

Prepared by and upon recording return to:
 Roth Jackson Gibbons Condlin, PLC
 Jennifer D. Mullen, Esq. #71127
 1519 Summit Avenue, Suite 102
 Richmond, Virginia 23230

Tax Map Numbers: C0050879022 and C0050879024

DEED OF EASEMENTS

(Access and Utility Easement and Pedestrian Access Easement)

THIS DEED OF EASEMENTS (this "Deed") is made as of July 30, 2021 (the "Effective Date"), by and between **CITY OF RICHMOND, VIRGINIA**, a municipal corporation organized under the laws of the Commonwealth of Virginia ("City"), and **URBANA AT HIOAKS, LP**, a Virginia limited partnership ("KCG"). City and KCG shall each be indexed as grantor and grantee.

EXEMPTION FROM TAXES

This conveyance is exempt from Recordation Taxes pursuant to Section 58.1-811(A)(3) and 58.1-811(C)(4) of the Code of Virginia (1950) as amended.

WITNESSETH:

WHEREAS, City is the owner of certain property located in the City of Richmond, Virginia designated as Tax Parcel No. C0050879024 (the "City Parcel"), identified as "City Parcel" on that certain plat entitled "Access Easement Exhibit, Urbana at Hioaks, 6850 Atmore Drive, Richmond, VA" and dated April 8, 2021, a copy of which is attached hereto as Exhibit A (the "Plat").

WHEREAS, KCG is the owner of certain property located in the City of Richmond, Virginia immediately adjacent to the City Parcel, designated as Tax Parcel No. C0050879022 and being a portion of the same real estate conveyed to GRANTOR by deed recorded in the Clerk's office of the Circuit Court of Richmond, Virginia, as Instrument No. 210022435, identified as "KCG Parcel" on the Plat (the "KCG Parcel").

WHEREAS, City and KCG may hereinafter each be referred to as an "Owner", and collectively as the "Owners". The City Parcel and the KCG Parcel may hereinafter each be referred to as a "Parcel" and collectively as the "Parcels".

WHEREAS, City and KCG desire to grant certain easements over portions of their respective Parcels for the benefit of the other Owner, and each of their respective successors, assigns and tenants, as more particularly set forth in this Deed.

AGREEMENT:

For and in consideration of the premises and other consideration the receipt and

sufficiency of which is hereby acknowledged by the Owners, the Owners hereto agree as follows:

1. Access and Utility Easement.

a. Grant of Easement. City hereby conveys and grants to KCG for the benefit of KCG, its successors, assigns, tenants, agents and invitees, with General Warranty of Title, for the benefit of and as an appurtenance to the KCG Parcel, a non-exclusive easement to last forty (40) years for the construction, reconstruction, installation, operation, inspection, maintenance, repair, and removal of the following improvements and appurtenances (the "Improvements"): (i) a pedestrian and vehicular ingress and egress between the KCG Parcel and Hioaks Road and (ii) stormwater management utility facilities (the "Stormwater Facilities") upon, over, under and across the City Parcel, as more particularly identified on the Plat as "Access and Utility Easement" (the "Access and Utility Easement").

b. Maintenance.

i. General. KCG shall be fully responsible for the construction, repair, operation, maintenance and replacement of the Improvements located within the Access and Utility Easement. KCG shall perform such Improvement activities at the direction of the City's Department of Public Utilities (the "Department"), in its sole discretion, in accordance with any law, regulation, policy, procedure, or practice that is applicable to the Improvement or a similar improvement.

ii. Stormwater Utility Maintenance. The easement granted herein for the construction and maintenance of certain Stormwater Facilities and associated appurtenances within the Access and Utility Easement are subject to the following conditions:

(a) KCG shall, prior to the construction of any Improvements within the Access and Utility Easement, submit to the City for its approval, a plat showing the location of one or more Stormwater Facilities on the City Parcel intended to manage the quality and quantity of stormwater runoff from the City Parcel.

(b) KCG shall regularly maintain and inspect the Stormwater Facilities to ensure the Stormwater Facilities function at design capacity ("Good Working Order") throughout their expected lifespan, as determined by the Department. KCG shall inspect the Stormwater Facilities at least once every three (3) years, and KCG's maintenance of the Stormwater Facilities must, at minimum, be in accordance with guidance provided in the latest edition of the "Virginia Stormwater Management Handbook" and at the Virginia Stormwater BMP Clearinghouse website.

(c) KCG shall to submit an inspection and maintenance report to the Department, on a form to be provided by the City, within thirty (30) days following any inspection or maintenance of the Stormwater Facilities by KCG.

