

INTRODUCED: February 26, 2018

AN ORDINANCE No. 2018-055

To grant to the Commonwealth of Virginia a non-exclusive, permanent easement over and across an approximately 20,053.61-square-foot portion of City-owned real estate located on Brown's Island for the purposes of installing, accessing, and maintaining the Virginia Emancipation Proclamation and Freedom Monument.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: MAR 26 2018 AT 6 P.M.

§ 1. That the City hereby grants to the Commonwealth of Virginia a non-exclusive, permanent easement over and across an approximately 20,053.61-square-foot portion of City-owned real estate located on Brown's Island, identified as a "variable-width construction and access easement area" on Sheet 2 of a plat entitled "Plan Showing a Portion of Browns Island Located near the Fifth Street Footbridge," prepared by Austin Brockenbrough Engineering + Consulting, and dated December 19, 2016, a copy of which is attached to and incorporated into this ordinance, for the purposes of installing, accessing, and maintaining the Virginia Emancipation Proclamation and Freedom Monument.

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: MAR 26 2018 REJECTED: _____ STRICKEN: _____

§ 2. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute the Deed of Easement and such other documents as may be necessary to consummate the transaction contemplated by section 1 of this ordinance, provided that the Deed of Easement shall be substantially in the form of the document attached to this ordinance and that such Deed of Easement and any other documents necessary to consummate such transaction shall first be approved as to form by the City Attorney.

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



CITY OF RICHMOND
INTRACITY CORRESPONDENCE

O & R REQUEST
4-7502
FEB 9 2018
Office of the
Chief Administrative Officer

O&R REQUEST

DATE: February 9, 2018

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer

THROUGH: Peter L. Downey, Deputy Chief Administrative Officer for Economic Development and Planning

FROM: Mark A. Olinger, Director
Department of Planning & Development Review

RE: Grant of Non-Exclusive Permanent Deed of Easement to Install, Access, and Maintain the Emancipation Proclamation and Freedom Monument

RECEIVED
FEB 12 2018
OFFICE OF CITY ATTORNEY

ORDINANCE OR RESOLUTION NO.:

PURPOSE: To grant to the Commonwealth of Virginia a non-exclusive, permanent deed of easement over and across the portion of City-owned property described as shown on the plans identified as "VARIABLE WIDTH CONSTRUCTION AND ACCESS EASEMENT AREA: 20053.61 SQ.FT. OR 0.460 ACRE" on Sheet 2 of the plat entitled "PLAN SHOWING A PORTION OF BROWNS ISLAND LOCATED NEAR THE FIFTH STREET FOOTBRIDGE", dated December 19, 2016, prepared by Austin Brockenbrough Engineering + Consulting, attached hereto, for the purposes of installing, accessing, and maintaining the Virginia Emancipation Proclamation and Freedom Monument (the "Freedom Monument") to be constructed on certain property to be conveyed to the Commonwealth of Virginia, and to authorize the CAO to execute the documents necessary to consummate the transaction.

REASON: The Emancipation Proclamation and Freedom Monument will be sited on Brown's Island on land to be deeded from the City to the Commonwealth in order to install the Monument at that site. The Commonwealth will need to access the site to construct the improvements and to provide maintenance to the site and requests a non-exclusive permanent deed of easement over and across the portion of City-owned property in order to access the site for maintenance purposes.

RECOMMENDATION: Approval is recommended by the City Administration.

BACKGROUND: The Dr. Martin Luther King, Jr., Memorial Commission is a statutory and bi-partisan agency of the Virginia General Assembly, created in 1992, to honor the memory and legacy of Dr. King and to continue his work through educational, historical, and cultural programs, among other activities. The Commission is implementing the development, creation, and erection of the Virginia Emancipation Proclamation and Freedom Monument to serve as an education site and tool

for educating the public about the importance of the Emancipation Proclamation and to memorialize as part of the Monument notable African American Virginians who have made significant contributions to the emancipation and freedom of formerly enslaved persons or descendants.

The Commission received funding to help in the planning, design, fabrication, and installation from the General Assembly in 2012 and has selected artist Thomas J. Warren of Oregon to fabricate and install the 12-foot monument on Brown's Island in time to commemorate the 400th anniversary of the arrival of the first recorded Africans to English North America in Jamestown.

