



**City Of Richmond, Virginia**  
**Office of the City Clerk**

**Request to Withdraw Legislation**

Paper Number: \_\_\_\_\_ Ord. No. 2016-270

Chief Patron: \_\_\_\_\_ Mayor Dwight Jones

Introduction Date: \_\_\_\_\_ November 14, 2016

Chief Patron Signature: \_\_\_\_\_  
LEVAR M. STONEY

Attestation: \_\_\_\_\_  
For Office Use Only  
Effective Date: \_\_\_\_\_ April 25, 2017

INTRODUCED: November 14, 2016

AN ORDINANCE No. 2016-270

To declare surplus and to direct the sale of City-owned real estate located at 101 North 6<sup>th</sup> Street, 603, 609, 611, 615 and 619 East Grace Street, 612 East Franklin Street, and 112, 114 and 116 North 7<sup>th</sup> Street, for \$3,950,000 to City Center Development, LLC, for the purpose of the construction of a mixed-use development including commercial and residential space.

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Patron – Mayor Jones

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Approved as to form and legality  
by the City Attorney

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PUBLIC HEARING: DEC 12 2016 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the following properties owned by the City of Richmond, with tax parcel numbers as shown in the 2016 records of the City Assessor, hereby are declared to be surplus real estate and are directed to be sold for \$3,950,000 to City Center Development, LLC for the purpose of the construction of a mixed-use development including commercial and residential space in accordance with the applicable provisions of Chapter 8 of the Code of the City of Richmond (2015), as amended, the Charter of the City of Richmond (2010), as amended, the Code of Virginia (1950), as amended, and the Constitution of Virginia:

609 East Grace Street  
112 North 7<sup>th</sup> Street

Tax Parcel No. W000-0008/001  
Tax Parcel No. W000-0008/010

AYES: \_\_\_\_\_ NOES: \_\_\_\_\_ ABSTAIN: \_\_\_\_\_

ADOPTED: \_\_\_\_\_ REJECTED: \_\_\_\_\_ STRICKEN: \_\_\_\_\_

114 North 7<sup>th</sup> Street  
116 North 7<sup>th</sup> Street

Tax Parcel No. W000-0008/009  
Tax Parcel No. W000-0008/008

§ 2. That, pursuant to section 8-65(b) of the Code of the City of Richmond (2015), as amended, the Chief Administrative Officer is hereby directed to execute, on behalf of the City, the 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 properties.

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



# CITY OF RICHMOND

## INTRACITY CORRESPONDENCE

O & R REQUEST

OCT 28 2016

Chief Administration Office  
City of Richmond

4-5841

### O&R REQUEST

**DATE:** October 28, 2016

**EDITION:** 1

**TO:** The Honorable Members of City Council

**THROUGH:** Dwight C. Jones, Mayor

**THROUGH:** Selena Cuffee-Glenn, Chief Administrative Officer

**THROUGH:** Lenora Reid, Deputy Chief Administrative Officer, Finance

**FROM:** Lee Downey, Deputy Chief Administrative Officer, Planning & Economic Development

**RE:** PURCHASE, SALE & DEVELOPMENT AGREEMENT BETWEEN THE CITY  
AND CITY CENTER DEVELOPMENT, LLC

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

RECEIVED

OCT 27 2016

OFFICE OF CITY ATTORNEY

**PURPOSE:** To sell city-owned property located at 101 N. 6<sup>TH</sup> Street; 603, 609, 611, 615, & 619 E. Grace Street, 612 E. Franklin Street, 112 N. 7<sup>th</sup> Street, 114 N. 7<sup>th</sup> Street, and 116 N. 7<sup>th</sup> Street to City Center Development, LLC (CCD) for the purpose of developing a mixed-use development. CCD will purchase the property from the City for \$3,950,000.

