

PERFORMANCE AGREEMENT

THIS PERFORMANCE AGREEMENT (“Agreement”) is made by and between **THE CITY OF ALEXANDRIA, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the “**CITY**”) and **ALEXANDRIA REDEVELOPMENT AND HOUSING AUTHORITY (“ARHA”)**, a political subdivision of the Commonwealth of Virginia (collectively, the “**Parties**”).

RECITALS

1. In April of 2025, ARHA entered into a purchase agreement to acquire The Alate, which is a senior housing development located at 1122 North First Street (Real Estate Account No. 10963500) in the City of Alexandria (the “**Project Property**”);
2. ARHA plans to relocate willing and age-eligible residents currently living at the Ladrey Senior High-Rise development located at 300 Wythe Street (the “**Ladrey Property**”) to the Project Property for permanent housing (the “**Project**”);
3. To finance the acquisition of the Project Property, ARHA has applied for bond funding from the Virginia Resources Authority (“**VRA**”) and intends to contribute approximately \$6 million of its funds as equity;
4. VRA has agreed to provide such financing on the condition that the City of Alexandria provide a moral obligation pledge to support the related debt service payments for the proposed borrowing (the “**Moral Obligation**”). The City’s Moral Obligation shall be memorialized in a “Support Agreement” among the City, ARHA, and VRA;
5. To induce the City to provide the Moral Obligation, ARHA has agreed to pledge certain revenues and real property owned by ARHA as collateral and to indemnify the City for any payments the City may be required to make under the Moral Obligation; and
6. The City and ARHA, therefore, desire to enter into this Performance Agreement to facilitate the provision of the VRA financing and development of the Project, which will benefit the residents of Alexandria.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and undertakings of the Parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

ARTICLE 1: CITY’S MORAL OBLIGATION PROTECTIONS

1.1 Indemnification. ARHA shall indemnify, defend, and hold harmless the City, its officers, employees, and agents from and against any and all losses, liabilities, obligations, damages, costs, expenses, and third-party claims (including reasonable attorney's fees) incurred by the City in connection with the Moral Obligation and this Agreement. Such indemnity includes, but is not limited to, a City decision not to proceed with the Moral Obligation, as well as any payments made by the City pursuant to the Moral Obligation. In addition, ARHA shall reimburse the City, upon request, the City's reasonable costs related to the review and approval of the Project, this Agreement, and Moral Obligation, including, but not limited to, bond counsel costs.

1.2 Collateral Properties. ARHA hereby grants the City an option to purchase real properties owned by ARHA valued at approximately \$6,000,000, as described in **Exhibit A** (the "**Collateral Properties**"), allowing the City to acquire the Collateral Properties, or revenues generated therefrom, under certain conditions. ARHA warrants that the Collateral Properties are unencumbered and may be transferred to the City in the event of default. Such option to purchase is further described in paragraph 1.4. For the Term of the Agreement, ARHA shall maintain ownership of all Collateral Properties unless the City executes its Collateral Properties Option.

1.3 Default and Remedies. If the City becomes liable for any payments under the Moral Obligation, then ARHA shall be considered to be in default. The City shall provide notice of such default to ARHA within 30 days of such fact or as soon as practicable thereafter. Upon receipt of such notice, ARHA shall be responsible for reimbursing the City for all payments made under the City's Moral Obligation and the indemnification set forth in paragraph 1.1. If immediate repayment is not feasible, ARHA and the City may agree to negotiate a reasonable repayment schedule acceptable to the City. The City is under no obligation to accept such a repayment schedule.

