

INTRODUCED: February 26, 2024

AN ORDINANCE No. 2024-053

To direct the sale of the City-owned real estate located at 2510 Lynhaven Avenue, consisting of 3.937± acres, for nominal consideration to YWCA Richmond, and in connection therewith to authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Purchase, Sale & Development Agreement between the City and YWCA Richmond, all for the purpose of facilitating the construction of an affordable multifamily residential development.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: MAR 11 2024 AT 6 P.M.

WHEREAS, by Resolution No. 2021-R024, adopted April 16, 2021, the Council approved the biennial real estate strategies plan entitled “2020 Biennial Real Estate Strategies Plan” and declared the City-owned real estate located at 2510 Lynhaven Avenue, consisting of approximately 3.937 acres, to be surplus City-owned real estate;

NOW, THEREFORE,

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That, notwithstanding the requirements of section 8-58 of the Code of the City of Richmond (2020), as amended, the City-owned real estate known as 2510 Lynhaven Avenue, consisting of approximately 3.937 acres, identified as Tax Parcel No. S008-0418/001 in the 2024

AYES: 7 NOES: 0 ABSTAIN: _____

ADOPTED: MAR 11 2024 REJECTED: _____ STRICKEN: _____

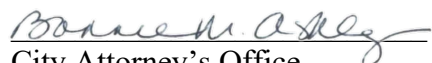
records of the City Assessor, is hereby directed to be sold to YWCA Richmond for nominal consideration for the purpose of facilitating the construction of an affordable multifamily residential development consisting of approximately 50 affordable rental units in accordance with Chapter 8 of the Code of the City of Richmond (2020), as amended, the Charter of the City of Richmond (2020), as amended, the Code of Virginia (1950), as amended, and the Constitution of Virginia.

§ 2. 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 must first be approved as to form by the City Attorney, as may be necessary to consummate the sale of the real estate authorized by section 1 of this ordinance.

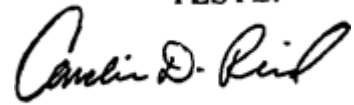
§ 3. That the Chief Administrative Officer, for and on behalf of the City of Richmond, is hereby authorized to execute a Purchase, Sale & Development Agreement between the City and YWCA Richmond in connection with the sale of the real estate authorized by section 1 of this ordinance; provided that such Purchase, Sale & Development Agreement must first be approved as to form by the City Attorney and must be substantially in the form of the document attached to this ordinance.

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

APPROVED AS TO FORM:


City Attorney's Office

**A TRUE COPY:
TESTE:**


City Clerk



City of Richmond

900 East Broad Street
2nd Floor of City Hall
Richmond, VA 23219
www.rva.gov

Master

File Number: Admin-2024-0126

File ID: Admin-2024-0126

Type: Request for Ordinance or Resolution

Status: Regular Agenda

Version: 1

Reference:

In Control: City Clerk Waiting Room

Department: DCAO For Planning and Economic Development

Cost:

File Created: 02/07/2024

Subject: Conveyance of 2510 Lynhaven Avenue

Final Action:

Title:

Internal Notes:

Code Sections:

Agenda Date: 02/26/2024

Indexes:

Agenda Number:

Patron(s):

Enactment Date:

Attachments: OR Transmittal Form - 2510 Lynhaven (Final - Full OR Packet with Attachments), 2510 Lynhaven Avenue PSA (AATF for introduction), Convey - 2510 Lynhaven Ave_AATF_.pdf

Enactment Number:

Contact:

Introduction Date:

Drafter: Alecia.Blackwell@rva.gov

Effective Date:

Related Files:

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
1	1	2/7/2024	Matt Welch - FYI	Notified - FYI	
1	2	2/7/2024	Sharon Ebert	Approve	2/9/2024
1	3	2/8/2024	Jeff Gray	Approve	2/9/2024
1	4	2/8/2024	Lincoln Saunders	Delegated	
Notes: Delegated: Out Of Office					
1	5	2/8/2024	Sabrina Joy-Hogg	Approve	2/12/2024
1	6	2/14/2024	Mayor Stoney	Approve	2/12/2024