**REASON:** The agreement will provide the City with \$3,950,000 from the purchase of the property for funding towards other capital improvement properties; will provide new, ongoing tax revenue to the city including new real estate, business personal property and BPOL taxes; will provide approximately 600 new parking spaces available to the public in an area of the City in need of additional parking; and, will provide for the redevelopment of a property that currently is occupied largely by a surface parking lot in the core of downtown.

**BACKGROUND:** The City conveyed the Property to the Broad Street Community Development Authority (the "CDA") in 2003 for the purpose of the CDA completing certain improvements contingent on the availability of funds for such purpose. The CDA funded, through the issuance of bonds, and completed some of the improvements to the Property, including the surface parking lot at 6<sup>th</sup> and E. Grace Streets and repairs to the parking deck at 6<sup>th</sup> and E. Franklin Streets.

The City reacquired the Property from the CDA in 2010 but has no available or appropriated funds in its Capital Improvement Program, or otherwise, for additional improvements to the property. The property currently serves as a surface parking lot and a parking deck, though the deck cannot be fully utilized for parking due to its out-of-date configuration. In addition, the site is an underdeveloped site in a part of the City's core downtown, an area that is currently undergoing significant revitalization.

With the purchase of the property, CCD will commit to developing a mixed-use development that would include a minimum of 800 parking spaces (600 available to the public), a minimum of 28,000 square feet of ground level retail space and a minimum of 372,000 square feet of residential/commercial space. The development will require a minimum assessment of \$86,000,000.

FISCAL IMPACT/COST: None anticipated.

FISCAL IMPLICATIONS: None anticipated.

BUDGET AMENDMENT NECESSARY: No amendment necessary at this time.

REVENUE TO CITY: \$3,950,000 in funding from the purchase to be used for future Capital Improvement projects; ongoing new real estate tax revenue (\$1,032,000/year at full development of the \$86,000,000 project); ongoing new tax revenue including business personal property and BPOL taxes.

DESIRED EFFECTIVE DATE: Upon Adoption.

REQUESTED INTRODUCTION DATE: November 14, 2016

CITY COUNCIL PUBLIC HEARING DATE: December 12, 2016

REQUESTED AGENDA: Consent Agenda.

RECOMMENDED COUNCIL COMMITTEE: Finance & Economic Development

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: Planning Commission

AFFECTED AGENCIES: Economic & Community Development; Planning and Development Review; Finance

RELATIONSHIP TO EXISTING ORD. OR RES.: None

REQUIRED CHANGES TO WORK PROGRAM(S): None.

ATTACHMENTS: Purchase, Sale and Development Agreement

STAFF: Lee Downey, DCAO Planning and Economic Development (804) 646-4848

## **PURCHASE & SALE & DEVELOPMENT AGREEMENT**

**THIS PURCHASE AND SALE AND DEVELOPMENT AGREEMENT** ("Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and between the **City of Richmond**, a municipal corporation of the Commonwealth of Virginia ("Seller") and **City Center Development, LLC**, an active Virginia limited liability company in good standing with the Virginia State Corporation Commission ("Purchaser").

### **RECITALS**

WHEREAS, the Seller owns fee simple title to certain real property located in the City of Richmond, Virginia, known as Tax Parcel Nos. W0000008001, W0000008008, W0000008009, W0000008010, more specifically referred to as 101 N. 6<sup>TH</sup> Street; 603, 609, 611, 615, & 619 E. Grace Street, 612 E. Franklin Street, 112 N. 7<sup>th</sup> Street, 114 N. 7<sup>th</sup> Street, and 116 N. 7<sup>th</sup> Street, Richmond, Virginia 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"); and

WHEREAS, the Seller conveyed the Property to the Broad Street Community Development Authority (the "CDA") in 2003 for the purpose of the CDA completing certain improvements thereon contingent on the availability of funds for such purpose; and WHEREAS, the CDA funded, through the issuance of certain bonds, and completed some of the improvements to the Property, including the surface parking lot at 6<sup>th</sup> and E. Grace Streets (the "Surface Lot") and repairs to the parking deck at 6<sup>th</sup> and E. Franklin Streets (the "Current Parking Deck"); and

