

**CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA**



<b>Agenda Date:</b>	December 18, 2017
<b>Action Required:</b>	Yes (Approval of Resolution – One Reading)
<b>Presenter:</b>	Chris Engel, Director of Economic Development
<b>Staff Contacts:</b>	Maurice Jones, City Manager Craig Brown, City Attorney Chris Engel, Director of Economic Development
<b>Title:</b>	<b>Authorizing Resolution Approving a Performance Agreement for Hotel Project at 201 E. Main St.</b>

**Background:**

In 2008, construction commenced on a project, that was to be known as the Landmark Hotel, at 201 East Main Street in a former bank building fronting the downtown mall. In 2009, amid the recession the project's financing was called into question ultimately resulting in work ceasing and leaving the building unfinished. Subsequently, in 2012, ownership of the property transferred to Deerfield Square Associates II, LLC following a court sanctioned auction process. Since that time various City staff have interacted with representatives of Dewberry Capital (manager for Deerfield Square Associates II, LLC) and its principal, Mr. John Dewberry, to ensure the safety and security of the structure; but no additional progress has been made to complete the construction of the hotel.

**Discussion:**

Since the project stalled, the City has heard growing concern from residents; businesses and visitors regarding the eyesore and safety concern this long-delayed project has created in the downtown area. These concerns and the unique set of circumstances surrounding this project prompted members of the City Council and staff to meet with representatives of Dewberry Capital and engage in discussions to identify options available to move the project to completion as quickly as possible. Ultimately, these conversations resulted in a request from Dewberry Capital for assistance in completing the project. Dewberry Capital intends to proceed with its plans to build The Dewberry Charlottesville luxury hotel on the site. Once completed, the property is expected to attract overnight guests seeking additional amenities that are currently in short supply in the area, and the retail and restaurant spaces within it will draw new regional visitors to the city. The company recently completed a similar project, The Dewberry Charleston, in Charleston, South Carolina.

At its March 6, 2017 meeting City Council passed (with a 4-1 vote), a resolution approving assistance for the hotel project. A copy of this resolution is included herein.

The Performance Agreement, also included herein, incorporates all the elements of the March 6 Council resolution and is now in final form agreeable to both parties.

In summary, the City in conjunction with the Charlottesville Economic Development Authority agrees to provide a performance grant, to the developer, equal to 50% of the incremental real estate tax generated by the project (above the base value) for ten years to assist in retiring the debt service. The base value, as of assessment year 2017, is \$6,642,500. The actual amount of the grant will be determined annually by the assessed value beginning the year following the completion date. The initial estimated annual grant amount is approximately \$110,000, although that may increase or decrease depending on the annual assessment and tax rate. The City will receive the other 50% of the increase during the ten year period and the full amount of real property taxes from the project thereafter. All other taxes generated by the property will accrue to the City upon opening the facility.

In order to trigger the full incentive offered by the performance grant the project must receive a certificate of occupancy by the completion date of September 30, 2020, and:

1. Generate in year one a minimum of \$150,000 in transient occupancy taxes. In year two \$225,000 and in years three – ten \$300,000.
2. The developer must also make a minimum capital investment of \$20 million in the construction of the project.
3. The developer must create 60 full-time equivalent jobs at the hotel.

With respect to the aforementioned performance agreement, the City has entered similar agreements in the past for projects that induce significant capital investment and job creation in the City. These are considered on a case by case basis and approved by the council. The threshold for consideration has been a minimum investment of \$20 million dollars and the creation of 200 or more jobs.

This project is expected to exceed \$20 million dollars in capital investment and create approximately 100 jobs. As a hotel project subject to the City's transient occupancy tax an additional requirement to generate a significant amount of transient occupancy tax revenue was added in this case. Once completed and operational the hotel project is expected to generate \$800,000 – \$950,000 in annual City tax revenue. This includes real property taxes, personal property taxes, sales taxes, meals taxes, lodging taxes, BPOL and utility taxes. In addition, during the construction phase there will be a positive economic impact felt by the local and regional construction sector and service providers.