As owner of Brown's Island, City staff have been part of the discussions related to the placement of the Monument on Brown's Island, and have advised the Commission on the necessary processes necessary to place the Monument on Brown's Island. In order to make it possible for the Emancipation Proclamation and Freedom Monument to be located at this particular site a total of four (4) Ordinances will ultimately need to be adopted by Council. Those Ordinances include:

1. To declare and direct conveyance of a portion of City-owned real estate to the Commonwealth of Virginia to facilitate the installation, and maintenance of the Emancipation Proclamation and Freedom Monument. Council adopted Ordinance No. 2017-005 on February 13, 2017.
2. To grant a non-exclusive permanent deed of easement to install, access, and maintain the Emancipation Proclamation and Freedom Monument. All maintenance costs associated with the installation of the Emancipation Proclamation and Freedom Monument will be borne by the Commonwealth of Virginia.
3. To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Fourth Amendment to the Controlled Public Access Lease Agreement between the City of Richmond and Venture Richmond, Inc., for the purpose of excluding from the "Demised Premises" certain real property.
4. To authorize the Chief Administrative Office to accept a donation of services and materials from Venture Richmond, Inc., in an amount approximated at \$103,800 related to the movement of the sculpture "The Mill" from its present location on Brown's Island to a new location, including site preparation, and new site elements.

FISCAL IMPACT/COST: None.

FISCAL IMPLICATIONS: None.

BUDGET AMENDMENT NECESSARY: None.

REVENUE TO CITY: None.

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: February 26, 2018

CITY COUNCIL PUBLIC HEARING DATE: March 26, 2018

REQUESTED AGENDA: Consent Agenda

RECOMMENDED COUNCIL COMMITTEE: Land Use, Housing, & Transportation, March 20, 2018

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: None.

AFFECTED AGENCIES: Chief Administrative Officer, Department of Planning and Development Review, Office of the City Attorney

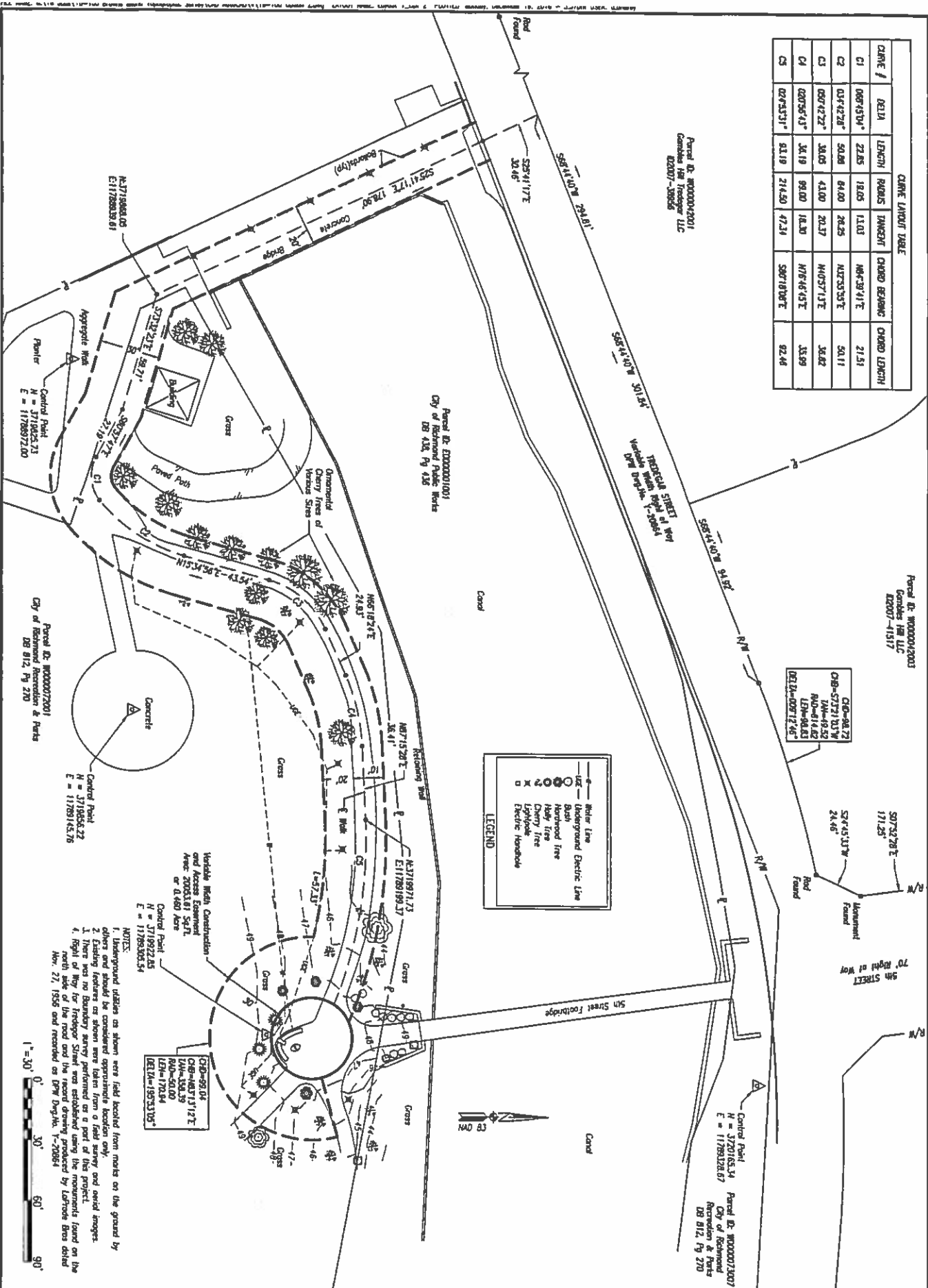
RELATIONSHIP TO EXISTING ORD. OR RES.: Ordinance No. 2017-005