WHEREAS, the CDA failed to fund or complete further improvements to the Property, including the parking facilities at 6<sup>th</sup> and E. Grace Streets contemplated by that certain Memorandum of Understanding dated May 15, 2003, between the Seller, the CDA, and ECI Investment Advisors, Inc. (the "6<sup>th</sup> and Grace Parking Facilities"); and

WHEREAS, the Seller reacquired the Property from the CDA in 2010; and

WHEREAS, the Seller has no available or appropriated funds in its Capital Improvement Program, or otherwise, to construct the 6<sup>th</sup> and Grace Parking Facilities; and

WHEREAS, the Seller does not intend to issue any bonds to finance the construction of the 6<sup>th</sup> and Grace Parking Facilities as the Seller cannot afford to do so consistent with its policies governing the issuance of debt obligation; and

WHEREAS, the Seller, therefore, declared the Property surplus by Ordinance No. \_\_\_\_\_, adopted by the City Council for the City of Richmond on \_\_\_\_\_, \_\_\_\_\_; and

WHEREAS, the Purchaser desires to purchase the Property from the Seller at arms-length for monetary consideration in the amount of \$3,950,000.00; and

WHEREAS, the Purchaser intends to develop the Property pursuant to certain development requirements herein, which development will include at least 600 public parking spaces as described in paragraph 9(a)(ii) below; and

WHEREAS, the Purchaser intends to expend at least \$86,000,000 for the acquisition, construction, and development of the Property; and

WHEREAS, the Seller requested the Purchaser to provide an independent appraisal of fair market value of this property to determine an independent valuation of the property, for the benefit of both parties; and

WHEREAS, the Seller desires to convey the Property to Seller at arms-length in exchange for monetary consideration in the amount of \$3,950,000.00 to facilitate Seller's development of the Property; and

WHEREAS, the Seller intends to utilize the cash proceeds from the conveyance for other capital improvement projects within 24 months of receipt thereof.

The following terms and conditions apply.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the Deposit defined in Section 3 herein, paid by the Purchaser to the Seller, the receipt and sufficiency of which is hereby acknowledged, the Purchaser hereby agrees to purchase, and the Seller hereby agrees to sell in consideration of the Seller's payment of the Purchase Price as defined in Section 2 herein, the Property pursuant to the following terms and conditions:

1. Recitals. The Recitals above are incorporated herein by reference.
2. Purchase Price. The Purchaser shall pay to the Seller, as consideration for Seller's conveyance of the Property, the sum of \$3,950,000.00 (the "Purchase Price"). This Purchase Price is based on the Independent Appraisal dated August 26, 2016 performed by Colliers Valuation & Advisory Services, a copy of which has been provided to Seller.
3. Deposit. The Purchaser has provided the Seller with \$395,000.00 (10% of the Purchase Price) as an earnest money deposit (the "Deposit"). The Deposit 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 shall be returned to the Purchaser within thirty (30) business days after termination 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. Upon request by either party, the Purchaser and Seller shall confirm the Effective Date in writing.

5. Assignment. 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, as hereinafter defined, without the prior written approval of Seller, which shall not be unreasonably withheld. Notwithstanding the foregoing, Purchaser may assign or transfer this Agreement or the Property to an entity formed by the Purchaser for the limited purpose of owning or developing the Property under the terms of this Agreement; provided, however, 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. Except as otherwise provided herein, in the event that Purchaser assigns or transfers this Agreement or title to the Property prior to the completion of the Development without Seller's written approval, Seller shall be entitled to any and all remedies available at law or in equity.