From a policy standpoint, it is important to remember that the implementation of a tax increment based performance agreement does not negatively impact the City budget as the grant is generated solely from the increase in real estate revenue received from the completed project. If the project is not completed the increase in taxes is not realized and therefore the City and economic development authority are not obligated to make the grant.

**Alignment with City Council's Vision and Strategic Plan:**

This agenda item aligns with Council's vision for Economic Sustainability. It also addresses one of the goals in the City's Strategic Plan that were recently adopted by Council: Goal 3: Have a Strong, Diversified Economy.

**Community Engagement:**

No engagement specific to this item.

**Budgetary Impact:**

Funds will need to be allocated for transfer to the Charlottesville Economic Development Authority but only after the project is complete and has received a certificate of occupancy and increased real property taxes have been realized for a full year.

**Recommendation/Alternatives:**

City staff recommends adoption of the attached Resolution.

**Attachments:**

Copy of March 6, 2017 Resolution Approving Assistance for Hotel Project at 201 E. Main Street

Proposed Council Resolution supporting Performance Agreement

Copy of Economic Development Performance Agreement

## **RESOLUTION**

### Approving Agreement of Assistance for Hotel Project at 201 E. Main Street

**WHEREAS**, in 2008, construction commenced on a project, that was to be known as the Landmark Hotel, at 201 East Main Street in a former bank building fronting the downtown mall; and

**WHEREAS**, in 2009, amid the recession, the project's financing was called into question ultimately resulting in work ceasing and leaving the building unfinished; and

**WHEREAS**, over the past eight years the City has heard growing concern from residents, businesses and visitors regarding the eyesore and safety concern this long-delayed project has created in the downtown area; and

**WHEREAS**, given these unique circumstances, members of the City Council, City staff and representatives of Dewberry Capital (manager for Deerfield Square Associates II, LLC, and owner of record of the property at 201 E. Main Street) have recently engaged in discussions to identify the best options available to move the project to completion as quickly as possible; and

**WHEREAS**, these conversations resulted in a request from Dewberry Capital for assistance from the City; and

**WHEREAS**, after discussion and considerable negotiation City staff is willing to recommend to Council the following components:

**City agrees to:**

1. City agrees to lease 75 City owned parking spaces in the Water Street Parking Garage for an initial term of 5 years. (If desired, an additional 75 spaces can be leased for a second five year period or the City can conduct a request for proposal process in which terms greater than five years are possible.) In year one, the lease shall be structured so that rent will be equal to 25% of the parking revenue generated by the hotel from the use of the 75 spaces, but not less than \$40,000. In year two, the minimum is increased to \$60,000. In subsequent years, the rent will be equal to 25% of the parking revenue generated by the hotel from the use of the 75 spaces, but not less than \$80,000 annually. The effective date of the lease will coincide with the issuance of a certificate of occupancy for the hotel. The lease will terminate by mutual agreement of both parties or if the hotel ceases to operate for more than 90 days.
  
2. The City in conjunction with the Charlottesville Economic Development Authority agrees to provide a performance grant, to the developer, equal to 50% of the incremental real estate tax generated by the project (above the base value) for ten years to assist in retiring the debt service. Base value as of 2017 is \$6,642,500. The actual amount of the grant will be determined annually by the assessed value beginning the year following the completion date. The initial estimated annual grant amount is approximately \$110,000, although that may increase or decrease depending on the annual assessment and tax rate.

In order to trigger the performance grant the project must receive a certificate of occupancy and generate in year one a minimum of \$150,000 in lodging tax receipts. In year two the minimum is increased to \$225,000 and in years three – ten to \$300,000. The developer must also make a minimum capital investment of \$20 million in the construction of the project.

