

INTRODUCED: January 27, 2014

AN ORDINANCE No. 2014-

To provide for the granting by the City of Richmond to the person, firm or corporation to be ascertained in the manner prescribed by law, of the lease, franchise, right and privilege to use and maintain certain property located at 12 North Belvidere Street for the management, maintenance, and operation of Monroe Park in accordance with a certain Agreement and Deed of Lease.

Patrons – Mayor Jones and President Samuels

Approved as to form and legality
by the City Attorney

PUBLIC HEARING:

AT 6 P.M.

WHEREAS, following the introduction of this ordinance, the City Clerk has caused to be advertised, once a week for two successive weeks in a newspaper of general circulation published in the city of Richmond, a descriptive notice of the Agreement and Deed of Lease attached to this ordinance, which notice:

1. included a statement that a copy of the full text of the ordinance is on file in the office of the City Clerk;
2. invited bids for the franchise, privilege, lease or right offered to be granted in and by this ordinance, which bids were to be:

AYES: _____ NOES: _____ ABSTAIN: _____

ADOPTED: _____ REJECTED: _____ STRICKEN: _____

- a. delivered in writing to the presiding officer of the Council of the City of Richmond at its regular meeting to be held on February 24, 2014, at 6:00 p.m., in open session;
 - b. presented by the presiding officer to the Council; and
 - c. then dealt with and acted upon in the mode prescribed by law;
3. required that all bids for the franchise, rights and privileges hereby offered to be granted shall be submitted in writing as required by law; and
 4. reserved the Council's right to reject any and all bids; and

WHEREAS, the deadline for the receipt of bids has passed, all bids have been received, and the Council is prepared to act in accordance with sections 15.2-2102 or 15.2103, or both, of the Code of Virginia (1950), as amended;

NOW, THEREFORE,

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That there shall be granted in the manner prescribed Article VII, Section 9 of the Constitution of Virginia and Title 15.2, Chapter 21, Article 1, §§ 15.2-2100—15.2-2108.1:1 of the Code of Virginia (1950), as amended, a lease for certain property located at 12 North Belvidere Street for the management, maintenance, and operation of Monroe Park on that property as described and under the conditions set forth in the Agreement and Deed of Lease, a copy of which is attached to and incorporated into this ordinance, to the following tenant:

_____.

§ 2. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute the Agreement and Deed of Lease between the City of Richmond as landlord and the tenant identified in section 1 of this ordinance to lease certain real

property located at 12 North Belvidere Street for the management, maintenance, and operation of Monroe Park by such tenant, provided that:

(a) The Agreement and Deed of Lease has first been approved as to form by the City Attorney and is substantially in the form of the document attached to this ordinance;

(b) The tenant identified in section 1 of this ordinance has first executed a bond, with good and sufficient security, in favor of the City of Richmond, Virginia, in the amount of \$30.00 and conditioned upon the construction, operation and maintenance of Monroe Park as provided for in the granted lease, franchise, right and privilege, with such bond in a form acceptable to the Chief Administrative Officer and approved as to form by the City Attorney; and

(c) The tenant identified in section 1 of this ordinance has first paid all costs incurred in connection with the advertisement of this ordinance, in accordance with section 15.2-2101 of the Code of Virginia (1950), as amended.

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



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

RECEIVED
O & R REQUEST
DEC 03 2013
CHIEF ADMINISTRATIVE OFFICE
CITY OF RICHMOND

O&R REQUEST

DATE: November 27, 2013

TO: The Honorable Members of City Council

THROUGH: Dwight C. Jones, Mayor

THROUGH: Byron C. Marshall, Chief Administrative Officer

THROUGH: Sharon O. Judkins, Deputy Chief Administrative Officer for Finance and Administration

THROUGH: Rayford L. Harris, Director of Budget and Strategic Planning

THROUGH: Christopher L. Beschler, Deputy Chief Administrative Officer for Operations

FROM: Staci L. Boone, Special Assistant to DCAO

RE: Lease of Monroe Park to Monroe Park Conservancy

ORD. OR RES. No. _____

PURPOSE: To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Lease Agreement between the City of Richmond as landlord and the Monroe Park Conservancy as tenant to lease certain real property located at 12 North Belvidere Street for the management, maintenance, and operation of Monroe Park.

REASON: This ordinance is necessary to authorize the Chief Administrative Officer to sign a lease agreement for Monroe Park negotiated with the Monroe Park Conservancy.

RECOMMENDATION: The City Administration recommends adoption of this ordinance.

CO-PATRON: The Richmond City Council President, Charles Samuels, would like to co-patron this paper. Please see attached email.

BACKGROUND: The property located at 12 North Belvidere Street is known as Monroe Park and identified as Tax Parcel No. W000-0352/001 in the Assessor's records. The park is bounded

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RECEIVED
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OFFICE OF CITY ATTORNEY

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on the north by West Franklin Street, on the east by North Belvidere Street, on the south by West Main Street, and on the west by North Laurel Street.

The sidewalks, drainage system, utilities, landscaping, and amenities of Monroe Park are beginning to show wear and are in need of repair and replacement. The Monroe Park Conservancy is a Virginia non-stock corporation formed to raise private funds for certain improvements to the park and to manage and operate the park as a park. Pursuant to the terms of the Lease Agreement, the Conservancy will endeavor to raise \$3,000,000 for these improvements. The Conservancy will provide the funds raised to the City, and the City will construct the improvements.

The Lease Agreement has a 30-year term that commences upon the completion of certain specified improvements to the park. At the end of the initial 30-year term, the Lease Agreement automatically renews for one ten-year period unless terminated by either party upon 12 months' prior written notice to the other party. The Conservancy will pay nominal rent in the amount of \$1.00 per year.

FISCAL IMPACT / COST: The Fiscal Year 2013-2014 Capital Budget appropriates \$435,000 for the Monroe Park – Renovations and Restoration project in the Culture and Recreation category. The Fiscal Year 2014-2018 Capital Improvement Program plans for an additional appropriation of \$1,235,000 in Fiscal Year 2014-2015. This provides a total of \$1,670,000 for the improvements to Monroe Park.

FISCAL IMPLICATIONS: Under the Lease Agreement, the Monroe Park Conservancy will provide up to \$3,000,000, increasing the amount available for the construction of improvements to Monroe Park from the \$1,670,000 currently appropriated and planned to a total of \$4,670,000.

BUDGET AMENDMENT NECESSARY: When funds are received from the Monroe Park Conservancy, an amendment to the Capital Budget will be necessary.

REVENUE TO CITY: The Monroe Park Conservancy will provide up to \$3,000,000 in funds raised from private sources for the improvements to Monroe Park.

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: December 9, 2013.

CITY COUNCIL PUBLIC HEARING DATE: January 27, 2014.

REQUESTED AGENDA: Consent Agenda.

RECOMMENDED COUNCIL COMMITTEE: Land Use, Housing and Transportation Standing Committee – January 21, 2014.

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: None.

AFFECTED AGENCIES: City Attorney's Office, Department of Parks and Recreation, Department of Public Utilities, Department of Public Works.

RELATIONSHIP TO EXISTING ORD. OR RES.: None.

REQUIRED CHANGES TO WORK PROGRAM(S): None.

ATTACHMENTS: ready-to-execute version of Lease Agreement
conceptual drawings

STAFF: Staci Boone, Special Assistant to DCAO, x6044.

AGREEMENT AND DEED OF LEASE

THIS AGREEMENT AND DEED OF LEASE (this "Lease") is made by and between **THE CITY OF RICHMOND**, a municipal corporation of the Commonwealth of Virginia ("Landlord"), and _____, a _____ ("Tenant"), effective as of the last date of execution of this document by the parties (the "Effective Date").

RECITALS

- A. Monroe Park has been a welcoming green space in downtown Richmond, Virginia for over a century, enjoyed by generations of Richmond citizens and visitors.
- B. The sidewalks, drainage systems, utilities, landscaping and amenities of Monroe Park are beginning to show wear and are in need of repair and replacement.
- C. Landlord desires that Monroe Park be restored, beautified and enhanced.
- D. Tenant has been formed to provide private funding for certain improvements and to provide ongoing management and supervision of Monroe Park.