(d) The City shall reserve, without limitation, the right to access the Access and Utility Easement to inspect the Stormwater Facilities to ensure they are in Good Working Order. In the event the Stormwater Facilities are not in Good Working Order, the City will provide KCG with written notice of corrective action needed to restore Good Working Order ("Corrective Action Notice"). Upon failure by KCG to take such corrective action within thirty (30) days following receipt of a Corrective Action Notice, the City may take whatever steps it deems necessary to restore the Stormwater Facilities to Good Working Order. KCG expressly understands and agrees the City is under no obligation to maintain or repair the Stormwater Facilities, and in no event will this Deed be construed to impose any such obligation on the City.

(e) In the event of an emergency involving the Stormwater Facilities, as determined by the Department in its sole discretion, the City will have the right, but not an obligation, to take whatever steps it deems necessary to abate the emergency condition. Before, or in place of, exercising such right, the City may instruct KCG by telephone or email to abate the emergency condition within a specified period of time.

(f) In the event the City performs work or expends any funds to maintain or repair the Stormwater Facilities or to respond to an emergency related thereto, including, but not limited to, performance of labor and purchase of equipment, supplies and materials, KCG agrees to reimburse the City in full within sixty (60) days after the City provides written notice KCG of all compensation due. In no event will the City pay any compensation to KCG relating to the City's exercise of its rights set forth in this Deed.

c. Indemnification. KCG shall indemnify and defend the 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 KCG's agents, contractors, employees, invitees, licensees, or volunteers, that is based on or related to (i) KCG's failure to satisfy any obligation under this Deed, (ii) the use of the Access and Utility Easement by KCG, its contractors, employees, invitees, officers, or volunteers, (iii) the performance of any Improvements activities on or outside of the Access and Utility Easement by KCG or its agents, contractors, employees, invitees, officers, or volunteers, (iv) the presence of or by KCG or its agents, contractors, employees, invitees, officers, or volunteers on or about the Access and Utility Easement, (v) the conduct or actions of KCG or its agents, contractors, employees, invitees, officers, or volunteers within or outside the scope of section 1 of this Deed, or (vi) any error, omission, negligent act or intentional act of KCG or its agents, contractors, employees, invitees, officers, or volunteers. This section 1(c) will survive the termination of this Deed.

d. Adjacent Land. KCG will have full and free use of the Access and Utility Easement for the purposes named herein and, when reasonably necessary for such use, KCG may use the land abutting the Access and Utility Easement; provided, however, that KCG's exercise of its right to use such abutting land will only be to the minimum extent necessary. KCG will have the right to trim, cut and remove any natural or manmade structure, improvement or

obstruction in or near the Access and Utility Easement that KCG deems to interfere with its exercise of the Access and Utility Easement. KCG hereby covenants with GRANTOR that upon completion by KCG of activities within Access and Utility Easement or the City's abutting land, KCG will restore or replace, to its immediately prior condition as far as is practicable and consistent with KCG's rights herein conveyed, whatever land and the surface thereof within the City Parcel KCG disturbs by performing such activities.

e. Continued Use. The City reserves the right to continue to use the Access and Utility Easement located on its respective Parcel for any purpose or use so long as such use does not materially interfere with the easement rights granted in this Deed.

f. Hazardous Materials. KCG shall not produce, dispose, release, transport, treat, use or store any Hazardous Materials upon or about the City Parcel. For purposes of this Deed, "Hazardous Materials" means any and all hazardous or toxic substances, wastes or materials which, because of their quantity, concentration, or physical, chemical or infectious characteristics, may cause or pose a present or potential threat to human health or the environment when used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. "Hazardous Materials" may include, without limitation, any substance, waste or material which is or contains asbestos, polychlorinated biphenyls, urea formaldehyde, explosives, radioactive materials or petroleum.

2. Pedestrian Access Easement.

a. Grant of Easement. KCG hereby conveys and grants to the City a permanent non-exclusive pedestrian-only access easement for ingress and egress to be used by the general public during daytime hours consistent with City park properties over and across those portions of the KCG Parcel identified as "Pedestrian Easement Area" on the Plat (the "Pedestrian Easement").

b. Trail Construction and Maintenance. KCG shall be solely responsible for the construction, repair, operation, maintenance and replacement of an approximately 4-foot wide meandering pedestrian trail connecting the City Parcel to Atmore Drive within the Pedestrian Easement (the "Public Gravel Trail"). KCG shall construct the Public Gravel Trail of gravel, crush and run or similar material as approved by the Department. KCG shall maintain the Public Gravel Trail so as to allow pedestrian ingress and egress between the City Parcel and Atmore Drive.

c. Continued Use. KCG reserves the right to continue to use the Pedestrian Easement located on its respective Parcel for any purpose or use so long as such use does not materially interfere with the easement rights granted in this Deed or conflict with any other instrument of record including, but not limited to, deed of easement recorded in the Clerk's office of the Circuit Court of Richmond, Virginia, as Instrument No. 07-05400.