**Dewberry Capital (as Developer) agrees to:**

1. Developer agrees to provide the city with a report, prepared and sealed by a qualified professional consultant licensed to practice in Virginia, confirming the structural integrity of the building and make a reasonable good faith effort to improve the structure's current appearance by July 1, 2017.
2. Developer agrees to provide the City with an official project pro forma showing all sources and uses of funds, construction costs, upfit costs and anticipated operating costs. Developer agrees that the primary lender be a bona fide institutional lender and have experience in hotel financing and will provide such qualifications to the City upon request.
3. Developer agrees to expeditiously pursue all necessary City permits and approvals needed to construct the hotel and will not request any reduction in fees related to such.
4. Developer agrees to allow the city to approve any change in management of the hotel during the term of the agreement.
5. Developer commits to a minimum employment level of 60 positions for local residents during the term of the agreement.
6. For purposes of the agreement the completion date will be July 1, 2020. If a certificate of occupancy has not been issued by the completion date the total grant amount allowable will be reduced by 2% for each month that completion is delayed beyond the completion date. If a certificate of occupancy has not been issued by July 1, 2021, this agreement will terminate and the owner of the property will then use its best efforts to sell the property to another owner / developer who will either complete the project or diligently pursue another development on the property. For purposes of the agreement the completion date will be July 1, 2020. If a certificate of occupancy has not been issued by the completion date the total grant amount allowable will be reduced by 2% per month. If a certificate of occupancy has not been issued within 12 months of the agreed upon completion date the agreement will terminate.
7. Developer agrees to remit all required City taxes in a timely manner during the grant period, agrees not to contest any increase in assessed value for the property during the grant period. Developer agrees to pay legal fees associated with preparing and reviewing the agreement, in an amount not to exceed \$10,000.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Charlottesville, Virginia that these terms are acceptable in concept and shall form the basis of a lease agreement for parking spaces and a performance agreement between the parties;

**BE IT FURTHER RESOLVED**, that the Council of the City of Charlottesville, Virginia directs the City Manager and his staff to prepare the necessary documents to effect such an agreement and schedule such for council consideration as soon as is practicable.

Adopted by Council  
March 6, 2017



Acting Clerk of Council

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**APPROVING RESOLUTION OF THE  
CITY COUNCIL  
OF THE CITY OF CHARLOTTESVILLE, VIRGINIA**

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**WHEREAS**, the Economic Development Authority of the City of Charlottesville, Virginia (**the “Authority”**), a political subdivision of the Commonwealth of Virginia (**the “Commonwealth”**), was established to promote economic development in the City of Charlottesville, Virginia (**the “City”**), expand the City tax base and encourage more job opportunities for the citizens of the City by, among other things, promoting industry and developing trade in the City and encouraging and inducing multi-state regional or national offices or operations centers and commercial enterprises to commit resources to locate or remain in the City; and

**WHEREAS**, the City Council of the City is empowered pursuant to Section 15.2-953 of the *Code of Virginia*, 1950, as amended (**the “Code”**), to make appropriations of public funds to the Authority for the purpose of promoting economic development in the City; and

**WHEREAS**, the Authority is empowered pursuant to Section 15.2-4901, *et seq.*, of the Code to, among other things, accept contributions, grants and other financial assistance from the City and make grants to any person, partnership, association, corporation, business, or governmental entity for the purposes of promoting economic development in the City; and

**WHEREAS**, the Authority, pursuant to that certain proposed Economic Development Performance Agreement (**the “Agreement”**), attached hereto as **Exhibit A**, is proposing to provide a certain financial incentive grant to the Developer (as defined in the Agreement) in order to encourage and induce the Developer to (i) invest a significant amount of money of not less than \$20,000,000 in certain real estate improvements (**“Improvements”**) to a property (**the “Property”**) located in the City, (ii) create and maintain or cause to be created and maintained a minimum of 60 new jobs at businesses to be located on the Property and (iii) complete construction and equipping of the Improvements by no later than the Completion Date (as defined in the Agreement); and

**WHEREAS**, the Authority, while recognizing that the City Council of the City (**the “City Council”**) is not empowered under Virginia law to make any binding commitment beyond the current fiscal year of the City, has requested that the City Council annually appropriate monies to the Authority for the purpose of promoting economic development in the City by funding certain financial obligations of the Authority pursuant to and during the term of the Agreement; and

**WHEREAS**, there has been presented to this meeting a draft of the Agreement which sets forth the understanding and agreement between the Authority and the Developer.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTESVILLE, VIRGINIA:**

**1.** The City Council finds and determines that the terms and conditions of the Agreement, including the provisions for the Grant, is consistent with the mission, goals and purposes of the Authority.

