



## CITY COUNCIL AGENDA REPORT

**To:** Honorable Mayor and Members of City Council  
**Meeting:** June 20, 2016  
**Subject:** Approval of an Agreement for Deferral of Certain Performance Obligations Pertaining to Hotel Development, Construction, Operation and Maintenance by and between the City of Roanoke and South Commonwealth Partners, LLC.

### **Background:**

On December 18, 2013, the City of Roanoke (City) and South Commonwealth Partners, LLC (Developer) entered into a Performance Agreement for Hotel Development, Construction, Operation, and Maintenance (Performance Agreement) in connection with the construction, operation, and maintenance of a hotel with at least 123 rooms (but not exceeding 130 rooms) (Hotel), along with the conveyance of certain air rights, property rights, and easements more particularly described in a Deed of Certain Air Rights, Deed of Condominium Units, and Deed of Easements, recorded in the Clerk's Office of the Circuit Court of the City of Roanoke, Virginia as Instrument No. 130014480 (Deed).

Pursuant to terms outlined in the Performance Agreement, Developer agreed to (i) construct the Hotel and complete construction of the Hotel, (ii) obtain a permanent Certificate of Occupancy within 30 days after the Construction Completion Date that authorizes Developer to conduct Hotel Business, and (iii) open the Hotel for Hotel Business by June 30, 2016. In the event that Developer failed to commence Hotel Business by June 30, 2016, Developer would be in default under the terms of the Performance Agreement and would be obligated to pay to the City liquidated damages of \$250 for each day, beginning July 1, 2016, that the Hotel is not open for Hotel Business (Hotel Opening Liquidated Damages).

Developer has diligently pursued construction of the Hotel, but has experienced some delays in completing the construction in accordance with the terms of the Performance Agreement. These delays are attributable to the unique challenges of constructing a facility atop of an operating public parking facility. As a result of these challenges, Developer has requested a deferral of the Hotel Opening Liquidated Damages, the specifics of which are outlined in the Agreement for Deferral of Certain Performance Obligations (Deferral Agreement), a copy of which is attached to this Report.

obligations under Section 4.1 of the Performance Agreement remain outstanding after October 31, 2016. The City will retain all its rights and remedies under the Deferral Agreement and the Performance Agreement;

4. Developer will provide the City with a cash escrow payment (Escrow) in the amount of \$50,000.00, to be held by the City Treasurer as security for completion of the Market Garage Repairs, as detailed in Schedule 2.1.1 of the Deferral Agreement.
  - a) In the event that Developer completes all of the Market Garage Repairs on or before October 31, 2016, to the satisfaction of the City Manager, the City Treasurer will disburse the Escrow to Developer upon written notification from the City Manager;
  - b) In the event that all of the Market Garage Repairs are not completed by Developer by October 31, 2016, to the satisfaction of the City Manager, the City will retain the Escrow to complete such repairs to its satisfaction. In the event that such costs incurred by the City are less than \$50,000.00, the difference between amount of the Escrow and the actual costs incurred by the City for completion of the Market Garage Repairs will be returned to Developer.
  - c) In the event that the costs to complete all of the Market Garage repairs exceed \$50,000.00, Developer shall pay to the City the amount that exceeds the Escrow.
5. Developer must complete repairs to the Market Garage attributed to the pre-cast panel that fell from the southerly side of the Market Garage, either by (i) replacement and installation of a new pre-cast panel of the same quality and material as the original; or (ii) installation of an Exterior Insulation and Finishing System (EIFS) panel, along with a ten (10) year contractor warranty of industry standard and satisfactory to the City Engineer, and make a payment to the City of \$12,500.00 for the diminution in value to the Market Garage. Developer is required to inform the City of its decision via written notice within ten (10) Days after execution of this Deferral Agreement.

**Recommended Action:**

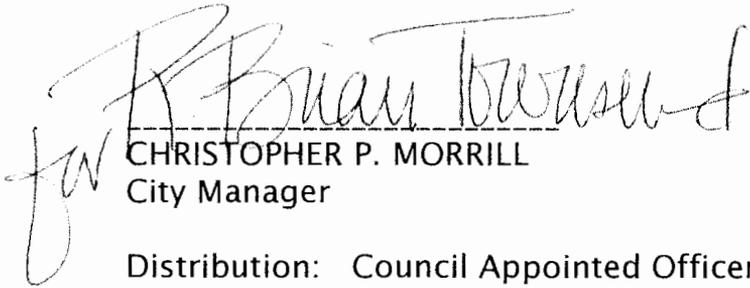
Approve the terms of the Deferral Agreement by and between the City and Developer, as set forth in the attachment to this City Council Agenda Report. Authorize the City Manager to execute such Deferral Agreement by and between the City and Developer, substantially similar to the one attached to this report, and to execute such other documents and to take such further actions as may be necessary to implement, administer, and enforce such Deferral

## **Considerations:**

The Deferral Agreement proposes to defer the collection of Hotel Opening Liquidated Damages once Developer opens the Hotel for Hotel Business under a temporary certificate of occupancy until October 31, 2016; provided Developer satisfies several specific obligations. The Deferral Agreement sets forth specific obligations of Developer that include, but are not limited to, the following:

1. Prior to requesting issuance of a temporary certificate of occupancy from the Department of Planning, Building and Development of the City and opening the Hotel for Hotel Business, Developer must remove all machinery, equipment, material, and debris from, and provide clear access to, all parking floors within the Market Garage. Developer must also ensure all such parking floors are available, useable, operable, and functional for their intended use of parking vehicles.
2. Prior to issuance of a temporary certificate of occupancy, Developer shall pay to the City the Hotel Opening Liquidated Damages that accrue on and from July 1, 2016, through the date on which Developer opens the Hotel for Hotel Business under the authority of the temporary certificate of occupancy. For example, if Developer opens the Hotel for Hotel Business on July 18, 2016, Developer shall pay the City \$4,500.00 before receiving a temporary certificate of occupancy.
3. Commencing upon execution of the Deferral Agreement and not later than October 31, 2016, Developer must complete, to the reasonable satisfaction of the City Manager, all remaining obligations with respect to construction of the Hotel, as particularly described and set forth in Section 2.1 of the Deferral Agreement (Outstanding Construction Obligations) and in Sections 3 and 4 of the Performance Agreement.
  - a) In the event that Developer performs and completes all of the Outstanding Construction Obligations on or before October 31, 2016, to the satisfaction of the City Manager, the City will release the Developer from any obligation to pay the amount of the Hotel Opening Liquidated Damages deferred pursuant to Section 1.1 of the Deferral Agreement;
  - b) In the event that Developer fails to satisfy all of the outstanding construction obligations on or before October 31, 2016, the amount of the Hotel Opening Liquidated Damages deferred pursuant to Section 1.1 of the Deferral Agreement will become immediately due and payable by Developer to the City. Such damages will continue to accrue and be payable for any period after October 31, 2016, to the extent that Developer's

Agreement, with the form of such Deferral Agreement, and other documents, to be approved by the City Attorney.

A handwritten signature in black ink, appearing to read "Christopher P. Morrill". To the left of the signature, the letters "for" are written vertically in a cursive style.

