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**TEMPORARY CONSTRUCTION AND
ACCESS EASEMENT AGREEMENT**

THIS **TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT** (“Easement Agreement”), is made as of this ____ day of _____, 2014, by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, acting in its proprietary capacity and not in its governmental or regulatory capacity, as grantor (the “County”); **LAUREL HILL VENTURE, LLC**, a Virginia limited liability company (“Alexander”); and **LAUREL HILL INVESTMENTS, L.C.**, a Virginia limited liability company (“Elm Street”, Elm Street and Alexander being hereinafter referred to both individually and collectively, as grantee, and, where the context may require, as the “Developer”).

RECITALS:

WHEREAS, On July 11, 2002, the County acquired approximately 2,323 acres of land located in Fairfax County, Virginia, which includes, among other things, an adaptive re-use site, identified as Fairfax County Tax Map Number 107-1-((1))-9 and being further described on Exhibit A attached hereto and made a part hereof (the “Property”), on which is situated a former reformatory and penitentiary.

WHEREAS, on [_____, 2014], the County and the Developer entered into that certain Master Development Agreement (as may be amended or modified from time to time, the “MDA”), which governs the construction of new residential, commercial, and retail uses as well as the adaptive re-use of historic structures for residential, commercial, and retail uses on portions of the Property.

WHEREAS, certain portions of the Property, in connection with the Developer's development and construction of the Project (as defined in the MDA), may be conveyed, as applicable, by Ground Lease (as defined in the MDA), or by Deed (as defined in the MDA), all as more particularly described in the MDA.

WHEREAS, the MDA contains that certain Phasing Plan (as defined therein), whereby the Developer will close on certain portions of the Property in different phases.

WHEREAS, the Developer desires access to that certain portion of the Property more particularly described in Exhibit B attached hereto and made a part hereof (the Easement Area), in order to begin construction of certain of infrastructure improvements included within the various Infrastructure Components (as defined in the MDA) of the Project (collectively, the Infrastructure Improvements) prior to Closing (as defined in the MDA) and obtaining a possessory interest in the portion of the Property included in the respective Phase (as defined in the MDA) in which the Easement Area is a part.

WHEREAS, in connection with the development and construction of the Project pursuant to the terms and conditions of the MDA, the County and the Developer agree that granting the Developer certain easement rights on, over and across and through the Easement Area for the purpose of access, ingress and egress of motor vehicles, construction equipment and personnel to facilitate the site preparation, grading and construction of the Infrastructure Improvements prior to Closing on the Phase containing the Easement Area under the MDA will benefit the Project.

WHEREAS, the County has agreed to grant the Easement (as defined below) to Developer, subject to the terms and conditions provided in this Easement Agreement.

NOW, THEREFORE, for and in consideration of the foregoing premises, the mutual agreement of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals; Undefined Terms.** The above recitals are true and correct and are incorporated herein by this reference. Capitalized terms used in the Recitals and in this Easement Agreement but not otherwise defined herein shall have the meanings as ascribed to such terms in the MDA.

2. **Grant and Use of Temporary Construction and Access Easement.** The County does hereby give, grant, and convey unto the Developer (and its successors and assigns), the following non-exclusive temporary construction and access easements (collectively, the Easement) throughout the Term (as defined in Section 5 below) for use related to the construction of the Infrastructure Improvements related to the Project:

a) **Access Easement** - An access easement on, over, across and through the Easement Area. The easement granted hereby shall be for purposes of pedestrian and vehicular access, ingress, egress, regress, and passage to, from and between the Easement Area and any Phase of the Project for which a Closing has occurred, and publicly dedicated rights-of-way; provided, however, that the use and exercise of such easements, rights and privileges shall not unreasonably affect or interfere with the use (if any) of the Easement Area by the County. The County reserves the right, from time to time to cause the Developer to replace, reconfigure and relocate any temporary roadways, driveways or entranceways if the County determines that any of the foregoing will cause unreasonable interference with publicly dedicated roads or rights-of-way or unwarranted traffic congestion or interference to adjacent property owners use or enjoyment of their

property; provided the County does not unreasonably interfere with the easement rights granted herein.

