

**Industrial Development Authority  
Of the City of Lexington, VA**

**Wednesday, May 28, 2014, 5:00 PM**

**Community Meeting Room, 1st Floor, City Hall**

1. Call to Order
2. Approval of Minutes of November 18, 2013 meeting \*
3. Consideration of a Memorandum of Agreement between the City, the IDA, and the VA Horse Center Foundation establishing a grant for debt service and capital needs \*
4. Discussion of accounting procedures for Authority funds \*
5. Consideration of a request from Robert E. Lee Properties, LLC to execute a Certificate of Partial Satisfaction to the Performance Agreement dated May 25, 2011. (Possibly to be proceeded by a tour of the facility) \*
6. Adjourn

\*indicates attachment






Office of the City Manager

## MEMORANDUM

To: Industrial Development Authority (IDA)

From: T. Jon Ellestad, IDA Secretary 

Subject: Memorandum of Agreement (MOA) with the Virginia Horse Center Foundation (VHC)

Date: May 20, 2014

Approximately six months ago, the City and County both received a letter from the VA Horse Center Foundation indicating that they could not meet their financial commitments, specifically their existing debt service, and were in arrears in their payments on debt issued by the USDA in 2007. They requested that the two localities raise their lodging tax rates by one additional percentage point and use the proceeds to fund the remainder of their debt with any funding left over to be used for capital maintenance purposes.

In 2006 and 2007, the State of Virginia terminated its support for the VHC by appropriating a sum of funds as its final payment on debt that had been incurred in building the facilities. An \$11.5 million loan was secured through the USDA for a forty-year period. It was clear, at that time, that the VHC would not be able to support the \$604,000 annual debt service for this loan without assistance. Therefore, special legislation was adopted by the General Assembly authorizing Rockbridge County, Lexington, and Buena Vista to impose a special 2% lodging tax, on top of their existing 4% tax rates, for the express purpose of supporting the USDA debt. In 2007, Rockbridge County and Lexington adopted this tax.

The proceeds from this tax has never fully covered the USDA note and, due to a variety of factors, the VHC has been unable to supplement it with their revenues. In fact, they utilized the required debt reserve to make payment and are presently \$137,000 in arrears. They also have been unable to provide the funds needed to re-invest in their facilities which are now about 25 years old.

The 1% additional tax now requested is separate from the dedicated 2% described above. It is authorized under the general taxing powers in our charter. However, it is not perfectly clear that the City can make a contribution to the VHC outside the authorization of the dedicated 2%. This is where the IDA comes in. Section 15.2-4901 of the State Code lists as a purpose of an IDA:

“It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to facilities devoted to the staging of equine events and activities (other than racing) which are integral to the Commonwealth’s economy and heritage and to promote thereby the safety, health, welfare, convenience, and prosperity of the inhabitants of the Commonwealth” (Vol. 3A, p. 1027).

It is clear that the IDA has the authority to make contributions to the VHC.

The City Council has considered this issue for quite some time, meeting with representatives of the County and the VHC. They are very concerned as to the significant economic impact the VHC has for our region and the impact should it close. They are equally as concerned about the VHC’s ability to turn their operations around and make themselves a financially self-sustaining entity. On Thursday, May 15, 2014, City Council adopted an ordinance implementing the requested tax, effective July 1, 2014. They also voted to support a set of conditions for this contribution, as reflected in the attached Memorandum of Agreement (MOA). They are now asking the Authority to support this effort by being the conduit for this grant.

You can see in reviewing this MOA that Council is (1) only making a two-year commitment; (2) expressly limiting the type of expenses the funds can be used for; and (3) requiring complete financial transparency from the VHC so that the City is made aware of the progress towards meeting their financial goals.

There is much more information that has been gathered over the past many months, and I will endeavor to answer your questions at the meeting.

May, 2014

## Memorandum of Agreement

THIS MEMORANDUM OF AGREEMENT (MOA), by and among, the City of Lexington, A Virginia Municipal Corporation, ("the City"), the INDUSTRIAL DEVELOPMENT AUTHORITY of the City of Lexington, Virginia, an industrial development authority organized and existing under the laws of the Commonwealth of Virginia, ("IDA") and The Virginia Horse Center Foundation, a private not-for-profit foundation organized under laws of the Commonwealth of Virginia, ("VHC").