CHRISTOPHER P. MORRILL  
City Manager

Distribution: Council Appointed Officers  
R. Brian Townsend, Asst. City Mgr. for Community Development  
Barbara A. Dameron, Director of Finance  
Phil Schirmer, City Engineer  
Debra Moses, Director of Parking  
Susan S. Lower, Director, Real Estate Valuation  
Wayne F. Bowers, Director, Economic Development  
Marc B. Nelson, Special Projects Coordinator, Economic Development

DRAFT DATE: JUNE 17, 2016

**AGREEMENT FOR DEFERRAL OF CERTAIN  
PERFORMANCE OBLIGATIONS**

THIS AGREEMENT FOR DEFERRAL OF CERTAIN PERFORMANCE OBLIGATIONS (“Deferral Agreement”) is made this \_\_\_\_ day of June, 2016, by and between the City of Roanoke, Virginia, a Virginia Municipal Corporation (the “City”), and South Commonwealth Partners, LLC, a South Carolina limited liability company authorized to transact business in the Commonwealth of Virginia (the “Developer”)

**RECITALS**

A. The City and Developer entered into a Performance Agreement for Hotel Development, Construction, Operation, and Maintenance dated December 18, 2013, (the “Hotel Performance Agreement”) in connection with the construction, operation, and maintenance of a hotel with at least 123 rooms, but not exceeding 130 rooms (“Hotel”), within certain air rights, property rights, and easements within the City and more particularly described in a Deed of Certain Air Rights, Deed of Condominium Units, and Deed of Easements dated December 18, 2013, by and between the City and the Developer, recorded in the Clerk’s Office of the Circuit Court of the City of Roanoke, Virginia as Instrument No. 130014480 (the “Deed”).

B. Pursuant to terms of the Hotel Performance Agreement, Developer agreed to (i) construct the Hotel and complete construction of the Hotel, (ii) obtain a Certificate of Occupancy within 30 days after the Construction Completion Date that authorizes Developer to conduct Hotel Business, and (iii) open the Hotel for Hotel Business by June 30, 2016.

C. In the event that Developer fails to commence Hotel Business by June 30, 2016, Developer is in default under the terms of the Hotel Performance Agreement and is obligated to pay to the City Hotel Opening Liquidated Damages for each day, beginning July 1, 2016, that the Hotel is not open for Hotel Business.

D. Developer has diligently pursued construction of the Hotel but has experienced some delays in completing the construction in accordance with the terms of the Hotel Performance Agreement that are attributable to the unique challenges of constructing a facility atop of an operating public parking facility.

E. Developer has requested the City to (i) defer collection of the Hotel Opening Liquidated Damages for the period beginning on the date on which Developer obtains a temporary certificate of occupancy from the Department of Planning, Building and Development of the City to open the Hotel for Hotel Business, through and including October 31, 2016 (the “Deferral Period”), and (ii) provided certain conditions and obligations of Developer are satisfied by Developer on or before October 31, 2016, time being of the essence, waive the default of Developer and waive collection of the Hotel Opening Liquidated Damages that accrued during the Deferral Period.

F. The City is willing to defer collection of the Hotel Opening Liquidated Damages for the Deferral Period and, subject to Performance of the Deferral Agreement by Developer, waive

DRAFT DATE: JUNE 17, 2016

Developer's defaults under the Hotel Performance Agreement, and waive collection of the Hotel Opening Liquidated Damages for the Deferral Period

G. The City and Developer agree that capitalized terms used in this Deferral Agreement and not otherwise defined here in, shall have the meanings ascribed to such terms in the Hotel Performance Agreement.

NOW, THEREFORE, based upon the mutual promises and covenants contained herein, and for other good and valuable consideration, the City and Developer agree that the Recitals set forth above are a material part of this Deferral Agreement and are incorporated herein, and the City and Developer hereby agree as follows:

1. Deferral Of Hotel Opening Liquidated Damages.

- 1.1 Subject to performance of all terms and conditions of this Deferral Agreement by Developer, the City agrees to defer collection of the Hotel Opening Liquidated Damages as set forth in Section 4.1.2 of the Hotel Performance Agreement for the Deferral Period. Developer acknowledges, confirms and agrees that the Hotel Opening Liquidated Damages shall accrue during the Deferral Period until Developer obtains a Certificate of Occupancy and opens the Hotel for Hotel Business.
- 1.2 Prior to requesting issuance of a temporary certificate of occupancy for the Hotel from the Department of Planning, Building and Development of the City and opening the Hotel for Hotel Business based on the issuance of the temporary certificate of occupancy, Developer shall remove all machinery, equipment, material, and debris from all parking decks within the Market Garage to provide clear access to all parking decks within the Market Garage and to make all such parking decks available, useable, operable, and functional for their intended use of parking vehicles throughout the Market Garage.
- 1.3 Developer agrees to pay the amount of Hotel Opening Liquidated Damages that accrue beginning July 1, 2016, and ending on the date on which the Deferral Period commences. Developer shall make this payment to the City upon issuance of the temporary certificate of occupancy for the Hotel.
- 1.4 Subject to performance of all terms and conditions of this Deferral Agreement by Developer, the City further agrees to defer enforcement of all remedies available to the City as a result of Developer's default of the Hotel Performance Agreement arising solely from (i) Developer's failure to complete construction of the Hotel by the Construction Completion Date; (ii) Developer's failure to obtain a Certificate of Occupancy within 30 days after the Construction Completion Date; and (iii) the Developer's failure to open the Hotel for Hotel Business by June 30, 2016.

DRAFT DATE: JUNE 17, 2016

2. Completion Of Construction Obligations.

- 2.1 Commencing upon execution of this Deferral Agreement and not later than October 31, 2016, at 4:00 p.m. Eastern Time, Developer shall complete, to the reasonable satisfaction of the City Manager, each of the following remaining obligations of Developer with respect to the completion of the construction of the Hotel (collectively, "Outstanding Construction Obligations"):
- 2.1.1 Complete all repairs for damages to the Market Garage resulting from the construction of the Hotel as more particularly described and set forth in Schedule 2.1.1 attached hereto and made a part hereof ("Market Garage Repairs").
  - 2.1.2 Complete repairs to the Market Garage attributable to the pre-cast panel that fell from the southerly side of the Market Garage, including, either (i) replacement and installation of a new pre-cast panel of the same quality and material as the original panel on the exterior of the Market Garage ("Panel Repairs and Precast Panel Replacement"); or (ii) replacement and installation of an Exterior Insulation and Finishing System ("EIFS") on the exterior of the Market Garage, together with a ten (10) year contractor warranty in form and substance satisfactory to, and approved by, the City Engineer, and pay to the City the sum of \$12,500.00 for the diminution in value to the Market Garage ("Panel Repairs and EIFS Installation"). The decision whether to make the Panel Repairs and Precast Panel Replacement or the Panel Repairs and EIFS Installation shall be made by Developer, in its discretion, by written notice to the City within ten (10) Days after execution of this Deferral Agreement. In the event that Developer elects to make the Panel Repairs and EIFS Installation, the notice of election shall include payment in full of the \$12,500.00 to the City in immediately available funds of the United States of America. Absent a timely election by Developer, Developer shall be obligated to make the Panel Repairs and Precast Panel Replacement in accordance with the terms of this Deferral Agreement. TIME IS OF THE ESSENCE.
  - 2.1.3 Complete the relocation of all existing Utilities as set forth in Section 3.3.9 of the Hotel Performance Agreement.
  - 2.1.4 Complete and pay for the retrofit of the Market Garage Vehicular Traffic Flows as set forth in Section 3.4 of the Hotel Performance Agreement.
  - 2.1.5 Determine, with the agreement and concurrence of the City, the number of parking spaces deemed permanently unusable in the Market Garage and pay the Supplemental Payment, if any, due to the City pursuant to Section 4.3 of the Hotel Performance Agreement.
  - 2.1.6 Complete construction of the City Office Space and deliver all of Developer's rights, title, interest, and possession thereof to the City, free and clear of all

DRAFT DATE: JUNE 17, 2016

liens, encumbrances, and claims of any party, as set forth in Section 4.1.3 of the Hotel Agreement.

- 2.1.7 Obtain the Certificate of Occupancy.
- 2.1.8 Provide written confirmation from the hotel franchisor that the Hotel Franchise remains in full force and effect.
- 2.1.9 Complete all requirements of Developer under Section G of the Deed.

