

COMPREHENSIVE AGREEMENT

by and between

THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA,

and

THE ALEXANDER COMPANY, INC.

**78.53 ACRES OF LAND IN THE MOUNT VERNON MAGISTERIAL
DISTRICT, FAIRFAX COUNTY, VIRGINIA
TAX MAP #107-1-((01))-0009**

Dated as of _____, 2014

COMPREHENSIVE AGREEMENT

THIS **COMPREHENSIVE AGREEMENT** (this "Agreement") is made and entered into as of this ____ day of _____, 2014 (the "Agreement Date"), by and among 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 (the "County"), and **THE ALEXANDER COMPANY, INC.**, a Wisconsin corporation ("Alexander", and together with the County, collectively, the "Parties").

RECITALS:

1. On July 11, 2002, the County acquired approximately 2,323 acres of land located in Fairfax County, Virginia (the "Master Deed Land"), pursuant to that certain Quitclaim Deed between the United States of America, acting by and through the Administrator of General Services (the "GSA"), and the County, and recorded among the land records of Fairfax County, Virginia in Deed Book 13112, Page 2169, as amended by that certain Corrected Quitclaim Deed between the GSA and the County, recorded July 16, 2002, among the land records of Fairfax County, Virginia in Deed Book 13116, Page 2200 (collectively, the "Master Deed").

2. The future development of the Master Deed Land is governed by, inter alia, (a) various restrictive covenants contained in the Master Deed itself, (b) the Fairfax County Reuse Plan, adopted on July 26, 1999 and as subsequently amended to date (the "Reuse Plan"), and (c) that certain Memorandum of Agreement dated June 28, 2001, by and among GSA, the County, the Fairfax County Park Authority, Fairfax County Public Schools, the Federation of Lorton Communities, the Lorton Heritage Society, the Northern Virginia Regional Park Authority, the Virginia Department of Historic Resources, and the Advisory Council on Historic Preservation (the "MOA"). The Reuse Plan is reflected in the Fairfax County, Virginia Comprehensive Plan (the "Comprehensive Plan").

3. As reflected on the Reuse Plan, the Master Deed Land includes an adaptive re-use site, identified as Fairfax County Tax Map Number 107-1-((1))-9 (the "Property"), on which is situated a former reformatory and penitentiary. The Master Deed, the Reuse Plan and the MOA require the County to adaptively re-use these prison structures as part of any County development of the Property. A legal description of the Property is attached to the MDA (as defined below).

4. On or about August 31, 2007 the County issued a request for proposal (as amended, modified, and accepted by the County; and including any written responses to inquiries by the County and any oral presentations by Alexander or Elm Street, or both (as hereinafter defined), collectively, the "RFP"), pursuant to Virginia's Public-Private Education Facilities and Infrastructure Act of 2002 ("PPEA"), Va. Code § 56-575.1, *et seq.*, for a Master Developer (as defined in the RFP) for the Property, to partner with the County to for the planning and development of the Property. The County subsequently

made a determination that Alexander was qualified, and selected Alexander as the Master Developer for the Property.

5. This work culminated in a master plan for the Property showing desired land use, budget and densities, which was approved by the Board of Supervisors on May 11, 2010 (the "Master Plan"). The portions of the Property to be developed pursuant to this Agreement include, but are not limited to, the historic structures located on those portions of the Property and any infrastructure thereto, and are hereinafter referred to as, collectively, the "Project".

6. Following the adoption of the Master Plan, Alexander entered into an agreement with Elm Street Communities, Inc., a Virginia corporation ("Elm Street"), whereby Elm Street agreed, among other things, to assist Alexander in the planning and rezoning process for the Project and to assume responsibility for development of portions of the new market rate residential and certain other components of the Project.

7. Pursuant to an Interim Agreement, dated as of November 4, 2011, by and between the County and Alexander, as amended on March 14, 2013, and December 16, 2013 (as amended or modified, collectively, the "Interim Agreement"), the County agreed to allow Alexander to commence certain design and zoning related work with respect to the Project in order to allow the Parties to obtain a more accurate estimate of the cost of the Project and to file necessary applications for tax credits, zoning and land use approvals.

8. The Parties have now negotiated a comprehensive agreement consistent with the PPEA, the RFP, and other laws, the terms and conditions of which are set forth herein.

9. Having considered this Agreement and other information, the County, in its regulatory capacity, has determined that the Project be completed pursuant to this Agreement, and that this Agreement and Project serves the public purpose of the PPEA under the criteria of Va. Code § 56-575.4C.

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

1. The foregoing recitals are hereby incorporated by this reference as if fully set forth herein.

2. The Parties agree that the Project shall be constructed, operated, maintained, managed, leased (as applicable), and owned (as applicable) pursuant to, among other things, written agreements to be executed by one or more of the County, Alexander, Elm Street, or their respective subsidiaries and affiliates, as applicable, including, without limitation, the following written agreements, and any amendments to those agreements:

- a. Master Development Agreement, by and among the County, Alexander, Elm Street, or their respective subsidiaries and affiliates, the form of which is attached hereto at **Exhibit A** (the "MDA");

- b. Deed of Lease, by and between the County, as landlord, and Alexander, Elm Street, or its subsidiaries and affiliates, the form of which is attached hereto at **Exhibit B** (the "Ground Lease");
 - c. Deed Without Warranty or English Covenants, by the County, as grantor, for the benefit of Alexander, Elm Street, or its subsidiaries or affiliates, as grantee, the form of which is attached hereto at **Exhibit C** (the "Deed");and
 - d. Temporary Construction and Access Agreement, by and among the County, Alexander, Elm Street, or their respective subsidiaries and affiliates, as applicable, the form of which is attached hereto at **Exhibit D** (the "Construction Easement").
3. The Parties also agree as follows:
- a. This Agreement and the exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings of the Parties hereto, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. No alteration, amendment, change or addition to this Agreement shall be binding upon any party unless reduced to writing and signed by all of the Parties affected.
 - b. This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia. Should any provision of this 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 Agreement and that each party had full opportunity to consult legal counsel of its choice before its execution of this Agreement.
 - c. This Agreement may be executed in two or more counterparts, each of which shall constitute one and the same instrument. Delivery by telecopier, facsimile, or electronic mail of an executed counterpart of a signature page (in any electronic format, including, without limitation, .TIFF, .JPG, or Adobe Corporation's Portable Document Format (.PDF)) shall be deemed an original signature page and fully effective as such.
 - d. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such

illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

- e. Whenever the term, the "County," is used in this 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."

(Remainder of Page Blank; Signatures Follow)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above-written.

COUNTY:

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

By: _____

Name: _____

Title: _____

ALEXANDER:

THE ALEXANDER COMPANY, INC.,
a Wisconsin corporation

By: _____

Name: _____

Title: _____

Exhibit A

Form of MDA

(See Attached)

Exhibit B

Form of Ground Lease

(See Attached)

Exhibit C

Form of Deed

(See Attached)

Exhibit D

Form of Construction Easement

(See Attached)