WHEREAS, The City of Lexington and the County of Rockbridge, Virginia ("the County") have previously adopted ordinances levying a 2% transient occupancy tax as authorized under Section 58.1-3825 of the Code of Virginia, which receipts were paid to VHC as provided under the terms of said Code Section; and

WHEREAS, VHC has been late making loan payments and difficulty meeting its current financial obligations; and

WHEREAS, VHC has requested that the City and the County levy an additional One (1%) Percent transient occupancy tax and pay a sum equal to the funds derived from such levy as a grant to VHC; and

WHEREAS, The City has decided that the IDA is the appropriate entity to handle the receipt of funds from the City and payment of funds to VHC.

NOW, THEREFORE, The parties, in consideration of the promises and obligations contained herein, mutually agree as follows:

The City has adopted an ordinance imposing an additional One (1%) Percent transient occupancy tax (additional tax), exclusive of the 2% transient occupancy tax presently dedicated to the USDA debt service as referenced in Section 366-17 of the City Code (dedicated tax). Further, it is the City's intention to make a grant to the VHC of an amount equal to the amount collected, beginning on July 1, 2014. The grant shall be paid to the IDA to be paid over and deposited in the restricted bank account referenced below. Said grant shall be for a period of two years from that date and will be conditioned upon the following terms.

- A. Collection and Payment of Funds: An amount equal to the receipts from this additional tax plus the receipts collected from the dedicated tax since the last USDA debt payment will be deposited directly into a restricted bank account (restricted account) on a monthly basis. Such funds will be restricted solely for uses authorized by this MOA.
- B. Restricted Account: The funds deposited into this account will be accounted for separately, with the dedicated tax receipts used only for USDA debt payments and the additional 1% tax receipts used for any of the expenses allowed under C. below. The restricted account will separately

account for the funds from each of these sources. A quarterly accounting of these funds, including source of funds, all expenditures, and a description of the purpose of each expenditure will be submitted quarterly to the Chief Financial Officer of the City.

- C. Authorized Expenses: Expenses authorized to be made from this account include: any past due amounts owed to the USDA for the existing debt; the annual debt service payment made to the USDA for the existing debt; replacement of the USDA debt service reserve (if required); and, capital maintenance items of over \$10,000 for upkeep of the facilities existing at the time of execution of this agreement. Capital Maintenance expenditures shall not be made or obligated at the expense of any existing USDA debt obligation or scheduled USDA debt payment.
- D. On or about January 1 of each year, the VHC will submit to the City a 5-year Capital Maintenance Plan of expected projects that would be funded from the restricted account.
- E. Within one month following the end of each quarter, senior staff and the President and Treasurer of the VHC shall meet with representatives of the City to review the status of the restricted account, the full finances of the VHC, and their progress toward making the Center fully financially self-sufficient.
- F. No later than March 30, 2016, representatives of the Horse Center shall meet with representatives of the City to discuss a possible extension of this MOA.
- G. Nothing in this agreement should be construed to lessen the VHC's efforts to fully fund capital costs or debt service payments from other sources or to raise funds from private donors to support their operations.
- H. This MOA shall only be effective upon the County of Rockbridge adopting a similar tax with the proceeds to be used in a similar manner. This agreement shall terminate if the County of Rockbridge adopts a resolution or ordinance that is substantially different in its terms from the terms of this MOA unless specifically ratified by the City. Further, if the VHC determines to cease operations or is placed under the control of a receiver this agreement shall terminate.
- I. Failure of the VHC to provide full financial disclosure to the representatives of the City in a timely manner, as specified in this agreement, shall constitute a breach of the agreement and terminate all financial obligations of the City and the IDA.

VIRGINIA HORSE CENTER FOUNDATION

DATE

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CITY OF LEXINGTON

DATE

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CITY OF LEXINGTON INDUSTRIAL DEVELOPMENT AUTHORITY

DATE

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## Memorandum

To: Industrial Development Authority (IDA)  
From: T. Jon Ellestad, City Manager and IDA Secretary   
Subject: IDA Banking  
Date: May 22, 2014

Presently, the IDA is holding its funds in a separate checking account and money market account at SunTrust Bank. SunTrust was chosen to hold the account because it is the central bank for the City. The Authority also holds two Certificates of Deposit of varying amounts and terms at Carter Bank. These funds total about \$360,000, which was paid to the Authority by the City in 2011. To date, there has been very little activity from these accounts.

Come July, the Authority's accounts will become much more active. Once R. E. Lee Properties, LLC opens the hotel and restaurant, the IDA will be sending quarterly checks to make the agreed-upon economic development grant. Then, if the Authority approves the Virginia Horse Center MOA, monthly deposits and withdrawals will be made from these accounts. Presently, two officers' signatures are required to issue checks. Generally, that is the Secretary (the City Manager) and the Chair. As transactions increase, this will become more cumbersome.