If payment is not made to the City within 60 days, or pursuant to a payment plan agreed to by both parties within that time period, then the City may also pursue other remedies as follows:

- (a) Rents and Other Revenues from Collateral Properties. After receiving notice of default from the City, ARHA shall provide the City with documentation, including, but not limited to, a rent ledger summarizing the rental income and tenant information for each of the Collateral Properties. Beginning on the first day of the succeeding month after the City gives notice of default, ARHA shall pay to the City an amount of funding equivalent to the total of all rents, voucher payments, and other revenues generated by the Collateral Properties during the preceding month. Such payments shall continue in monthly increments until such time as the ARHA payments to the City fully offset the City's payment(s) under the Moral Obligation. Notwithstanding the foregoing, nothing herein shall relieve ARHA of its responsibilities for the VRA financing.
- (b) Execute Option to Acquire Collateral Properties. If the rents and other revenues from the Collateral Properties described in paragraph 1.3(a) are insufficient to completely reimburse any City payments under the Moral Obligation, then the City may exercise the Collateral Properties Option, defined in paragraph 1.4, by providing written notice to ARHA as set forth in paragraph 1.4. Closing shall occur

within sixty (60) days after delivery of the option notice, unless extended by mutual agreement of the parties.

- (c) ARHA Real Property Sale Revenues. After notice of default is given to ARHA by the City, ARHA shall provide the City with 30 days prior notice of any of its properties that it proposes to sell to a third party. The City shall be entitled to any surplus sale proceeds ARHA realizes on any such properties, whether or not it is one of the Collateral Properties, up to an amount that fully offsets the City's payment(s) under the Moral Obligation.

1.4 Collateral Properties Option. ARHA hereby grants to the City an irrevocable option (the "Collateral Properties Option") to acquire the Collateral Properties, or any portion thereof, for the Term of the Agreement, at no cost to the City, in consideration of the City's obligations under the City's Moral Obligation, and exercisable only upon the occurrence of any of the following events:

- (a) ARHA defaults under the Agreement or any related agreement, and such default remains uncured after thirty (30) days written notice from the City;
- (b) The City is required to make any payment under the City's Moral Obligation provided on behalf of ARHA, including debt service reserve payments, which is not fully offset by rents and revenues from Collateral Properties as set forth in paragraph 1.3(a); or
- (c) ARHA fails to repay the City any amounts demanded under the indemnification provision in paragraph 1.1 of the Agreement within the time required.

The City may exercise the Collateral Properties Option by providing written notice to ARHA after any event set forth in this paragraph. The City reserves the right to designate a separate nonprofit organization to act on its behalf and take ownership of Collateral Properties. Closing shall occur within sixty (60) days after delivery of the option notice, unless extended by mutual agreement of the parties. A memorandum of option shall be recorded in the land records for each of the Collateral Properties.

1.5 Substitution of Collateral Properties. During the Term of the Agreement, ARHA may request to substitute the Collateral Properties with alternative real property owned by ARHA of equal or greater appraised value. ARHA shall provide all documentation reasonably necessary to support this request, as determined by the City Manager or their designee, including but not limited to a current appraisal and title certification for each such property.

- (a) In lieu of substitute real property, ARHA may alternatively request to substitute the Collateral Properties Option for a different form of surety, including but not limited to a letter of credit. Such a request shall be reviewed by the Director of Finance and other relevant City staff. The City shall be under no obligation to accept the substitute surety if it determines that it does not provide adequate coverage. Approval of a substitute surety shall be in the City's sole discretion.

