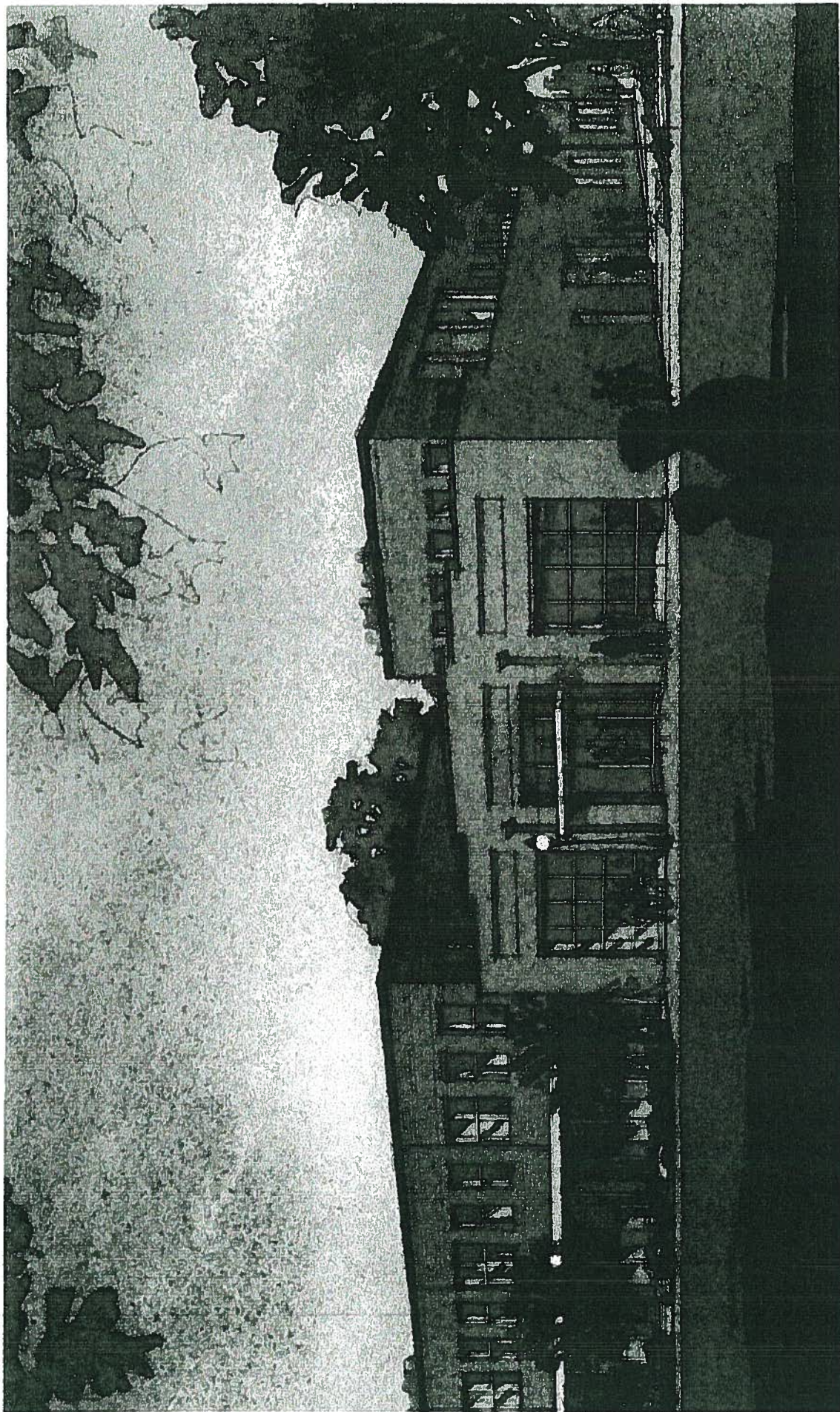


WEST ELEVATION



NORTH ELEVATION





24TH STREET DEVELOPMENT - EXTERIOR RENDERING

STERLING BILDER

LAWRENCE  
GROUP

Architectural Graphics Firm, Inc. LLC





**24TH STREET DEVELOPMENT - INTERIOR RENDERING**

**STERLING BOLDER**

**LAWRENCE  
GROUP**

Architectural Rendering Firm

Sheet/Page No.