History of Legislative File

Master Continued (Admin-2024-0126)

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File Admin-2024-0126

City of Richmond

Intracity Correspondence

O&R Transmittal

DATE: February 6, 2024

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: J.E. Lincoln Saunders, Chief Administrative Officer

THROUGH: Sharon L. Ebert, Deputy Chief Administrative Officer - Planning & Economic Development Portfolio

FROM: Matthew A. Welch, Senior Policy Advisor - Planning & Economic Dev. Portfolio
Chris Nizamis, Real Estate Manager - Real Estate Strategies/DED

RE: Conveyance of 2510 Lynhaven Avenue (Parcel ID # S0080418001) for Development of Affordable Housing

ORD. OR RES. No.

PURPOSE: To direct the sale of the surplus city-owned real estate located at 2510 Lynhaven Avenue, consisting of 3.937 ± acres, for nominal consideration to YWCA Richmond, and in connection therewith to authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Purchase, Sale & Development Agreement between the City and YWCA Richmond, for the purpose of facilitating the construction of an affordable multifamily residential development.

BACKGROUND: The appx. 3.937 acre vacant/unimproved City-owned parcel located at 2510 Lynhaven Avenue (the "Property") was declared surplus by City Council via Council's approval of the 2020 Biennial Real Estate Strategies Plan (Res. 2021-R024). The requested ordinance would authorize the City to convey/donate the Property to YWCA Richmond, a Virginia non-profit entity, which will partner with Lynhaven Ridge VA LLC (Surber Development) for the development of 50 new affordable rental units ranging from families at or below 30% AMI (5 units), 50% AMI (21 units), 60% AMI (6 units), and 80% AMI (18 units). All of the affordable housing units will be either 2-bedroom (20 units) or 3-bedroom (30 units). Additionally:

- No less than five (5) of the affordable units will conform to HUD regulations interpreting the

accessibility requirements of § 504 of the Federal Rehabilitation Act of 1973 and be actively marketed to persons with disabilities as defined in the Fair Housing Act.

- The development will contain dedicated space for YWCA Richmond to provide on-site services to residents.
- The development will be constructed employing green building techniques, shall achieve the National Green Building Standard of silver.
- Should the Virginia Department of Housing and Community Development make funding available for its Housing Innovations in Energy Efficiency (HIEE) Program, Purchaser will apply for such funding.

In the City's One Richmond An Equitable Affordable Housing Plan, the City set a goal of 1,000 new affordable units annually until 2030. This conveyance and subsequent development of 50 affordable units targeting families across the spectrum of affordability (as low as 30% AMI) will contribute to meeting the new affordable unit goal and addressing the City's affordable housing needs.

COMMUNITY ENGAGEMENT: The developer contacted the Bellmeade Civic Association and Richmond Highway Neighborhood Association and held a public information session on Feb. 6.

STRATEGIC INITIATIVES AND OTHER GOVERNMENTAL:

- The subject parcel is included on the "2020 Biennial Real Estate Strategies Plan", approved by City Council (Res. No. 2021-R024)
- The development will contribute to meeting the City's goal of 1,000 new affordable units annually (One Richmond - An Equitable Affordable Housing Plan)

FISCAL IMPACT: No direct revenue from the conveyance expected, as this will be a donation to support affordable housing. This project would create short-term job creation and long-term increased tax revenue having impacts to the City's overall economic benefits.

DESIRED EFFECTIVE DATE: Upon adoption of this Ordinance

REQUESTED INTRODUCTION DATE: February 26, 2024

CITY COUNCIL PUBLIC HEARING DATE: March 11, 2024

REQUESTED AGENDA: Consent Agenda

RECOMMENDED COUNCIL COMMITTEE: N/A (Planning Commission)

AFFECTED AGENCIES: Mayor, Chief Administrative Officer, Office of the City Attorney, Department of Economic Development, Department of Planning and Development Review, and Department of Housing and Community Development.