AGREEMENT

NOW, THEREFORE, for and in consideration of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants contained herein, Landlord and Tenant hereby agree as follows:

1. **PREMISES.** Commencing on the Commencement Date (as hereafter defined) Landlord demises and leases to Tenant and Tenant leases from Landlord that certain real property on which Monroe Park is located, the improvements thereon, including the Improvements (as hereafter defined) and any improvements made hereafter unless otherwise agreed by the parties (together, the "Premises") as the same is more particularly described on Exhibit A attached hereto and made a part hereof. The Premises is leased "AS IS" except as otherwise stated herein.
2. **TERM.** The term of this Lease shall commence on the Commencement Date and shall end on the thirtieth (30th) anniversary of the Commencement Date (the "Term"). The Term shall automatically renew for one ten (10) year period unless terminated by either party upon twelve (12) month's prior written notice. Notwithstanding the foregoing, Tenant shall send written notice to Landlord, at least eighteen (18) months before the end of the Term, of the automatic renewal of this Lease (the "Renewal Notice"). In the event Tenant fails to deliver the Renewal Notice, this Lease shall expire on the last day of the Term. This Lease may be renewed thereafter upon an affirmative act of the City Council for the City of Richmond, Virginia. Upon any such renewal or extension, "Term" shall include any such renewal or extension.
3. **CONSTRUCTION PERIOD; TITLE TO IMPROVEMENTS.**
 - (a) Funds. Tenant shall endeavor to raise \$3,000,000.00 in cash, pledges, grants, in-kind contributions, or any other contributions (collectively, the "Contributions") to contribute to the construction of those certain above and below ground improvements and renovations (the

“Improvements”) as more particularly shown on those certain plans, including the drawings, entitled “Monroe Park, Renovation and Restoration, City of Richmond,” prepared by 3 north and dated October 30, 2009, a list of which is attached as Exhibit B, and the Project Manual for the Monroe Park Renovation and Restoration, dated October 31, 2009 (collectively, the “Plans”). If the Improvements and the Plans are modified or amended as allowed herein, the terms “Improvements” and “Plans” shall refer to the Improvements and Plans as modified or amended. The Contributions will be used in conjunction with the Landlord’s monies, if appropriated by the City Council for the City of Richmond, to complete the Improvements (collectively, the “Funds”).

(1) Once the Landlord has received the Contributions, or satisfactory evidence, in the Landlord’s discretion, that the Contributions have been or will be raised and the Tenant has ensured payment of, and the City Council for the City of Richmond has appropriated the remaining necessary monies for the Funds, the Landlord will endeavor to solicit a contract or contracts to complete the Improvements. In the event the Funds are not obtained or a contract or contracts to complete the Improvements is not entered into by Landlord, all Contributions shall be returned to Tenant within a reasonable amount of time, not to exceed ninety (90) days.

(2) In no way is Landlord committing to complete or contract for the completion of any work or Improvements if the Funds are insufficient to pay for such work or Improvements. If the responses to the Landlord’s procurement efforts indicate that the Funds will not allow for the construction of the Improvements as set out in the Plans, as reasonably determined by the Landlord in its sole discretion, Landlord shall provide Tenant written notice that the cost of the lowest response exceeds available funding and thereafter Tenant and Landlord have sixty (60) days to negotiate and mutually agree on changes to the Improvements and the Plans which shall be mutually agreed to in writing between the Landlord, through its Chief Administrative Officer or a designee thereof, and the Tenant. If Landlord and Tenant cannot agree on changes to the Improvements and the Plans within sixty (60) days after the Landlord has provided written notice of the responses, and the Landlord, through its Chief Administrative Officer or a designee thereof, and the Tenant do not agree to extend such period in writing, this Lease shall terminate and the Landlord and Tenant shall have no claim against the other hereunder. If the responses to the Landlord’s procurement efforts allow for the construction of the Improvements as set out in the Plans, as reasonably determined by the Landlord in its sole discretion, Landlord shall be obligated to construct the Improvements.

(3) If there are Funds remaining following completion of the construction of the Improvements, the Funds will be divided between the Landlord and the Tenant at a share equal to the monetary value of each party’s proportional contribution to the Funds (i.e., if the monetary value of the Tenant’s Contributions equal 45% of the Funds and the Landlord provides 55% of the Funds, then the Tenant shall be entitled to 45% of any remaining Funds and the Landlord shall be entitled to 55% of any remaining Funds.)

(b) Project Management. The Landlord will hire a project manager to facilitate and manage the solicitation of a contract or contracts for the construction of the Improvements and administer the contract or contracts for construction of the Improvements (the “Project Manager”). The Landlord will endeavor to use 3 north, PLC as the Project Manager pursuant to its existing contract with 3 north, PLC identified as City Contract No. 08217-1 (the “3 north Contract”). This requirement shall be subject to the 3 north Contract still being in effect and shall be subject to the

availability of funds under the 3 north Contract which is subject to the appropriation of the City Council for the City of Richmond, Virginia. The Project Manager will:

(1) Assist the Landlord in the utilization of the portion of the Funds provided by the Tenant's Contributions and the portion of the Funds appropriated by City Council.

(2) Assist the Landlord in reviewing the Plans and cost estimate to ensure their accuracy in the then-current market and assist the Landlord and architect in amending or modifying the Plans if necessary.

(3) Assist the Landlord in drafting specifications and a scope of work to be included in the necessary procurement solicitation of a contract or contracts for completing the Improvements.

(4) Once a contract or contracts for the Improvements is in place, monitor the progress of the Improvements to ensure the project is being completed to the specifications and contractual terms and to the standards as set forth in Section 3(d) of this Lease.

(5) Review invoices related to any contract for Improvements prior to the City paying such invoices. The City shall only pay invoices that are approved by the Project Manager, whether such invoices are to be paid from the Contributions or otherwise.

(c) Plans. If, after commencement of construction of the Improvements, the Landlord determines the Funds will not allow for construction of the Improvements as set out in the Plans (due to cost overruns or otherwise), the parties shall mutually agree to modifications to the Improvements and/or Plans, the Landlord shall cause the Plans to be modified and the Landlord shall be obligated to construct the Improvements, as modified.

(d) Standard of Construction. Landlord shall cause the construction of the Improvements according to the Plans and all applicable laws, rules and regulations and in a good and workmanlike manner free from defects.

(e) Title. All title, right and interest in the Improvements and all other improvements on the Premises and fixtures situated thereon and to any and all alterations, changes and additions thereto now or hereafter constructed shall remain solely vested in the Landlord.

(f) Completion and Commencement Date. Upon substantial completion of the Improvements, Landlord shall submit to Tenant a certificate of substantial completion from the Project Manager. Upon Landlord providing the Tenant a certificate of substantial completion for the Improvements, the Term shall commence (the "Commencement Date"). The Landlord shall provide written notice of the Commencement Date to the Tenant.

4. **RENT.** Commencing on the Commencement Date, Tenant covenants and agrees to pay Landlord rent for the Premises for the then current Term in the amount of \$1.00 per year, which Tenant may pay to Landlord in full as one payment of Thirty Dollars (\$30.00). Rent for the ten (10) year renewal period provided for in Section 2 herein shall also be in the amount of \$1.00 per year, which Tenant may pay to Landlord in full as one payment of Ten Dollars (\$10.00).

5. **AGREEMENTS, EASEMENTS, SUBLEASES AND OTHER TRANSFERS.**

(a) Service Agreements. During the Term, Tenant at its sole expense may enter into agreements to service, repair, maintain and replace (with the same as was before) the Premises, including the Improvements, without Landlord's consent, provided such do not grant any interest in the Premises (such as an easement or sublease, except as provided in subsection (d) below) and provided that Tenant shall provide Landlord a copy of any such service agreement within five (5) business days after the same is requested by the Landlord in writing.

(b) Easements. Landlord agrees, subject to and to the extent permitted by applicable law (including but not limited to any action required to be taken by the City Council of the City of Richmond, Virginia), to accommodate any reasonable requests by Tenant for the grant of easement rights across the Premises for utilities or other facilities servicing and benefiting the Premises and Tenant's use and operation thereof.

(c) Secured Interests in Tenant's Leasehold. Tenant shall not encumber Landlord's interests in the Premises with a mortgage, deed of trust or other kind of lien without the prior written consent of Landlord, which Landlord may withhold in its sole discretion.