Developer will promptly notify the City, in writing, as Developer completes the construction and repair items included in this Section 2.1, and the City will, promptly upon receiving notification of completion each such item from Developer, cause the work to be inspected and notify Developer, in writing, of approval of such work or the requirement of further work. All such required further work shall be performed and completed by Developer at its sole cost and expense on or before October 31, 2016, at 4:00pm (Eastern Time).

- 2.2 Other than making the election set forth in Section 2.1.2 within ten (10) Days after execution of this Deferral Agreement and paying the sum of \$12,500.00 if Developer elects to make the Panel Repairs and EIFS Installation, Developer will satisfy the Outstanding Construction Obligations on or before October 31, 2016, at 4:00 p.m. (Eastern Time) to the satisfaction of the City, as determined by the City Manager, at the sole cost and expense of Developer. TIME IS OF THE ESSENCE with respect to the obligation of Developer to satisfy all of the Outstanding Construction Obligations.
- 2.3 In the event that Developer fails to satisfy all of the Outstanding Construction Obligations on or before October 31, 2016, at 4:00 p.m. (Eastern Time), the amount of the Hotel Opening Liquidated Damages deferred pursuant to Section 1.1 of this Deferral Agreement shall become immediately due and payable by Developer and Developer shall pay to the City the amount of the Hotel Opening Liquidated Damages deferred pursuant to Section 1.1 of this Deferral Agreement, in immediately available funds of the United States. Hotel Opening Liquidated Damages shall continue to accrue and be payable for any period after October 31, 2016, to the extent that Developer's obligations under Section 4.1 of the Hotel Performance Agreement remain outstanding after October 31, 2016. The City shall have all of its rights and remedies available to it under this Deferral Agreement and the Hotel Performance Agreement.
- 2.4 In the event that Developer performs and completes all of the Outstanding Construction Obligations on or before October 31, 2016, at 4:00 p.m. (Eastern Time), to the satisfaction of the City Manager, the City shall release the Developer from any obligation to pay the amount of the Hotel Opening Liquidated Damages deferred pursuant to Section 1.1 of this Deferral Agreement. The City Manager will execute and deliver a release in the form attached here as Schedule 2.4.

3, Escrow for Completion of Market Garage Repairs.

- 3.1 Developer shall provide the City with a cash escrow payment in the amount of \$50,000.00, to be held by the City as security for completion of the Market Garage Repairs (“Escrow”). Developer shall deliver the Escrow to the City upon execution of this Deferral Agreement. Payment shall be made in immediately available funds of the United States of America. The City shall deposit the Escrow with the City Treasurer and such funds shall be disbursed by the City Treasurer in accordance with this Deferral Agreement. The Escrow shall be held in a non-interest bearing account.
- 3.2 In the event that all of the Market Garage Repairs are not completed by Developer by October 31, 2016, at 4:00 p.m. (Eastern Time) to the satisfaction of the City, the City shall retain the Escrow and complete the Market Garage Repairs, to its satisfaction. In such event, the City Treasurer shall disburse the Escrow to the City without notice to the Developer. In such event, Developer shall have no claim, right, or interest in or to any portion of the Escrow until the City completes all of the Market Garage Repairs to its satisfaction. In the event that all costs incurred by the City to complete the Market Garage Repairs is less than \$50,000.00, the difference between the amount of the Escrow and the actual costs incurred by the City for completion of the Market Garage Repairs shall be returned to Developer. In the event that the costs incurred by the City for the completion of the Market Garage Repairs exceeds the amount of the Escrow, Developer shall reimburse the City such amount in excess of the Escrow within ten (10) Days after receipt of invoice from the City.
- 3.3 In the event that Developer completes all of the Market Garage Repairs on or before October 31, 2016, at 4:00 p.m. (Eastern Time), to the satisfaction of the City Manager, the City Treasurer shall disburse the Escrow to Developer upon written notification from the City Manager.

4. Acknowledgement.

- 4.1 Developer and the City acknowledge and agree that this Deferral Agreement is a modification of certain terms and conditions of the Hotel Performance Agreement as permitted by Section 2.1.2 thereof. The waiver of certain conditions of the Hotel Performance Agreement is made in accordance with, and subject to, Section 2.1.6 of the Hotel Performance Agreement. Except as expressly waived or deferred in this Deferral Agreement, all terms and conditions of the Hotel Performance Agreement remain in full force and effect.
- 4.2 Developer acknowledges, agrees, and confirms that Developer must comply with all applicable laws, rules and regulations of any Governmental Entity, including the Department of Planning, Building and Development of the City with respect to the issuance of a temporary certificate of occupancy for the Hotel, including, without limitation, life safety issues, fire safety and suppression requirements, and special

DRAFT DATE: JUNE 17, 2016

inspection requirements associated with the issuance of a temporary certificate of occupancy.

- 4.3 Developer and the City acknowledge and agree that the Market Garage Repairs set forth in Section 2.1.1 and Schedule 2.1.1 constitute the repairs and improvements known by Developer and the City as of June 13, 2016. Developer and the City acknowledge and agree that additional repairs and improvements to the Market Garage may be required as Developer completes construction of the Hotel. Developer and City agree to meet on a biweekly basis to review the status of completion of the Market Garage Repairs and determine whether additional repairs and improvements are required. The City and Developer shall cooperate in setting a schedule for such additional repairs and improvements to the Market Garage. The City, if necessary as determined by the City Manager in his reasonable discretion, agrees to seek approval from Roanoke City Council for an extension or modification of this Deferral Agreement.
- 4.4 This Deferral Agreement is subject to the express approval and authorization of Roanoke City Council.
- 4.5 Except as expressly set forth in this Deferral Agreement, Developer acknowledges, confirms, and agrees that Developer is in compliance with all terms, conditions, and obligations under the Hotel Performance Agreement. Developer further acknowledges, confirms, and agrees that TIME IS OF THE ESSENCE with regard to performance of all obligations under this Deferral Agreement.
- 4.6 This Deferral Agreement shall be governed, interpreted, and construed under the substantive laws of the Commonwealth of Virginia, and any cause of action regarding the rights and duties of the parties must be brought in the Circuit Court or General District Court for the City of Roanoke, Virginia, and further each party agrees this Deferral Agreement is controlled by the laws of the Commonwealth of Virginia , with the exception of Virginia's Conflict of Interest Law provision which shall not apply, and that all claims, disputes, and other matters shall be decided only by such court according to the laws of the Commonwealth of Virginia as aforesaid. The parties further waive and agree not to assert in any such action, suit , or proceeding, that such party is not personally subject to the jurisdiction of such courts, that the action, suit, or proceeding is brought in an inconvenient forum or that venue of the action, suit, or proceeding is improper. The parties further agree that the provisions of Section 17.2 of the Hotel Performance Agreement shall apply to any claim or dispute arising under this Deferral Agreement.
- 4.7 Developer shall obtain the written consent of its Lender, Wells Fargo Bank, National Association, consenting to the terms and conditions of this Deferral Agreement.
- 4.8 The persons who have executed this Deferral Agreement on behalf of their respective parties represent and warrant they are duly authorized to execute this Deferral Agreement on behalf of their respective entities.

DRAFT DATE: JUNE 17, 2016

WHEREFORE, the City and Developer have caused their duly authorized officers to execute and deliver this Deferral Agreement as of the date hereof.

ATTEST:

CITY OF ROANOKE, VIRGINIA

\_\_\_\_\_  
Stephanic M. Moon Reynolds, City Clerk

By: \_\_\_\_\_  
Christopher P. Morrill, City Manager

WITNESS:

SOUTH COMMONWEALTH PARTNERS, LLC

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Paul C. Aughtry, III  
Duly authorized Manager

Wells Fargo Bank, National Association, consents to execution, delivery, and performance of this Deferral Agreement by South Commonwealth Partners, LLC, in accordance with Section 21.2 of the Hotel Performance Agreement.

