



INDUSTRIAL DEVELOPMENT AUTHORITY REGULAR MEETING AGENDA

4TH FLOOR CONFERENCE ROOM

February 13, 2024

10:30 AM

A. CALL TO ORDER

B. ROLL CALL

C. MEETING MINUTES

1. IDA Meeting Minutes for January 9, 2024 for Approval

D. FINANCIAL REPORT

1. Industrial Development Authority Statement of Accounts as of January 31, 2024

E. STAFF UPDATES

F. ACTION ITEMS

1. A resolution approving and authorizing a loan not to exceed a principal amount of \$30,000 to Uncle Al's Diner, LLC (SCC 11637987) and Allen Plummer and Charles Walker in their personal and individual capacities.
Council Letter Number CL - 1130.
2. A resolution approving and authorizing the Industrial Development Authority of Danville, Virginia executing a partial assignment of economic interest in North Union Properties, LLC to the Downtown Danville Association dba River District Association for real property

located at 206-208 N. Union Street.
Council Letter Number CL - 1132.

3. A Resolution of the Industrial Development Authority of Danville, Virginia approving and authorizing an agreement with Timmons Group in an amount not to exceed \$23,500.00 for geotechnical services at Lynn Street parcels 21745 and 21746 and Shelton Street parcel 22329, Danville, Virginia.
4. A resolution of the Industrial Development Authority of Danville, Virginia approving and authorizing a temporary easement to 424 Memorial Drive LLC on parcel numbers 21322, 23568, 23264, 23263, 22028, and 23110 for the purpose of installing a temporary sediment pond.

G. CLOSED MEETING

As Permitted by Subsection (A)(3) of Section 2.2-3711 of the Code of Virginia, 1950, as amended for discussion or consideration of the acquisition of real property or of the disposition of publicly held real property; and

As Permitted by Subsection (A)(5) of Section 2.2-3711 of the Code of Virginia, 1950, as amended for discussion concerning a prospective business or industry related to economic development.

As Permitted by Subsection (A)(7) of Section 2.2-3711 of the Code of Virginia, 1950, as amended for consultation with legal counsel concerning actual litigation and briefings by staff regarding specific legal matters requiring legal advice.

- A. Motion to Convene in Closed Meeting*
- B. Motion to Reconvene in Open Meeting*
- C. Motion to Certify Closed Meeting*

H. NEW BUSINESS

I. ADJOURN



**INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA
MINUTES OF MEETING
JANUARY 9, 2024**

Pursuant to a Written Notice, a copy of which is attached hereto, a Regular Meeting of the Board of Directors of the Industrial Development Authority of Danville, Virginia was held in the Fourth Floor Conference Room of the Municipal Building on Tuesday, January 9, 2024, at 10:30 a.m.

THE FOLLOWING MEMBERS WERE PRESENT AND ABSENT:

PRESENT: T. Neal Morris, Chairman
Russell Reynolds, Vice Chairman
John Laramore, Secretary/Treasurer
Kristen Barker
Philip Hall
Robert Woodall

ABSENT: Dave Cumbo

ALSO PRESENT: W. Clarke Whitfield, Jr., City Attorney
Kimberly L. Gibson, Legal Assistant/Paralegal
Ken Larking, City Attorney, City Manager
Corrie Bobe, Economic Development Director
Kelvin Perry, Economic Development
Samantha Bagby, Economic Development

T. Neal Morris, Chairman, called the meeting to order at 10:30 a.m.

ROLL CALL

MINUTES

COPIES OF THE MINUTES OF THE DECEMBER 12, 2023, REGULAR CALLED MEETING WERE DISTRIBUTED TO THE MEMBERS WITH THEIR AGENDA PACKETS. A MOTION WAS MADE BY MR. REYNOLDS TO APPROVE THE MINUTES AS PRESENTED. THE MOTION WAS SECONDED BY MR. HALL AND CARRIED WITH THE MEMBERS PRESENT VOTING AS FOLLOWS:

MR. MORRIS	- AYE
MR. REYNOLDS	- AYE
MR. LARAMORE	- AYE
MRS. BARKER	- AYE
MR. HALL	- AYE
MR. WOODALL	- AYE

FINANCES

MICHAEL ADKINS, THE DIRECTOR OF FINANCE, PROVIDED THE MEMBERS OF THE IDA BOARD AT THE MEETING WITH A PACKET OF CURRENT FINANCIAL STATEMENTS OF THE IDA.