(d) Licenses/Subleases. Landlord understands and agrees that Tenant intends to enter into use, sublease, license and similar agreements with performing arts groups and other third parties to use Premises or portions thereof. Tenant will deliver a copy of any such agreement to Landlord upon Landlord's request. Tenant shall have the right to sublease and license portions of the Premises to third parties without Landlord's consent, so long as: (i) the term of any such agreement is less than thirty (30) days; (ii) the term will not automatically renew or be renewed for consecutive or near consecutive terms which cumulatively will have the effect of extending the relationship beyond 30 days; and (iii) the use of the Premises by the sublessee/licensee will not require a permit for such use to be issued by the Landlord pursuant to the Richmond City Code or require Landlord to provide security or solid waste disposal services. All other subleases and licenses negotiated by Tenant shall be subject to the reasonable approval of the Director of the City of Richmond's Department of Parks, Recreation and Community Facilities ("Parks and Rec"). All licenses and subleases or similar agreements shall require that the subtenant or licensee:

(1) comply with the use policies established by the Board of Directors of the Tenant (the "Use Policies");

(2) provide evidence of any required permits and licensing agreements, if any;

(3) indemnify, defend and hold harmless Tenant and Landlord and their respective officers and employees from and against any and all claims, costs, demands, expenses, judgments, losses, suits and other liabilities of any type (including but not limited to those relating to death or injury, property damage or environmental liability and those related to intellectual property for the performance or playing of intellectual property not owned or otherwise authorized by the sublessee or licensee), and any claim including attorneys' fees and other costs of litigation, caused by, arising from or relating to the acts or omissions of such licensee or subtenant, and its respective officers, employees, agents, servants, volunteers, contractors or guests and from any breach by such licensee or subtenant

of the terms of its license or sublease; and

(4) maintain and provide a certificate of insurance indicating that it maintains commercial general liability insurance coverage at levels acceptable to Tenant and consistent with the Use Policies.

(5) if applicable, warrant that it will not infringe, or cause or permit others to infringe, on any intellectual property right; and

(6) where applicable, provide evidence that it possesses all necessary licensing agreements with all applicable performing rights organizations, including but not limited to ASCAP, BMI, MPLC and SESAC authorizing any performance by sublessee or sublicensee.

Notwithstanding the above, any agreements with the City of Richmond, Virginia or the Commonwealth of Virginia shall not contain any of such requirements except those contained in Subsection (1) of this Paragraph 5.

Tenant shall be solely responsible for setting policies for use of the Premises by third parties, and for negotiating the terms of, all subleases and licenses. Once Tenant has approved use of the Premises by a third party and obtained agreement of the third party user to the conditions set forth above, Tenant shall notify Parks and Rec which shall, in turn, determine if any City of Richmond, Virginia permits are required for such use. Upon satisfaction of any City of Richmond, Virginia requirements, Parks and Rec shall issue its permit for use of the Premises on behalf of Tenant, which will be subject to the requirements of this Section 5. Tenant shall maintain a record of any such license or sublease and all other permits, agreements or certificates relating thereto and shall make such records available to Landlord upon request. Except as set forth herein, Tenant shall not assign or otherwise transfer its interest in this Lease without Landlord's prior written consent, which may be withheld in Landlord's sole discretion.

(e) Operating Agreement. The parties understand and agree that the Tenant shall enter into an operating agreement with Virginia Commonwealth University ("VCU") substantially in the form attached hereto as Exhibit C (the "Operating Agreement"). The Operating Agreement shall be subject to the terms and conditions of this Lease. Tenant agrees it shall not amend or alter the Operating Agreement without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. To the extent of any conflict between the terms of this Lease and the terms of the Operating Agreement, the terms of this Lease shall govern. For purposes of this Lease, VCU shall not be deemed an agent, contractor, employee, licensee, invitee or subtenant of Tenant.

(f) Other Encumbrances. Except as set forth above, Landlord agrees not to further encumber its interest in the Premises during the Term of this Lease with monetary or other liens, encumbrances or easements without the prior written consent of Tenant. Tenant shall have no right or authority to enter into or deliver or perform any contracts or agreements pertaining to the Premises which purport to bind Landlord or which are contrary to the terms of this Lease.

6. USE AND USE POLICIES.

(a) Tenant shall comply with all laws, rules, orders, ordinances and regulations of federal, state, county and municipal authorities pertaining to the Premises, including without limitation, all applicable federal, state and local laws, regulations or ordinances pertaining to Occupational Safety and Health Act (OSHA) requirements, all zoning and other land use matters, utility availability and the Americans With Disabilities Act of 1990 (“Laws”). During the Term, Tenant agrees to comply with all federal, state and local statutes, regulations, executive orders and ordinances related to the handling, emission, spill, release, discharge or disposal of any hazardous substance, solid waste or toxic substance into the air, soil, surface or groundwater of the Premises. Notwithstanding the foregoing, Tenant shall not be required to make any improvements or alterations to the Premises or improvements in order to comply with Laws.

(b) Tenant, through its Board of Directors, shall establish policies for the use of the Premises (the “Use Policies”). The Use Policies shall be subject to the approval of the Chief Administrative Officer of the City of Richmond or a designee thereof.

7. **COVENANT AGAINST LIENS.** If, because of any act or omission of Tenant or any subtenant or occupant of the Premises or any part thereof, any mechanic’s lien or other lien, charge or order for the payment of money shall be filed against Landlord or Landlord’s interests in the Premises, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after written notice of the filing of such lien, charge or order; and Tenant shall indemnify, defend with counsel satisfactory to Landlord and save harmless Landlord against and from all costs, liabilities, suits, penalties, claims and demands, including counsel fees, resulting therefrom.

8. **ACCESS TO PREMISES.** Upon reasonable prior notice, Landlord or Landlord’s agents and designees shall have the right, but not the obligation, to enter upon the Premises or any part thereof, without unreasonably interfering with the conduct of operations thereon to perform any services required pursuant to Section 15 of this Lease, and to inspect and examine the same, or for any reason subject to the rights of users of the Premises under agreements with Tenant.

9. **INSURANCE.**

(a) Tenant shall provide at its expense, and keep in force during the Term, commercial general liability insurance in a good and solvent insurance company or companies licensed to do business in the Commonwealth of Virginia in a single limit of at least One Million Dollars (\$1,000,000) with respect to bodily injury and property damage. Either the policy shall include a rider for pollution liability or Tenant shall obtain a separate policy for pollution liability, subject to availability, covering the actions and activities of Tenant and third parties and the indemnity provisions set out in Section 14 herein for an annual premium not to exceed \$3,500.00 for such pollution liability coverage (such premium cap to increase at a rate of not more than 3% per year of the Term). The limits of the policy should be reviewed annually for adequacy. Such policy or policies shall include Landlord as an additional insured. Tenant agrees to deliver certificates of such insurance or a copy of the policy to Landlord upon Landlord’s reasonable request and to provide a new certificate annually before any previously delivered certificates expire.

(b) During any period during which Tenant or any subtenant or occupant of the Premises is conducting any construction activity whatsoever at the Premises, including, but not

limited to, construction of improvements and repairs, replacements, alterations, modifications, additions and demolition thereof, Tenant shall keep or require its contractors and subtenants and occupants of the Premises to keep, in full force and effect a policy of builder's risk insurance covering loss or damage to such improvements for the full replacement value thereof, other than respecting repairs or alterations for which the insurance set forth in Subsection 15(b) remains in force. Landlord shall be listed as an additional insured on these policies.

(c) Tenant shall, during the Term, be responsible for payment of all premiums for insurance coverage required by this Paragraph 9. All coverages provided by Tenant pursuant to this Paragraph 9 shall be primary as to any coverages maintained by Landlord. All policies shall include a notice of cancellation or non-renewal of at least thirty (30) days.

10. **WAIVER OF SUBROGATION.** To the extent that insurance proceeds are actually received in satisfaction of a loss which is required to be covered by insurance and to the extent that the applicable insurers agree to this waiver of subrogation, Landlord and Tenant hereby waive any and all rights of recovery against each other for any loss, damage or injury, no matter how caused; and each party shall endeavor to cause all insurance policies which it is obligated to maintain or cause to be maintained under this Lease to contain appropriate provisions recognizing this release and expressly waiving all rights of subrogation by the respective insurance carriers.

11. **DESTRUCTION AND DAMAGE.**

(a) Damage to or destruction of all or any portion of the Premises caused by fire, the elements, or any other cause whatsoever, whether or not without fault of Tenant, shall not automatically terminate this Lease or entitle Tenant to surrender the Premises or entitle Tenant to any abatement of or reduction in rent or other sums, moneys, costs, charges or expenses required to be paid by Tenant hereunder or otherwise affect the respective obligations of the parties hereto, except as otherwise set forth in this Lease.

(b) In the event that any improvements (including the Improvements) now or hereafter placed on the Premises shall be damaged or destroyed, whether partially or entirely, by any cause whatsoever, Landlord shall promptly and within a reasonable time after such damage or destruction, repair, restore or reconstruct or cause to be repaired, restored or reconstructed said damaged or destroyed improvements in such manner that after such repair, restoration or reconstruction, the condition thereof shall be as close as reasonably practical to a condition at least equal to the condition thereof immediately prior to such damage or destruction.