b) Construction Easement ó To the extent reasonably necessary or desirable for the preparation of the Easement Area to construct, and the construction of, the Infrastructure Improvements, the County grants to the Developer an easement in, on and over the Easement Area to facilitate and carry out such preparation and construction, including the right to have contractors, subcontractors, personnel, vehicles, machinery, materials, equipment and similar items present therein. This construction easement must be utilized in a manner which will not unreasonably interfere with the use of or access to any portion of the Project or to any adjacent property by its owner. All construction allowed under this Easement shall be done in accordance with the terms of the MDA.

3. Reservation of Rights. Subject to the rights created herein, the County expressly reserves (to itself, its successors and assigns) the right to use, or to grant to others the right to use by virtue of additional licenses, rights-of-way, reservations or easements, any and all portions of the area upon, above, or under the Easement Area (in the County's reasonable discretion) for any purpose whatsoever not inconsistent with the rights or purposes herein granted, including, but not limited to, the right of ingress and egress over and across the Easement Area onto any adjacent or contiguous property; provided, such right does not unreasonably interfere with the Developer's Easement hereunder.

4. Limitation of Rights. The Easement granted herein creates a non-exclusive easement, and other than such rights expressly created by this Easement Agreement the Developer does not and may not claim any interest or estate of any kind or extent whatsoever in the Easement Area (subject to the Developer's rights to a Closing under the MDA on the Phase that contains the Easement Area).

5. Term. The Developer acknowledges that this Easement Agreement, and the Developer's rights in and to the Easement granted herein, shall immediately terminate, expire and be deemed null and void upon the earlier of (i) the Closing on the Phase that contains the Easement Area by the Developer under the MDA, or (ii) termination of the MDA in accordance with its terms.

6. Covenants of the Developer. The Developer (and its successors, assigns, agents, invitees and employees) shall:

(a) not interfere with or prevent the normal use and maintenance by the County of the Easement Area (if any), or the County's adjacent property, provided the County's right to use the Easement Area shall be subject to the terms and conditions set forth in Section 3 above;

(b) not intentionally interfere with any existing or hereafter granted license, easement, reservation or right-of-way upon, above, over, through, under or across the Easement Area so long as such license, easement, reservation or right-of-way

does not materially and adversely interfere with the Developer's Easement hereunder; and

(c) exercise diligent good faith efforts to comply at all times and in all respects with all Applicable Law. The Developer shall also obtain, maintain and comply with all applicable permits (if any) in connection with the Developer's use of the Easement Area. The Developer shall not, by any act or omission, render the County liable for any violation thereof.

7. **Liens.** The Developer shall not act (or fail to act) in a way which permits any lien to be filed against the Easement Area for any labor or materials in connection with work of any character performed or claimed to have been performed on the Easement Area at the direction or sufferance of the Developer or its assigns. To the extent any such lien is filed against such Easement Area prior to a Closing on the Phase in which the Easement Area is contained, without the prior written consent of the County, which may be granted or withheld in the County's sole, but reasonable discretion (and subject to the terms of the MDA, if applicable), the Developer shall cause the same to be immediately removed by bonding over or otherwise satisfying such lien, and if the Developer fails to do so, the County shall have the right (but not the obligation) to cause the removal of the same and charge the Developer for all of the actual out of pocket costs and fees incurred by the County in connection with such lien removal, together with interest accruing thereon at an annual rate of interest as set forth in the MDA, until the County's receipt of full payment therefor.