**2.** It is the current intention of the City Council to make sufficient annual appropriation of monies to the Authority for the purpose of promoting economic development in the City by funding certain financial obligations of the Authority pursuant to and during the term of the Agreement.

**3.** The City Manager or any other officer charged with the responsibility of preparing the City budget is hereby authorized and directed to include in the City budget for each fiscal year of the City during the term of the Agreement a request that the City Council appropriate sufficient monies to the Authority for the purpose of promoting economic development in the City and funding certain financial obligations of the Authority pursuant to the terms of the Agreement during such fiscal year.

**4.** The City Manager is hereby authorized to acknowledge the City's understanding of the Agreement and to execute such documents as he deems appropriate in relation to such Agreement.

**5.** All other acts of the City Manager, the Director of Economic Development or any other officer of the City relating to the purposes and intent of this resolution are hereby approved and ratified.

**6.** This resolution shall take effect immediately.

ADOPTED: \_\_\_\_\_, 2017

CERTIFICATION OF ADOPTION OF RESOLUTION

I, the undersigned Clerk of the City Council of the City of Charlottesville, Virginia, hereby certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by a majority of the members of the City Council at an open meeting duly called and held on \_\_\_\_\_, 2017 and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof. The following represent the votes taken at such meeting:

Member	Ayes	Nays	Abstentions
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WITNESS my hand and the seal of the Authority, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Clerk of the City Council of the  
City of Charlottesville, Virginia

[SEAL]

**Exhibit A**

**Economic Development Performance Agreement**

**ECONOMIC DEVELOPMENT  
PERFORMANCE AGREEMENT  
(Dewberry Hotel Charlottesville)**

**THIS ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT** (this “**Agreement**”) is made this \_\_\_ day of December, 2017, by and among the **Economic Development Authority of the City of Charlottesville, Virginia**, a political subdivision of the Commonwealth of Virginia (the “**Authority**”), and **Deerfield Square Associates II, LLC**, a Georgia limited liability company (the “**Owner**”), and **Dewberry Hospitality Group, LLC**, a Georgia limited liability company (the “**Operator**”), each by its manager, **Dewberry Capital Corporation**, a Georgia corporation (the “**Manager**”) (hereinafter the Owner, the Operator, the Manager, and their respective successors and assigns, shall be collectively referred to in this Agreement as the “**Developer**”), and it recites and provides as follows.

**WHEREAS**, the City of Charlottesville, Virginia, a political subdivision of the Commonwealth of Virginia (the “**City**”), has a significant interest in the terms and conditions of this Agreement; and

**WHEREAS**, the Developer intends to invest a significant amount of money (the “**Investment**”) into real estate improvements located in the City commonly known as the Landmark Hotel, 201 East Water Street, Charlottesville, Virginia, tax parcel number 280031000 (the “**Property**”), which Investment is expected to create a significant number of new jobs,, new real estate tax revenue, and generate new transient occupancy tax revenues in the City; and

**WHEREAS**, the Developer has represented to the City and the Authority that the Investment, once construction is complete, will consist of a luxury hotel, with integrated restaurant and retail space, that will create the anticipated new jobs, and the projected minimum new city transient occupancy tax revenues described in **Exhibit A**; and

**WHEREAS**, the Investment will be not less than \$20,000,000; and

**WHEREAS**, the City Council of the City (the “**Council**”) is empowered under Sections 15.2-953 and 15.2-1205 of the *Code of Virginia*, 1950, as amended (the “**Code**”) to make appropriations of money to the Authority for promotion of economic development, and to give, lend or advance to the Authority, in any

manner that it deems proper, funds or other City property, not otherwise specifically allocated or obligated; and

**WHEREAS**, the Authority is empowered under Sections 15.2-4901, *et seq.*, of the Code to develop trade by inducing commercial enterprises to locate in the Commonwealth of Virginia and, specifically under Sections 15.2-4905(12) and (13) of the Code, to accept monies from the City, and to make grants ("**Grants**"), such as those further described below, to any business in furtherance of the purposes for which the Authority was created; and