A MOTION WAS MADE BY MR. HALL TO APPROVE THE FINANCIAL REPORT. THE MOTION WAS SECONDED BY MR. REYNOLDS AND CARRIED WITH MEMBERS PRESENT VOTING AS FOLLOWS:

MR. MORRIS	- AYE
MR. REYNOLDS	- AYE
MR. LARAMORE	- AYE
MRS. BARKER	- AYE
MR. HALL	- AYE
MR. WOODALL	- AYE

RESOLUTIONS

A RESOLUTION OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA APPROVING AND AUTHORIZING A LEASE AGREEMENT BETWEEN NORTH UNION PROPERTIES, LLC AND RAE BARNES (IN HER PERSONAL AND INDIVIDUAL CAPACITY) AND 2 EARTHY MAMAS, LLC FOR THE PROPERTY IDENTIFIED AS 206 NORTH UNION STREET, SUITE 100.

MOTION MADE BY: MR. WOODALL; SECONDED BY MR. HALL

MR. MORRIS	- AYE
MR. REYNOLDS	- AYE
MR. LARAMORE	- AYE
MRS. BARKER	- AYE

MR. HALL - AYE
MR. WOODALL - AYE

A RESOLUTION OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA APPROVING AND AUTHORIZING A LEASE RENEWAL WITH DOWNTOWN DANVILLE ASSOCIATION D/B/A RIVER DISTRICT ASSOCIATION AS ALLOWED BY THE ORIGINAL LEASE AGREEMENT EXECUTED ON MARCH 1, 2021.

MOTION MADE BY: MRS. WOODALL; SECONDED BY: MRS. BARKER

MR. MORRIS - AYE
MR. REYNOLDS - AYE
MR. LARAMORE - AYE
MRS. BARKER - AYE
MR. HALL - AYE
MR. WOODALL - AYE

MR. REYNOLDS MOVED THE MEETING BE RECESSED AND THE BOARD IMMEDIATELY RECONVENED IN EXECUTIVE CLOSED MEETING FOR THE PURPOSES:

1. *DISCUSSION CONCERNING A PROSPECTIVE BUSINESS OR INDUSTRY OR THE EXPANSION OF AN EXISTING BUSINESS OR INDUSTRY WHERE NO PREVIOUS ANNOUNCEMENT HAS BEEN MADE AS PERMITTED BY SUBSECTION (A)(5) OF SECTION 2.2-3711 OF THE CODE OF VIRGINIA, 1950, AS AMENDED.*
2. *DISCUSSION OR CONSIDERATION OF THE ACQUISITION/DISPOSITION OF REAL PROPERTY FOR A PUBLIC PURPOSE WHERE DISCUSSION IN AN OPEN MEETING WOULD ADVERSELY IMPACT THE BARGAINING POSITION OF THE AUTHORITY AS PERMITTED BY SUBSECTION (A)(3) OF SECTION 2.2-3711 OF THE CODE OF VIRGINIA, 1950, AS AMENDED.*

MOTION WAS MADE BY: MR. REYNOLDS; SECONDED BY: MR. HALL

MR. MORRIS - AYE
MR. REYNOLDS - AYE
MR. LARAMORE - AYE
MRS. BARKER - AYE
MR. HALL - AYE
MR. WOODALL - AYE

MR. REYNOLDS MOVED THE MEETING IMMEDIATELY RECONVENE INTO AN OPEN MEETING. THE MOTION WAS SECONDED BY MRS. BARKER AND CARRIED WITH THE MEMBERS PRESENT VOTING AS FOLLOWS:

