

Prepared by:
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City Tax Map Parcel 160001000 (formerly parcels 160001000, 160002000, 160003000, 160004000, 160005000, 160008000) (100-114 and 409 Stadium Road and 1705 Jefferson Park Avenue)

This deed is exempt from state recordation taxes pursuant to Va. Code Secs. 58.1-811(A)(3) and 58.1-811(C)(4) and is exempt from the fees imposed by Va. Code Sec. 17-275 pursuant to Va. Code Sec. 17-266

DEED OF TEMPORARY AERIAL ENCROACHMENT AND EASEMENT

This **DEED OF TEMPORARY AERIAL ENCROACHMENT AND TEMPORARY AERIAL EASEMENT** (“*Deed*”) is made and entered into as of this _____ day of _____, 202_, by the **CITY OF CHARLOTTESVILLE, VIRGINIA**, P.O. Box 911, Charlottesville, Virginia 22902 (“*City*”), as Grantor, and **CHARLOTTESVILLE STADIUM ROAD PROPERTIES KP7, LLC** a Delaware limited liability company, 3000 Locust Street, St. Louis, Missouri 63103 (“*Grantee*”).

WITNESSETH:

WHEREAS the Grantee is the owner of a ground leasehold interest, as “Tenant”, in and to that certain real property located in the City of Charlottesville, Virginia, containing 144,044 square feet in the aggregate, more or less, shown as “Tax Map Parcels 16-1, 16-2, 16-3, 16-4, 16-5, 16-8 and the Vacated 30’ Public Right of Way for Woodrow Street” on that certain plat prepared by Joseph C. Medley, Surveyor, dated July 9, 2024, last revised September 18, 2024, entitled “Plat Showing Boundary Line Adjustment and Various Easements Across the Lands of Woodrow Apartments, LLC, Tax Map Parcels 16-1, 16-2, 16-3, 16-4, 16-5, 16-8 and the Vacated 30’ Public Right of Way for Woodrow Street, White Hall Magisterial District, City of Charlottesville, Virginia” and recorded in the Clerk’s Office of the Circuit Court of the City of Charlottesville as Instrument No. 2024-00002784 (hereinafter, “*Grantee’s Property*”); and

WHEREAS, the City is the owner of those certain real properties adjacent to the Grantee’s property commonly known as the rights-of-way of Montebello Circle, Stadium Road, Emmet Street South, and Jefferson Park Avenue, together with certain sanitary sewer facilities located in easements granted to the City (hereinafter, collectively, the “*City’s Property*”); and

WHEREAS, the Grantee is in the process obtaining the City’s approval of a site plan for the “*VERVE Charlottesville Project*” authorizing development of the Grantee’s Property, including the construction of one or more buildings thereon, identified as the *VERVE*

Charlottesville Project (“**Project**”), and the Grantee now desires to proceed with construction of the Project; and

WHEREAS, to facilitate construction of the Project, Grantee desires to place temporary tower cranes (the “**Cranes**”) on the Grantee’s Property, and City council has authorized a temporary aerial easement to allow operation of the Cranes within the areas identified as “Temporary Tower Crane #1 Swing Easement,” “Temporary Tower Crane #2 Swing Easement,” and “Temporary Tower Crane #3 Swing Easement” (collectively, the “**Easement Area**”) on a plat entitled “Plat Showing Temporary Tower Crane Swing Easements, The Verve Project”, dated October 16, 2024 and prepared by Timmons Group (the “**Plat**”), attached hereto and incorporated by reference; and

WHEREAS, in consideration of its use and occupancy of the air rights over the City’s Property in the manner described above, the Grantee desires to bind itself, its successors and assigns, for all liabilities for and relating to the construction activities to be conducted by Grantee within the City’s Property during construction.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the City hereby grants and conveys to the Grantee a temporary aerial encroachment and easement to use the air space over the City’s Property, within the Easement Area (the “**Temporary Aerial Encroachment and Easement**”), subject to the following terms, conditions, or restrictions.