- 1.6 Condition of Collateral Properties. Throughout the Term of the Agreement, ARHA shall maintain the Collateral Properties in good condition and shall not transfer, lease, encumber, or otherwise take any step that could materially affect the value or title of the Collateral Properties without the City's prior written consent in each instance. The City shall be listed as an additional insured party on any insurance policy for the Collateral Properties obtained by ARHA throughout the Term of the Agreement.
- 1.7 HUD Reduction of Vouchers. If the U.S. Department of Housing and Urban Development ("HUD") significantly reduces funding to ARHA or the availability of tenant-based or project-based vouchers, such that the combined rental revenue at the Project Property becomes insufficient to cover the Project debt service, ARHA has indicated that it intends to reallocate its remaining vouchers to support rental payments at the Project Property, which are necessary to generate sufficient revenues to meet debt service obligations on the bonds to be issued by VRA in connection with the Project. ARHA shall not reduce or remove any existing voucher allocations from properties pledged to the City as Collateral Properties unless and until ARHA has either: (a) received the prior written consent of the City; or (b) deposited with the City, or otherwise secured, supplemental funds in an amount sufficient to offset the loss of voucher revenue and ensure that the Collateral Properties continues to satisfy the City's collateral coverage requirements. Any proposed reallocation of vouchers from Collateral Properties under this Agreement shall require the City's prior written approval, which shall be at the City's sole discretion.
- 1.8 Bond Defeasance Escrow Funding Obligation. ARHA shall fully fund any gap that may arise in the bond defeasance escrow account in the event the Project Property acquisition does not close for any reason after VRA has priced the bonds. If the Project Property sale fails to consummate post-pricing, the proceeds from the issued bonds shall be deposited into a defeasance escrow, and ARHA shall contribute any additional funds necessary to fully satisfy all future debt service obligations associated with the defeased bonds, such that no liability shall accrue to the City under its Moral Obligation.
- 1.9 Payment in Lieu of Taxes. ARHA shall make an annual payment in lieu of real property taxes ("PILOT") to the City for the Project Property. The amount of the PILOT shall be equal to the net operating income remaining after payment of debt service and operating expenses for the Project Property, not to exceed the amount of real estate taxes that the City would have assessed if the Project Property were subject to full taxation. The PILOT shall be calculated annually based on ARHA's annual financial report and shall be paid to the City within ninety (90) days of the end of each fiscal year.

ARTICLE II: ADDITIONAL PREREQUISITES

- 2.1 Good Faith. ARHA shall work in good faith with the City and shall include appropriate City representatives in meetings, telephone calls, and correspondence related to the Project with VRA and HUD.
- 2.2 Appraisal. ARHA shall provide to the City a copy of the third-party appraisal of the Project Property within one (1) business day of its receipt, but in no event later than June 19,

2025. The Parties acknowledge that the appraisal is currently anticipated to be completed on or about June 10, 2025. As a condition precedent to the City's agreement to provide the Moral Obligation referenced herein, the appraised value of the Project Property must be, in the sole judgment of the City Manager or their designee, sufficient to support the proposed purchase price and to provide adequate security for the repayment of the VRA bond financing. The City may, in its sole discretion, withhold approval of the Moral Obligation if the appraised value is not adequate to support the Project.

- 2.3 Project Property Management. ARHA shall provide to the City a contract for third-party property management services for the Project Property no later than June 19, 2025. The identity of the property management firm, as well as the material terms and conditions of the contract, including but not limited to maintenance and performance standards, shall be subject to the City's prior approval, which shall be at the City's sole discretion. ARHA shall maintain a third-party property management service for the Project Property. The City must approve any change to the property management contract during the Term.
- 2.4 Financial Information. ARHA shall provide the City with updated financial proformas for the Project as revisions are made, including, but not limited to, any versions submitted to VRA, HUD, or any other governmental agency, lender, investor, or third party involved in the transaction. This obligation shall remain in effect throughout the Term of the Agreement. ARHA shall promptly disclose to the City any material changes to Project assumptions, funding sources, rent structures, operating costs, or any other financial elements that may affect the feasibility of the Project or the City's Moral Obligation. Updated proformas and supporting documentation shall be provided to the City contemporaneously with any external submission. In addition, ARHA shall submit to the City an annual financial report on the project, which shall include the annual rents, expenses, reserves, net operating income, and vacancy rate at the Project Property. The annual report shall also include a detailed account of HUD funding of vouchers and other relevant support.
- 2.5 Renovation of Ladrey Property. ARHA acknowledges that renovation of the Ladrey Property is a City priority. Therefore, ARHA shall:
- (a) Provide to the City, on a quarterly basis, more detailed plans for the proposed renovation of the Ladrey Property, including but not limited to: (i) the incorporation of amenities and design features approved in the 2024 redevelopment plan; (ii) written confirmation of HUD's approval for a renovation-only scope of work in lieu of redevelopment; and (iii) documentation from the Virginia Department of Housing and Community Development (DHCD) regarding the status, disposition, and terms of any grant awards, including confirmation of grant funding for the Project.
 - (b) Within 10 business days of becoming aware of any material developments related to the renovation of the Ladrey Property and the associated financing, ARHA shall notify the City of such fact