**WHEREAS**, the Authority has agreed to provide certain incentives (in the form of the Grants) to the Developer from monies appropriated by the City to induce it to make the Investment in the Property, all as set forth herein; and

**WHEREAS**, the Authority and the Developer desire to set forth their understanding and agreement as to the Investment and the Grants in writing, and to have the City acknowledge the execution of this Agreement;

**NOW, THEREFORE**, for and in consideration of the premises, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows.

1. Subject to the terms of this Agreement, the Developer shall:
  - a. Make the Investment in improvements to the Property, consisting of a luxury hotel, with a minimum of 100 rooms (**the "Hotel"**), and a minimum of 4,000 square feet of integrated restaurant and/or retail space (**collectively, the "Improvements"**).
  - b. Use its commercially reasonable efforts to substantially complete construction of the Hotel and the equipping of the Improvements by means of the Investment no later than September 30, 2020.
  - c. Create or cause to be created, by no later than the date which is twelve months after Developer has procured a preliminary or permanent certificate of occupancy, and to thereafter maintain or cause to be maintained for the period during which Grant payments are to be paid as provided for herein, at least 60 full-time equivalent jobs at the Hotel and within the Improvements.

d. Within sixty (60) days after the date of this Agreement, confirm in writing to the Authority that, to the best of Developer's knowledge, there has been no material adverse change to the information or conclusions provided in the Structural System Condition Report dated March 1, 2017, prepared and sealed by Kurt D. Swensson, a qualified professional consultant licensed to practice in Virginia, confirming the structural integrity of the existing building currently located on the Property.

e. Within ninety (90) days after the date of this Agreement, provide the Authority and City with a project pro forma showing all anticipated sources and uses of funds concerning the Investment, including the construction costs, upfit costs, and projected Hotel opening costs. Developer agrees that its primary lender for the Investment will be a bona fide institutional or commercial lender that has experience in commercial real estate or hotel financing. After Developer has selected its lender and has received a written commitment from such lender in respect of the Investment, Developer will provide the qualifications of its lender to the Authority and the City, upon the Authority's or the City's reasonable written request.

f. Prior to the appointment of any company other than Owner, Operator, or Manager as the manager of the Hotel, Developer shall give reasonable advance written notice to the Authority and City and seek the Authority's and City's advance approval as to such appointment, which approval may not be unreasonably withheld, conditioned or delayed by the Authority or City. For the avoidance of doubt, Developer shall have the right to change the company appointed to manage the Hotel, with or without the Authority's and the City's advance approval if the manager is experienced in the operation of luxury segment hotels, and the Hotel continues to be operated as a luxury segment hotel. The Authority and City shall be deemed to have approved for all purposes any change in the appointment of the manager of the Hotel, if the Authority and City have failed to respond in writing within 30 days after the date of Developer's initial notice.

g. Comply in all material respects with applicable federal, state and local laws, and use commercially reasonable efforts to diligently pursue and secure all plans, approvals, bonds and permits as may be necessary or

appropriate for the construction of the Improvements and the occupancy thereof.

h. The Developer may, by written notice to the Authority, request an extension (at a minimum in monthly increments) of the date for substantial completion of the construction of the Improvements or the date for obtaining a preliminary or permanent certificate of occupancy for the Hotel, as provided for in Paragraph 1(b) above, if circumstances beyond the reasonable control of Developer necessitate an extension of one or both of those dates. The Authority's approval of such request shall not be unreasonably withheld, conditioned or delayed. The Authority shall respond in writing within thirty (30) days after receiving any such request submitted by the Developer and, if an extension is granted, the parties will enter into and sign an amendment to this Agreement giving effect to the extension in light of the other rights and obligations set forth herein. If the Authority fails to respond within thirty (30) days after receiving Developer's request, then the Authority will be deemed to have approved such request for all purposes.