3. Assurances. Each party hereto, together with their respective successors and assigns, shall, from time to time, execute and deliver such documents and instruments of further confirmation and assurance, in recordable form as may be reasonably requested by the other

party, together with their respective successors and assigns, to perfect, complete, and confirm the rights, conditions, covenants, obligations, and agreements created under or contained in this Deed.

4. Default and Remedy. If any party hereto, or its respective successors or assigns, defaults in the performance of the obligations under this Deed and fails to cure such default as required in this Deed, the non-defaulting party shall be entitled to pursue its remedies at law and in equity with respect to such default, including without limitation the right to recover its reasonable attorney's fees and costs incurred in connection with such default.

5. Notice. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

City: City of Richmond, Director of Public Utilities
730 East Broad Street
Richmond, Virginia 23219

with a copy to:

City of Richmond, Office of the City Attorney
900 East Broad Street, 4th Floor
Richmond, Virginia 23219

KCG: Urbana at Hioaks, LP
9311 N. Meridian Street
Indianapolis, IN 46260
Attn: Robert J. Pasquesi, II

With a copy to:

Roth Jackson Gibbons Condlin, PLC
1519 Summit Avenue, Suite 102
Richmond, Virginia 23230
Attn: Jennifer D. Mullen, Esq.

And:

Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, Minnesota 55402
Attn: Jeffrey S. Drennan, Esq.

6. Entire Agreement. This Deed contains the entire agreement of the parties, and there are no other promises, conditions, understandings, or other agreements, whether oral or written, relating to the subject matter of this Deed.

7. Forum and Venue. Any and all disputes, claims and causes of action arising out of or in connection with this Deed, 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.

8. Controlling Law. This Deed shall be construed, performed, and enforced in accordance with the internal laws of the Commonwealth of Virginia.

9. Successors. This Deed shall be run with the land and be binding upon Grantor and the Grantee, together with each of their respective successors and assigns.

10. Captions and Headings. The captions and headings contained in this Deed are included herein for the convenience of reference only and shall not be construed to limit or enlarge the terms hereof or otherwise affect the meaning or interpretation of this Deed.

11. Amendment. This Deed may be amended only by instrument signed by the respective parties hereto, or their respective successors or assigns, and recorded in the Clerk's Office of the Circuit Court of the City of Richmond, Virginia.

12. Invalidation. The invalidation of any provision of this Deed by judgment, court order, legislative mandate, or a finding that such provision is illegal, invalid, or unenforceable shall in no way affect any other provision hereof and all other provisions hereof shall remain in full force and effect.

13. Waiver. Waiver by any party of a breach of any term or provision of this Deed shall not be deemed a waiver of any subsequent breach of the same or any other term or provision hereof.

City:

CITY OF RICHMOND

By: Lincoln Saunders

Name: Lincoln Saunders

Title: Acting Chief Administrative Officer

Authorized by Ord. No. 2021-163, adopted June 28, 2021COMMONWEALTH OF VIRGINIA
CITY OF RICHMOND, to-wit:

I, Elizabeth D'Arcy, Notary Public in and for the City and State aforesaid, do hereby certify that Lincoln Saunders, whose name is signed to the foregoing deed of easement, bearing date of the 22nd day of July, 2021, personally appeared before me in my City and State aforesaid and acknowledged the same to be his/her act and deed.

Given under my hand this 22nd day of July, 2021.Elizabeth H. D'Arcy
Notary PublicNotary Registration Number: 7850195
My commission expires: 4/30/2023

Approved as to Form

By: [Signature]
Assistant City Attorney

KCG

Urbana at Hioaks, LP, a Virginia limited partnership

By: KCG Urbana at Hioaks GP, LLC, a Virginia limited liability company, its general partner

By: KCG Holdings, LLC, its managing member

By: 

Name: Robert J. Pasquesi, II

Title: President

COMMONWEALTH OF VIRGINIA
CITY OF RICHMOND, to-wit:

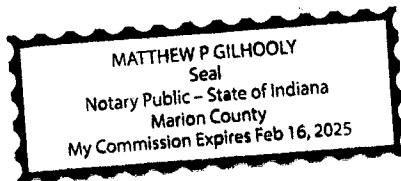
The foregoing instrument was acknowledged before me, MATTHEW GILHOOLY, Notary Public, this 13TH day of JULY, 2021 by Robert J. Pasquesi, II, who has presented identification of STATE D.L.. (a United States Passport, a certificate of United States citizenship, a certificate of naturalization, an unexpired foreign passport, an alien registration card with photograph, a state issued driver's license or a state issued identification card or a United States military card), and voluntarily acknowledged this instrument as President of KCG Holding LLC, a Florida limited liability company, the managing member of KCG Urbana at Hioaks GP, LLC, a Virginia limited liability company, the general partner of Urbana at Hioaks, LP, a Virginia limited partnership, on behalf of the limited partnership.