In looking at the original Bylaws adopted by the Authority in 1987 (see attached), I found that, in addition to the City Manager being the Secretary, the Finance Director shall be the Treasurer. I also found a number of other provisions of these Bylaws that we have not been following, but that is another issue. I also talked with our auditor who indicated that other localities hold their IDA funds with the governmental funds, but accounted for in a separate Fund. Even though the IDA has a separate tax ID number, this is allowed. This is how the City accounts for the School System's funds. This would improve accounting, simplify check issuing, and eliminate a separate auditing fee. Checks would be issued upon authorization of the Secretary and the Treasurer. Accounting reports could then be easily provided to the Authority on a quarterly basis. I would recommend that you appoint the City Finance Director as Treasurer and authorize the closing of the IDA bank accounts; incorporating the accounting into the City's accounts as a separate Fund.

Also, since I will be stepping down from my duties as City Manager and your Secretary at the end of July, I would suggest that the first order of business of the Authority would be to review the Bylaws with your new Secretary and Mr. Larry Mann to update them.

BYLAWS OF THE  
INDUSTRIAL DEVELOPMENT AUTHORITY  
OF  
LEXINGTON, VIRGINIA

I. INTRODUCTION

A. Name. The name of this body shall be the "Industrial Development Authority of Lexington, Virginia" and is sometimes hereinafter referred to as the "Authority."

B. Purpose. The purpose of the Authority shall be to acquire, own, lease, and dispose of properties to the end that it may promote industry and develop trade by inducing manufacturing, industrial, commercial and governmental enterprises and institutions of higher learning to locate in or remain in the Commonwealth of Virginia and further the use of the natural resources and agricultural products of the Commonwealth of Virginia. In addition, the Authority shall have all other purposes now or hereafter set forth in the Industrial Development and Revenue Bond Act, Chapter 33 of Title 15.1 of the Code of Virginia (1950), as amended (the "Act").

C. Powers. The Authority shall be vested with all powers that may be necessary or appropriate to enable it to accomplish its purposes, and all such powers shall be exercised for the benefit of the inhabitants of the Commonwealth of Virginia, either through the increase of their commerce or through the promotion of their safety, health, welfare, convenience or prosperity. The Authority may exercise all powers granted to it by the Act as may be in effect from time to time. The Authority shall be a political subdivision of the Commonwealth of Virginia, as provided by



the Act, and as such shall be a separate and distinct legal entity from the City of Lexington, Virginia.

II. BOARD OF DIRECTORS AND OFFICERS

A. Board of Directors. The Authority shall be governed by a Board of Directors in which all powers of the Authority shall be vested.

B. Number, Appointment, and Terms of Directors. There shall be seven Directors of the Authority who shall be appointed by the City Council of the City of Lexington, Virginia. The seven Directors shall be appointed initially for terms of one, two, three and four years; two being appointed for one-year terms; two being appointed for two-year terms; two being appointed for three-year terms; and one being appointed for a four-year term. Subsequent appointments shall be for a term of four (4) years and until a successor Director shall be appointed and qualified. Each Director, before entering upon his duties, shall take and subscribe the oath prescribed by Section 49-1 of the Code of Virginia (1950), as amended. No Director shall be an officer or employee of the City of Lexington, Virginia. Every Director shall, at the time of his appointment and thereafter, reside in the City of Lexington, Virginia. When a Director ceases to be a resident of the City of Lexington, Virginia, such Director's office shall be vacant and a new Director shall be appointed pursuant to the Act and Section II.C. of these Bylaws.

C. Vacancies. The City Council of the City of Lexington, Virginia shall make any appointments necessary to fill any

vacancies upon the Board of Directors, such appointment being for the unexpired term of any Director who shall have resigned or otherwise vacated his office. The City Manager of the City of Lexington shall promptly notify the City Council of the City of Lexington of any vacancy which may occur on the Board of Directors.

D. Compensation for Directors. The Directors shall receive no salary but the Directors may be compensated such amounts per regular, special or committee meeting as may be approved by the City Council of the City of Lexington, Virginia, not to exceed fifty dollars per meeting, and shall be reimbursed for necessary travel and other expenses incurred in the performance of their duties.