REQUIRED CHANGES TO WORK PROGRAM(S): None.

ATTACHMENTS: Conveyance of Property Survey, Construction and Access Easement Survey

STAFF: Mark A. Olinger, Director, Dept. of Planning & Development Review, 646-6305

CURVE /	DELTA	LENGTH	RADIUS	TANGENT	CHORD BEARING	CHORD LENGTH
C1	008°15'04"	22.85	18.05	11.03	N66°29'41"E	21.51
C2	034°42'28"	50.86	84.00	28.26	N42°33'53"E	50.11
C3	057°42'22"	38.03	43.00	20.37	N40°57'13"E	35.82
C4	020°35'43"	36.19	99.00	18.30	N75°46'45"E	33.99
C5	027°33'31"	31.19	214.50	47.24	S00°10'00"E	92.46



CONSTRUCTION & ACCESS EASEMENT
 PLAN SHOWING A PORTION OF
 BROWNS ISLAND
 LOCATED NEAR THE
 FIFTH STREET FOOTBRIDGE

Austin
Brockenbrough
 ENGINEERING • CONSULTING

1011 Boulder Springs Drive, Suite 200 | Richmond, Virginia 23225
 804.592.3900 main | 804.592.3901 fax
 www.brockenbrough.com

CLIENT	VA DGS
TAC	16-100
JOB NO.	16-100
DATE	12/19/16
SCALE	

APPROVED BY
 12-19-16
 TAC
 SHEET NO
 2 of 2

This Deed is exempt from (i) recordation taxes pursuant to §§ 58.1-811.A.3. and 58.1-811.C.4. of the Code of Virginia (1950), as amended, and (ii) the payment of Clerk's fees pursuant to §§17.1-266 and 17.1-279(E) of said Code.

Tax Parcel ID No.: Portions of E0000001001 and W0000072001
Consideration: \$1.00
Actual Value: \$ _____

Prepared by: Office of the Attorney General

DEED OF EASEMENT

This DEED OF EASEMENT ("Deed of Easement") is made and entered into this _____ day of _____, 2018, by and among the **CITY OF RICHMOND**, a body politic and municipal corporation of the Commonwealth of Virginia (the "Grantor" or the "City"); the **COMMONWEALTH OF VIRGINIA**, acting by and through the **COMMONWEALTH OF VIRGINIA, DEPARTMENT OF GENERAL SERVICES** (the "Grantee" or the "Commonwealth"); and **VENTURE RICHMOND, INC.**, a Virginia corporation ("Venture").

WHEREAS, the City is the fee simple owner of certain real property more particularly described in (i) that certain Deed dated February 17, 1995, and recorded May 9, 1995, in the Clerk's Office of the Circuit Court of the City of Richmond, Virginia (the "Clerk's Office") in Deed Book 438, at page 436, and (ii) that certain Deed of Exchange dated and recorded May 27, 1983, in the Clerk's Office in in Deed Book 812, at page 270 (collectively, the "Property");

WHEREAS, by Ordinance Number 2017-005, duly adopted by the Council of the City of Richmond (the "Council") at its properly noticed meeting held on February 13, 2017, a copy of which is attached as **Exhibit A**, and in accordance with the provisions of § 15.2-2100 *et seq.* the Code of Virginia (1950), as amended (the "Code"), the Council declared surplus to Grantor, and directed to be conveyed to Grantee, the Commonwealth Property (hereinafter defined);