WITNESS:

WELLS FARGO BANK,  
NATIONAL ASSOCIATION

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DRAFT DATE: JUNE 17, 2016

COMMONWEALTH OF VIRGINIA § To-wit:  
CITY OF ROANOKE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of June, 2016, by Christopher P. Morrill, City Manager of the City of Roanoke, for and on behalf of the City.

My Commission expires:

\_\_\_\_\_

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

SEAL

STATE OF \_\_\_\_\_ § To-wit:  
CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of June, 2016, by Paul C. Aughtry, III, the duly authorized manager of South Commonwealth Partners, LLC, a South Carolina limited liability company, for and on behalf of South Commonwealth Partners, LLC.

My Commission expires:

\_\_\_\_\_

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

SEAL

STATE OF \_\_\_\_\_ § To-wit:  
CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of June, 2016 by \_\_\_\_\_ the duly authorized \_\_\_\_\_, of Wells Fargo Bank, National Association, a national banking association, for and on behalf of Wells Fargo Bank, National Association.

My Commission expires:

\_\_\_\_\_

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

SEAL

DRAFT DATE: JUNE 17, 2016

**Approved as to Form:**

\_\_\_\_\_  
City Attorney

**Approved as to Execution:**

\_\_\_\_\_  
City Attorney

Approved by the Director of Finance  
subject to appropriation.

\_\_\_\_\_  
Director of Finance

Authorized by Ordinance No. \_\_\_\_\_

DRAFT DATE: JUNE 17, 2016

Schedule 2.1.1

Market Garage Repairs

Schedule 2.1.1

Market Garage Repairs

Attached to this Schedule 2.1.1 are two lists that identify repairs and other matters that Developer must address under the terms of this Deferral Agreement. The two lists are (i) Market Garage Punch List dated 10.13.15, updated to 5/17/16 (“Punch List”); and (ii) the Supplemental Review of THP Limited, Inc. dated June 13, 2016 (“THP Review”). Some of the items are set forth in other subsections of Section 2 of this Deferral Agreement.

For purposes of this Schedule 2.1.1, the following items from each list are Market Garage Repairs:

Punch List

Item 1 through and including Item 7 as set forth in the Punch List, subject to the following clarifications and amendments:

Item 6 (Southeast stairwell). The southeast stairwell does not require pressurization because the southeast stairwell does not connect to the Hotel. All other work identified in Item 6 will be performed.

Item 7 (Louvers/exhaust). The City will not require a fence to be installed. The other work identified in Item 7 will be performed.

Item 9 through and including Item 16 as set forth in the Punch List, subject to the following clarifications and amendments.

Item 10 (Lighting): Developer shall relocate light fixtures within the garage to eliminate the conflict between these light fixtures and the sprinkler system installed by Developer, as noted in Item 10 of the Punch List and Items 17 and 19 of the THP Review. Developer may relocate light fixtures are clear of the sprinkler line, in places satisfactory to the City Parking Director to maintain adequate lighting of the Garage, and consistent with applicable codes.

Item 12 (Waterproofing) Developer shall provide waterproofing in accordance with the details and description set forth in Item 12 of the THP Review.

Item 14 (Sprinkler System) The portion of Item 14 that addresses the existing lighting shall be addressed as set forth in the clarifications and amendments to Item 10 set forth in this Schedule 2.1.1.

Item 16 (Pressure Washing) Developer shall be solely responsible for the pressure washing of the garage, including all levels, stairwells, and walls, as described in Item 16 of the Punch List, within twenty one (21) Days after Developer receives a temporary certificate of occupancy from the City Department of Planning, Building and Development, subject to the following conditions: (i) pressure-washing shall occur only during the evenings (7:00pm to 5:00am) during the work week, and on Saturday and Sunday; (ii) Developer and the City shall agree and establish the specific written schedule for the commencement and completion of the power washing; and (iii) the work shall be completed within the written schedule. Developer agrees that City is not required to commence any work related to (x) painting any areas of the Market Garage, (y) installing signs within the Market Garage, or (z) constructing any other improvements in the Market Garage; as provided in any other agreement between the City and Developer until the power washing has been completed to the satisfaction of the City.

Item 22 and Item 23 as set forth in the Punch List.

Developer and the City acknowledge and agree that the remaining Items on the Punch List are items covered by other subsections of Section 2.1 of this Deferral Agreement. Specifically, Item 8 (pre-cast panel) is subject to Section 2.1.2 of this Deferral Agreement; Item 17 (signage) is subject to Section 2.1.4 of this Deferral Agreement; Item 18 (drive lane striping) is subject to Section 2.1.5 of this Deferral Agreement; Item 19 (ParkRoanoke office) is subject to Section 2.1.6 of this Deferral Agreement; Item 20 (easements) is subject to Section 2.1.9 of this Deferral Agreement; and Item 21 (utilities) is subject to Section 2.1.4 of this Deferral Agreement.

#### THP Review

Item 1 through and including Item 17.

Item 19 through and including Item 23.

Developer and the City acknowledge and agree that Item 18 (pre-cast panel) is subject to Section 2.1.2 of this Deferral Agreement. In the event that Developer elects to install the EIFS as provided in Section 2.1.2 of this Deferral Agreement, Developer shall provide the warranty as described in Section 2.1.1 and Item 18 of the THP Review.

Developer has requested, and the City has agreed, that Developer, if Developer has an objection to an item in the THP Review (other than the requirements of Item 18), Developer may request alternatives to the requirements set forth in the THP Report ("Developer Request"). Each Developer Request shall be in writing and be accompanied by a proposed resolution endorsed by the Developer's structural engineer, and delivered to the City Manager. The City Manager may accept the alternative recommendation of the Developer set forth in the Developer Request if the alternative proposed by the Developer is acceptable to THP and the City Engineer.

In addition to the items set forth in the attached lists, Developer shall make all repairs to the fountain adjacent to the Market Garage, to the satisfaction of the City Engineer, to ensure that the fountain is operational and functional for its intended purposes. Developer shall reinstall all flag and flag poles removed from the area around this fountain.

Developer shall also make such other repairs for damages to the Market Garage or other property of the City which arise or occur on and after June 13, 2016. As set forth in Section 2.1 of this Deferral Agreement, Developer shall make all other repairs that are required by inspections of the Project.

Market Garage Hotel Construction  
Punch List – Fall 2015

10-13-15 (updated 5/17/16)