E. Officers of the Authority. The Directors shall elect from their membership a Chairman and a Vice-Chairman of the Authority. Officers shall be elected annually at the regular meeting held in September of each year and shall commence their duties immediately upon election and shall continue in office thereafter until a successor shall have been elected and qualified. The Directors may elect at any regular or special meeting such Officers as may be necessary to fill any vacancy created by resignation, expiration of a term of appointment as a Director, or otherwise, which Officers shall serve for the remaining portion of such Officer's unexpired term. The Director shall appoint the City Manager of Lexington as Secretary and the City's Finance Director as Treasurer.

F. Duties of Officers. The duties of Officers of the Authority shall include, but shall not be limited to, the following:

1. The Chairman shall preside at all meetings of the Authority; shall be responsible for notice of meetings to the Directors and Officers of the Authority; shall be responsible for all correspondence; shall make committee appointments; may appoint members of the Authority as liaison to any other governmental agencies, authorities, and commissions; shall act as a signatory when authorized; and shall have overall responsibility for accomplishment of the Authority's goals and purposes.

2. The Vice Chairman shall, in the absence of the Chairman, exercise all of the Chairman's powers and duties. In the event the office of Chairman shall become vacant, the Vice Chairman shall immediately become the Chairman.

3. The Secretary shall be responsible for taking detailed minutes of every meeting of the Authority, and for preparing and distributing such minutes to all persons as directed by the Board of Directors. The Secretary shall maintain copies of all reports, correspondence, contracts, agreements, indentures, documents, audits, rules and regulations and any other records as may be directed by the Board of Directors. The Secretary also shall be responsible for preparing and filing all statements, reports and similar matters from time to time required by law to be filed by the Authority with any Federal, state or local official, including, but not limited to, the statements required to

be filed with the Secretary of the Commonwealth pursuant to Section 2.1-71 of the Code of Virginia (1950), as amended, and the report required to be filed with the City Council of the City of Lexington, Virginia and the Division of Industrial Development, Richmond, Virginia by Section 15.1-1377 of the Code of Virginia (1950), as amended.

4. The Treasurer shall be custodian of all funds of the Authority; shall keep and maintain suitable financial records as may be directed by the Board of Directors; shall arrange for an annual audit of the accounts of the Authority by an independent Certified Public Accountant, subject to the prior approval of the Board of Directors; and shall report to the Directors the results of such annual audit.

5. In addition to the foregoing powers and duties, each Officer of the Authority may exercise any powers conferred upon such officer by the Act, and all other powers as are customarily exercised by such officer in similar organizations or authorities as may be expedient, necessary or proper to further the lawful purposes of the Authority. During the absence of any Officer, the Board of Directors may designate any member of the Authority to perform the duties of the absent Officer until such Officer's return.

G. Quorum. Four members of the Board of Directors shall constitute a quorum of the Board for the purposes of conducting its business and exercising its powers and for all other purposes, except that no facilities owned by the Authority shall be

leased or disposed of in any manner without a majority vote of the members of the Board of Directors. No vacancy in the membership of the Board of Directors shall impair the right of a quorum to exercise all the powers and perform all the duties of the Board of Directors.

H. Voting. Except as otherwise required in these Bylaws or by the Act, voting shall be by a simple majority of those present at any duly constituted meeting of the Board of Directors. No Director shall be allowed to vote by proxy at any meeting of the Authority.

I. Meetings and Notices. Except as set forth in Section II. J. hereof, regular meetings of the Board of Directors shall be held at the call of the Chairman at 5:00 p.m. on the third Wednesday of the month, at Lexington City Hall. Special meetings of the Board of Directors may be called by the Chairman or a majority of the Board of Directors. Notice specifying the time and place of any special meeting shall be given to each Director and Officer of the Authority at least 24 hours before such meeting by personally delivering such notice to him or her or by telephoning or mailing such notice to him or her at least 24 hours before the meeting. The presence of any Officer or Director at a special meeting shall be deemed an acknowledgement of the timely receipt of notice thereof or a waiver of any such notice. Special meetings may be held without notice if all of the Directors are present or those not present sign a written waiver of notice before

or after the meeting. All meetings at which formal action is taken shall be open to the public.

J. Public Hearing and Approval; Transmission of Fiscal Impact Statement.

1. Whenever federal law requires public hearings and public approval as a prerequisite to obtaining federal tax exemption for the interest paid on industrial development bonds, unless otherwise specified by federal law or regulation, the public hearing shall be conducted by the Authority either at its offices or in the General District Court Room of the City of Lexington on a date and at a time selected by the Chairman of the Authority.