MR. MORRIS - AYE
MR. REYNOLDS - AYE

MR. LARAMORE	- AYE
MRS. BARKER	- AYE
MR. HALL	- AYE
MR. WOODALL	- AYE

UPON RECONVENING, MR. REYNOLDS MOVED THAT THE BOARD ADOPT A RESOLUTION CERTIFYING THAT TO THE BEST OF EACH MEMBER'S KNOWLEDGE THAT:

- 1. ONLY PUBLIC BUSINESS MATTERS LAWFULLY EXEMPTED FROM OPEN MEETING REQUIREMENTS UNDER SECTION 2.2-3711; AND*
- 2. ONLY SUCH PUBLIC BUSINESS MATTERS AS WERE IDENTIFIED IN THE MOTION BY WHICH THE CLOSED MEETING WAS CONVENED WERE HEARD, DISCUSSED, OR CONSIDERED IN THE CLOSED MEETING.*

MOTION WAS MADE BY: MR. REYNOLDS; SECONDED BY: MR. HALL

MR. MORRIS	- AYE
MR. REYNOLDS	- AYE
MR. LARAMORE	- AYE
MRS. BARKER	- AYE
MR. HALL	- AYE
MR. WOODALL	- AYE

ADJOURN

JOHN LARAMORE
SECRETARY

T. NEAL MORRIS
CHAIRMAN

**Industrial Development Authority
Statement of Accounts
As of January 31, 2024**

Regular Checking	\$ 618,414.46
USDA Loan Account	\$ 63,905.55
City Funded Loan Account	\$ 957,993.88
North Union Properties/Master Tenant	\$ 19,720.52
Reserve Account	\$ 2,828,363.63

Reserve Account Details

Hold for FY23 Debt Svc	529,921.05	
Hold for Enterprise Zone	430,905.00	
Hold for Dan River Falls	(500,000.00)	grant funds to replenish (\$500,000)
Hold for FY22 Edev Incentives	1,962,612.00	
Hold for FY23 Edev Incentives	367,925.58	
Hold for 217 N Union	37,000.00	
Available	(0.00)	
	<u>2,828,363.63</u>	

City Funded Loans:

Beginning Balance January 1, 2024	\$ 957,843.84
The Bee - Monthly Payment - Paid 12/28/23	-
Southside Ice - Pmt from Bankruptcy Trustee	109.39
Interest /Bank Fees	40.65
Ending Balance January 31, 2024	<u>\$ 957,993.88</u>

Industrial Development Authority
Statement of Account - Regular Checking
For the month ended January 31, 2024

Beginning Balance at January 1, 2024

\$ 544,561.43

RECEIPTS:

Rent:

77,236.15

Utility/Insurance Reimbursement:

DR Foundation 1,733.98

Averett 4,776.05

6,510.03

Real Estate Tax Reimbursements

4,678.38

Parco Repayment of Incentive

20,388.14

Interest Income/Wire Fees

(1.75)

DISBURSEMENTS:

AMNB Loan - Lockett Drive (11,566.62)

AMNB - 500 Stinson Drive #1 (4,887.77)

AMNB - 500 Stinson Drive #2 (5,717.03)

AMNB - 512 Bridge Street (16,467.81)

AMNB Loan - Old Belt One (6,721.18)

AMNB - 1350 Barker Road (7,306.55)

Locus Bank - 500 Cane Creek (18,502.76)

First National - Gaither Rd Prop (3,136.84)

Movement Bank - Monument (2,651.24)

US Bank Bond Debt Service (13,666.67)

Architectural Partners - DR Falls (5,575.20)

Kent Shelton - Dan River Falls (3,360.00)

Mattern & Craig - Witcher Park (1,030.00)

Stantec - DR Falls (2,012.76)

Norfolk Southern - lease (1,902.57)

Blair Construction - 1 Ecomnets W (14,212.00)

WRT - Schoolfield Plan (2,085.86)

Brown Edwards - FY23 Audit (7,210.00)

W.L. Bowman - 310 Main (9,970.00)

AV Contractors - 620/622 N Main (12,125.00)

Utility Bills/Elevator Maint (14,181.02)

Insurance (10,669.04)

(174,957.92)