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 from and after the Effective Date until Closing, provided that Purchaser hereby indemnifies and holds harmless the Seller for any acts of negligence by Purchaser or its employees, agents, invitees or contractors that occur on Seller's property during said access. Subject to the conditions set out herein, Purchaser shall have access to the Property between 8:00 AM and 5:00 PM during the Seller's work days, or any other time mutually agreed to by the parties, to permit the proper performance of the Due Diligence; provided that Purchaser shall, at its sole expense: (i) procure general liability insurance covering the activities of Purchaser, its employees, agents, invitees or contractors at the Property in the amount of \$1 million per occurrence prior to entering the Property; said policy shall also name the Seller as an additional insured and Purchaser shall provide certificates evidencing said policy to the Seller prior to Purchaser or any other party acting on Purchaser's behalf entering the Property; and (ii) return the Property to its previous condition and repair 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 reasonable 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. Due Diligence; Necessary Funding; Zoning; Title.

(a) Due Diligence. Purchaser shall have the right from and after the Effective Date to perform Due Diligence, as hereinafter defined, with respect to its intended use and development of the Property as provided herein. The Purchaser shall have one hundred eighty (180) 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 inspections, appraisals, studies, surveys, tests, evaluations and investigations, including without limitation title, survey, engineering studies, environmental, soil, drainage, utilities and traffic studies 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 the Development, as hereinafter defined, not feasible, then Purchaser shall so notify the Seller in writing within ten (10) days after the Due Diligence Period has ended; and if said notice is provided, this Agreement shall terminate and the Deposit shall be returned to the Purchaser and the Seller and Purchaser shall have no further rights or obligations to one another hereunder. If Purchaser does not provide said notice, this option to terminate due to Due Diligence results shall be forfeited. If the Purchaser does not perform reasonable Due Diligence, as determined by the Seller in its reasonable discretion, within the timeframe set out herein, the Seller may elect to (i) extend the timeframe by which Purchaser must perform such reasonable Due Diligence or (ii) terminate the Agreement by written notice to Purchaser and thereafter the Deposit shall be returned to Purchaser within a reasonable time thereafter and the Seller and Purchaser shall have no further rights or obligations to one another hereunder. Any determination or lack of determination by the Seller regarding the Purchaser's Due Diligence shall not operate to warrant or guaranty the condition of the Property or whether the Property is suitable for the Development, or use thereof and Seller incorporates Section 12 of this Agreement herein by reference.

(b) Necessary Funding. Closing on this Agreement is contingent upon Purchaser providing internal funds or obtaining a written loan commitment, or a combination of both, at Closing for acquisition of the Property and completion of Phase I of the Development as hereinafter defined (the "Necessary Funding"). The availability of the Necessary Funding shall be determined by the Seller in its reasonable discretion. Purchaser agrees to make application for financing to obtain the Necessary Funding within thirty (30) days after the expiration 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, as determined by the Seller in its reasonable discretion, and so notify Seller in writing within ninety (90) days after the end of the Due Diligence Period, Seller may elect to (i) extend the timeframe by which the Purchaser must comply or (ii) terminate this Agreement by written notice to Purchaser and thereafter the Deposit shall be returned to Purchaser and the Seller and Purchaser shall have no further rights or obligations to one another hereunder.

(c) Zoning. Prior to the expiration of the Due Diligence Period, Purchaser shall secure a zoning confirmation letter issued by the Zoning Administrator for the City of Richmond certifying that Phase I of the Development, as hereinafter defined, will meet all necessary zoning requirements. If the Purchaser does not obtain the required zoning confirmation prior to the end of the Due Diligence Period, the Seller may elect to (i) extend the timeframe by which the Seller must comply or (ii) terminate this Agreement by written notice to Purchaser and thereafter the Deposit shall be returned to Purchaser and the Seller and Purchaser shall have no further rights or obligations to one another hereunder.