(c) It is hereby specifically agreed that all insurance proceeds paid and delivered on account of any damage or destruction, less the costs, if any, of such recovery, including, but not limited to, reasonable attorneys' fees and costs, shall be used by Landlord for the purpose of paying the cost of any and all repairs and reconstruction required to be made under the terms of this Section 11.

12. **ENVIRONMENTAL CONDITIONS, LIABILITY, INDEMNITY.**

(a) As stated herein, Tenant is leasing the Premises "AS IS" without warranty or guaranty, except as set forth herein. As used in this Lease, the term "Hazardous Material" means those substances, materials, and wastes listed in the United States Department of Transportation

Hazardous Materials Table (49 CFR 172.101) or classified by the Environmental Protection Agency as hazardous substances (40 CFR Part 302), or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (1) petroleum, (2) asbestos, (3) polychlorinated biphenyls, (4) designated as a hazardous substance pursuant to the federal "Clean Water Act", the federal "Resource Conservation and Recovery Act", or the federal "Comprehensive Environmental Response", Compensation and Liability Act", (5) excreta or other animal waste, or (6) lead.

(b) Any Hazardous Material to be brought upon or used in or about the Premises by Tenant or its employees, contractors, subcontractors or agents shall be used, kept, stored and disposed of in a manner that complies with all federal, state and local laws, rules, regulations, directives, decrees, ordinances, codes, orders, approvals of governmental authorities, licenses or standards, including, without limitation, the federal "Comprehensive Environmental Response, Compensation and Liability Act", the federal "Resource Conservation and Recovery Act" and any state and local law, regulation, or ordinance relating to pollution or protection of human safety, health or the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata), including, without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of any Hazardous Material, or otherwise relating to the manufacture, refining, distribution, use, management, treatment, storage, disposal, transport, reeling, reporting or handling of any Hazardous Material (collectively, "Environmental Laws"). In addition, to the extent any environmental permits are required to be obtained by Tenant or its employees, contractors or agents, in connection with Tenant's use, Tenant shall be responsible, at its sole cost and expense, for obtaining such permits and for immediately providing copies of all applications for such permits and copies of all issued permits to Landlord.

(c) Neither Tenant nor its employees, contractors, subcontractors or agents, shall discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system or any body of water, if such material (as reasonably determined by any government authority) does or may, pollute or contaminate the same, or may adversely affect (a) the health, welfare or safety of persons, whether located on the Premises or elsewhere, or (b) the condition, use or environment of any other real or personal property.

(d) Tenant shall maintain good spill prevention practices as recommended by governmental agencies having jurisdiction over the premises and comply with all applicable regulations and containment practices. Any and all releases, spills, discharges, emissions, etc. caused by Tenant on the Premises shall be documented by Tenant and reported to Landlord and the appropriate authority under applicable law within twenty-four (24) hours of the occurrence thereof. Immediate steps shall be taken by Tenant in the event it causes an uncontained release to minimize the duration, amount and extent of any discharge to the environment. Tenant shall require all contractors and subcontractors operating on the Premises to maintain, at the Premises and available to interested Parties on request, any and all material safety data sheets required by law and pertaining to materials or substances discovered, encountered, brought upon, stored, used or consumed in any construction at the Premises, regardless of their source.

(e) If any Hazardous Materials are released into the environment as a result of the actions of Tenant or its employees, contractors, subcontractors or agents, Tenant shall be

responsible, at its sole cost and expense, for completing (or causing completion of) any and all remediation activities that may be required to be undertaken in compliance with any applicable laws. Any required remediation activities shall be completed by Tenant in accordance with all applicable laws. Tenant's obligations under this subsection (e) shall survive the expiration or earlier termination of this Lease.

(f) Tenant hereby agrees to defend, indemnify and hold harmless Landlord (including its officers, directors, employees and agents) from and against all liabilities (including third party liabilities), losses, claims, damages, property damage, demands, judgments, fines or penalties insofar as not prohibited by law, costs and expenses (including, without limitation, clean-up costs and reasonable attorneys' and consultants' fees and disbursements) which arise from (i) Tenant's violation of any Environmental Laws, (ii) Tenant's compliance with any Environmental Laws relating to or arising out of Tenant's operations on the Premises, or (iii) the generation, manufacture, refining, transportation, treatment, storage, handling, disposal, discharge or spill of any Hazardous Materials on the Premises by Tenant or its employees, contractors, subcontractors, agents, subtenants or licensees. Tenant shall defend any action, suit or proceeding brought against Landlord in connection with the foregoing, and in doing so it shall use independent counsel selected by Tenant and reasonably approved by Landlord. The provisions of this subsection (f) shall be in addition to any other obligations and liabilities Tenant may have to Landlord at law or equity and shall survive the expiration or earlier termination of this Lease. Tenant's subleases and licenses shall require any subtenants or licensees to defend, indemnify and hold harmless the Landlord from and against any of the above matters arising under Tenant's subleases or licenses.

(g) Landlord hereby represents and warrants that, as of the date of this Lease, Landlord has no knowledge of the presence of any Hazardous Materials at, on or under the Premises. The Landlord shall confirm this representation and warranty in writing as of the Commencement Date.

13. **EMINENT DOMAIN.** If all or a portion of the Premises is taken or condemned for a public or quasi-public use (a sale in lieu of condemnation to be deemed a taking or condemnation for purposes of this Lease), this Lease shall, at Tenant's option, terminate as of the date title to the condemned real estate vests in the condemnor, and neither party shall thereafter have any liability hereunder. If Tenant elects not to terminate this Lease pursuant to the preceding sentence, Tenant may do such work as may be reasonably necessary to restore the portion of the Premises not taken to tenantable condition for Tenant's uses, but shall not be required to expend more than the net award, and shall be entitled to the condemnation proceeds for such purpose that either Landlord or Tenant receive for restoration of the Premises. If a part or all of the Premises shall be taken or condemned during the Term of this Lease and Tenant elects to terminate the Lease and convey its leasehold estate back to Landlord, Landlord and Tenant shall be entitled to compensation for their respective rights therein as available under Virginia law.

14. **INDEMNITY.**

(a) Tenant shall indemnify and save harmless Landlord and its officers and employees, from and against any and all claims, liabilities, damages, penalties, judgments, causes of action, proceedings, suits, costs and expenses, including, but not limited to, fees and costs of attorneys and

other professionals and accountants, arising out of, in connection with or in any way related to any injury or death to person or property sustained by anyone in and about the Premises, resulting from, out of, or in connection with the use or occupancy of the Premises by Tenant (including, but not limited to those resulting from or out of or in connection with the grossly negligent or willful acts or omissions of Tenant or its officers, directors, agents, employees, contractors, servants, tenants, concessionaires, licensees, invitees, successors or assigns), or related to or arising out of or in connection with, any default by Tenant under this Lease or any failure by Tenant to fully and completely perform and comply with its obligations under this Lease, and under any of Tenant's subleases or licenses. Tenant shall require its subtenants to indemnify and save harmless the Landlord and Tenant from and against any of the above matters arising under Tenant's subleases or licenses.

(b) Other than Landlord's obligation in Section 11(b), Landlord shall not be responsible or liable for any damage or injury to any improvements, including the Improvements, or to any person or persons at any time on the Premises, including, but not limited to, any damage or injury to Tenant or to any of Tenant's officers, directors, agents, servants, employees, contractors, customers, licensees, invitees, concessionaires, sublessees, successors or assigns, unless such arise as a result of Landlord's (or its employees', agents' or contractors') gross negligence.

15. **REPAIRS/MAINTENANCE.** (a) Except as provided in subsection (b) below or elsewhere in this Lease, Tenant shall be responsible for the routine maintenance, service and repair (with the same as was before) of the Premises, and shall comply with all applicable laws with respect to its use of the Premises. Tenant shall, during the Term, pay or have paid and shall discharge punctually, as and when the same shall become due and payable, all charges for telephone and other services whether public or private, furnished to Tenant by third party providers except those undertaken by Landlord in Subsection (b) below.