2. The parties further agree:

(a) The Authority, subject to annual appropriations by the Council, as contemplated in Paragraph 7 hereof, and subject to the Developer's fulfillment of the requirements of Paragraph 5 below, shall provide a Grant to the Developer each year for ten (10) consecutive years. Unless Developer has failed to pay any installment of real property taxes by such installment's due date, each Grant shall be paid by the Authority to Developer no later than April 1<sup>st</sup> of the year following the year in which Developer pays such installments of real property taxes. The Grants shall commence, at the Developer's election, in the calendar year following the later of (i) the year in which substantial completion of construction occurs, (ii) the year in which a preliminary or permanent certificate of occupancy is issued for the Hotel, or (iii) a subsequent year, chosen by written notice from the Developer to the Authority, which may not be more than two (2) years following the year in which a preliminary or permanent certificate of occupancy is issued for the Hotel. The Grant each year will be equal to fifty percent (50%) of the total annual real property taxes on the Property paid by Developer to the City in excess of \$63,103.00.

(b) Developer shall use commercially reasonable efforts to obtain the necessary approvals and financing, and to satisfy other governmental or municipal conditions for construction of the Hotel.

(c) If a preliminary or permanent certificate of occupancy has not been issued for the Hotel by September 30, 2020 (as such date may be extended as provided for herein), the first Grant for the initial year shall be reduced by two percent (2.00%) for each full calendar month following such date until a preliminary or permanent certificate of occupancy is issued.

(d) If a preliminary or permanent certificate of occupancy for the Hotel has not been issued by September 30, 2021, this Agreement shall terminate and no party shall have any further obligations or liability to any other party in respect of the rights and obligations set forth herein. Notwithstanding the foregoing, or anything to the contrary contained herein, if through no fault of Developer, Developer is unable to obtain necessary approvals or financing, or satisfy other governmental or municipal conditions concerning the construction of the Hotel (including, but not necessarily limited to, Board of Architectural Review approval), the dates set forth in Paragraph 1(b) and Paragraph 1(c), shall be automatically extended on a month-by-month basis to account for the delays that are not the fault of, or in the reasonable control of, Developer. Developer and City will reduce any such extensions of those dates to writing as necessary during the term of this Agreement. In the event that a preliminary or permanent certificate of occupancy has not been issued by September 30, 2021 (as such date may be extended in accordance with the other provisions of this Agreement), due solely to intentional delays or inaction on the part of the Developer (and, for the avoidance of doubt, not including any delays attributable to the City, or its approval process, or the Authority), Developer agrees to use commercially reasonable efforts to pursue other development of the Property and/or to sell the Property to another party that will pursue development of the Property.

3. The Grants shall be paid, annually in accordance with Paragraph 2(a) hereof, and subject to funding by the Council, for a period of ten (10) consecutive years. The initial Grant shall be reduced by the actual costs, up to a maximum of \$10,000, incurred by the Authority for external legal fees in connection with this Agreement.

4. The assessed value of the Property for real estate tax purposes shall be solely determined by the City Assessor according to the Assessor's normal and ordinary

tax assessment practices. The assessed value of the Property may be contested by the Owner, so long as such contest is made on a good faith basis. In the event that the Owner contests the assessed value of the Property, such contest shall be made within a year after the contested assessment and prior to payment of any Grant for that year.

5. The payment of any Grant is dependent upon:

a. the Developer making the Investment in the Property no later than September 30, 2020, as such date may be extended in accordance with the provisions of this Agreement, and upon Developer providing the Authority and the City with a notarized certificate, signed by the Developer's architect, confirming Developer's actually-incurred costs of not less than the amount of the Investment;

b. the Developer's compliance, throughout the following term of this Agreement, with the jobs creation and jobs maintenance requirements of Paragraph 1(c); such compliance to be certified in writing by Developer to the Authority and the City, together with such evidence as the Authority and the City may reasonably request; and

c. the Developer remits transient occupancy tax receipts to the City, collected by the Hotel, of not less than \$150,000.00 during the first twelve months following the issuance of a preliminary or permanent certificate of occupancy; \$225,000.00 during the second twelve months following the issuance of a preliminary or permanent certificate of occupancy; and \$300,000.00 during the third and every subsequent twelve month period following the issuance of a preliminary or permanent certificate of occupancy during the remaining term of this Agreement; provided that, in the event the transient occupancy taxes remitted by the Developer in any year are less than the required amount for such year, the Grant shall be reduced by the difference between the required amount of transient occupancy taxes and the amount actually paid by Developer for such year; and provided further that Developer may continue to qualify for full future Grants if Developer meets the remittance requirements of this subsection for such future years.