PARK Roanoke

Item No.	Location	Description	Contractor Complete Date	City Approval Date
1.	North Elevator	Interior has been worn and ridden hard. Clean up of cab and thorough inspection to be performed by City contracted ThyssenKrupp Elevator. Ongoing water intrusion issue to be examined and corrected as needed, including all potential electrical.	WA to refurbish cab	
2.	South Elevator	Clean up of cab and thorough inspection to be performed by City contracted ThyssenKrupp Elevator	WA to refurbish cab. Park Roanoke to coordinate TK inspection	
3.	Hotel Elevator Northeast	Confirm that only 2 spaces per level are lost at completion – 12 spaces total. Current gap between bollards and cinderblock with rectangular cut out is only covered by plyboard. Verify all drain connections are intact behind elevator, as this is location that multiple lines ran together and down vertically	Pride/WA to seal wall and EFIS	
4.	Northwest Stairwell	Condition above Level 5 is generally not known. Seal and prevent any water intrusion. Pressurization of stair tower and ensure that it meets code, including railings	Review by THP	
5.	Southwest Stairwell	Condition above Level 5 is generally not known. Pressurization of stair tower and ensure that it meets code, including railings.	Review by THP	
6.	Southeast Stairwell	Condition above Level 5 is generally not known. Pressurization of stair tower and ensure that it meets code including railings. PARK Roanoke management noted that apparent ponding water had caused moderate deterioration at Level 5 and above in this stairwell – ceiling to be repaired in full	Review by THP	
7.	Louvers/Exhaust for Stairwells	Execute so that louver footprint does not impede vehicular or pedestrian safety. Segments from cinderblock have been cut but not removed to date.	Design okay, Install in process	
8.	Pre-Cast Panel South	Whole replacement of pre-cast panel after canopy removal	Install pending	
9.	Façade, Ledges	Various places on perimeter that have been scuffed, scraped, or removed during hoisting and canopy installation. Indentations are particularly visible above vehicular entrance/exit. Columns trimmed. Paint, smooth, and repair to return to pre-construction conditions.	Primarily Luck Ave side	
10.	Lighting	Install of roof lights. Two perimeter lights that need to be reattached and replaced as needed on Luck Ave, near garage entrance. Keep light placement intact and re-direct sprinkler lines as directed post-inspection.	Install following inspections	
11.	Drains	Tie in all final connections and verify that any changes will continue to direct water to low points. City to camera drains to determine extent of build-up. Contractor to snake, flush, clean out all debris from all drain lines.	Facilities to camera lines	
12.	Level 4 and Level 5 South	Water intrusion has continued in spaces in this area. Seal all connections that water does not enter level from openings in ceiling above	Review by THP	
13.	Ground Floor Drive Path	Repair of concrete chunk (divot) that was inadvertently removed.		
14.	Sprinkler System	Review and inspection to ensure code compliance. Discussion for access and responsibilities for system. Verify that all drive lanes (clearance) and light fixtures are not obstructed by lines or sprinkler heads. Ensure all points are connected and test system.	Testing in process	
15.	General Debris	Removal of Styrofoam beads and other small supplies that are scattered through all levels of parking garage.	ongoing	

Market Garage Hotel Construction  
Punch List – Fall 2015

10-13-15 (updated 5/17/16)

PARK Roanoke

16	Pressure Washing	Pressure washing of garage levels, stairwells, walls in advance of opening of Hotel	By City	
17	Signage All Levels	Consultation with W/A and H/A to determine signage needs for garage and hotel prior to open date – purchase and installation - \$20,000 dedicated to signage.	install pending	
18	Drive Lanes Striping	Ensure that all drive lanes throughout the garage are code compliant in all aspects, including width – 19ft for two way. Re-striping of garage – striping in late summer 2015 in areas that were sealed for hotel lobby – largely contained to Level 2.		
19	PARK Roanoke/Hotel Access	PARK Roanoke to be returned maintenance room and office space, includes rest room. Shared access for electrical, water, and Verizon – develop procedure or MOU for access	Office partially returned in Mar 2016 - still finishing area	
20	Easements	Complete any unfinished easements and finalize – including, bladder in PARK Roanoke maintenance, A/C in greenspace at South of building Return of Sister Cities' flags	In process	
21	Utilities	Settle up on utilities (electric and water) over the past 20+ months. Verify separation of utilities between Hospitality America and PARK Roanoke, as noted in "Access".	Park Roanoke to provide	
22	Entrance/Exit Island Curb	Re-forming of rounded curb to direct exiting traffic to the right and towards Church Ave.		
23	Outside of Enclosed Stairwell's	Review code and need for additional emergency lights and exit indicators	Kelly to review and advise	

Item Nos 22 - 23 added on 4/5/16



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THP Limited, Inc. 100 E. Eighth St., Cincinnati, OH 45202 513-241-3222 fx 241-2981 thpltd.com

June 13, 2016

Mr. Luke Pugh, PE  
Project Manager  
Office of the City Engineer  
Noel C. Taylor Municipal Building  
215 Church Avenue, Room 350  
Roanoke, VA 24011

Subject: **Market Garage  
Supplemental Review**  
THP #15398.00

Dear Luke:

This letter includes observations and discussions relative to THP's 6/7/2016 supplemental review of the conditions in the Market Garage related to the work by Pride Construction. This letter supplements THP's original letter from our preliminary review of the garage, dated 1/22/2016.

This letter is broken into two sections. The first updates the status of items THP noted during our preliminary review. The second section includes all new or additional items noted during the supplemental review.

All findings and recommendations are based on conditions existing as of the date of the surveys, and assume the original design and construction of the garage met appropriate standards. Review of conditions hidden or indeterminable from visual assessment, such as reinforcement and embedments within cast-in-place concrete, vehicular barrier systems, and buried waterproofing elements, were excluded from THP's scope of work. A review of the electrical systems, lighting, and mechanical systems of the garage were not included in the scope of this review.

#### **UPDATED ITEMS**

All items below are listed as originally included in THP's preliminary letter. ***Updates to each item based on the Supplemental Review are provided in bold italic text.***

#### **Elevator Shaft**

Several observations and comments regarding the work in connection with the elevator shaft.

1. All supported levels include a rectangular saw cut box out and several small (3 to 4 inch diameter) and larger (6 to 8 inch diameter) core holes in the slab for conduits and pipes. At many locations saw cuts and cores cut rebar, clearly visible in the side surfaces. All cut rebar locations should be wire wheel prepared and coated with 2 independently applied coats of epoxy, to limit long term corrosion and unsightly rust stains on soffits below.

Mr. Luke Pugh  
Market Garage Supplemental Review  
June 13, 2016

***All penetrations have MEP lines installed, and THP was unable to verify if the recommended preparation and coating had been performed. Pride Construction should provide written verification to the City for future records.***

***No visible cove sealant or other waterproofing was installed around the base of the slab penetrations, to prevent future water infiltration to the levels below.***

***The construction drawings for the Hotel Project also require the Engineer of Record to approve all penetrations locations prior to installation. It is recommended the City receive a letter from Pride Construction that this process was followed during the work with no issues at any of the locations.***

2. All supported levels include approximately 7 steel bollards positioned around the elevator shaft to protect it (and conduit and pipes) from vehicular impacts. Bollards are anchored into the floors with 4 approximately 7/16 inch diameter anchors with an unknown embedment depth. THP is concerned the small diameter anchors are inadequate to stop a vehicular impact and possible damage to the shaft, conduit and pipes. This concern is magnified by the long protruding nature of most of the anchors, which creates concerns for the as-built embedment depths. Calculations of the structural capacity of as-installed anchors should be obtained and confirmed adequate for typically expected vehicular impacts. Similarly, all anchors should be cut off flush with nuts to limit concerns for patron injury, and all bollard tops should be capped and sealed to prevent moisture from condensation and debris from building up in the bollard.

***Bollard anchor conditions appears unchanged from the preliminary survey. As a result, THP's previous recommendations remain unchanged.***

3. Bollards on Level 1 on the newly installed traffic membrane (observations and discussion later) should be reset on a full bed of sealant, to eliminate water migration into anchor holes.

***Bollard installation conditions appears unchanged from the preliminary survey. As a result, THP's previous recommendations remain unchanged.***

4. At all supported levels the CMU shaft wall is not completely constructed to the underside of the floor above. Anchors in steel clip angles at wall tops to fix the top CMU wall are not yet installed, and backer rod and sealant is not installed between the CMU wall top and floor slab.

***The noted gap between the CMU wall top and slab above appears to have been filled at all locations.***

5. At some-to-all supported levels the generally hidden south side of the CMU shaft wall exhibits poor quality (irregular and not completely filled) mortar joints.

***The shaft wall is now being enclosed with cold-form metal framing. No issues with visible mortar joints were noted.***

Mr. Luke Pugh  
Market Garage Supplemental Review  
June 13, 2016

6. At some-to-all supported levels the surface finish details at form ties for the north side shaft reinforced concrete wall are incomplete and/or inadequate.