Notary Public

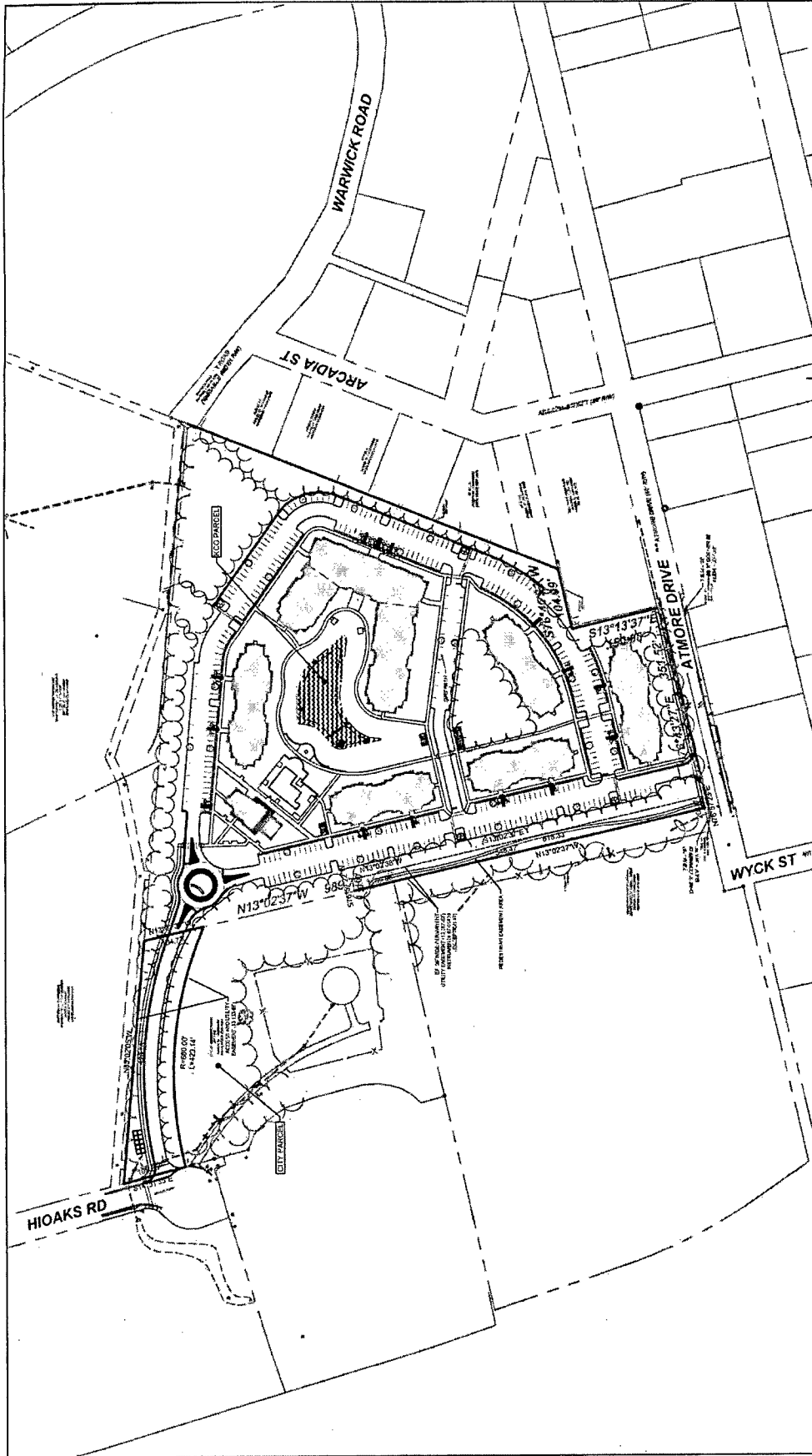
Registration Number: 6267101

My commission expires: FEB 16, 2025

(SEAL)



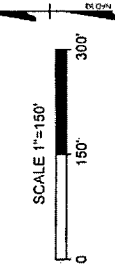
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ACCESS EASEMENT EXHIBIT

URBANA AT HIOAKS

6850 ATMORE DRIVE, RICHMOND, VA - 04/08/2021



INSTRUMENT 210022789
RECORDED IN THE CLERK'S OFFICE OF
RICHMOND CITY CIRCUIT COURT ON
AUGUST 5, 2021 AT 02:49 PM
EDWARD F. JEWETT, CLERK
RECORDED BY: JRO