RELATIONSHIP TO EXISTING ORD. OR RES.: Related legislation expected to be introduced to City Council = An ordinance to authorize a Special Use Permit and an ordinance to designate the property as a Revitalization Area.

ATTACHMENTS:

- Draft Ordinance (Signed Approved as to Form by the City Attorney's Office)
- Purchase, Sale & Development Agreement (Signed Approved as to Form by the City Attorney's Office)

STAFF:

Matt Welch, Senior Policy Advisor - Planning & Economic Development Portfolio
Christopher Nizamis, Real Estate Manager - Real Estate Strategies/Economic Development

PURCHASE, SALE & DEVELOPMENT AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made this ____ day of _____, 2024 (the “**Effective Date**”), between the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia (“**City**”) and **YWCA Richmond**, a Virginia non-stock corporation (“**Purchaser**”).

RECITALS

A. The City owns that certain real estate known as 2510 Lynhaven Avenue, consisting of approximately 3.937 acres, identified as Tax Parcel No. S008-0418/001 (the “**Property**”).

B. By Resolution No. 2021-R024, adopted by the City Council for the City of Richmond (“**City Council**”) on April 16, 2021, Council approved the 2020 Biennial Real Estate Strategies Plan and declared the Property surplus.

C. The Purchaser is a member Lynhaven Ridge MM LLC, the sole managing member of Lynhaven Ridge VA LLC, a Virginia limited liability company (“**Developer**”).

D. The Purchaser desires utilize the Property for the construction and operation, on the Property, of an affordable residential development consisting of a minimum of fifty (50) multifamily affordable rental units with 30-year rent restrictions ensuring affordability to individuals and families earning no greater than 30%, 50%, 60%, and 80% area median income for the Richmond-Petersburg Metropolitan Statistical Area, as determined by the United States Department of Housing and Urban Development (“**AMI**”), as more particularly described in Section 2(b) of this Agreement (the “**Affordable Housing Development**”).

E. The City desires to support Purchaser’s efforts towards creating permanent affordable housing opportunities in the city of Richmond through the construction and operation of the Affordable Housing Development.

F. In support of those efforts, on _____, 2024, City Council adopted Ordinance No. 2024-____, which directs the sale of the Property for nominal consideration, to the Purchaser for the purpose of facilitating the construction and operation of the Affordable Housing Development.

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 Purchaser agree as follows:

1. **Agreement to Sell and Purchase; Property Defined.** City agrees to donate to Purchaser, and Purchaser agrees to accept from City, as authorized by §15.2-953(A) of the Code of Virginia, 1950, as amended, subject to the terms and conditions of this Agreement, all of the City's rights, title and interest in the Property as more particularly described in Schedule A attached hereto and incorporated herein, which term includes all appurtenances pertaining thereto and all buildings and other improvements situated thereon.

2. **Closing; Conditions to Closing; Post Closing Covenants.**

a. **Closing.** Closing shall occur within 60 days following Purchaser'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.**" In the event Purchaser has not satisfied the Conditions Precedent to Closing within 24 months of the Effective Date, the City may, in its sole discretion, terminate this Agreement by providing 30 days prior written notice to Purchaser. Notwithstanding the foregoing, if Purchaser satisfies the Conditions Precedent to Closing within 30 days of such written termination notice from the City, the termination will not take effect and the parties may proceed to Closing in accordance with this Agreement.

b. **Purchaser's Post-Closing Covenants.** Purchaser shall complete construction of the Affordable Housing Development, as described herein, on the Property within 36 months of Closing and shall ensure ongoing compliance with the applicable affordability restrictions, as described herein.

(i) The Affordable Housing Development shall include no less than fifty (50) total multifamily affordable dwelling units with the following mix of affordability restrictions (collectively, the "**Affordable Units**").

A. No less than five (5) multifamily affordable dwelling units with 30-year income rent restrictions of no more than 30% of the AMI.