6. Subject to the provisions of Paragraph 16 below, the obligations of the Developer under this Agreement shall also be the joint and several obligations of the Owner and the Operator.

7. While recognizing that it is not empowered under Virginia law to make any binding commitment beyond the current fiscal year of the City, it is the intention of the Council to make sufficient annual appropriations during the term of this Agreement to fund all Grants hereunder. To that end, the Council has directed the City Manager, and other officer charged with the responsibility of preparing the City's budget, to include in the proposed budget for each fiscal year of the City during the term of this Agreement, disbursement amounts sufficient to fund each Grant payable to the Developer hereunder. If at any time during the term of this Agreement, the City, the Authority, or the Developer reasonably determines that the amount appropriated in the City budget is insufficient to pay any Grant due hereunder, then the City Manager (or other officer charged with the responsibility of preparing the City's budget) will submit to the Council at the next scheduled meeting of the Council, or as promptly as practicable, a request for a supplemental appropriation sufficient to cover any deficit. The Authority shall use its best efforts to provide the Developer with timely written updates on the Council's consideration and approval of such supplemental appropriation requests as they occur.

8. This Agreement shall take effect from the date first set forth above and, unless terminated earlier, shall continue for a term of ten (10) years beginning on the date of the initial Grant (so that such term includes the payment of the tenth and final Grant).

9. Notwithstanding the provisions of Paragraph 6, this Agreement shall not create a joint venture, or any relationship of agency or employment between any of the parties.

10. The covenants of the Authority as stated in this Agreement shall not be interpreted to establish any pledge, security interest, lien, or other encumbrance on property of the City or the Authority, nor shall the covenants of the Developer establish any lien, security interest, or encumbrance on the Property.

11. In the event of a dispute between the parties as to the interpretation, performance or enforcement of the terms and provisions hereof, the parties shall endeavor in good faith to resolve the dispute by negotiation. In the event a resolution of the dispute by negotiation is not definitively reached within a reasonable time (not exceeding 90 days), the parties agree that, as a condition precedent to litigation, they shall submit the dispute to mediation in Charlottesville by a mediator to be designated by the President of the Charlottesville Chamber of

Commerce. Any mediation shall be concluded within ninety (90) days after the initiation of mediation, unless agreed otherwise in a writing signed by all parties. At the conclusion of mediation, if the dispute is not resolved to the satisfaction of the parties, the matter may be submitted for litigation in accordance with the provisions of the following Paragraph.

12. This Agreement shall be governed by the laws of the Commonwealth of Virginia, and, in the event of litigation between the parties, jurisdiction and venue shall be in the Circuit Court of the City of Charlottesville, Virginia, and all legal actions between the parties to this Agreement shall be brought only in such court. All parties hereto agree that, in the event of any action brought to enforce the terms and provisions hereof, the prevailing party (as determined by the Circuit Court judge) shall be entitled to reimbursement of reasonable attorney's fees and court costs. All parties to this Agreement have standing to enforce any covenants, terms, provisions, and agreements set forth herein.

13. This Agreement is the entire agreement between the parties hereto, sets forth all of promises, agreements, conditions, and understandings between the parties respecting the subject matter hereof, and supersedes all prior and contemporaneous negotiations, conversations, discussions, correspondence, memoranda, and agreements between the parties concerning such subject matter.