(b) Except as set forth expressly in this Lease, Landlord shall not be required to furnish any service or facility to the Premises or Improvements now or hereafter located thereon and shall not be liable to Tenant or other person or entity for any failure of electric current, or of any service by any utility, nor for injury or damage to person (including death) or property caused by or resulting from steam, gas, electricity, water or rain which may flow or leak from any part of the Premises or the buildings and improvements to be erected thereon, or from any pipes, appliances or plumbing works of the same, or from the street or subsurface, or from any other place, nor from interference with land or other incorporeal hereditaments or easements, however caused, except:

(i) Landlord shall have the obligations set forth in Section 11 and shall provide, or cause to be provided, property insurance for the Premises (including the Improvements) in coverage amounts up to the replacement value thereof and shall keep all Improvements now or hereinafter constructed on the Premises, insured for the benefit of Landlord and Tenant, as their respective interests may appear, against loss or damage by fire and customary extended coverage, with a good and solvent insurance company licensed to do business in the Commonwealth of Virginia, in an amount not less than the full replacement value thereof. Such policy or policies shall name Landlord and Tenant, as insureds thereunder, as their respective interests may appear;

(ii) As such repair and replacement is needed in the reasonable discretion of Landlord, Landlord shall repair and replace all structural elements of the improvements (including walls, roof, ceilings and foundation) and shall repair and replace any and all systems serving the Premises (including HVAC, plumbing and electrical) and the Improvements;

(iii) Landlord shall supply gas, water, electricity, sanitary sewer and storm runoff facilities to the Premises at no cost to Tenant, if Landlord cannot lawfully provide these services at no cost, Landlord shall reimburse Tenant for these costs;

(iv) The Landlord will exempt Tenant from real estate taxes applicable to the Premises in accordance with Virginia Code § 58.1-3203 or any other Virginia law allowing for such an exemption provided Tenant remains eligible for such exemption under Virginia Code § 58.1-3203 or any other Virginia law.

(v) Landlord and VCU shall be solely responsible for the security and policing of the Premises and, to the extent permitted by law, Landlord shall hold Tenant harmless with regard thereto.

16. **MEMORANDUM OF LEASE.** Landlord and Tenant agree, at the other's request and at the sole expense of the requesting party, to execute a Memorandum of Lease in recordable form, setting forth such provisions hereof as may be required by applicable law, including a description of the Premises, the term of this Lease, and any other portions thereof, excepting the rental provisions, as either party may reasonably request.

17. **TENANT BOARD OF DIRECTORS.** Tenant agrees to elect to its Board of Directors those certain City of Richmond, Virginia employees designated by the Mayor of the City of Richmond, Virginia in a number equal to at least one-third of the membership of the Board of Directors and maintain that representation of the City of Richmond, Virginia on its Board of Directors for the Term. Termination of employment with the City of Richmond of any such person shall be deemed such person's resignation from the Board of Tenant.

18. **NO WAIVER: NO FAILURE OF LANDLORD OR TENANT TO COMPLAIN OF ANY ACT OR OMISSION ON THE PART OF THE OTHER NO MATTER HOW LONG THE SAME SHALL CONTINUE SHALL BE DEEMED TO BE A WAIVER BY LANDLORD OR TENANT OF ANY OF ITS RIGHTS UNDER THIS LEASE.** No waiver by Landlord or Tenant, at any time, express or implied, of any breach of any of the agreements or provisions contained in this Lease shall be construed to be a waiver of any subsequent breach of the same or of any other provisions in this Lease. No acceptance by Landlord of any partial payment shall constitute an accord or satisfaction but shall only be deemed a partial payment on account.

19. **NOTICES.** Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless same shall be in writing and (i) delivered in person, (ii) sent postage prepaid by United States registered or certified mail, return receipt requested or (iii) sent by Federal Express (or such other express delivery service promising next day delivery) directed to Landlord at 900 E. Broad Street, Richmond, VA 23219 and to Tenant at

1643 Monument Avenue, Richmond, Virginia 23220, or such other address as either party may designate by notice given from time to time in accordance with this Paragraph. All such notices shall be deemed to be given upon receipt when delivered in person, upon the date indicated on return receipt, or one day after deposited with express carrier for overnight delivery as hereinabove provided.

20. **DEFAULT.** If Tenant defaults in its obligations under this Lease, and fails to cure any default within forty-five (45) days of receipt of written demand from Landlord (or longer provided Tenant is diligently pursuing the cure of such default to completion), Landlord shall have all rights and remedies available to it at law and equity including the right to terminate this Lease.

21. **AMENDMENT TO LEASE.** In accordance with section 15.2-2105 of the Code of Virginia, no amendment or extension of this Lease which extends or enlarges the time or territory of this Lease shall be granted until the provisions of sections 15.2-2101 through 15.2-2104 of the Code of Virginia have been complied with. To the extent required by law, no amendment that releases the Tenant or any assignee thereof from the performance of any duty required by this Lease or the ordinance that authorizes this Lease shall be granted until notice of such proposed amendment has been given to the public. The cost of such notice shall be paid by Landlord. No such amendment shall be effective unless and until adopted by ordinance.

22. **GOVERNING LAW.** This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Virginia without giving effect to any choice of law or conflict of laws rules or provisions. In the event of any litigation with respect to this Lease, venue shall be the City of Richmond, Virginia.

23. **PARTIAL INVALIDITY.** If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

24. **INTERPRETATION.** Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The paragraph headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The terms "Landlord" and "Tenant" whenever used herein shall mean only the owner at the time of Landlord's or Tenant's interest herein, and upon any sale or assignment of the interest of either Landlord or Tenant herein, their respective successors in interest and assigns shall, during the term of their ownership of their respective estates herein, be deemed to be Landlord or Tenant, as the case may be.

25. **ENTIRE AGREEMENT.** No oral statement or prior written matter shall have any force or effect. Tenant agrees that it is not relying on any representations or agreements other than those contained in this Lease. This Lease shall not be modified or canceled except by writing subscribed by all parties.

26. **PARTIES.** Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective successors and assigns.

27. **NO JOINT VENTURE.** Neither the terms, provisions or conditions of the foregoing clauses, nor any terms, provisions or conditions of the Lease of which they are a part, shall be construed as creating or constituting Landlord as co-partner or joint venturer with Tenant, nor shall same be construed in any manner as making Landlord liable for the debts, defaults, obligations or lawsuits of Tenant, or its sublessees and assigns.

28. **LIABILITY.** No director, officer, employee or agent of Tenant shall be personally liable to Landlord or any successor in interest in the event of any default or breach by Tenant under this Lease, or on any obligation incurred under the terms of this Lease, including but not limited to the indemnification provisions. No director, officer, employee or agent of Landlord shall be personally liable to Tenant or any successor in interest, in the event of any default or breach by Landlord under this Lease, or on any obligation incurred under the terms of this Lease, including but not limited to the indemnification provisions. The Tenant may terminate this Lease at any time upon sixty (60) days written notice to Landlord with no liability for doing so.

29. **SUBJECT TO APPROPRIATION.** Any payments and other performances by Landlord under this Lease are subject to approval by the City Council of the City of Richmond, Virginia ("City Council") and annual or periodic appropriations by the City Council. It is understood and agreed between Landlord and Tenant that Landlord shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purposes of performing this Lease. Under no circumstances shall Landlord's total liability under this Lease exceed the total amount of funds appropriated by the City Council for the Landlord's performance of this Lease.

30. **AUTHORITY TO ACT.**

a. Landlord. Landlord warrants and agrees that the Chief Administrative Officer for the City of Richmond, Virginia is hereby authorized to act on behalf of the City of Richmond, Virginia under the terms of this Lease and is authorized to enter into this Lease on behalf of the Landlord.

b. Tenant. Tenant warrants and agrees that the individual signatory below is authorized to enter into this Lease on behalf of the Tenant and any actions taken by any individual on behalf of the Tenant under this Lease have been duly authorized.

[See NEXT PAGE FOR SIGNATURES.]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed pursuant to due authority.

LANDLORD:

THE CITY OF RICHMOND, VIRGINIA,
a municipal corporation of the Commonwealth of
Virginia

Date: _____, 2013

By: _____

Name: _____

Title: _____

Under authority granted by Ord. No. _____, adopted _____.