**A05**

19010

August 20, 2014

Scale: NTS



**EXHIBIT "B" - The Deed**

This Document Prepared By:  
Richmond City Attorney's Office  
900 E. Broad Street, Room 300  
Richmond, Virginia 23219  
Parcel ID E0000338028, E0000338022  
Consideration: \$250,000.00

**DEED**

THIS DEED, made \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between the **CITY OF RICHMOND, VIRGINIA**, municipal corporation and political subdivision of the Commonwealth of Virginia, hereinafter referred to as "Grantor", and **STERLING BILDER, L.L.C.**, a Virginia Limited Liability Company, hereinafter referred to as "Grantee", provides as follows:

**EXEMPTION FROM TAXES**

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

**WITNESSETH:**

That for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor does hereby grant and convey unto the Grantee with SPECIAL WARRANTY of Title, the following described real estate (the "Property"), to-wit:

**SEE SCHEDULE A ATTACHED HERETO AS A PART HEREOF**

This conveyance is subject to conditions, easements, restrictions, and agreements of record applicable to the Property, to include the following conditions, restrictions, and

agreements, which shall be deemed covenants running with the Property:

That certain Purchase and Sale and Development Agreement between Grantor, as Seller,  
and Grantee, as Purchaser, dated \_\_\_\_\_, 2014.

IN WITNESS WHEREOF, the Grantor has caused this Deed to be executed on its behalf  
by its duly authorized representative pursuant to the authority granted by Ordinance No  
\_\_\_\_\_, adopted \_\_\_\_\_, 201\_.

THE CITY OF RICHMOND, VIRGINIA  
a municipal corporation

By: \_\_\_\_\_

Chief Administrative Officer

Approved as to form:

\_\_\_\_\_  
Matthew A. Welch  
Assistant City Attorney

Grantors' Address:  
City of Richmond  
Department of Economic &  
Community Development  
Main Street Station  
1500 East Main Street, Suite 400  
Richmond, Virginia 23219

This conveyance by Special Warranty Deed from City Central, LLC is hereby accepted by Sterling Bilder, LLC.

STERLING BILDER, LLC

a Virginia limited liability company

By: \_\_\_\_\_  
Name/Title:

COMMONWEALTH OF VIRGINIA        )  
  ) TO-WIT  
CITY/COUNTY OF \_\_\_\_\_        )

The foregoing instrument was acknowledged before me, \_\_\_\_\_, Notary Public, this \_\_\_\_ day of \_\_\_\_\_, 201\_, by \_\_\_\_\_ who is either personally known to be or has presented identification of a valid state issued driver's license. \_\_\_\_\_ voluntarily acknowledged this instrument as \_\_\_\_\_ of Sterling Bilder, LLC, a Virginia limited liability company, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

Registration Number: \_\_\_\_\_

My commission expires: \_\_\_\_\_

Notary Seal

## SCHEDULE A

### PARCEL I:

ALL that certain piece or parcel of land, with all improvements and appurtenances thereto belonging, lying and being in the City of Richmond, Virginia and described as 313 North 24<sup>th</sup> Street. Commencing on the east line of 24<sup>th</sup> Street 143' 88" south of Marshall Street; thence running southerly and fronting 31' 6" on the east line of 24<sup>th</sup> Street; thence back easterly between parallel lines 122' to an alley 20' wide.

#### Including:

ALL that certain piece or parcel of land, with all improvements and appurtenance thereto belonging and lying and being in the City of Richmond, Virginia and described as 315 North 24<sup>th</sup> Street. Beginning at a point on the east line of 24<sup>th</sup> Street 115' 2" south of Marshall Street; thence running southerly and fronting on the east line of 24<sup>th</sup> Street 28' 6"; thence back easterly between parallel lines 122' to an alley 20' wide.

BEING the same real estate conveyed to the City of Richmond, a municipal corporation of the Commonwealth of Virginia, by deed from The J. FULMER BRIGHT MEMORIAL FOUNDATION, INC. dated June 27, 1990 and recorded in the Clerk's Office, Circuit Court, City of Richmond, Virginia on July 30, 1990 in Deed Book 242, Page 1891.

The two parcels have been combined to create Parcel Tax Number E0000338028

### PARCEL II:

ALL that certain piece or parcel of land with all improvements and appurtenance thereto belonging and lying and being in the City of Richmond, Virginia and described as 2407 East Marshall Street, and more particularly bound and described as follows:

BEGINNING at the southeastern intersection of Marshall Street and 24<sup>th</sup> Street and from said point of beginning thence extending southwardly and fronting on the eastern line of 24<sup>th</sup> Street a distance of 114 feet, 10 inches, more or less, and from said frontage thence extending back eastwardly between parallel lines and line parallel with the southern line of Marshall Street, a distance of 120 feet, more or less, to an alley in the rear 24 feet wide.

BEING the same real estate conveyed to the City of Richmond, a municipal corporation of the Commonwealth of Virginia, by deed from The J. FULMER BRIGHT MEMORIAL FOUNDATION, INC. dated June 27, 1990 and recorded in the Clerk's Office, Circuit Court, City of Richmond, Virginia on July 30, 1990 in Deed Book 242, Page 1897.

Known as Parcel Tax Number E0000338022