B. No less than twenty-one (21) multifamily affordable dwelling units with 30-year income rent restrictions of no more than 50% of the AMI.

C. No less than six (6) multifamily affordable dwelling units with 30-year income rent restrictions of no more than 60% of the AMI.

D. No less than eighteen (18) multifamily affordable dwelling units with 30-year income rent restrictions of no more than 80% of the AMI.

(ii) No less than twenty (20) of the Affordable Units shall be two-bedroom units.

(iii) No less than thirty (30) of the Affordable Units shall be three-bedroom units.

(iv) No less than five (5) of the Affordable Units shall conform to HUD regulations interpreting the accessibility requirements of § 504 of the Federal Rehabilitation Act of 1973 and be actively marketed to persons with disabilities as defined in the Fair Housing Act.

(v) The Affordable Housing Development shall contain dedicated space for YWCA Richmond to provide on-site services to residents.

(vi) The Affordable Housing Development shall be constructed employing green building techniques, shall achieve the National Green Building Standard of silver.

(vii) Should the Virginia Department of Housing and Community Development make funding available for its Housing Innovations in Energy Efficiency (HIEE) Program, Purchaser shall apply for such funding.

This section 2(b) shall survive Closing.

3. **Due Diligence.**

a. **Generally.** Purchaser will have 120 days commencing on July 1, 2024 (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, Purchaser shall provide City with any and all information Purchaser acquires relating to or resulting from its Due Diligence. Notwithstanding anything to the contrary in the foregoing or in this section 3, should Purchaser not receive a LIHTC award in the 2024 cycle but by virtue thereof apply in the 2025 cycle, the Due Diligence Period will commence on July 1, 2025 and Purchaser will have 120 commencing upon that date to perform 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 Purchaser, and its agents, contractors, employees, and officers, the non-exclusive right to enter upon the Property for the purpose of enabling Purchaser to perform its Due Diligence thereon. Purchaser understands, acknowledges, and agrees that this grant conveys no interest or estate in the Property but merely grants to Purchaser 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 Purchaser’s Due Diligence or (ii) the expiration of the Due Diligence Period.

c. **Access.** If the intended inspection includes intrusive physical or environmental testing of the Property, or any portion thereof, Purchaser shall provide prior written notice to the City requesting the City's consent for Purchaser to access the Property for such testing, which notice shall include a reasonably detailed description of the type, scope, manner, and duration of the inspections to be conducted. Purchaser shall not undertake any such physically or environmentally intrusive inspections without the prior written consent of City.

d. **Utility Protection.** Purchaser and its agents, contractors, employees, and officers shall protect all privately and publicly owned utilities located within the Property and shall not permit any utilities interruption.

e. **Condition of Property.** Upon completion of the Due Diligence and upon the termination or cancellation of this Agreement, Purchaser 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 Purchaser 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 Purchaser fails to comply with this section 4(e), City may undertake repair, removal, or restoration at Purchaser's cost. This section 4(e) will survive any expiration or termination of this Agreement.

f. **Termination.** If prior to the expiration of the Due Diligence Period, Purchaser determines that the Property is unsuitable for Purchaser's use of the Property for the Affordable Housing Development due to a material defect in the condition of the Property, in Purchaser's reasonable discretion, then Purchaser will have the right to terminate this Agreement 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 Purchaser 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 Purchaser or its agents, contractors, employees, invitees, licensees, officers, or volunteers irrespective of how the injury or damage is caused, and Purchaser hereby releases City from any liability, real or alleged, for any personal injury or property damage to Purchaser 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 Agreement.