2. Notice of the hearing shall be given by the Secretary by publishing once a week for two successive weeks in a newspaper published or having general circulation in the City of Lexington, Virginia. The notice shall specify the time and place of hearing and also shall contain (a) the name and address of the Authority; (b) the name and address (principal place of business, if any) of the party seeking financing; (c) maximum dollar amount of financing sought; and (d) the type of business and purpose and specific location, if known, of the facility to be financed. Notwithstanding anything to the contrary contained herein, the hearing shall be scheduled and held not less than six (6) nor more than twenty-one (21) days after the second publication, as aforesaid.

3. If after the public hearing has been held, the Authority approves the financing, the Chairman shall convey promptly to the City Council of the City of Lexington, Virginia a reasonably detailed summary of the comments expressed at the hearing, together with the Authority's recommendation. Such summary and recommendation shall be accompanied by a fiscal impact statement concerning the facility and financing therefor for which approval is sought in the following form:

		_____
		Date
(Name of Applicant)		
(Facility)		
1.	Maximum amount of financing sought	\$ _____
2.	Estimated taxable value of the facility's real property to be constructed in the municipality	\$ _____
3.	Estimated real property tax per year using present tax rates	\$ _____
4.	Estimated personal property tax per year using present tax rates	\$ _____
5.	Estimated merchants' capital tax per year using present tax rates	\$ _____
6.	Estimated dollar value per year of goods and services that will be purchased locally	\$ _____
7.	Estimated number of regular employees on year round basis	\$ _____
8.	Average annual salary per employee	\$ _____

Signature

\_\_\_\_\_

Chairman

INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE  
CITY OF LEXINGTON

The Chairman shall use his best efforts to transmit said fiscal impact statement, summary and recommendation to the City Council of the City of Lexington, Virginia within such time as will permit said City Council to either approve or disapprove the financing within sixty (60) calendar days from the public hearing.

K. Minutes. The Secretary of the Authority shall keep detailed minutes of all meetings and proceedings and all such minutes shall be open to public inspection at all times at the office of the Authority.

L. Financial Transactions, Records and Fiscal Year. The Treasurer of the Authority shall keep suitable records of all financial transactions of the Authority and shall arrange to have the same audited following the end of each fiscal year, subject to the approval of the Board of Directors. Copies of each audit shall be further furnished to the City Council of the City of Lexington, Virginia and all such other persons as the Board of Directors may deem appropriate, and shall be open to public inspection at the office of the Industrial Development Authority, at City Hall, 300 East Washington Street, Lexington, Virginia 24450. The fiscal year of the Authority shall begin on July 1 and end on the last day of June next following.

M. Agenda of Meetings. The format of all regular meetings of the Board of Directors shall be as follows:



- A. Call to Order.
- B. Reading (if requested by any member), approval and correction of the minutes of the last regular meeting and any special meetings held subsequent to the last regular meeting.
- C. Treasurer's Report.
- D. Chairman's Report.
- E. Committee Reports: Executive Committee, Industrial Advisory Committee, and Special Committees.
- F. Old Business.
- G. New Business.
- H. Adjournment.

N. Employees and Agents. The Board of Directors shall have the power to employ and pay compensation to such employees and agents, including attorneys, as the Board of Directors shall deem necessary in carrying on the business of the Authority.

### III. COMMITTEES

A. Executive Committee. The Board of Directors may designate, by resolution adopted by a majority of the Directors, any two or more of the Directors to constitute an Executive Committee. The Executive Committee shall consider on behalf of the Board of Directors, all matters brought to its attention when the Board of Directors is not in session during either a regular or a special meeting. The Executive Committee may act solely in an advisory capacity and shall not exercise any of the powers granted to the Authority of its officers pursuant to these Bylaws or the Act. The Executive Committee shall report to the members of

the Authority at the Authority's next regularly scheduled meeting all matters discussed by the Executive Committee.

B. Special Committees. The Board of Directors may appoint, from time to time, committees as it may deem necessary and expedient to promote the purposes of the Authority. Such committees shall be advisory only and shall not be empowered to act by or on behalf of the Authority. Members of any special committee shall not be compensated for their services but may be reimbursed for necessary traveling and other expenses incurred while on the business of the Authority.

#### IV. SEAL OF THE AUTHORITY

A. Seal. The seal of the Authority shall be a flat faced circular die with the name of the Authority engraved thereon and such other words and figures as may appear thereon, as evidenced by a sample of such seal which appears on the margin of these Bylaws opposite this Section.