8. **Insurance.** At any and all times while the Developer is using the Easement Area pursuant to the terms of this Easement Agreement, the Developer shall obtain and maintain general public liability insurance and any and all other types of insurance for the Easement Area in the same amounts and with the same limits as are required to be maintained for any Phase of the Project in accordance with the terms of the MDA. Further, any insurance requirements to be obtained or observed by the Developer under the MDA (including, without limitation, requirements to name the County as an additional insured, delivery of insurance certificates or copies of policies to the County, etc.) shall apply to the Developer under this Easement Agreement with respect to the Easement Area.

9. **Indemnification.**

(a) The Developer shall defend, indemnify and save the County and their respective heirs, personal representatives, successors and assigns, harmless from and against any and all claims for injury or death to persons, damage to or loss to property, mechanics or materialman's liens, or any other liability of any nature whatsoever to the full extent permitted by Virginia law, including, without limitation, the cost of any reasonable attorneys' fees and other costs, arising out of or alleged to have arisen out of or occasioned by the use and occupancy of the Easement Area by the Developer (and its successors, assigns, employees, contractors, agents, guests and invitees) pursuant to the terms of this Easement Agreement. Notwithstanding the foregoing, in no event shall the Developer be

required to indemnify the County for any claims, damages or losses resulting from the negligence or willful misconduct of the County, its employees, agents, or contractors on the Easement Area during the term of this Easement Agreement.

(b) The Developer shall protect, defend, indemnify and hold the County harmless from any liens, claims, suits, demands, actions or causes of action made or filed by any architect or contractor with whom such party has contracted for the design and construction of the Project under this Agreement or made or filed by any other person acting directly or indirectly by, through or under such architect or contractor or otherwise supplying services, labor, materials or equipment, it being understood that the County shall not be construed to be the agent or partner of the Developer, and the Developer assumes all responsibility and liability for the cost of the performance of any construction contracted for or by the Developer and any disputes in regard thereto and the agreements therefor. Notwithstanding the foregoing, this subsection is subject and subordinate to the terms of the MDA (including without limitation, the Per Phase County Project Cost Allocation and Per Phase Developer Project Cost Allocation with respect to the Infrastructure Improvements being constructed within the Easement Area) and in the event that the terms of this subsection contradict the terms of the MDA, the terms of the MDA shall control.

10. **Breach by the Developer.** If the Developer materially breaches any provision of this Easement Agreement and fails to cure any such breach within thirty (30) days after written notice thereof is given by the County (unless, with respect to any such breach the nature of which cannot reasonably be cured within such thirty (30) day period, the Developer commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion), in addition to any other right or remedy available to the County at law or in equity, the County shall have the right, but not the obligation, to cure any such breach or terminate this Easement Agreement (subject in all cases, to the rights of Developer to cure a default or breach under the MDA). The Developer shall reimburse the County for any and all out of pocket costs incurred by the County to exercise its rights hereunder upon demand, together with interest accruing thereon at an annual rate of interest as set forth in the MDA, until the County's receipt of full payment therefor.

11. **Condition of Easement Area.** The Developer acknowledges that the Developer (i) has physically inspected the Easement Area; and (ii) except as may otherwise be expressly set forth in the MDA, accepts the Easement Area "AS IS" and "WHERE IS" with full knowledge of the conditions thereof and subject to all existing easements, rights-of-ways, covenants, encumbrances, liens, and restrictions of record. The County makes no representations, statements, warranties or agreements to the Developer in connection with this Easement Area, including, without limitation, the nature of title (if any) granted herein, except as may be expressly represented or warranted to in the MDA. The Developer's use of the Easement Area is at its own risk and the County shall have no liability or obligation for or with respect to any loss or damage to any of the Developer's improvements within the Easement Area, except as may otherwise be expressly provided in the MDA.