14. This Agreement is subject to modification only by written agreement signed by all parties hereto.

15. All notices required under this Agreement shall be given in writing, and shall be deemed to be received five (5) days after being mailed by first class mail, postage prepaid, return receipt requested, or one (1) day after being placed for next day delivery with a nationally recognized overnight courier service, or upon receipt when delivered by hand, addressed as follows:

if to the Authority, to:

Economic Development Authority of the City of Charlottesville,  
Virginia  
c/o Office of Economic Development  
Attention: Executive Director  
610 East Market St., Room B230  
Charlottesville, Virginia 22902

with a copy (which shall not constitute notice) to:

Daniel M. Siegel, Esquire  
Sands Anderson PC  
P.O. Box 1998  
1111 E. Main Street  
Richmond, VA 23218-1998, and

if to the City, to:

S. Craig Brown,  
City Attorney,  
Charlottesville City Hall  
651 East Main Street  
Charlottesville, VA 22901

if to the Developer, to:

Care of  
John Clotfelter  
Chief Financial Officer  
Dewberry Capital Corporation  
One Peachtree Pointe  
1545 Peachtree Road, Suite 250  
Atlanta, GA 30309

with a copy (which shall not constitute notice) to:

Jason C. Hicks  
Womble Bond Dickinson (US), LLP  
201 East Main Street  
Suite P  
Charlottesville, VA 22901

16. The Authority reserves the right to approve in advance the assignment of this Agreement by the Developer to any individual or entity; provided such approval shall not to be unreasonably withheld, conditioned or delayed if the ownership of the proposed assignee is disclosed to the Authority, and the proposed assignee has the requisite capacity to perform the Developer's obligations hereunder. Notwithstanding the foregoing, no approval of the Authority shall be required for

an assignment of this Agreement by the Developer to any affiliate of the Developer. Any such approved or permitted assignee shall be bound by all the terms and conditions, and enjoy all of the rights and benefits, of this Agreement. If the Authority approves the assignment of this Agreement to an assignee that is not affiliated with Developer, then Developer, Owner, and Manager shall be relieved of any and all further obligations hereunder following the effective date of the assignment.

17. This Agreement may be executed in multiple counterparts and the signature pages may be exchanged or delivered by facsimile or email, and each counterpart shall be deemed an original, and all of which together shall be deemed one and the same instrument. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. If any provision of this Agreement is determined to be unenforceable, then the remaining provisions of this Agreement shall be interpreted as in effect as if such unenforceable provisions were not included therein; provided, however, that Developer shall have no continuing obligations hereunder if the payment of the Grants contemplated hereunder is determined to be unlawful or unenforceable. Each of the parties to this Agreement represents that it is fully authorized to enter into this Agreement; that it will be bound by the terms and conditions set forth herein; and that the person whose signature appears below has the authority to bind such party.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement to be effective as of the date first written above.

**ECONOMIC DEVELOPMENT AUTHORITY OF  
THE CITY OF CHARLOTTESVILLE, VIRGINIA**

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

(SIGNATURES OF THE PARTIES CONTINUE ON THE FOLLOWING PAGE.)

**DEERFIELD SQUARE ASSOCIATES II, LLC**

By its manager, Dewberry Capital Corporation

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

**DEWBERRY HOSPITALITY GROUP, LLC**

By its manager, Dewberry Capital Corporation

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

**ACKNOWLEDGED BY THE CITY OF  
CHARLOTTESVILLE, VIRGINIA**

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

**Exhibit “A”**  
**Projected Minimum New City Transient Occupancy Tax Revenue**

The following table reflects Developer’s projections, as of the date of this Agreement, as to the minimum new city transient occupancy taxes to be generated during each of the first 10 years following the opening of the Hotel. The projections may or may not be realized. Actual new city transient occupancy taxes may be less or may be more than the following projections. Nothing set forth in the Agreement (or in this Exhibit A) shall constitute a guarantee by Developer as to any specific, minimum, or particular level of new city transient occupancy taxes during any year during the term of this Agreement. The following table is intended to merely constitute Developer’s good faith non-binding projections as of the date of this Agreement.

Year 1	\$150,000
Year 2	\$225,000
Year 3	\$300,000
Year 4	\$300,000
Year 5	\$300,000
Year 6	\$300,000
Year 7	\$300,000
Year 8	\$300,000
Year 9	\$300,000
Year 10	\$300,000

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