(d) Title. Title to the Property is to be good of record and in fact, fully marketable and insurable by a recognized title insurance company of Purchaser's selection authorized to do business in the Commonwealth of Virginia ("Title Company") at regular rates without exception, except for such matters listed on Exhibit A attached hereto and incorporated herein (the "Permitted Exceptions") and such other matters which are acceptable to Purchaser, in

Purchaser's sole discretion. Prior to expiration of the Due Diligence Period, Purchaser shall, at its own expense, order a standard ALTA commitment for owner's title insurance for the Property ("Title Commitment"), and shall, prior to expiration of the Due Diligence Period, obtain an ALTA survey of the Property ("Survey") sufficient in form and substance to enable the Title Company to remove its standard survey exception. If, other than the Permitted Exceptions, Purchaser finds any of the exceptions to title set forth in the Title Commitment or matters shown on the Survey to be material defects in title, Purchaser shall provide Seller written notice no later than 5:00 p.m. on the tenth (10<sup>th</sup>) day after expiration of the Due Diligence Period setting forth the Purchaser's title and survey objections ("Title Objections") and enclosing a copy of the Title Commitment and Survey. If Purchaser fails to give such notice timely, Purchaser shall be deemed to have accepted all title exceptions and survey objections that are reported in the Title Commitment or Survey and forfeits any right to terminate this Agreement pursuant to this subsection 7(d). If Purchaser timely provides written notice of its Title Objections, Purchaser shall be deemed to have accepted all title exceptions reported in the Title Commitment other than the Title Objections expressly set forth in the notice and Purchaser forfeits any right to terminate this Agreement pursuant to this subsection 7(d) for any matter other than those Title Objections expressly set forth in the notice. Upon written notice of the Title Objections, Seller may, in its sole discretion, attempt to cure any Title Objections. If any Title Objections are not cured by Seller within 30 days of such written notice or the expiration of the Due Diligence Period, whichever day occurs later, then Purchaser may, at its option, either: (i) terminate this Agreement by delivery of written notice thereof to Seller, whereupon the Deposit shall be returned to Purchaser as provided in paragraph 3 above and Seller and Purchaser shall have no further rights or obligations to one another hereunder, (ii) waive such Title Objections and proceed to Closing, or (iii) if requested by Seller, extend the Closing date for a period of time sufficient for Seller to remedy such Title Objections, without Purchaser waiving its right to terminate this Agreement in the event that Seller is unable to remedy such Title Objections prior to such extended Closing Date.

8. Closing. Provided Purchaser is not in default hereunder and this Agreement has not otherwise been terminated, 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 is ready to close, and in no event later than sixteen (16) months after the 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 reasonable discretion. At Closing, Seller shall deliver to Purchaser (1) exclusive possession of the Property and (2) a deed conveying the Property to Purchaser, which deed shall convey the Property subject to any Permitted Exceptions or other exceptions to title accepted by Purchaser, and shall be in a form approved by the Office of the City Attorney for the City of Richmond (the "Deed"). Sections 5, 9, 10, 11, 14, 18, 21, 24, 25, 29, and 30 of this Agreement (the "Surviving Sections") shall be incorporated into the Deed and shall expressly survive the Closing, the transfer and recordation of the Deed, and any subsequent transfer of the Property. The Deed shall acknowledge the survival of the Surviving Sections and shall specifically list the Development requirements and the Post-Closing Covenants set forth in Sections 9 and 10 of this Agreement as well as the remedy set forth in Section 18(b) of this Agreement.

9. Development. The Purchaser shall complete the development of the Property as set forth herein (the "Development"), a portion of which shall be completed in Phase I as set forth herein and pursuant to the deadline for completion of Phase I set forth in Section 10(a)(1) of this Agreement. Collectively, Phase I and the Remaining Development, as set forth herein, shall

constitute the Development. This Section 9 shall expressly survive Closing and recordation of the Deed.

(a) Phase I of the Development shall include the following (collectively, the "Phase One Requirements").

(i) Demolition of the Current Parking Deck.