(ii) **Indemnity.** Purchaser 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 Purchaser's agents, contractors, employees, invitees, licensees, officers, or volunteers, that is based on or related to: (i) use of the Property by Purchaser, its agents, contractors, employees, invitees, licensees, officers, or volunteers; (ii) the performance of the Due Diligence on or outside of the Property by Purchaser, its agents, contractors, employees, invitees, licensees, officers, or volunteers; (iii) the presence on or about the Property of Purchaser, its agents, contractors, employees, invitees, licensees, officers, or volunteers; (iv) the conduct or actions of Purchaser, 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 Purchaser, its agents, contractors, employees, invitees, licensees, officers, or volunteers. Without limiting the generality of the foregoing obligation, Purchaser 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 Purchaser (including effluent discharged on the Property) or disturbed as a result of Purchaser'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, Purchaser shall carry and maintain, and shall cause its agents, contractors, invitees, licensees, officers, 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.:

- (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 Five Million Dollars (\$5,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) 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 Purchaser, its agents, contractors, employees, invitees, licensees, officers, and volunteers. In addition, all motorized equipment, both licensed and not licensed for road use, operated or used by Purchaser, its agents, contractors, employees, invitees, licensees, officers, and volunteers in or on the Property will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy.

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.
- (2). Before Purchaser, its agents, contractors, employees, invitees, licensees, officers, or volunteers enter upon the Property, Purchaser shall deliver to City one or more valid Certificates of Insurance which show the foregoing insurance coverage to be in force and effect. Purchaser shall provide individual insurance policy declarations sheets or pages, or a specimen copy of individual policies to City upon City's request.
- (3). Purchaser shall list and shall cause its agents, contractors, invitees, licensees, officers, 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). Purchaser shall cause its Commercial General Liability and Business Automobile Liability policies and those of its agents, contractors, invitees, licensees, officers, 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. Purchaser 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 and Land Use Approvals.** Purchaser shall be solely responsible for obtaining any special use permit (SUP), rezoning, or other zoning modification that may be necessary in order to permit Purchaser's construction and operation of the Affordable Housing Development on the Property. Purchaser shall at its own expense request and obtain a Zoning Confirmation Letter for the purpose of verifying that the Affordable Housing Development conforms with the City's zoning regulations. Purchaser's receipt of a Zoning Confirmation Letter (and, if necessary in order to obtain such letter, Purchaser's obtaining of a SUP, rezoning, or other zoning modification) shall be condition precedent(s) to Closing as set forth in Exhibit A.

6. **Title and Survey.**

a. **Title.** The City agrees to convey to Purchaser fee simple title to the Property by a Quitclaim Deed, free and clear of all liens and encumbrances, mortgages, assessments, agreements, options and covenants created or suffered by City, except for such encumbrances as are set forth in section 6(e) below.

b. Purchaser will have until the expiration of the Due Diligence Period to examine title to the Property and to notify the City in writing if Purchaser objects to any exceptions of title other than the Permitted Encumbrances. If Purchaser timely notifies the City of any such objections, then the City may, at its sole option, cure any of such objections on or before the

Closing Date. If such objections are not so cured, or if the City does not elect to cure such objections, then either party may terminate this Agreement without further liability whatsoever (except as may be otherwise expressly provided herein). If Purchaser fails to give timely notice to the City of any valid objections to any such exceptions to title, then such exceptions shall constitute Permitted Encumbrances for all purposes of this Agreement.

c. Subject to the Permitted Encumbrances, so long as this Agreement remains in force and effect, the City shall not lease, encumber or convey all or any part of the Property or any interest therein, or enter into any agreement granting to any person any right with respect to the Property or any part thereof, without the prior written consent of Purchaser.

d. **Survey.** During the Due Diligence Period, Purchaser 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. City’s approval of the Survey shall not be unreasonably withheld, conditioned or delayed. Prior to Closing, Purchaser will have the right, at its sole cost and expense, to have the Survey updated, in which case the Purchaser 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 Purchaser, the City, the Title Company and any other parties designated by Purchaser. The Property shall be conveyed by the City to the Purchaser using the legal description for the Property appearing on the Survey.