Approved as to terms:

Approved as to form:

Assistant City Attorney

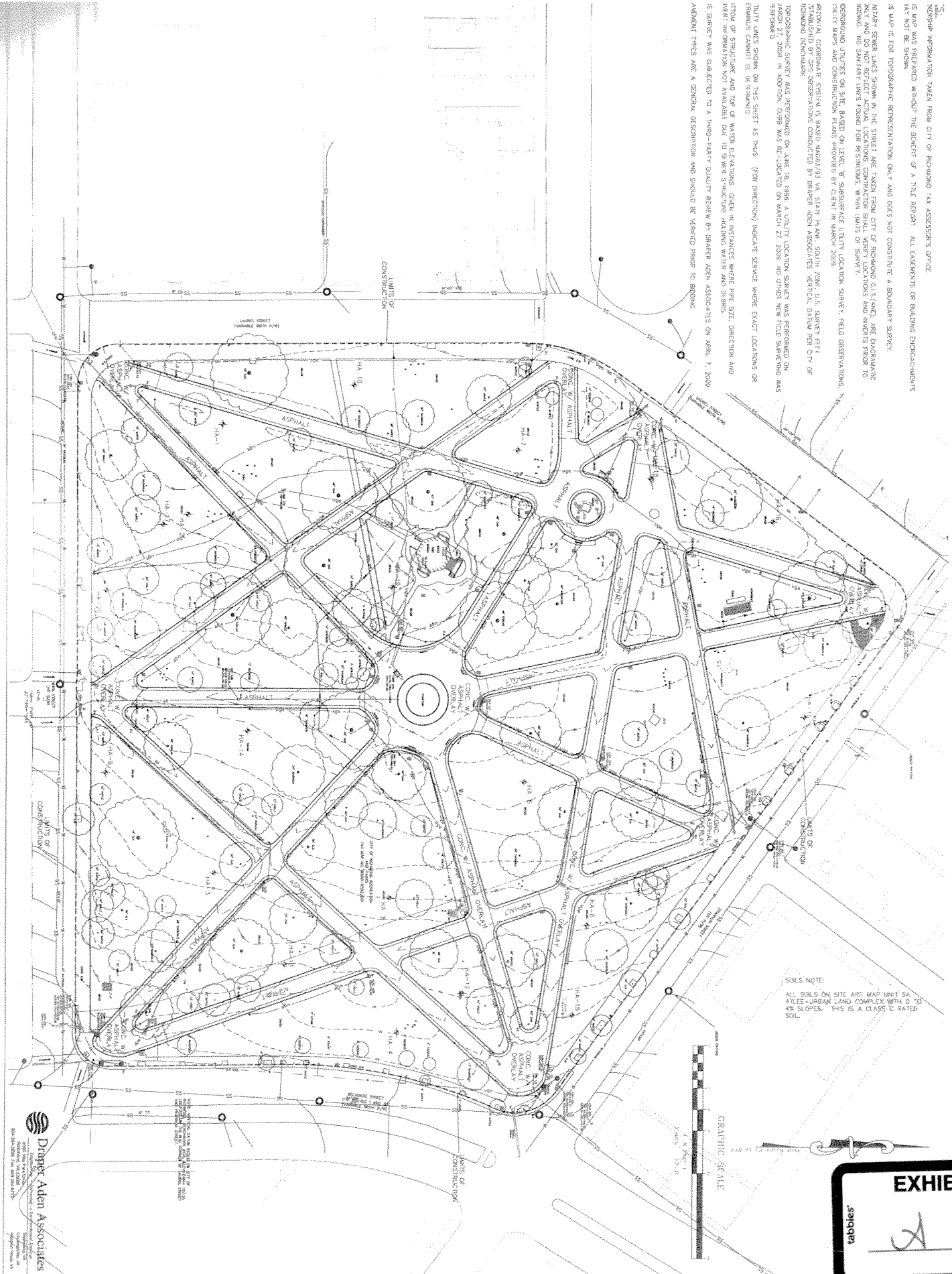
TENANT:

Date: _____, 2013

By: _____

NEIGHBOR INFORMATION TAKEN FROM CITY OF RICHMOND TAX ASSESSOR'S OFFICE IS MAP IS FOR TOPOGRAPHIC REPRESENTATION ONLY AND DOES NOT CONSTITUTE A BOUNDARY SURVEY. MARY SEWER LINES SHOWN IN THE STREET ARE TAKEN FROM CITY OF RICHMOND CLS(AND) ARE GUARANTEED AND DO NOT REFLECT ACTUAL LOCATIONS. CONTRACTOR SHALL VERIFY LOCATIONS AND INVERTS PRIOR TO CONSTRUCTION. NO SHOWN LINES FOUND FOR RICHMOND, VIRGINIA LINES OF SERVICE. UNDERGROUND UTILITIES ON SITE, BASED ON LEVEL 'B' SURVEYFACE UTILITY LOCATION SURVEY, FIELD OBSERVATIONS, UTILITY MARKS AND CONSTRUCTION PLANS PROVIDED BY CLIENT IN MARCH 2009. HORIZONTAL COORDINATE SYSTEM IS BASED ON NAD83 VA STATE PLANE, SOUTH ZONE. U.S. SURVEY FEET. VERTICAL COORDINATE SYSTEM IS BASED ON NAVD83 VA STATE PLANE, NORTH ZONE. U.S. SURVEY FEET. TOPOGRAPHIC SURVEY WAS PERFORMED ON JUNE 18, 1998. A UTILITY LOCATION SURVEY WAS PERFORMED ON MARCH 27, 2009. IN ADDITION, CORP WAS RE-LOCATED ON MARCH 27, 2009. NO OTHER NEW FIELD SURVEYING WAS PERFORMED.

UTILITY LINES SHOWN ON THIS SHEET AS THIS (FROM DIRECTION) INDICATE SERVICE WHERE EXACT LOCATIONS OR INVERTS CANNOT BE DETERMINED. LIMITS OF STRUCTURE AND TOP OF WATER ELEVATIONS GIVEN IN INSTANCES WHERE PRECISE DIRECTION AND LAYER INFORMATION NOT AVAILABLE DUE TO SEWER STRUCTURE HOLDING WATER AND DEBRIS. IS SURVEY WAS SUBJECTED TO A THIRD-PARTY QUALITY REVIEW BY BRAYNER ADEN ASSOCIATES ON APRIL 7, 2009. ADJUSTMENT TYPES ARE A GENERAL DESCRIPTION AND SHOULD BE VIEWED PRIOR TO BIDDING.



SOILS NOTE:
ALL SOILS ON SITE ARE MAP UNIT SA-
ATLÉE-URBAN LAND COMPLEX WITH 0 TO
4% SLOPES. THIS IS A CLASS C RATED
SOIL.

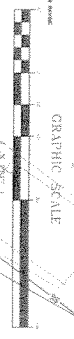


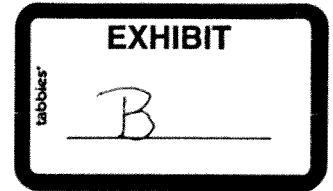
EXHIBIT
tabbles
21



Diaper Aden Associates
300 WEST 11TH STREET, RICHMOND, VA 23224
P. 804.332.8805 F. 804.332.5062

C2.1	REVISIONS	EXISTING CONDITIONS	Richmond, Virginia	201 WEST 11TH STREET RICHMOND VA 23224 P. 804.332.8805 F. 804.332.5062
	OCT. 30, 2009	PERMIT SET		

LIST OF DRAWINGS



CS	Cover Sheet	L2.7	Entrance Layouts
		L2.8	Entrance Layouts
		L2.9	Entrance Layouts
CIVIL		L2.10	Entrance Layouts
C1.1	General Notes	L3.1	Checkers House Layout and Grading
C1.2	Erosion and Sediment Control Notes	L3.2	Checkers House Details
C2.1	Existing Conditions	L4.1	Rill Layout
C3.1	Phase I Erosion and Sediment Control Plan	L4.2	Rill Details
C3.2	Phase II Erosion and Sediment Control Plan	L4.3	Rill Elevations
C4.1	NW Quadrant Demolition Plan	L4.4	Rill Sections
C4.2	NE Quadrant Demolition Plan	L4.5	Rill Sections
C4.3	SW Quadrant Demolition Plan	L4.6	Rill Plans
C4.4	SE Quadrant Demolition Plan	L5.1	Quoits and Pentanque Layout
C5.1	NW Quadrant Grading and Drainage Plan	L6.1	NW Quadrant Planting Plan
C5.2	NE Quadrant Grading and Drainage Plan	L6.2	NE Quadrant Planting Plan
C5.3	SW Quadrant Grading and Drainage Plan	L6.3	SW Quadrant Planting Plan
C5.4	SE Quadrant Grading and Drainage Plan	L6.4	SE Quadrant Planting Plan
C6.1	NW Quadrant Utility Plan	L6.5	Planting Details
C6.2	NE Quadrant Utility Plan	L6.6	Planting Schedule
C6.3	SW Quadrant Utility Plan	L6.7	Irrigation Layout
C6.4	SE Quadrant Utility Plan	L7.1	Lighting Legend and Layout
C7.1	Erosion and Sediment Control Details	L7.2	Lighting Fixture Detail 1
C7.2	Civil Details	L7.3	Lighting Fixture Detail 2
C7.3	Civil Details	L7.4	Lighting Fixture Detail 3
C8.1	Storm Sewer Profiles	L7.5	Lighting Fixture Detail 4
C8.2	Storm Sewer Profiles	L7.6	Lighting Fixture Detail 5
C9.1	Pre-Development Drainage Plan	L7.7	Lighting Fixture Detail 6
C9.2	Post-Development Drainage Plan	L7.8	Lighting Fixture Detail 7
C9.3	Drainage Calculations	L7.9	Lighting Calculations1-CRI Improved HPS
		L7.10	Lighting Calculations 3-Standard HPS/MH
		L7.11	Lighting Fixture Photometry 1
		L7.12	Lighting Fixture Photometry 2
		L7.13	Lighting Fixture Photometry 3
LANDSCAPE		ELECTRICAL	
L1.0	Tree Demolition Plan	E0.1	Electrical Legend and Details
L1.1	Layout Key Plan	E0.2	Electrical Risers and Details
L1.2	NW Quadrant Layout Plan	E1.1	Electrical Site Plan-Lighting
L1.3	NE Quadrant Layout Plan	E1.2	Electrical Site Plan-Power
L1.4	SW Quadrant Layout Plan	E2.1	Electrical Panelboard Schedules
L1.5	SE Quadrant layout Plan		
L2.1	Site Details	PLUMBING	
L2.2	Site Details	P0.1	Plumbing Legend and Notes
L2.3	Pylon Details	P1.1	Plumbing Site Plan
L2.4	Pylon Plan and Elevation		
L2.5	Pylon/Flagpole Details		
L2.6	Site Details		