(ii) A minimum of 800 parking spaces (the "Parking Spaces") at or above grade in a newly constructed parking deck (the "Required Parking Deck"). No such parking spaces shall be located on a surface lot. A minimum of 600 of such parking spaces shall be and remain open to public use (the "Public Parking Spaces") daily from 6 a.m. to 12 p.m. and any such additional hours determined by the Purchaser subject to reasonable maintenance requirements. The Public Parking Spaces shall be available for hourly, daily, and monthly rental or use by the general public for no greater than the market rate in the surrounding area; provided, however, that no less than 200 Public Parking Spaces shall be available at all times for hourly or daily rental or use. The Required Parking Deck shall front any streets to which it is adjacent and those portions of the ground floor of the Required Parking Deck directly along the street frontage ("Parking Deck Ground Level Street Frontage") shall not be used for parking or related circulation of vehicles but, rather, shall be devoted to other permitted retail and commercial uses in the applicable zoning district, as set forth in Chapter 30 of the Code of the City of Richmond (2015) ("City Code"), which uses shall have a depth of not less than 20 feet along the street frontage. Notwithstanding the foregoing, a portion or portions of the Parking Deck Ground Level Street Frontage may be used as a means of pedestrian or vehicular access in such locations approved by the Director of Planning and Development Review for the City of Richmond.

(iii) A minimum of 28,000 square feet designated for ground level retail and commercial use within the frontage of Grace and 6th Streets adjacent to the Property and in the Parking Deck Ground Level Street Frontage.

(b) The Remaining Development shall include a minimum of 372,000 square feet designated for residential or commercial use (or a combination thereof) in addition to any area used to satisfy the Phase I Requirements.

(c) Provided nothing herein shall be deemed to waive or alter the deadlines for completion of Phase I or the Development set forth in Section 10 of this Agreement, the Purchaser may construct Phase 1 and the Remaining Development, or a portion thereof, simultaneously.

(d) The Development shall create a total assessed value for the Property, as assessed pursuant to Chapter 26 of the City Code, of at least EIGHTY SIX MILLION DOLLARS (\$86,000,000.00) within the deadline set forth in Section 10(a)(iii) of this Agreement (the "Total Assessment Goal").

10. Post-Closing 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 Phase I of the Development and make available the Public Parking Spaces within twenty-four (24) months after expiration of the City Lease, as defined in Section 11 of this Agreement. Provided, however, if the parties do not enter into the City Lease then Purchaser covenants to complete Phase I of the Development and make available the Public Parking Spaces within twenty-four months after Closing and issuance of a demolition permit for demolition of the existing parking deck as part of Phase 1 of the Development provided that Purchaser shall apply for such demolition permit within thirty (30) days after Closing and shall diligently pursue issuance of such permit.

(ii) Purchaser covenants to complete the Development within sixty (60) months after Closing.

(iii) Purchaser covenants that the total assessed value of the Property, as assessed pursuant to Chapter 26 of the City Code, for the then-current tax year as of the date occurring seventy-two (72) months after Closing (the "Applicable Tax Year"), will meet or exceed the Total Assessment Goal. If, as of the date occurring seventy-two (72) months after Closing, the Purchaser believes it has been aggrieved by the assessment of any of the parcels constituting the Property for the Applicable Tax Year and Purchaser qualifies to apply for equalization thereof pursuant to the then-current City Code, then Purchaser shall so notify Seller in writing of its intent to apply for such equalization on or before the date occurring seventy-two (72) months after Closing and shall notify Seller at such time Purchaser applies for such equalization. If Purchaser so notifies Seller and Purchaser applies for such equalization within the timeframes set forth by the then-current City Code, then Purchaser shall not be deemed in default of this subsection (a)(iii) and shall not be deemed liable for damages set forth in Section 18(b) of this Agreement, until such time that the Assessor for the City of Richmond makes a determination as to such application for equalization. If, upon hearing the Purchaser's evidence, the Assessor alters the assessed value for any of the parcels constituting the Property for the Applicable Tax Year, then the assessed value(s) as altered shall be used to determine whether the total assessed value of the Property meets the Total Assessment Goal.