WHEREAS, the City conveyed a portion of the Property containing 0.029 of an acre to the Commonwealth by Deed dated _____, 2018, and recorded _____, 2018, in the Clerk's Office as _____ (the "Commonwealth Property"), which Commonwealth Property is more particularly described therein;

WHEREAS, a portion of the Property, excluding the Commonwealth Property, is subject to that certain Controlled Public Access Lease Agreement dated as of September 15, 1998, by and between the City and Riverfront Management Corporation, a Virginia corporation and predecessor in interest to Venture (as amended, the "Lease");

WHEREAS, it is intended that the Commonwealth Property will be the site of the Virginia Emancipation Proclamation and Freedom Monument (the "Freedom Monument") to be constructed by the Dr. Martin Luther King, Jr. Memorial Commission (the "Commission"), a commission created by the General Assembly of Virginia in 1992;

WHEREAS, the Freedom Monument will serve as (i) an educational site to inform the

public about the importance of the Emancipation Proclamation, and (ii) a memorial to notable African American Virginians who made significant contributions to the emancipation and freedoms of formerly enslaved persons or their descendants;

WHEREAS, Grantee has requested access over portions of the Property in order to construct, maintain, and repair the Freedom Monument to be located on the Commonwealth Property; and

WHEREAS, by Ordinance duly adopted by the Council, a copy of which is attached as **Exhibit B**, the Council authorized the grant to Grantee of a perpetual, non-exclusive easement over, upon, and across certain portions of the Property subject to the terms and conditions set forth herein.

NOW, THEREFORE, for the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in accordance with §§ 2.2-1149 of the Code, the parties hereby agree as follows:

1. Grantor hereby dedicates and grants unto Grantee, its successors and assigns, a perpetual, non-exclusive 20, 053.61 square foot variable width construction and access easement (the "Easement") on, under, over, and across a portion of the Property to lay, erect, construct, install, use, operate, inspect, maintain, repair, replace, rebuild, remove, and improve the Freedom Monument, within the area subject to the Easement (the "Easement Area") shown and depicted as "VARIABLE WIDTH CONSTRUCTION AND ACCESS EASEMENT AREA: 20053.61 SQ.FT. OR 0.460 ACRE" on Sheet 2 of the plat entitled "PLAN SHOWING A PORTION OF BROWNS ISLAND LOCATED NEAR THE FIFTH STREET FOOTBRIDGE", dated December 19, 2016, prepared by Austin Brockenbrough Engineering + Consulting (the "Plat"), which Plat is attached hereto as **Schedule 1** and made a part hereof.

2. The Easement is subject to all existing easements, rights-of-way, covenants, encumbrances, and restrictions of record.

3. Grantee shall use reasonable efforts to restrict its ingress and egress to and from the Commonwealth Property for purposes of exercising its rights expressed herein to the Easement Area. Following Grantee's exercise of the rights contained herein, and upon completion of any activity by Grantee upon the Easement Area, Grantee shall restore the Property within such area as nearly to its original condition as practicable, including, but not limited to, backfilling of trenches, repaving, reseeding, or resodding of lands, removal of trash and debris, and removal of any of Grantee's equipment, accessories, or appurtenances not consistent with the construction, maintenance, or repair of the Freedom Monument or the exercise of any right expressed herein.

4. Grantee shall use reasonable efforts to exercise any right expressed herein in such a manner that will not occasion injury or damage to Grantor and will minimize any adverse impact or disturbance to the Property. Subject to the provisions of this paragraph 4, Grantee shall have the right to alter or remove any structures or obstructions, natural or artificial, and to trim, cut, and remove trees, shrubbery or other natural obstructions, on, under, or over the Easement Area which Grantee reasonably deems to interfere with or threaten the efficient and safe construction, maintenance, or repair of the Freedom Monument. Prior to cutting down or removing of any tree

on the Property, Grantee shall submit a written request for approval to the Director of Public Works and obtain the express written permission of the Director of Public Works as required by section 8-287 of the Code of the City of Richmond, as it may hereafter be amended. All trees cut by Grantee shall remain the property of Grantor. All brush, branches, and other debris resulting from any cutting, trimming, or clearing of the Easement Area shall be removed from the Property and disposed of by Grantee at Grantee's cost.

5. Grantee shall provide Grantor and Venture with reasonable notice prior to commencement of any work on the Commonwealth Property that necessitates use of the Easement Area and shall cooperate with the Grantor and Venture so as not to unreasonably interfere with their activities on the Property. Grantor and Venture, and their successors and assigns, may use the Easement Area for any purpose not inconsistent with the rights hereby granted, provided such use does not interfere with the safe and efficient construction, maintenance, or repair of the Freedom Monument, and further provided that such use is not inconsistent with any laws, ordinances, or codes pertaining to the construction, operation, or maintenance of the Freedom Monument or to which Grantor is subject.