EXHIBIT C

OPERATING AGREEMENT

THIS OPERATING AGREEMENT (this "Agreement") is dated as of the ___ day of _____, 2013 (the "Effective Date"), by and between MONROE PARK CONSERVANCY, a Virginia non-stock corporation (the "Conservancy") and Virginia Commonwealth University, a corporation established under Title 23, Chapter 6.1, Section 23-50.4 of the Code of Virginia ("VCU").

Recitals:

A. The City of Richmond, Virginia (the "City") and the Conservancy have entered into that certain Deed of Lease dated as of the date hereof (the "Lease"), pursuant to which the City has leased Monroe Park (the "Park") to the Conservancy. The terms of the Lease allow the Conservancy to further subcontract certain Park management and maintenance obligations to third parties.

B. The Conservancy desires to enter into an operating agreement with VCU whereby VCU shall perform certain management and maintenance obligations at the Park.

C. VCU, as the owner and operator of real property near and adjacent to the Park, has a vested interest in ensuring the security and proper maintenance of the Park. VCU desires to enter into this Agreement with the Conservancy to accept certain Park maintenance obligations hereunder.

NOW, THEREFORE, for and in consideration of the mutual promises, conditions and covenants herein set forth, the parties agree as follows:

Agreement:

1. Term. The term of this Agreement shall be for a period of ten (10) years, commencing on the Effective Date and continuing until one day prior to the ten (10) year anniversary thereof (the "Term"). This Agreement shall automatically continue for three (3) additional and consecutive ten (10) year terms, unless any party gives written notice of termination to the other parties at least sixty (60) days prior to the end of the then current term. Notwithstanding the foregoing, in the event the Lease is terminated or expires, this Agreement shall terminate or expire conterminously. This Agreement is, and shall at all times be, subject and subordinate to the Lease.

2. VCU Services. VCU shall be responsible for those certain Park maintenance and cleaning services as more particularly outlined on Exhibit A attached hereto and made a part hereof (the "VCU Services"). The VCU Services shall be performed in accordance with the schedule outlined on Exhibit A, in a good a workmanlike manner and in accordance with all applicable laws, rules and regulations.

3. Conservancy Services. The Conservancy shall be responsible for all marketing and event planning and programming at the Park consistent with applicable City of Richmond Virginia (“City”) and Virginia ordinances or statutes. The Conservancy shall establish policies for the use of the Park (or any part thereof) by local entities per the terms of the Lease. The Conservancy shall have the right to engage in fundraising activities and marketing campaigns to promote the development, use and enjoyment of the Park.

4. License Agreements. In order to perform its duties hereunder, the Conservancy shall have the right to enter into written license agreements with licensees and/or concessionaires for the use of the Park per the terms of the Lease. The Conservancy shall be entitled to collect all fees and proceeds it receives from such events/use of the Park and such funds shall be used exclusively for the costs of operation and maintenance of the Park.

5. Joint Policing/Security. The City and VCU have agreed upon a plan for joint policing/security for the Park.

6. Termination.

(a) Either party may terminate this Agreement upon a default by the other party hereunder. A party shall be in default hereunder if (a) such party fails to pay any sum payable hereunder within fifteen (15) days after same is due and payable, or (b) such party fails in any material respect to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than thirty (30) days after written notice thereof from the other party. In the event that a default is not reasonably susceptible to being cured within the thirty (30) day period, the defaulting party shall not be considered in default if it has within such thirty (30) day period informed the other party of the reasons preventing cure within the thirty (30) day period and the other party has approved the extension of the cure period in writing, has commenced with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default.

(b) Upon termination or expiration, all further obligations of the parties hereunder shall terminate except for the obligations that are expressly intended to survive the termination or expiration of this Agreement. All reports, records and documents maintained by the Conservancy relating to this Agreement (or copies thereof) shall be provided to the City upon termination or expiration.

7. Representations of the Conservancy. The Conservancy hereby represents and warrants to VCU as follows:

(a) The Conservancy is a duly organized and validly existing non-stock corporation created under the laws of the Commonwealth of Virginia, has the requisite power and has or will obtain all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and any other related documents to which the Conservancy is a party and to perform each and all of the obligations of the Conservancy provided for herein and therein.

(b) The Conservancy has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and any other related documents to which the Conservancy is a party.

(c) Each person executing this Agreement or any other related document on behalf of the Conservancy has been or will at such time be duly authorized to execute each such document on behalf of the Conservancy.

(d) Neither the execution and delivery by the Conservancy of this Agreement or any other related document to which the Conservancy is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in default under or a violation of the governing instruments of the Conservancy or any other agreements or instruments to which it is a party or by which it is bound.

(e) There is no action, suit, proceeding, investigation or litigation pending and served on the Conservancy which challenges the Conservancy's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement or any other related document to which the Conservancy is a party, or which challenges the authority of the Conservancy official executing this Agreement or the other related documents; and the Conservancy has disclosed to the other parties hereto any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Conservancy is aware.

(f) The Conservancy is and will remain in compliance with all laws, rules, regulations and lawful orders of any public authority applicable to it or its activities in connection with this Agreement and the other related documents.

(g) The representations and warranties of the Conservancy contained herein shall survive the expiration or termination of this Agreement.

8. Representations of VCU. VCU hereby represents and warrants to the Conservancy as follows:

(a) VCU is a duly organized and validly existing corporation created under the laws of the Commonwealth of Virginia, has the requisite power and has or will obtain all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and any other related documents to which VCU is a party and to perform each and all of the obligations of VCU provided for herein and therein.

(b) VCU has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and any other related documents to which VCU is a party.

(c) Each person executing this Agreement or any other related document on behalf of VCU has been or will at such time be duly authorized to execute each such document on behalf of VCU.

(d) Neither the execution and delivery by VCU of this Agreement or any other related document to which VCU is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in default under or a violation of the governing instruments of VCU or any other agreements or instruments to which it is a party or by which it is bound.

(e) There is no action, suit, proceeding, investigation or litigation pending and served on VCU which challenges VCU's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement or any other related document to which VCU is a party, or which challenges the authority of the VCU official executing this Agreement or the other related documents; and VCU has disclosed to the other parties hereto any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which VCU is aware.

(f) VCU is and will remain in compliance with all laws, rules, regulations and lawful orders of any public authority applicable to it or its activities in connection with this Agreement and the other related documents.

(g) The representations and warranties of VCU contained herein shall survive the expiration or termination of this Agreement.

9. Nondiscrimination.

(a) During the performance of this Agreement, the Conservancy and VCU agree, pursuant to Resolution No. 74-R8-11 adopted February 25, 1974 by the Council of the City of Richmond, to comply fully with Titles VI and VII of the Civil Rights Act of 1964, as amended, and all regulations promulgated thereunder. By entering into this Agreement, the Conservancy and VCU certify that each has complied with Titles VI and VII of the Civil Rights Act of 1964, as amended.

(b) During the performance of this Agreement, the Conservancy and VCU agree (i) that they shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Conservancy and VCU and (c) that, where applicable, they shall comply with the Virginians with Disabilities Act, the federal Americans with Disabilities Act and the federal Rehabilitation Act.

10. Indemnification/Insurance.

(a) The Conservancy shall indemnify, defend and hold harmless VCU and its respective officers, agents and employees, from and against any and all losses, liabilities, claims, damages and expenses (including court costs and reasonable attorneys' fees) arising from any material default or breach of this Agreement by the Conservancy of its obligations specified in this Agreement, as well as all claims arising from errors, omissions or grossly negligent acts of the Conservancy, its officers, directors, agents and employees.