- (c) Work in good faith and with reasonable diligence to complete the renovation of the Ladrey Property. For purposes of this provision, “completion” shall include: (i) securing all necessary financing; (ii) obtaining HUD approval of the renovation scope; (iii) completing the conversion of project-based vouchers; and (iv) successfully relocating all affected residents to permanent housing. ARHA shall endeavor to complete the renovation of the Ladrey Property within three (3) years of the execution date of this Agreement. Unless otherwise agreed to in writing by the City, ARHA shall not seek City Council approval of any new development project until the renovation of the Ladrey Property has been completed as defined above.
 - (d) Relocation Plans. ARHA has provided the City with a relocation plan for all current residents of the Ladrey Property and acknowledges that the City Manager has provided comments on the submitted plan. ARHA shall provide the City with monthly updates on the implementation of the relocation plan, including progress on relocation, changes to projected timelines, and any material issues affecting resident relocation. In addition, ARHA shall have a continuing obligation to disclose to the City, within 10 business days of becoming aware, any facts, developments, or communications—whether with residents, HUD, or third parties—that may reasonably be expected to have a materially adverse impact on the City's interests or obligations in connection with the Project financing, the City's Moral Obligation, or the relocation and disposition of the Ladrey Property.
- 2.6 Restriction on Sale. ARHA shall not sell, transfer, convey, assign, lease (other than to residential tenants), or otherwise encumber the Project Property, in whole or in part, without the prior written consent of the City during the Term.
- 2.7 Kitchen and Dining Space. Before altering the kitchen and dining spaces at the Project Property or entering into a third-party agreement regarding the use of such spaces for purposes other than serving residents of the building, ARHA shall consult with the City to determine whether the spaces can be used for community-based uses and/or training programs.

ARTICLE III – OTHER TERMS AND CONDITIONS

- 3.1 Term of Agreement. This Agreement shall remain in full force and effect from the date of complete execution by all Parties and shall continue through the final maturity and full repayment, redemption, or defeasance of all bonds issued by the VRA in connection with the financing of the Project Property, including the payment of all principal, interest, and related obligations (the “Term”). The Term shall also include any period during which the City remains obligated under its Moral Obligation related to such bonds, whether or not the bonds remain outstanding, and any such time that ARHA is responsible under paragraph 1.1 for reimbursement to the City.
- 3.2 Community Engagement. ARHA shall participate in community and public body meetings and engagement efforts related to the Project as requested by the City, including but not

limited to public hearings before the Planning Commission and City Council, as well as engagement with ARHA residents and existing residents of the Project Property.

- 3.3 Assignment. ARHA may not assign its interest or any part thereof in the Agreement, without the prior written approval of the City.
- 3.4 Entire Agreement/Amendments. This Agreement incorporates all prior negotiations and discussions among the Parties regarding its subject matter and represents the entire agreement of the City and the ARHA for the Project. This Agreement may only be modified by a written instrument executed by the City and ARHA.
- 3.5 Notices. A notice, communication, or request under this Agreement shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service (next business day service), or (c) hand delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed to the applicable Parties as follows. Notice is deemed effective upon delivery or receipt:

ARHA:

The City: City Manager
City of Alexandria
301 King Street
Alexandria, Virginia 22314

With Copies to: City Attorney
City of Alexandria
301 King Street
Alexandria, Virginia 22314

- 3.6 Counterparts; Authorized Signatures. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. Each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this Agreement and bind the party represented.
- 3.7 Choice of Laws and Venue. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, including its conflict of laws provisions. Any lawsuit, action, or proceeding arising under this Agreement shall be brought exclusively in a court of competent jurisdiction in the City of Alexandria, Virginia.
- 3.8 Incorporation into Agreement. All exhibits, schedules, and recitals form a part of this Agreement.