#### V. CHECKS, NOTES, DRAFTS AND OTHER LEGAL DOCUMENTS

A. Authorized Signatures. Checks, notes, drafts, and other legal documents shall be signed by such Directors or Officers as specified in the Act, these Bylaws, or as the Board of Directors may, from time to time, authorize. The signature of any such person may be by facsimile when authorized by the Board of Directors or the Act.

#### VI. RULES AND REGULATIONS

A. Rules of Order. Roberts Rules of Order, newly revised or any subsequent edition thereof, shall govern all matters of procedure not specifically set forth in these Bylaws or the Act.

B. Rules and Regulations. The Board of Directors may adopt, amend and alter, from time to time, such rules, regulations, or forms which it may deem necessary or expedient for the management of the affairs of the Authority and which shall not be inconsistent with the Act. The Secretary of the Authority shall maintain current copies of all rules, regulations, and forms adopted by the Authority, which shall be available for public inspection at all times at the office of the Authority.


#### VII. AMENDMENTS

A. Amendments of Bylaws. These Bylaws may be amended by a majority of the Board of Directors present at any duly constituted meeting, provided written or oral notice of such amendment shall have been given to the Directors and Officers at least 24 hours prior to any such meeting.



Office of the City Manager

## Memorandum

To: Industrial Development Authority (IDA)  
From: T. Jon Ellestad, City Manager and IDA Secretary   
Subject: Request from R. E. Lee Properties for a Certificate of Partial Completion  
Date: May 22, 2014

Attached you will find a letter from Attorney Lee Taylor, representing R. E. Lee Properties, LLC, requesting that the Authority execute the attached Certificate of Partial Completion in order for them to execute a contract for sale of one of the three condominium units on the top floor of the building. The Authority holds a Deed of Trust on the entire property as a result of a \$150,000 forgivable loan the Authority made towards this project. Once the project has been completed and the obligations of the developer have been met, the loan is forgiven and the deed removed from the property. The obligations of the developer are attached.

I have reviewed each of the obligations and can report to you the progress made on each obligation:

- A. The developer purchased the property, obtained construction financing of \$4.8 million and obtained the required life insurance.
- B. The developer has until November 25, 2014 to complete the renovations and open the two businesses. The renovation of the condominiums is substantially completed, and the renovation of the hotel was expected to be completed by late June. The restaurant still has some work to do, but should be open around the end of June also. I would propose that the Authority tour the building during the meeting to assure yourselves of the status of the work.
- C. The developer has been approved for over \$5 million in construction financing and has obtained building permits for \$5.2 million. He also has obtained a "Prospective Market Value Upon Completion" appraisal, for financing purposes, that sets the value at \$7.5 million. I do not believe any additional information will be needed to certify that this obligation has been met.
- D. The developer has, so far, met this condition. He will only have to pull business licenses for the new businesses.
- E. This condition will have to be confirmed in July.

Given the status of the project to-date, I do not believe that the City or Authority is at any great risk in approving this certificate.

*Law Offices*  
***SPENCER & TAYLOR, PLC***  
*Attorneys at Law*

401 Lime Kiln Road  
Lexington, VA 24450  
Telephone: (540) 463-7138  
Facsimile: (540) 464-6500

Lee R. Taylor  
Kent A. Gibson  
Thomas C. Spencer (retired)

148 West 20<sup>th</sup> Street  
Buena Vista, VA 24416  
Telephone (540) 261-7138  
Facsimile (540) 261-6511

May 20, 2014

T. Jon Ellestad  
Lexington City Manager  
300 Washington Street  
Lexington, VA 24450

Laurence A. Mann, Esquire  
Lexington City Attorney  
15A E. Nelson Street  
Lexington, VA 24450

*Re: Robert E. Lee Properties, LLC*

Dear Messrs. Ellestad and Mann:

Please accept this letter on behalf of Ugo Benincasa, the manager of Robert E. Lee Properties, LLC. As you are well aware, Mr. Benincasa has been engaged in the renovation and restoration of the Robert E. Lee Hotel on Main Street, here in Lexington. The restoration is nearing its completion, with an occupancy date projected for June 30, 2014.

Mr. Benincasa is excited about the progress made to date and would like to invite you, as well as the members of the Industrial Development Authority, to tour the hotel at a convenient time.