125 N Union	500.00	
Averett	-	12/12
Barry Smith	260.00	
Belk	-	12/29
City - Gang Prev.	1,500.00	
City - IT Dept.	11,360.00	
DR Foundation	5,610.00	
Earnhardt Plumbing	2,556.55	11/28
GSO	5,900.00	
Launch Place	3,000.00	
Link's Café	3,000.00	
Lizzy Lou	-	
Mind Body Wellness	900.00	
Morrisette Paper	6,762.61	
Overfinch	12,587.80	
River District Assoc	1,585.00	
Riverside Running	5,624.96	
Robert Stephens	250.00	
Site Collaborative	-	12/28
Sth VA Legal	-	12/28
Vintages	1,000.00	
Walraven	14,839.23	
	<u>77,236.15</u>	

PASS THROUGH:

From City for Incentives 140,000.00

To be Paid - RD Golf & Social (40,000.00) -

To be Paid - River Dist Assoc. (100,000.00) -

Ending Balance at January 31, 2024

\$ 618,414.46

Industrial Development Authority
Statement of Account
USDA Loan Funds

For the month ended January 31, 2024

Beginning Balance at January 1, 2024 \$ 61,926.53

RECEIPTS:

Dry Fork Fruit Dist.	266.07	
Donnachaidh	1,710.27	
River City Escapes	-	
Interest	2.68	
		1,979.02

DISBURSEMENTS:

-

Ending Balance at January 31, 2024 \$ 63,905.55

Reconciliation to original USDA grant of \$99,000

ORIGINAL USDA FUNDS \$ 99,000.00

LESS OUTSTANDING LOANS:

River City Escapes	12,043.59	
Donnachaidh	13,496.26	
Dry Fork Fruit Dist.	10,570.68	
		(36,110.53)

INTEREST EARNED 20,423.78

DEFAULTED LOANS (19,457.70)

PENALTIES EARNED 50.00

BALANCE IN ACCOUNT \$ 63,905.55

Industrial Development Authority of Danville
A/R Aging Summary
As of January 31, 2024

	Current	1 - 30	31 - 60	61 - 90	> 90	TOTAL
125 North Union	-250.00	0.00	0.00	0.00	0.00	-250.00
127 North Union	0.00	315.00	0.00	315.00	7,560.00	8,190.00
310-312 Main Street	0.00	1,000.00	0.00	0.00	0.00	1,000.00
A La Carte	0.00	0.00	0.00	0.00	533.00	533.00
Averett University	0.00	0.00	5,201.96	0.00	0.00	5,201.96
Earnhardt Plumbing	0.00	0.55	0.00	0.00	0.00	0.55
J&W Associated LLC dba Links Cafe	0.00	3,000.00	0.00	3,000.00	300.00	6,300.00
Lizzy Lou Boutique	0.00	1,400.00	0.00	0.00	0.00	1,400.00
Lou's Antiques Co	0.00	0.00	0.00	0.00	26,000.00	26,000.00
Pemberton Lofts Parking	0.00	0.00	6,000.00	0.00	0.00	6,000.00
River District Association	0.00	-1,585.00	0.00	0.00	0.00	-1,585.00
Riverside Running Co., LLC	-2,812.48	0.00	0.00	0.00	0.00	-2,812.48
Robert Stephens	0.00	250.00	0.00	92.00	0.00	342.00
Unison Tube, LLC	0.00	0.00	0.00	0.00	69,032.50	69,032.50
Vintages by the Dan	0.00	0.00	0.00	97.32	0.00	97.32
TOTAL	-3,062.48	4,380.55	11,201.96	3,504.32	103,425.50	119,449.85