- 3.9 No Waiver. No failure on the part of the City to enforce any covenant or provision contained in the Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the other party to enforce the same in the event of any subsequent default.
- 3.10 Compliance with Laws. ARHA shall, at all times, be subject to all applicable governmental laws, ordinances, rules and regulations (collectively, the "**Applicable Laws**") pertinent to the Project, this Agreement, and ARHA's actions in connection with the Project and this Agreement. This shall include, but is not limited to, applicable development approvals, such as Development Special Use Permit ("DSUP") conditions.
- 3.11 Good Faith and Fair Dealing. The Parties covenant and agree each to the other that its conduct under this Agreement, and the interpretation and enforcement of the provisions hereof, shall be characterized by good faith and fair dealings so that the objectives of each party as set forth in this Agreement may be achieved.
- 3.12 Sovereign Immunity. Nothing contained in this Agreement shall be deemed to be, or have the effect of being, a waiver by the City of such sovereign immunity it may have under the laws of the Commonwealth of Virginia or of the United States.
- 3.13 Indemnification. The City shall not be liable for any loss, damage, or injury of any kind or character to any person or property arising from the acts or omissions of the ARHA, its contractors, agents, successors, and assigns pursuant to this Agreement. ARHA hereby waives all claims against the City and its respective officers, agents, and employees related to this Agreement. ARHA hereby indemnifies and saves the City and its respective officers, agents, and employees harmless from and against any and all liabilities, damages, claims, suits, costs (including court costs, attorneys' fees, and costs of investigation) and actions of any kind for claims arising from ARHA's breach of any of the terms and conditions of this Agreement or by reason of any act or omission by the ARHA, its contractors, agents, successors, and assigns in the performance of this Agreement.
- 3.14 No Liability of Public Employees. Notwithstanding any other provisions of this Agreement to the contrary, nothing in this Agreement nor any action taken by the City pursuant to this Agreement nor any document which arises out of this Agreement shall give rise to personal liability to any of the City's elected or appointed officials, officers, and employees.
- 3.15 Effective Date. This Agreement shall be effective as of the day on which it has been fully executed by the Parties (the "**Effective Date**"). The City's Moral Obligation is contingent on this Agreement, which must be approved by both parties and be in effect prior to the pricing of the bonds.
- 3.16 Remedies. In the event of a breach of this Agreement by ARHA, including ARHA's failure to observe or perform any provision of this Agreement, and if such failure continues for 30 days after written notice thereof from the City to ARHA, then the City may exercise any remedies available to it at law or in equity. All remedies provided to the City under this Agreement shall be cumulative and not restrictive of other remedies, including, without

limitation, specific performance or the City's exercise of the Collateral Properties Option as specified in Paragraph 1.4.

- 3.17 Audit. The City shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic, or other) relating or pertaining to the Agreement (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), maintained by or under the control of ARHA, including, but not limited to those kept by ARHA, its employees, agents, assigns, successors and subcontractors. ARHA shall maintain such books and records, together with any supporting or underlying documents and materials, for the Term of the Agreement and for at least three (3) years following its completion. The books and records, together with the supporting or underlying documents and materials, shall be made available, upon request, to the City's employees, agents, representatives, contractors, or other designees during regular business hours in Alexandria, Virginia. ARHA shall provide annual audited financial statements for ARHA and for the Project Property to the City.
- 3.18 Recitals. The Parties agree that the recitals above are true and accurate, and they are hereby wholly incorporated into this Agreement.
- 3.19 Subject to Appropriation. Notwithstanding all of the foregoing, any and all payments which the City is required to make under this Agreement, the Support Agreement, or other related documents shall be subject to City Council appropriation and other availability of funds.

[Signatures appear on the following pages.]

ARHA

By: _____ Date: _____

Its:

City of Alexandria, Virginia

By: _____ Date: _____

Its: Chair/Vice-Chair

Approved as to Content:

Approved as to form & legal sufficiency:

City Manager or designee

City Attorney or designee