(iv) Purchaser covenants to develop 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.

(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 Section 18 of this Agreement entitled "Seller's Remedies."

(c) This Section 10 shall expressly survive Closing and recordation of the Deed.

11. Seller's Temporary Use. If Closing occurs within twelve (12) months after the Effective Date and if requested by the City's Chief Administrative Officer (the "CAO"), Purchaser agrees to lease to the City that portion of the parking structure currently located on the Property, which is currently used by Seller for its parking administrative offices, in the discretion of the CAO, for a period of twelve months from the date of Closing, or such shorter period determined by the CAO, for ONE DOLLAR (\$1.00) per month (the "City Lease"). The City's Chief Administrative Officer is authorized to execute the City Lease on behalf of the City provided it is in a form approved by the Office of the City Attorney. This Section 11 shall expressly survive Closing and recordation of the Deed.

12. No Representations or Warranties. As to the Property, Purchaser warrants and acknowledges to and agrees with Seller that Purchaser is purchasing the Property in an "AS IS" condition "With All Faults" and except as otherwise specifically set forth herein 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.

13. Authority.

(a) Seller hereby represents and warrants to Purchaser that it is a Virginia municipal corporation and has the full right, power and authority to enter into this Agreement and to perform each and all of its obligations hereunder. Seller further represents and warrants to Purchaser in good faith that it has provided to Purchaser copies or otherwise made Purchaser aware of any and all agreements, contractual commitments, obligations or undertakings duly executed and entered into between Seller and any other person or entity upon or after the Seller's acquisition of the Property from the CDA, which relate to the development of the Property and which are not otherwise duly recorded in the Clerk's Office of the Circuit Court of the City of Richmond, Virginia.

(b) Purchaser hereby represents and warrants to Seller that it is a limited liability company duly formed under Virginia law and has the full right, power and authority to enter into this Agreement and to perform each and all of its obligations hereunder.

14. Purchaser to Indemnify Seller.

(a) As set forth in paragraph 13(a), Seller believes in good faith that entry into this Agreement and the performance of Seller's obligations hereunder will not result in the breach of any contract commitment, undertaking, or obligation with respect to the Property or the

development thereof or result in the violation of any law, rule, regulation or ordinance applicable to Seller or the Property.

(b) Notwithstanding the foregoing, Purchaser agrees to indemnify, defend, and hold harmless Seller against any and all claims (including any and all damages resulting therefrom), contractual or otherwise, that Seller's entry into this Agreement (including the performance of any of the obligations hereunder) constitutes Seller's breach of any contractual commitment, undertaking, or obligation with respect to the Property or the development thereof.

15. Pro-rations and Closing Costs. Purchaser shall pay for any recording tax imposed upon grantee as to the Deed, if any, and, unless otherwise agreed herein, all other expenses incurred by Purchaser in connection with this purchase including, without limitation, surveys, title examination, insurance premiums, recording costs, loan document preparations costs, and fees of Purchaser's attorney.

16. 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.

17. 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 may either: (i) terminate this Agreement by written notice as herein provided, in which case the Deposit shall be refunded to the Purchaser and this Agreement shall become void, with neither party having any further liability hereunder, or (ii) bring a claim against Seller for specific performance hereunder.

18. 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) In the event the total assessed value of the Property, as assessed pursuant to Chapter 26 of the City Code, for the Applicable Tax Year does not meet or exceed the Total Assessment Goal as set forth in Sections 9 and 10 of this Agreement, then Purchaser shall pay to 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 total assessed value of the Property falls short of the Total Assessment Goal (the "Liquidated Damages"). The Liquidated Damages shall constitute a lien on the Property and shall be attributable to the Property in the same manner as city taxes levied upon real estate. Seller and Purchaser agree that in the event the Total Assessment Goal 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 Liquidated Damages constitute a reasonable estimate of the damages that would be suffered by Seller. Purchaser agrees to pay the Liquidated Damages to Seller within one hundred twenty (120) days of receipt of written notification from Seller that the Total Assessment Goal has not been satisfied. After Purchaser's payment in full of the Liquidated Damages, Seller shall deliver to Purchaser a certificate in recordable form evidencing payment of such sum within 30 days of request to do so from Purchaser.