e. **Permitted Encumbrances.** City and Purchaser acknowledge and agree that the City shall convey title to the Property to Purchaser subject to the Permitted Exceptions (as hereinafter defined). For the purposes of this Agreement “**Permitted Encumbrances**” 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, (iv) such state of facts disclosed by the Survey, and (v) any exception that Purchaser’s title company agrees to affirmatively insure over. Notwithstanding the foregoing, in no event will Permitted Encumbrances 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. Purchaser hereby expressly agrees and acknowledges, and represents and warrants to the City, that Purchaser 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). Purchaser acknowledges and agrees that the Property is and shall be sold and conveyed (and accepted by the Purchaser 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 Purchaser'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, 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. Purchaser 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, Purchaser, on behalf of itself and its successors and assigns, shall thereby release and further agrees to indemnify and defend the City and its agents, contractors, employees, officers, and volunteers ("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, Purchaser 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 Purchaser acknowledges and agrees that the liabilities to be assumed by the Purchaser pursuant to each of the foregoing clauses are intended to be independent of one another, so the Purchaser shall assume liabilities described in each of the clauses even though some of those liabilities may be read to be excluded by another clause.

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

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

a. On or prior to the Closing Date, City shall deliver the following to the Purchaser's title company for the benefit of Purchaser:

(i) A quitclaim deed for the Property, duly executed and acknowledged by the City (the "Deed"). The Purchaser acknowledges and agrees that the Deed will contain a reversionary right in the Seller and a requirement in the form of a covenant running with the Property requiring that the Property be used for the Affordable Housing Development, with such reversionary right and covenant extending until such time as Purchaser enters into an Extended Use Agreement with Virginia Housing, formerly Virginia Housing Development Authority, to ensure the affordability requirements and a 30 year affordability period.

(ii) A duly executed and acknowledged affidavit addressed to the title company regarding mechanics' liens and possession, in substantially the form attached hereto as Exhibit B (the "Owner's Affidavit").

(iii) 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").

(iv) Any additional documents required by the title company, provided such additional documents are customary in commercial real estate transactions in the Commonwealth of Virginia and are otherwise in a form acceptable to the City in its sole but reasonable discretion, duly executed and acknowledged by the City, if applicable.

b. On, or prior to, the Closing Date, Purchaser shall deliver the following to the title company for the benefit of the City:

(v) A duly executed counterpart original of the Settlement Statement.

(vi) Any additional documents required by the title company, provided such additional documents are customary in commercial real estate transactions in the Commonwealth of Virginia and are otherwise in a form acceptable to the Purchaser in its sole but reasonable discretion, duly executed and acknowledged by the Purchaser, if applicable.

(vii) 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 Purchaser, if applicable.

c. Possession of the Property will be given to Purchaser at Closing, subject to the Permitted Exceptions, by delivery of the Deed.

d. Purchaser shall pay for the cost of any title report or 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 Purchaser'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 its 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 Purchaser 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 Purchaser from developing the Property for Purchaser's intended use for the Affordable Housing Development, Purchaser then will have the right, at the Purchaser's option, to elect not to take title.

10. **Casualty.** The risk of damage or loss to Property by fire, act of God, or other casualty is assumed by the Purchaser at Closing.

11. **Default by the Purchaser.** If Purchaser fails to timely proceed to Closing in accordance with the terms and conditions of this Agreement, including but not limited to the failure to satisfy the Conditions Precedent to Closing, City will have all rights and remedies at law and in equity, including, without limitation and the right to terminate this Agreement.

12. **Default by the City.** If City fails to timely proceed to Closing in accordance with the terms and conditions of this Agreement, which failure is not cured within ten (10) days following receipt of written notice from Purchaser, then Purchaser will have, as its sole and exclusive remedy the right to terminate this Agreement. Purchaser further hereby waives all claims that Purchaser 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 Purchaser that it has dealt with no broker, agent, finder or other intermediary in connection with this Agreement. Purchaser represents and warrants to City that it has dealt with no broker, agent, finder or other intermediary in connection with this Agreement. Purchaser agrees to indemnify, defend and hold City harmless from and against any broker's claim arising from any breach by Purchaser, respectively, of its representations and warranties in this paragraph. The foregoing indemnification obligations of Purchaser shall survive Closing or any expiration or termination of this Agreement.