Industrial Development Authority of Danville

Balance Sheet

As of January 31, 2024

	Jan 31, 24
ASSETS	
Current Assets	
Checking/Savings	
Loans (City Funded)	957,993.88
North Union Master Tenant LLC	7,165.03
North Union Properties, LLC	12,555.49
Regular Checking	618,414.46
Reserve Account	2,828,363.63
US Bank - 2021A Project Fund	2,797,308.33
USDA Checking	63,905.55
Total Checking/Savings	7,285,706.37
Accounts Receivable	
Real Estate Tax AR	97.32
Rent Receivable	114,150.57
Utilities Receivable	5,201.96
Total Accounts Receivable	119,449.85
Other Current Assets	
Allowance for Rent	-101,017.50
Due from City/County	13,818,542.63
Lease Interest Rec. - GASB 87	27,285.55
ST Lease Rec. - GASB 87	693,360.53
Total Other Current Assets	14,438,171.21
Total Current Assets	21,843,327.43
Fixed Assets	
Accumulated Depreciation	-5,457,143.84
Buildings	26,630,206.71
Construction In Progress	12,551,924.46
Equipment	75,000.00
Land	5,842,192.76
Land Improvements	2,580,260.66
Total Fixed Assets	42,222,440.75
Other Assets	
Allowance for Doubtful Accounts	-74,078.35
Interest Receivable	9,523.93
LT Lease Rec. - GASB 87	6,943,141.81
Notes Receivable	
123 South Union LLC Note Receiv	2,795,952.46
Donnachaigh	13,581.39
Dry Fork Distillery N/R	10,570.68
Eng Biopharmaceut Inc.	150,000.00
River City Escapes Note Receiva	12,043.59
Southside Ice	14,896.70
Total Notes Receivable	2,997,044.82
Total Other Assets	9,875,632.21
TOTAL ASSETS	73,941,400.39

Industrial Development Authority of Danville

02/05/24

Balance Sheet

Accrual Basis

As of January 31, 2024

	Jan 31, 24
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
Accrued Interest	25,503.75
Security Deposits	116,922.45
Total Other Current Liabilities	142,426.20
Total Current Liabilities	142,426.20
Long Term Liabilities	
Bonds Payable	2,698,000.00
Deferred Lease Rev - GASB 87	7,221,497.42
Lease Revenue Note - 2021A	10,000,000.00
Notes Payable	
1st National Gaither Rd Parcels	484,710.36
AMNB - 1350 Barker Road	867,232.25
AMNB - 206/208 N Union Loan	694,246.65
AMNB - 500 Stinson Drive	717,516.49
AMNB - Dan River Falls	7,216,891.72
AMNB Loan - 500 Stinson #2	157,191.77
AMNB Loan - Locket Drive	961,699.61
AMNB Loan - Old Belt 1 Upfit	557,775.60
DIMON Construction Loan	1,487,883.18
Movement Bank - 816 Monument	486,070.66
VBSFA - 1 Ecomnets Way	1,383,318.81
VCC - Cyber Park Shell Building	1,978,274.62
VSBFA - 500 Cane Creek	1,335,693.75
VSBFA - MEP Loan	63,992.00
Total Notes Payable	18,392,497.47
Revolving Loan Fund - USDA	99,000.00
Total Long Term Liabilities	38,410,994.89
Total Liabilities	38,553,421.09
Equity	
Contributed Capital	150,000.00
Opening Bal Equity	4,856,400.56
Retained Earnings	32,669,320.33
Net Income	-2,287,741.59
Total Equity	35,387,979.30
TOTAL LIABILITIES & EQUITY	73,941,400.39

Industrial Development Authority of Danville

Profit & Loss

July 2023 through January 2024

	Jul '23 - Jan 24
Ordinary Income/Expense	
Income	
Grants	
Grants - City of Danville	2,532,391.47
Total Grants	2,532,391.47
Parking Space Rental Income	10,704.00
Reimbursed Expenses	47,941.76
Rental Income	648,340.03
Total Income	3,239,377.26
Gross Profit	3,239,377.26
Expense	
Bank Service Charges	671.66
Grant Repayments	3,840,000.00
Incentive Payments	859,715.68
Insurance	66,817.24
Interest Expense	469,107.21
Licenses and Permits	2,202.57
Loan Fees	14,386.97
Office Supplies	138.63
Professional Fees	
Accounting	27,210.00
Consulting	68,975.65
Legal Fees	22,161.50
Professional Fees - Other	32,973.83
Total Professional Fees	151,320.98
Repairs	
Building Repairs	60,848.67
Total Repairs	60,848.67
Taxes	41,912.14
Telephone	1,916.59
Utilities	49,584.49
Total Expense	5,558,622.83
Net Ordinary Income	-2,319,245.57
Other Income/Expense	
Other Income	
Interest Income	134,060.98
Total Other Income	134,060.98
Other Expense	
Loss on Sale of Property	102,557.00
Total Other Expense	102,557.00
Net Other Income	31,503.98
Net Income	-2,287,741.59