As the restoration nears its completion, a contract to sell one of the condominium units on the top floor has been entered, which has a projected closing date of late May. To that end, the developer has requested that a Certificate of Partial Satisfaction be executed by the Industrial Development Authority, releasing the property from the lien which secures the Performance Agreement dated May 25, 2011. The proceeds from this sale will be extremely helpful to the developer in paying the final cost associated with this project. In addition, Mr. Benincasa has proposed that a portion of the sale proceeds be committed to reduction of the principal on the purchase money Deed of Trust which was recorded at the time of closing on the parking lot, at the rear of the hotel.

T. Jon Ellestad  
Laurence A. Mann  
May 20, 2014  
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I am excited about the completion of this tremendous project and the benefit that it will bring to the city of Lexington.

I look forward to hearing from you in this regard.

Sincerely,



Lee R. Taylor

LRT/rf

cc: Ugo Benincasa

The real estate affected is 28-1-1-188B

VA.CODE Section 55-66.3 to 55-66.7

**CERTIFICATE OF PARTIAL SATISFACTION**

Place of record: CIRCUIT COURT OF ROCKBRIDGE COUNTY, VIRGINIA

Date of Deed of Trust: August 5, 2011

Deed of Trust Instrument Number: 110002334

Name(s) of Grantor(s): Robert E. Lee Properties, L.L.C.

Name(s) of Trustee(s): Laurence A. Mann and J. Steven Grist

Brief Description of Property to be Released: All those premises comprising a Condominium Unit in Robert E. Lee Condominium, located in the City of Lexington, Virginia, together with all appurtenances, rights and privileges thereunto belonging, including but not limited to the Common Elements of said Condominium, pursuant to the Declaration Of Condominium Covenants, Restrictions and Easements, Robert E. Lee Condominium, dated the 14th day of November 2013, of record in the Clerk's Office of the Circuit Court of Rockbridge County, Virginia, as Instrument Number 130003908, shown and described as "SUITE B, ±1,226 sq. ft.", on that certain plat, dated February 21, 2013, revised July 5, 2013, prepared by Farris P. Hotchkiss, L.S., entitled "Exhibit "D" Sixth Floor Robert E. Lee Hotel", which plat is of record in the Clerk's Office aforesaid attached to Instrument Number 130003908.

Maker(s) of Notes(s): Robert E. Lee Properties, L.L.C.

Date of Note(s): August 5, 2011

Face Amount of Note(s): \$150,000.00

The lien of the above-mentioned deed of trust securing the above-mentioned note is hereby released only insofar as the same is applicable to the real estate described above and in all other respects shall remain in full force and effect.

The undersigned is the legal holder of the evidence of debt secured by the said deed of trust.

Given under my/our hand(s) this \_\_\_\_\_ day of \_\_\_\_\_, 2014, pursuant to duly authorized authority.

**THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON**, Noteholder

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

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

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_:

Subscribed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014,  
by \_\_\_\_\_ (NAME AND TITLE) AS  
authorized agent for the Industrial Development Authority of the City of Lexington.

My commission expires: \_\_\_\_\_.

Notary Registration Number: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Grant payments within 30 days of confirmation of such information.

- D. Subject to the provisions of this Agreement, the amount of each Grant shall be up to an amount equal to the real estate taxes generated based on 50% of the assessed value above the present assessed values set forth herein as of the date of this agreement, currently \$1,297,200.00, together with 50% of revenue generated by Lodging taxes, Business tangible property taxes, Business license tax and Meals taxes from the Hotel facility not now generated by or from the Facility. Any new local tax or increase in the rate of any of the aforementioned taxes for the purpose of dedicating the incremental revenue for a specific project or purpose shall be excluded from such amount of tax revenue resulting from the Property or the Hotel. Each grant quarter must be looked at separately to see if the requirements for a Grant have been met.
- E. The maximum amount of all Grant funds Developer may receive under this Agreement shall in no event exceed a total of \$348,920.00. Once this maximum amount is paid Developer may not make any further Grant requests and no further Grant requests will be considered.

**SECTION 6. OBLIGATIONS OF UGO BENINCASA, SALVATORE BONIFATI and a Limited Liability Company or Corporation with a majority interest held by same and formed by them, if any (DEVELOPER).**

DEVELOPER agrees and promises that in order to qualify to receive and to continue to receive the Grant for each grant year (as defined in this Agreement), he or his Company or both shall do or provide each of the following, all of which are material to this Agreement:

- A. Provide the IDA and the City, within 12 months of closing on the Hotel property, sufficient documentation, as determined by the IDA and the City, establishing that Developer has the right, authority, and financial ability to develop the Property as contemplated by this Agreement and to operate a hotel and restaurant on such Property, including but not limited to a non-contingent financing agreement with a recognized lender and life insurance in at least the amount of \$250,000.00 on his life with the City listed as loss payee until final payment of Grant has been made.
- B. Within 42 months after the date of this Agreement, complete the renovation of the Hotel with at least 35 Hotel Rooms, a full service restaurant on the second floor, the top floor to be renovated into either hotel rooms or condominium apartments, together. Furthermore, within such 42 month time period, Developer shall obtain a permanent certificate of occupancy for the Facility and the Facility will be open to the public for business.