(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.

(d) This Section 18 shall expressly survive Closing and recordation of the Deed.

19. Delivery of Seller's Documentation. To the extent that any of the following items exist and are in the possession of the Seller and can be located through a reasonable search, Seller agrees to furnish to Purchaser, within ten (10) days from the Effective Date of this Agreement, any and all inspection reports, surveys, title reports, topographical maps, engineering reports, and any plans or profiles of any roadways, easements, or utility lines, proffered conditions, and any and all correspondence or agreements with any federal, state, county, or city governmental body or agency thereof in connection with the acquisition, purchase, or development of the Property. Seller further agrees to furnish to Purchaser all information available to Seller concerning the environmental condition of the Property. Notwithstanding the foregoing, Seller's failure to provide any document contemplated hereunder shall not constitute a breach or default by Seller unless such document is withheld by Seller in a bad faith effort to deceive Purchaser.

20. 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:

Director, Economic & Community Development  
City of Richmond  
1500 East Main Street, Suite 400  
Richmond, Virginia 23219

With a Copy to:

City Attorney  
City of Richmond  
900 East Broad Street, Room 300  
Richmond, Virginia 23219

To Purchaser:

City Center Development, LLC  
Robert P. Englander, Jr.  
P. O. Box 14532

Richmond, Virginia 23221

With a Copy to: Christopher M. Malone, Esquire  
ThompsonMcMullan, PC  
100 Shockoe Slip  
Richmond, Virginia 23219

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.

21. 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. The parties acknowledge that Robert P. Englander, Jr., one of the principals of Purchaser, is a licensed real estate agent and that he is not acting in such capacity with respect to the transaction contemplated by this Agreement. This Section 21 shall expressly survive Closing and recordation of the Deed.

22. 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. Furthermore, Purchaser warrants that itself, its partners, 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.

23. 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.

24. 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, 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. This Section 24 shall expressly survive Closing and recording of the Deed.

25. Time for Performance. TIME IS OF THE ESSENCE HEREUNDER. This Section 25 shall expressly survive Closing and recordation of the Deed.

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



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

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

29. 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. This Section 29 shall expressly survive Closing and recordation of the Deed.

30. Signature Authority. Except as specifically otherwise set forth in this Agreement, the CAO or the designee thereof may provide any authorization, approvals, and notices contemplated herein on behalf of the Seller. This Section 30 shall expressly survive Closing and recordation of the Deed.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

WITNESS the following signatures and seals:

**SELLER:**

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

By: \_\_\_\_\_  
Selena Cuffee-Glenn, Chief Administrative Officer

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

Approved As To Form:

\_\_\_\_\_  
City Attorney's Office

Approved As To Terms:

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

**PURCHASER:**      **CITY CENTER DEVELOPMENT, LLC, a Virginia limited liability  
company**

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

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

EXHIBIT A  
PERMITTED EXCEPTIONS

AS TO PARCEL NO. W0000008001

1. Easement granted to Chesapeake and Potomac Telephone Company by Instrument recorded April 16, 1928 in Deed Book 352B, page 86.
2. Agreement with Virginian Electric and Power Company recorded July 19, 1951 in deed Book 534D, page 415, for transformer vault.

AS TO PARCEL NO. W0000008008

1. Title to westerly or rear 12' of the premises (referred to as a 12' alley in old deeds and plats). See plat recorded in Plat Book 7, page 124 and referenced in Deed Book 633B, page 548.