12. **Miscellaneous.**

a) **Modification.** This Easement Agreement may not be modified or amended in any respect except by a written agreement executed by or on behalf of the parties hereto, in the same manner as executed herein.

b) **No Assignment; Binding on Successors and Assigns.** Except and unless the MDA is assigned by Alexander, Elm Street or the Developer in accordance with the terms thereof, the Developer may not assign or otherwise transfer this Easement Agreement, or any of its rights and obligations hereunder, in whole or in part, without the prior written consent of the County, which consent shall not be unreasonably withheld, conditioned or delayed. This Easement Agreement shall be binding upon and shall inure to the benefit of, the successors and permitted assigns of the parties, and where the term "County," "Developer," "Alexander," or "Elm Street" is used in this Easement Agreement, it shall mean and include such entity's respective successors and permitted assigns.

c) **Interpretation and Governing Law.** This Easement Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia. Should any provision of this Easement Agreement require judicial interpretation, the parties hereby agree and stipulate that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of any rule or conclusion of law that a document should be construed more strictly against the party who itself or through its agents prepared the same, it being agreed that all parties hereto have participated in the preparation of this Easement Agreement and that each party had full opportunity to consult legal counsel of its choice before its execution of this Easement Agreement.

d) **Notice.** Any notice required to be given shall be made pursuant to the provisions of the MDA.

e) **Counterparts.** This Easement Agreement may be executed in counterparts; each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument.

f) **Waivers.** The parties shall have the right by notice in writing to the other parties to waive any of the provisions of this Easement Agreement that are for the sole benefit of the waiving party. Any failure of a party to insist upon strict compliance with any of the terms and conditions of this Easement Agreement shall not be construed as a waiver of such terms and conditions or of the right of such party to insist at any time thereafter upon such strict compliance.

g) **Headings.** The descriptive headings in this Easement Agreement are inserted for convenience only and do not constitute a part of this Easement Agreement.

h) **Third Parties.** NO PERSON SHALL BE DEEMED TO BE A THIRD PARTY BENEFICIARY OF THIS EASEMENT AGREEMENT OR ANY PORTION HEREOF.

i) Jury Trial. ALL SIGNATORIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS EASEMENT AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

j) Definition of the County. Whenever the term, the "County," is used in this Easement Agreement, unless the term is followed by, "in its governmental capacity," "in its regulatory capacity," or words of similar import, the term means, "the County, in its proprietary capacity."

k) Construction and Interpretation of Easement Agreement. This Easement Agreement has been fully reviewed and approved by the parties hereto and their respective counsel. Accordingly, in interpreting this Easement Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provisions being interpreted. Section headings are for convenience only and shall not be considered in construing this Easement Agreement.

The following words and phrases as used throughout this Easement Agreement shall be construed as follows, unless otherwise modified: (i) "At any time" shall be construed as "at any time or from time to time." (ii) "Any" shall be construed as "any and all." (iii) "including" shall be construed as "including but not limited to." (iv) "will" and "shall" shall each be construed as mandatory (v) the word "in" with respect to an easement granted or reserved shall mean, as the context may require, "in," "to," "on," "over," "within," "through," "upon," "across," "under," and any one or more of the foregoing.

l) No Public Rights Created. Nothing herein shall create or be construed to create any rights in or for the benefit of the general public in or to the Easement Area or the Easement granted hereby, and there shall be no public dedication.

m) Severability. Each paragraph, subparagraph, part, term and provision of this Easement Agreement shall be considered severable; and if; for any reason, any paragraph, term or provision is herein determined to be invalid or contrary to or in conflict with any existing or future law or regulation of a court or agency having valid jurisdiction, such shall not impair the operation or effect the remaining portions, paragraphs, terms and provisions of this Easement Agreement, and the latter will be given full force and effect and will bind the parties hereto; and said invalid paragraphs, terms or provisions shall be deemed not to be part of this Easement Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the parties hereto have executed this Easement in duplicate the day and year first above written.

**BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA**, a
political subdivision of the Commonwealth
of Virginia, in its proprietary capacity

Approved as to Form:

Name:
Title: Assistant County Attorney

By: _____
Print Name: _____

COMMONWEALTH OF VIRGINIA)
) ss:
COUNTY OF FAIRFAX)

On _____, 2014, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(Signatures Continue)

Exhibit A

Depiction of Easement Area