14. **Notice.** All notices, offers, consents, or other communications required or permitted to be given pursuant to this 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 Purchaser:

YWCA Richmond
6 N. Fifth Street
Richmond, VA 23219
Attn: Rupa Murthy, Chief Executive Officer
rmurthy@ywearichmond.org

With a copy to:

120 Green Tree Circle
Bristol, Virginia 24201
Attn: Jen Surber
jensurber@surberdev.com

B. To the City:

Chief Administrative Officer
900 East Broad Street, 14th Floor
Richmond, Virginia 23219

With a copy to:

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

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

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

c. **Assignment.** Purchaser may not assign this Agreement (and no transfer by Purchaser of any interest in this Agreement and no transfers of direct or indirect interests in Purchaser 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, Purchaser will not be relieved of any of its duties, obligations or liabilities hereunder, instead Purchaser, as assignor, and Purchaser's assignee shall therefore be jointly and severally liable hereunder. Notwithstanding the foregoing, Purchaser may without the necessity of obtaining the City's consent thereto, assign its interest in this Agreement to the Developer for the sole purpose of the financing, construction, and operation of the Affordable Housing Development. Purchaser shall promptly provide a copy of any such assignment to the City.

d. **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, subject to the terms of section 15(c) above.

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

f. **Severability.** Each clause, paragraph and provision of this 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 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 Agreement which will remain and continue in full force and effect. In all other respects, all provisions of this 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 Agreement, or the rights and obligations of City or Purchaser in connection with this Agreement, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia. Any and all disputes, claims and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. Each party shall be responsible for its own attorneys' fees in the event of any litigation or other proceeding arising from this Agreement.

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

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

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

k. **Public Document.** The City and the Purchaser acknowledge and agree that this Agreement and any other records furnished, prepared by or in the possession of the City may be subject to the retention and disposition requirements of the Virginia Public Records Act and the public disclosure requirements of the Virginia Freedom of Information Act.

l. **Cooperation.** Purchaser 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.

m. **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.

n. **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.

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

CITY:

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

By: _____

Name: J.E. Lincoln Saunders

Title: Chief Administrative Officer

As authorized by Ordinance No. 2024-____, adopted _____, 2024

APPROVED AS TO FORM:


Office of the City Attorney,
Deputy City Attorney

PURCHASER:

YWCA RICHMOND, a Virginia non-stock corporation

By: _____

Name: _____

Title: _____

EXHIBIT A to AGREEMENT

CONDITIONS PRECEDENT TO CLOSING

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

(a) Purchaser has materially complied with all covenants and provisions required by this Agreement to be complied with by Purchaser before, on, or as of the Closing Date.

(b) Purchaser has completed or waived its Due Diligence.

(c) Purchaser has obtained any special use permit, rezoning, or other zoning modification that may be necessary in order to permit Purchaser's construction and operation of the Affordable Housing Development on the Property.

(d) Purchaser has obtained a Zoning Confirmation Letter verifying that construction and operation of the Affordable Housing Development on the Property conform to the City's zoning regulations.

(e) Purchaser has (i) received a reservation and an allocation of competitive nine percent (9%) Low Income Housing Tax Credits ("LIHTC") for the construction of the Affordable Housing Development during the 2024 or the 2025 tax credit allocation cycle administered by Virginia Housing and (ii) received commitment for construction and permanent financing, in such amounts sufficient, cumulatively, to provide funding for the completion of the Affordable Housing Development.

EXHIBIT B to 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: J.E. Lincoln Saunders
Title: Chief Administrative Officer

COMMONWEALTH OF VIRGINIA:

CITY OF RICHMOND:

The foregoing instrument was acknowledged before me this _____ day of
_____, 20__, by J.E. Lincoln Saunders, as Chief Administrative Officer 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 Agreement

[Real Property Description]

[To be inserted before Closing based on Survey]

Schedule A to Agreement