***The shaft wall is now being enclosed with cold-form metal framed (CFMF) wall system, which will act the finished surface and cover the reinforced concrete wall.***

7. At all supported levels the shaft is not yet painted.

***The shaft wall is now being enclosed with CFMF wall system, which will act the finished surface.***

#### **Level 1 Traffic Membrane**

8. The Level 1 north bay new traffic membrane is reportedly a Neogard FC System. The specifics of the system (primer, detail coats, base coat thickness, top coat thickness), surface preparation, and supplemental sealants are not known. The installing subcontractor is not known either. Regardless, the installed system looks good, with good fairly uniform aggregate distribution and no apparent problems. The City should require a formal joint-and-several warranty from Neogard and the installing subcontractor, and a supplemental commitment letter from Pride Construction, against material and installation defects in the system. 5 years is the industry standard duration for such warranties.

***No additional issues were noted with the traffic membrane system. As previously noted, THP recommends the City receive a copy of the warranty for records, even though they are reportedly not responsible for the maintenance and performance of the membrane system.***

#### **Level 1 Stair Curb Coating**

9. The raised curb at the northwest stair on Level 1 appears to have a new coating system, reportedly a Strongcoat system. The Strongcoat system is not a waterproofing system. Instead, it is a latex modified cementitious coating that generally sheds water, but will not bridge cracks. The benefit of the system is its vapor permeability, key at this location where concerns for vapor drive from residual moisture between the raised curb and floor exist. The installation specifics (preparation, primer, coating thickness, details at end terminations) are not known. The installing subcontractor is not known either. The long term performance of the Strongcoat system is difficult to predict; it may be adequate since the raised curb limits exposure to splashing water from vehicles, but cannot be assured. THP did not note whether or not supplemental sealants were installed on top of the Strongcoat system at walls, or along the face of the curb; they should be. The City should require a formal joint-and-several warranty from Strongcoat and the installing subcontractor, and a supplemental commitment letter from Pride Construction, against material and installation defects in the system. As THP has never specified a Strongcoat system, and our knowledge of it is only via restoration of it after the fact, so we do not know what duration warranty to expect.

***No additional issues were noted with the coating system. As previously noted, THP recommends the City receive a copy of the warranty for records, even though they are reportedly not responsible for the maintenance and performance of the coating system.***

Mr. Luke Pugh  
Market Garage Supplemental Review  
June 13, 2016

### **Level 5 to 6 Walls**

10. Localized installation of an off-white color elastomeric coating was noted on the north side (southward facing surface) of the Level 5 to 6 center bay wall, coating the existing cast-in-place slab edge spandrel and an apparent newly installed CMU in fill wall. The reason for this localized coating installation is not known. Similarly, the localized off-white color coating calls attention to all remaining wall surfaces in the center bay, many of which have significant visible patching efforts. The City should require all exposed wall surfaces in the Level 5 to 6 ramp bay to be uniformly coated.

***The existing coated (and uncoated) surfaces appear unchanged.***

### **General Garage Conditions**

11. Several existing drains in the supported floors are clogged with debris. Some drains have filter fabric; other do not. All drains throughout the garage should be positively cleared of debris and confirmed to be free flowing at the end of work on site.

***The majority of the drains appear to have filter fabric installed. However, isolated drains throughout the garage were still not filtered, including at the base of the northeast crossover to the middle bay on Level 2, where debris was noted. Refer to the attached Photo 01, included at the end of this letter. As previously recommended, all drains throughout the garage should be positively cleared of debris and confirmed to be free flowing at the end of work on site.***

12. At all supported floors at the elevator shaft, saw cut box outs and cores on supported floors will present concerns for contaminant of water from vehicles and especially floor slab cleaning efforts. A supplemental standing cove sealant, at least 1" tall, should be installed at all slab openings. Alternatively, and probably better, a small 1"x1" stainless steel or aluminum angle set in sealant could be installed on the floor surface around the box cuts and cores to provide the water containment.

***As noted, at all floors, ongoing work included CFMF and finishing at the elevator shaft. However, no sealant or other waterproofing of the walls was noted at this point in the construction (Photo 02). The City should receive verification from the design team or Pride Construction for how the base of the finished surfaces at the garage floor will be waterproofed, and who will be responsible for maintenance and issues associated with this interface.***

13. Extensive construction debris and stockpiled materials exist on the Level 5 to 6 center ramp bay and Level 6 north bay. Similarly, heavy lifts were noted in the center ramp bay. After completion of the work, and significant cleanup of floors, careful review of floors (and soffits below) for signs of damage and/or cracking from local overloads is necessary.

***While debris and stockpiled materials still exist throughout the upper levels, no heavy lifts were noted at the time of THP's site visit. It is recommended that Pride Construction confirm in writing that the vehicles and equipment used during the project did not exceed the available capacity of the floor slab or garage structure.***

Mr. Luke Pugh  
Market Garage Supplemental Review  
June 13, 2016

### **ADDITIONAL ITEMS**

In addition to the items from the Preliminary Review, THP noted several additional items to be reviewed and addressed as part of this Supplemental Review. These items include the following:

#### **Existing Elevator and Stair Towers**

14. During a meeting with the City, it was reported that leaking had been noted in the existing stair and elevator towers below the new hotel. While direct assessment of this interface was not possible from the garage, it appears that several sections of the hotel façade and envelope over these existing structure were not completed (**Photo 03**). THP recommends Pride Construction notify the City when the work is complete, and then coordinate a water test (with the City present) of the envelope over or adjacent to the stair and elevator towers to ensure no leaking or other water infiltration is noted.
15. All stair towers were noted to have visible buildup of dirt and debris from ongoing construction at Levels 5 and 6 (**Photo 04**). These towers should be cleaned and reviewed again with the City to verify they are in acceptable condition.
16. The elevator cabs at the northwest and southwest towers were dirty, and had visible marks throughout the cab, including damaged ceiling panels (**Photo 05**). THP noted construction workers using both elevators during the site visit. Pride Construction should review the condition of the cabs with the City and clean/repair/replace any issues associated with the hotel construction.
17. At the northwest stair tower on one of the levels, a sprinkler line is penetrating the CMU wall of the tower with no firestop or sealant installed (**Photo 06**). All penetrations to the stair towers should be reviewed to verify they comply with the project fireproofing and safety requirements.

#### **South Façade – Missing Panel**

18. Early in the project, a precast concrete façade panel was reportedly damaged and fell from the south side on the upper level (**Photo 07**). The City reported that, with the hotel now in place, the panel cannot be easily replaced with another precast piece, and the request has been made to use an EIFS system, similar to remainder of the hotel façade, including other similar façade panels to the east.

Any revision to EIFS should include discussion on the different durability of the EIFS system versus a precast panel. The new panel should be designed by the design team for the hotel project to ensure correct materials and detailing are specified for the conditions at this location. In addition, the City should receive a warranty specific for this panel which covers all maintenance for a period of at least 10 years (minimum), including all associated sealants and finishes.

Mr. Luke Pugh  
Market Garage Supplemental Review  
June 13, 2016

### Miscellaneous Garage Issues

19. New sprinkler lines were installed throughout the garage, typically five lines (east-west orientation) per bay. At numerous locations, the lines were installed directly adjacent to or below the garage light fixtures (**Photo 08**).
20. Throughout the garage at locations adjacent to the ongoing construction, the wall top flashing was bent, partially removed, or otherwise damaged (**Photo 09**). These locations should be repaired or new flashing installed to original specifications.
21. Debris and garbage was noted in several of the new bollards (**Photo 10**), which should be cleaned out. Typically, bollards are filled with concrete or a cap installed to prevent future debris and garbage. If a cap is used in lieu of filling, it is recommended to install weep holes at the base of all holes to mitigate potential water build up and corrosive deterioration.
22. Throughout Levels 5 and 6, the barrier cables installations were not complete or missing (**Photo 11**). All barrier cables should be installed prior to completion of the work.
23. Adjacent to the southwest stair tower on Level 2, significant wash down was visible on the floor from cutting into the stair tower wall for installation of new MEP equipment (**Photo 12**). The floor and curb should be cleaned and the drain verified to be free and clear of debris and functioning properly.