- C. Within 42 months after the date of this agreement, Developer will have spent or caused to have been spent at least \$2.5 million on the development of the Facility. The \$2.5 million shall be exclusive of the cost of the Properties. The Developer shall provide the documentation provided to any lender to induce said lender(s) to commit to lend Developer at least \$2.5 million for construction, together with copies of all lien waivers and draw requests provided to the lender(s) from the date of this Agreement through the completion of construction of the Facility. Any personal financial information of Ugo Benincasa and Salvatore Bonifati required by Lender shall be excluded from this requirement to disclose
- D. Developer shall file all appropriate and applicable real estate tax and other tax forms or notices with the City, ensure it has received assessments from the City for such taxes, and Developer shall pay all such taxes to the City and not claim any exemptions from real estate taxes or other taxes for any periods of time for which Grant funds are requested. Developer shall also ensure that the owner of the Property and any entity that may operate and/or manage the Facility, if different than Developer and/or Company, also complies with all the obligations of this Section and any other applicable provisions of this Agreement.
- E. Developer shall confirm that at least 30 new jobs have been created with the opening of the Hotel and restaurant which may be part time or full time positions. Developer shall provide sufficient documentation to establish to the reasonable satisfaction of the IDA and the City of Developer's compliance with the obligations set forth in this subparagraph.

Immediately after Developer has fulfilled the obligations set forth herein in full and has opened the Hotel and the restaurant for business, the City and IDA shall confirm to Developer in writing that the terms of this Section have been satisfied and the City and the IDA shall release Developer from any further obligations under subparagraphs A, B, C and E of this Section. When Developer has received the maximum amount of the Grant funds (\$348,920.00), the Developer shall be released from any further obligations under Subparagraph D of this Section.

#### **SECTION 7. DISTRIBUTION OF GRANT FUNDS.**

The City shall deposit with the IDA the sum of \$348,920.00 together with the sum of \$150,000.00 to provide funds for the forgivable loan and Grant on or about the time of the closing on the Hotel property. Following the end of each grant quarter, based upon the City's fiscal year, upon compliance with the obligations set forth in this Agreement, including but not limited to furnishing the information set out in Section 6, sub-paragraph C therein, to the City and the IDA, the City shall compute the amount of the Grant due Developer and forward confirmation to the IDA which shall pay such amount to Developer. The City will process such approved request within 20



May 14, 2013

Kelly Sargent  
Cornerstone Bank  
54 South Main Street  
Lexington, VA 24450

Dear Ms. Sargent:

Charles W. Parkhurst, MAI, CCIM  
President

1502 Franklin Road, SW  
Suite 102  
Roanoke, Virginia 24016  
Phone: 540/721-1109  
Fax: 540/721-2725

Web:  
www.greylockadvisorygroup.com

Email:  
chuck@greylockadvisorygroup.com

At your request, we have estimated the Market Values "As Is" and "Prospective Market Value Upon Completion" (PMVUC) of the property known as "Robert E. Lee Building" located at 30 South Main Street, City of Lexington, Virginia. The ownership interest appraised is the Fee Simple Estate. We visited the subject property on October 11, 2012. The Effective Dates Of Appraisals are October 11, 2012 (As Is) and February 11, 2014 (Prospective Market Value Upon Completion). The indicated value of the subject property is \$2,600,000 (As Is) and \$7,500,000 (Prospective Market Value Upon Completion).

Attached is a Summary Appraisal Report to substantiate our findings. This appraisal is prepared under the Uniform Standards of Professional Appraisal Practice (USPAP) and to the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Title IX (FIRREA), as well as, the supplemental standards required for use in a Federally Related Transaction (FRT).

It has been a pleasure to serve you in this matter.

Respectfully,

Charles W. Parkhurst, MAI, CCIM  
President  
Virginia Certified Real Estate

Appraiser No. 3320

Todd W. Ohlerich  
Senior Appraiser  
Virginia Certified General  
Real Estate

Appraiser No. 15972



On Target In The Market