(b) VCU shall defend and hold harmless the Conservancy and the City and their respective officers, agents and employees, from and against any and all losses, liabilities, claims, damages and expenses (including court costs and reasonable attorneys' fees) arising from any material default or breach of this Agreement by VCU of its obligations specified in this Agreement, as well as all claims arising from errors, omissions or grossly negligent or intentional acts of VCU, its officers, directors, agents and employees.

(c) The Conservancy shall carry the insurance required in the Lease. VCU shall carry, at its expense, and keep in force during the Term, commercial general liability insurance in a good and solvent insurance company or companies licensed to do business in the Commonwealth of Virginia in a single limit of at least One Million Dollars (\$1,000,000) with respect to bodily injury and property damage. The limits of the policy should be reviewed annually for adequacy. Such policy or policies shall include The Conservancy and the City as additional insureds. VCU agrees to deliver certificates of such insurance and/or a copy of the policy to the Conservancy upon reasonable request and to provide a new certificate annually before any previously delivered certificates expire.

11. Notices. All notices and demands by any party to any other shall be given in writing and shall be delivered by hand or sent by nationally recognized courier for next day delivery or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To the Conservancy: Alice McGuire Massie
1643 Monument Avenue,
Richmond, Virginia 23220
Facsimile No.: (804)
Telephone No.: (804)

To VCU:

Any party may, upon prior written notice to the other, specify a different address for the giving of notice. Notices shall be effective one day after sending if sent by overnight courier or three days after sending if sent by certified mail, return receipt requested.

12. Successors and Assigns. No party may, other than to a successor entity, without the prior written consent of the others, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under this Agreement. If any party changes its name, such party agrees to promptly furnish the other party with written notice of change of name and appropriate supporting documentation, including any documentation filed with the State Corporation Commission. All of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

13. No Waiver. The failure of any party to insist upon the strict performance of any provisions of this Agreement, the failure of any party to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future or continuing waiver of any such provision, right, option, or remedy or as a waiver of a subsequent breach thereof. The consent by one party to any act by any other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given. No act, delay or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust or impair any right, remedy, or power of such party under this Agreement, or to relieve the other party from the full performance of its obligations under this Agreement. No waiver of any term, covenant, or condition of this Agreement shall be valid unless in writing and signed by the waiving party.

14. Cooperation. The parties agree to cooperate to achieve the objectives of this Agreement and to use reasonable and good faith efforts to resolve all disputes and disagreements that may arise hereunder. Each party agrees to designate in writing representatives with the authority to make decisions binding upon such party so as to not unduly delay resolution of disputes and disagreements.

15. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for the other counterpart.

16. Entire Agreement. This Agreement (including any exhibits or documents incorporated by reference herein or attached hereto) constitutes both a complete and exclusive statement and the final written expression of all the terms of this Agreement and the entire understanding between the parties relating to the specific matters covered herein. All prior or contemporaneous oral or written agreements, understandings, representations or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose. This Agreement may be altered, amended or revoked only by an instrument in writing signed by each party hereto, or its permitted successor or assignee. No verbal agreement or

implied covenant shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding. If any provisions of this Agreement are rendered obsolete or ineffective in serving their purpose by change in law, passage of time, financing requirements or other future events or circumstances, the parties agree to negotiate in good faith appropriate amendments to or replacements of such provisions in order to restore and carry out the original purposes hereof to the extent practicable; provided, however, that neither party is obligated to agree to any amendment or replacement which would reduce its rights or enlarge its responsibilities under this Agreement.

17. Governing Law and Forum Choice.

(a) All issues and questions concerning the construction, enforcement, interpretation and validity of this Agreement, or the rights and obligations of the Conservancy and/or VCU 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 conflicts 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.

(b) Any 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 a federal or state court located in the city of Richmond, Virginia.

18. No Third-Party Beneficiaries. Notwithstanding any other provision of this Agreement, the Conservancy and VCU 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 parties hereto; (iii) no other individual or entity shall obtain any right to make any claim against the parties hereto 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, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Agreement.

19. Construction and Interpretation.

(a) The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to

the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it.

(b) If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The parties hereto agree to negotiate in good faith appropriate amendments to or replacements of provisions of the Agreement that are illegal, invalid or unenforceable in order to restore and carry out the original purposes thereof to the extent practicable; provided, however, that neither party is obligated to agree to any amendment or replacement which would reduce its rights or enlarge its responsibilities under this Agreement.

(c) This Agreement includes captions, headings and titles appearing herein for convenience only, and such captions, headings and titles shall not affect the construction, interpretation or meaning of this Agreement.

(d) References in this document to this "Agreement" mean, refer to and include this document as well as any riders, exhibits, addenda, and attachments hereto, which are hereby incorporated herein by reference, or other documents expressly incorporated by reference in this document. Any references to any covenant, condition, obligation or undertaking "herein," "hereunder" or "pursuant hereto" (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this Agreement and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this Agreement. All terms defined in this Agreement shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this Agreement unless the context thereof clearly requires otherwise. Unless expressly provided otherwise, all references to Sections refer to the sections set forth in this Agreement.

(e) As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

20. Force Majeure. No party will be liable or responsible to the other party for any delay, damage, loss, failure, or inability to perform caused by "Force Majeure" if such party (i) furnishes the other party with written notice of the "Force Majeure" within ten (10) days of the date on which such party gains actual knowledge that the event of "Force Majeure" will occur or has occurred and is ongoing and (ii) seeks to minimize the period of delay or hindrance by any means possible, including, without limitation, seeking alternate sources of labor or materials. The term "Force Majeure" as used in this Agreement means an event that causes a party to be unable to perform its obligations under this Agreement that is due to circumstances

beyond such party's reasonable control, such as a natural disaster, terrorist act, action or decree of a governmental body having jurisdiction, or any other events commonly known as "acts of God."

21. Nonliability of Conservancy Directors, Officers and Employees. No director, officer, employee or agent of the Conservancy shall be personally liable to VCU or any successor in interest, in the event of any default or breach by the Conservancy, or on any obligation incurred under the terms of this Agreement, including but not limited to the indemnification provisions.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

MONROE PARK CONSERVANCY
a Virginia non-stock corporation

By: _____
Alice McGuire Massey, President
Date: _____

VIRGINIA COMMONWEALTH UNIVERSITY
a corporation established under the Code of Virginia

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A

VCU MAINTENANCE SERVICES

FOR MONROE PARK

1. Cleaning.

- a) Trash and litter shall be picked up as needed, and placed in containers for City pickup, and leaves shall be collected as needed and placed for removal by the City, so as to maintain Monroe Park in a clean and neat condition.
- b) All walkways and sidewalks in and adjoining Monroe Park, and any and all drives and entrances in Monroe Park, and all open spaces and playgrounds, shall be routinely cleaned so as to keep them in a clean and neat condition, and kept clean of grass and weeds.
- c) Benches, monuments, light poles and fixtures and entrance gates and pillars shall be cleaned as needed to keep them in a clean and neat condition.
- d) Graffiti shall be removed or painted over, as appropriate to the nature of the surface, as soon as practicable after it appears.
- e) Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.
- f) Branches and trees damaged or felled by excessive winds, ice, vandalism or any other cause shall be promptly removed.

2. Snow Removal

Snow and ice shall be removed from all walkways and paved surfaces within a reasonable time after each snowfall or accumulation of ice, so such surfaces will accommodate safe passage. Sand and/or salt shall be spread as needed but only to the extent not injurious to grass and plantings

3. Landscape Maintenance

- a) All trees and shrubs that are overextended, dead or are otherwise unsafe or unsightly shall be pruned and trimmed to maintain their natural form.
- b) Fertilizer and weed control shall be applied to trees, shrubs, plants and lawn areas as needed.

- c) Paving blocks, pavement, cobbled and concrete areas shall be treated for weeds and weeds shall be removed as necessary
- d) Plants and trees that are dead diseased or otherwise unhealthy shall be replaced with healthy specimens of substantially equal type and reasonable size.
- e) Grass-covered areas shall be arriated, reseeded or resodded as needed, at least annually.
- f) All grass-covered areas shall be mowed and edged as needed.
- g) All landscaped areas shall be weeded as needed.

4. Other.

- a) All graphics and signs shall be maintained in a neat and clean condition, and damaged or vandalized signs shall be removed and their removal reported to the Conservancy.
- b) All items with painted surfaces, except _____[those on the pavilion building?]_____ shall be painted as needed. Surfaces shall be scraped free of rust and other extraneous matter and painted to match existing color.