If you have any questions or need any added information, please call or email.

Very truly yours,

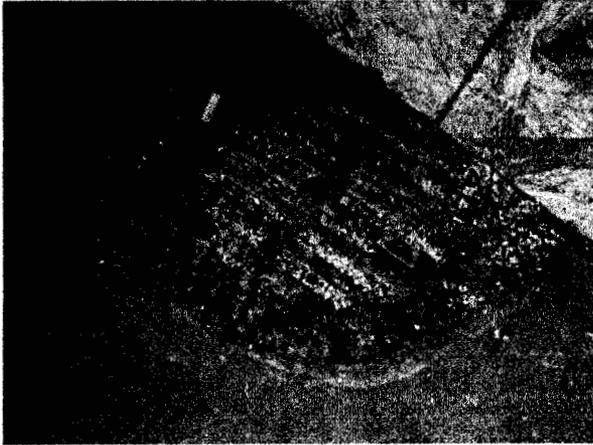
THP Limited, Inc.



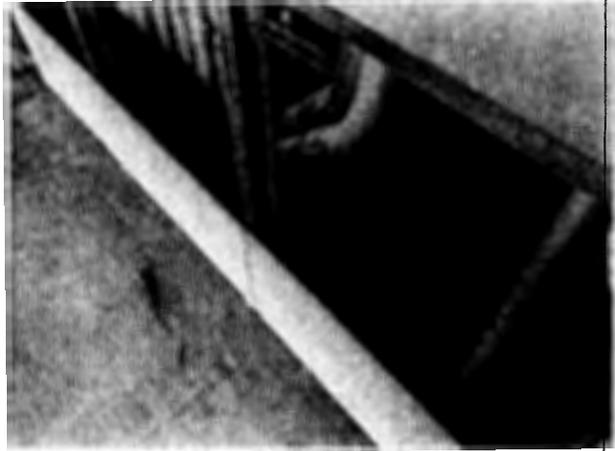
Christopher A. Hauke, P.E.  
Principal

cc: Chris Przywara, THP

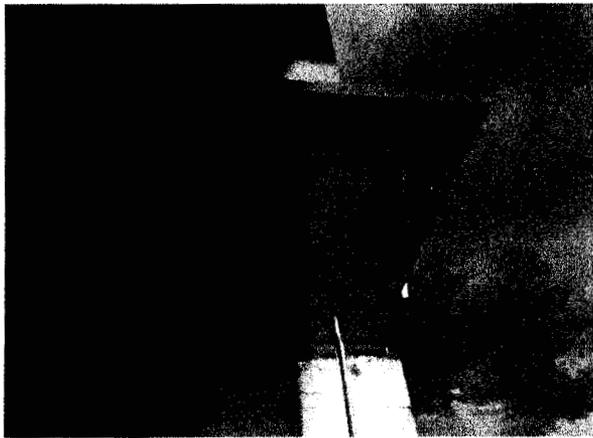
Attachment: Photos 01 through 12



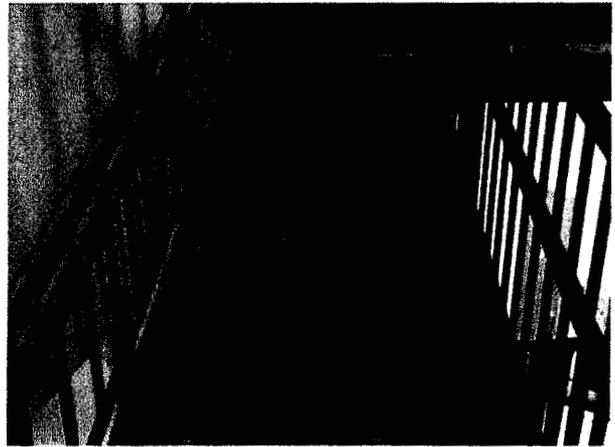
**Garages Photo 01**  
Clogged floor drain.



**Garages Photo 02**  
Base of new MEP enclosure.

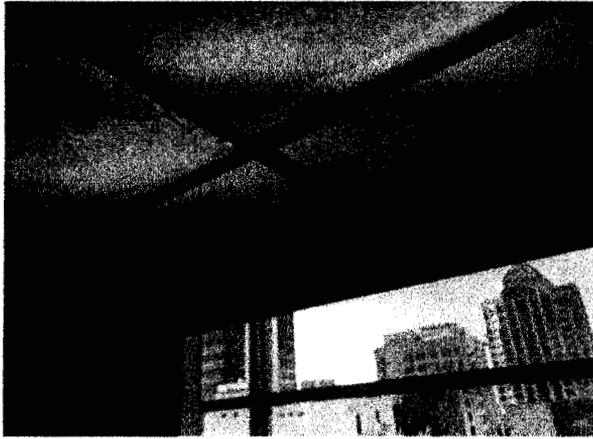


**Garages Photo 03**  
Unfinished building envelope over stair tower.

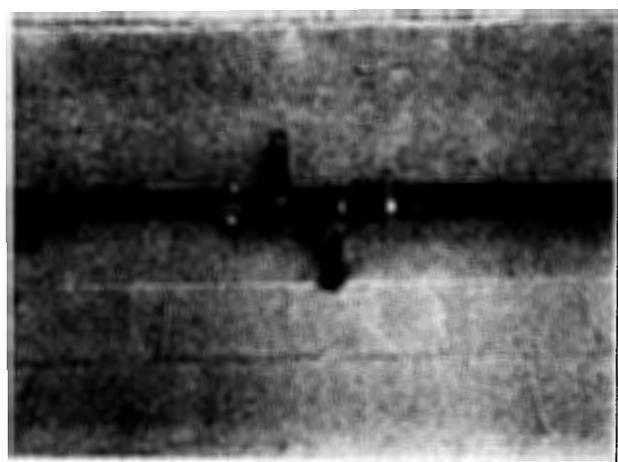


**Garages Photo 04**  
Debris and dirt in stair tower.

Mr. Luke Pugh  
Market Garage Supplemental Review  
June 13, 2016



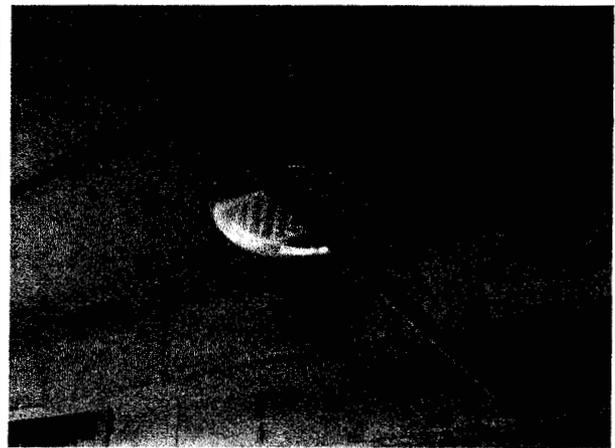
**Garages Photo 05**  
Damaged light fixture in elevator cab.