1. Grantee’s rights under this Temporary Aerial Encroachment and Easement shall commence as of the date on which a building permit is issued for construction of the Project (“**Commencement Date**”), and said rights shall terminate (i) on the date as of which the Crane is permanently removed from the Property, or (ii) at the end of a period of five (5) years from the Commencement Date, whichever first occurs.

2. Grantee shall be liable for any and all actual damages to the Easement Area resulting from any negligence attributable to the Grantee and/or its agents, and contractors which relates to the Temporary Aerial Encroachment and Easement over the City’s Property.

3. Grantee shall indemnify, defend, and hold the City harmless from and against any and all liability, losses, suits, actions, causes of action, judgments, claims, demands, damages, penalties, fines, expenses and costs of any and every kind and nature, including without limitation attorney’s fees and costs, incurred by or asserted or imposed against the City by reason of any accident, injury (including death), or damage to any person, property, equipment, or utility facilities (including, without limitation any property, equipment, or utility facilities owned by the City), however caused, resulting from or arising out of the Grantee’s use and occupancy of the Temporary Aerial Encroachment and Easement during the Grantee’s construction activities, by Grantee, its agents, and contractors; except, in any such case, to the extent caused or exacerbated by the City or any party seeking the benefit of such indemnity, defense, and hold harmless rights.

4. The Grantee agrees that the City shall have and retain any and all legal rights it may have pursuant to Virginia Code Sec. 15.2-2009 and Sec. 15.2-2011, as such statutes exist

as of the date of this Deed and as they may subsequently be amended, in addition to any other legal rights or remedies the City may have.

5. During and after its exercise of the rights herein conveyed, the Grantee shall promptly remove all trash and other debris resulting from its development activities or the operation of the Crane, and at its expense shall restore any City Property altered or damaged by Grantee's activities or operations pursuant to this Deed, to the condition they were in immediately prior to the commencement of Grantee's activities or operations pursuant to this Deed, or as nearly reasonable possible, reasonable wear and tear, and damage caused by the City, or by 3rd parties unrelated to Grantee or its activities or operations pursuant to this Deed, all being excepted.

6. The Grantee's covenants and agreements set forth within this Deed shall run with the land described herein as the Grantee's Property, and shall be binding on Grantee, its successors, and assigns.

7. By ordinance # _____ approved on _____, the Charlottesville City Council approved this conveyance and authorized the Mayor to execute documents required in connection with the conveyance. The Mayor is authorized by Charlottesville City Code Sec. 2-7.

[Signature pages follow]

WITNESS the following duly authorized signatures.

Grantor: **CITY OF CHARLOTTESVILLE, VIRGINIA,**
 a municipal corporation

By: _____ (SEAL)
 Juandiego Wade, Mayor

COMMONWEALTH OF VIRGINIA
City/County of _____, to-wit

The foregoing instrument was acknowledged before me this _____ day of _____, 202_,
by Juandiego Wade, Mayor of the City of Charlottesville, Virginia.

Notary Public

Registration #: _____

[Affix Seal]

My commission expires: _____

Approved as to Form:

Sands Anderson PC, Acting City Attorney

Grantee:

**CHARLOTTESVILLE STADIUM ROAD
PROPERTIES KP7, LLC,**
a Delaware limited liability company

By: _____

Name: Brandt Stiles

Title: Authorized Signatory

STATE OF

City/County of _____, to-wit

The foregoing instrument was acknowledged before me this _____ day of _____, 202_,
by Brandt Stiles, as Authorized Signatory of Charlottesville Stadium Road Properties KP7, LLC, a
Delaware limited liability company, on behalf of said company.

Notary Public

Registration #: _____

[Affix Seal]

My commission expires: _____

EXHIBIT A

Plat showing “Temporary Tower Crane Swing Easements” dated October 16, 2024, prepared by
Timmons Group Appears on Following Page

[insert Plat]