6. The parties hereto acknowledge and agree that notwithstanding anything contained in this Deed of Easement to the contrary, so long as the Commonwealth is the holder of the rights granted by this Deed of Easement, the following provisions shall control over any conflicting provisions hereof:

- A. With respect to tort liability for acts or occurrences with respect to this Deed of Easement, including product liability, the Commonwealth is either constitutionally immune (or partially immune) from suit, judgment, or liability, insured, or covered by a financial plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies and practices.
- B. No equitable, quasi-contractual, or injunctive remedies, other than those specifically authorized by law, may be used or are effective against the Commonwealth.
- C. This Deed of Easement shall be governed by, and construed according to, the laws of the Commonwealth of Virginia, without giving effect to any choice of laws or conflict of laws rules or provisions. Any and all disputes, claims, and causes of action arising out of or in connection herewith shall be brought, and any judicial proceeding shall take place, only in the state courts of the Commonwealth sitting in the City of Richmond.

Nothing in this paragraph 6 is intended to negate the obligations undertaken by the Grantee in this Deed of Easement.

7. Grantor and Grantee acknowledge that neither has agreed to provide any indemnification or save harmless agreements running to the other. No provision, covenant, or agreement contained in this Deed of Easement shall be deemed, in any manner, to be a waiver of the sovereign immunity of the City of Richmond, or of the Commonwealth, or any of its boards,

agencies, or other political subdivisions, from tort or other liability.

8. Notwithstanding any shared use of the Easement Area, nothing in this Deed of Easement shall create or be deemed to create any partnership, joint venture, or agency relationship between Grantor and Grantee.

9. Grantee shall maintain sufficient liability insurance in such amounts and with such coverage as to protect its interests and ensure reasonable financial responsibility in the event of liability for injury, loss, or damage with respect to the Property or any portion thereof, which may be in the form of self-insurance. Prior to engaging in any work permitted by this Deed of Easement, Grantee shall cause its contractors to carry and maintain workers' compensation and employers' liability insurance, commercial general liability insurance, and business automobile liability insurance in forms and amounts reasonably acceptable to Grantor, and to name Venture and the City as additional insureds.

10. As evidenced by Venture's execution of this Deed of Easement, Venture consents to the terms, conditions, and restrictions of this Deed of Easement and hereby subordinates to this Deed of Easement, the Lease and any and all rights created by the Lease, as the Lease and those rights pertain to the Easement Area.

11. Grantor represents that it is the fee simple owner of the lands made subject to the Easement. Grantor shall cooperate with Grantee in securing the consent of lien holders or the partial release or subordination of liens, if any. This Deed of Easement shall be perpetual in nature and shall run with the land.

[THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK.
SIGNATURES APPEAR ON THE FOLLOWING PAGES.]

WITNESS the following signatures and seals.

GRANTOR:

CITY OF RICHMOND,
a body politic and municipal corporation of the
Commonwealth of Virginia

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to wit:

The foregoing Deed of Easement was acknowledged before me this _____ day of _____,
2018, by _____, acting in his/her capacity as
_____ of _____, on behalf of Grantor.

My commission expires: _____
My commission number: _____

Notary Public

APPROVED AS TO FORM
Bonnie A. Amley

GRANTEE:

COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF GENERAL SERVICES

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to wit:

The foregoing Deed of Easement was acknowledged before me this _____ day of _____,
2018, by _____, acting in his/her capacity as
_____ of _____, on behalf of Grantee.

My commission expires: _____
My commission number: _____

Notary Public

VENTURE RICHMOND, INC.
a Virginia corporation

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to wit:

The foregoing Deed of Easement was acknowledged before me this _____ day of _____, 2018, by _____, acting in his/her capacity as _____ of Venture Richmond, Inc., a Virginia corporation, on behalf of the corporation.

My commission expires: _____
My commission number: _____

Notary Public

APPROVED AS TO FORM:
OFFICE OF THE ATTORNEY GENERAL

By: _____
Assistant Attorney General

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

RECOMMEND APPROVAL:
DEPARTMENT OF GENERAL SERVICES

By: _____
Director

APPROVED BY THE GOVERNOR:

Pursuant to § 2.2-1149 of the Code of Virginia (1950), as amended, and by the authority vested in me to act for and on behalf of the Governor of Virginia under Executive Order 88 (01) dated December 21, 2001, I hereby approve this Easement and the execution of this instrument.

Secretary of Administration

Date