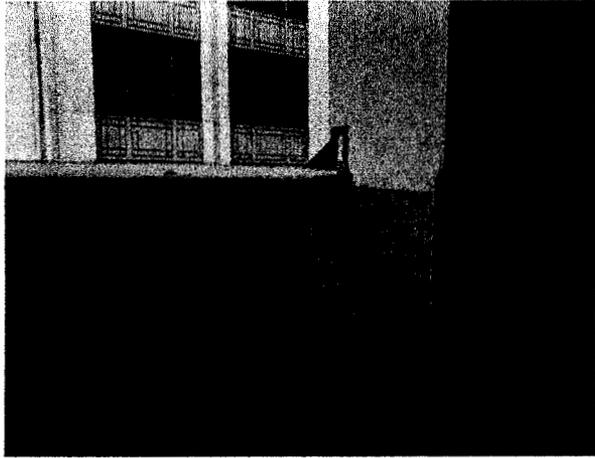
**Garages Photo 06**  
Open penetration at northwest stair tower.



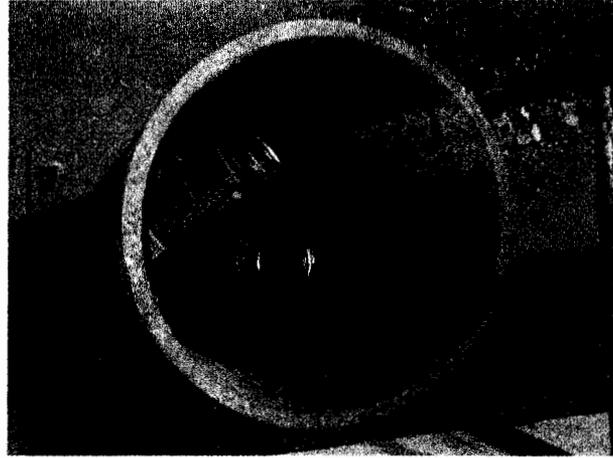
**Garages Photo 07**  
Location of damaged south façade panel.



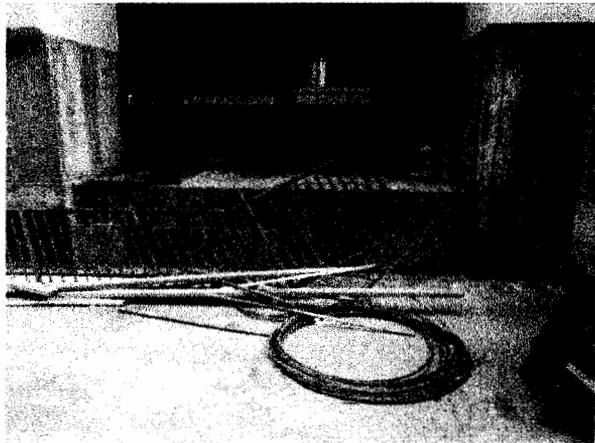
**Garages Photo 08**  
Sprinkler line installation at light fixture.



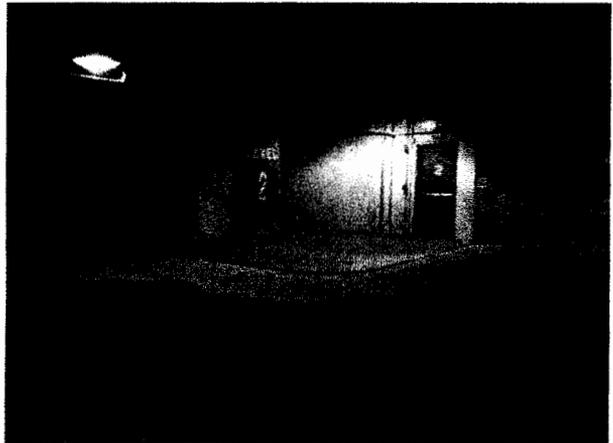
**Garages Photo 09**  
Damaged walltop flashing.



**Garages Photo 10**  
Trash and debris in open bollard.



**Garages Photo 11**  
Incomplete barrier cable installation.



**Garages Photo 12**  
Visible wash down adjacent to Level 2 stair tower.

DRAFT DATE: JUNE 17, 2016

Schedule 2.4  
Form of Release

RELEASE OF DEFERRED HOTEL OPENING LIQUIDATED DAMAGES

This Release of Deferred Hotel Opening Liquidated Damages is made by the City of Roanoke, Virginia, a Virginia municipal corporation (the "City") this \_\_\_\_ day of \_\_\_\_\_, 2016, and is provided to South Commonwealth Partners, LLC, a South Carolina limited liability company ("Developer").

RECITALS

A. The City and Developer entered into a Performance Agreement for Hotel Developer Development, Construction, Operation, and Maintenance dated December 18, 2013, (the "Hotel Performance Agreement") in connection with the construction, operation, and maintenance of a hotel with at least 123 rooms, but not exceeding 130 rooms ("Hotel"), within certain air rights, property rights, and easements within the City and more particularly described in a Deed of Certain Air Rights, Deed of Condominium Units, and Deed of Easements dated December 18, 2013, by and between the City and the Developer, recorded in the Clerk's Office of the Circuit Court of the City of Roanoke, Virginia as Instrument No. 130014480 (the "Deed").

B. Pursuant to terms of the Hotel Performance Agreement, Developer agreed to (i) construct the Hotel and complete construction of the Hotel, (ii) obtain a Certificate of Occupancy within 30 days after the Construction Completion Date that authorizes Developer to conduct Hotel Business, and (iii) open the Hotel for Hotel Business by June 30, 2016.

C. In the event that Developer fails to commence Hotel Business by June 30, 2016, Developer is in default under the terms of the Hotel Performance Agreement and is obligated to pay to the City Hotel Opening Liquidated Damages for each day, beginning July 1, 2016, that the Hotel is not open for Hotel Business.

D. The City and Developer entered into an Agreement for Deferral of Certain Performance Obligations dated June \_\_, 2016 ("Deferral Agreement"), under which Deferral Agreement the City agreed to defer the accrual of Hotel Opening Liquidated Damages provided Developer satisfied the Outstanding Construction Obligations, as defined in the Deferral Agreement, on or before October 31, 2016.

E. Pursuant to Section 2.4 of the Deferral Agreement, the City agreed to provide this Release of deferred Hotel Opening Liquidated Damages if Developer satisfied the Outstanding Construction Obligations, to the satisfaction of the City Manager, on or before October 31, 2016.

F. The City Manager has confirmed that Developer has satisfied the Outstanding Construction Obligations to his satisfaction.

G. All capitalized terms, not otherwise defined herein, shall have the meaning ascribed to such term as set forth in the Deferral Agreement or the Hotel Performance Agreement, as applicable.

NOW, THEREFORE, based upon the mutual covenants contained herein, and for other good and valuable consideration, the City and Developer agree as follows:

1. Release of Deferred Hotel Opening Liquidated Damages.

The City acknowledges and agrees that Developer has satisfied the Outstanding Construction Obligations, to the satisfaction of the City Manager, and hereby releases Developer from any and all claims for any deferred Hotel Opening Liquidated Damages that accrued under the terms of the Deferral Agreement.

2. Effect, Applicable Law.

This Release of Deferred Hotel Opening Liquidated Damages is made pursuant to Section 2.4 of the Deferral Agreement. Except as expressly provided herein, all terms and conditions of the Deferral Agreement and the Hotel Performance Agreement shall remain in full force and effect. This release of Hotel Opening Liquidated Damages shall be constructed and interpreted in accordance with the laws of the Commonwealth of Virginia.

WHEREFORE, the City has executed this Release of Deferred Hotel Opening Liquidated Damages by its duly authorized City Manager.

ATTEST:

CITY OF ROANOKE, VIRGINIA

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Christopher P. Morrill, City Manager

South Commonwealth Partners, LLC accepts this Release of Deferred Hotel Opening Liquidated Damages in accordance with its terms and conditions.

SOUTH COMMONWEALTH PARTNERS, LLC

\_\_\_\_\_  
Witness  
Print name: \_\_\_\_\_

By: \_\_\_\_\_  
Paul C. Aughtry, III, duly authorized Manager