STAFF REPORT

DATE: February 13, 2024
TO: Industrial Development Authority
FROM: Kelvin Perry, Assistant Director of Economic Development and Tourism
RE: A resolution approving and authorizing a loan not to exceed a principal amount of \$30,000 to Uncle Al's Diner, LLC (SCC 11637987) and Allen Plummer and Charles Walker in their personal and individual capacities.

Request for loan approval from the city funded loan account in the amount of \$30,000 to Uncle Al's Diner LLC for the purchase of restaurant equipment and building up fits.

ATTACHMENTS

1. 1130 Loan for Uncle Als Diner LLC 30K resolutions
2. 1130 Attachment-Uncle Al's Commitment Letter
3. 1130 Attachment-Note-Uncle Als Diner
4. 1130 Attachment Uncle Al's Diner Loan Agrmt

PRESENTED: February 13, 2024

ADOPTED: February 13, 2024

RESOLUTION NO. 2024 _____._____

A RESOLUTION APPROVING AND AUTHORIZING A LOAN NOT TO EXCEED A PRINCIPAL AMOUNT OF \$30,000 TO UNCLE AL'S DINER, LLC (SCC 11637987) AND ALLEN PLUMMER AND CHARLES WALKER IN THEIR PERSONAL AND INDIVIDUAL CAPACITIES.

WHEREAS, it is the purpose and intent of the Industrial Development Authority of Danville, Virginia, to aid in the promotion of economic development within the City of Danville; and

WHEREAS, in order to facilitate the promotion of economic development within the City of Danville the Industrial Development Authority may have to aid in funding for such purposes; and

WHEREAS, Uncle Al's Diner, LLC (SCC 11637987) and Allen Plummer and Charles Walker, have requested a loan from the Industrial Development Authority for Thirty Thousand Dollars (\$30,000); and

WHEREAS, it is the intent of the Industrial Development Authority and Uncle Al's Diner, LLC (SCC 11637987) and Allen Plummer and Charles Walker, to enter into a Loan for a principal amount not to exceed Thirty Thousand Dollars (\$30,000), substantially in the form attached hereto and made a part hereof, which more particularly sets forth the terms and conditions of the loan.

NOW THEREFORE, BE IT RESOLVED by the Industrial Development Authority of Danville, Virginia, that it does hereby approve and authorize a loan for Uncle Al's Diner, LLC (SCC 11637987) and Allen Plummer and Charles Walker in their personal and individual capacities, in a principal amount not to exceed Thirty Thousand Dollars (\$30,000), the terms and conditions being more particularly set forth in the

Commitment Letter, Promissory Note, and Loan Agreement Note, substantially in the form attached hereto and made a part hereof; and

BE IT FURTHER RESOLVED that the Industrial Development Authority of Danville, Virginia, does hereby authorize its Chairman, or in his absence the any officer, to execute any and all documents pertaining to said loan.

APPROVED:

Chairman

ATTEST:

Secretary

Approved as to
Form and Legal Sufficiency:

City Attorney

COMMITMENT LETTER
REVOLVING LOAN PROGRAM
_____, 2024

Re: Borrower(s): Uncle Al's Diner, LLC
and
ALLEN PLUMMER AND CHARLES WALKER

Property Address: 920 S. Main Street
Danville, VA 24541

Loan No.: RLF #_____/20____

This letter confirms that the Industrial Development Authority of Danville, Virginia (the IDA) has received and considered the application by the Borrowers for financial assistance under the Revolving Loan Program. Having determined that the application complies with all eligibility requirements, the IDA hereby commits to make available to the Borrowers, Uncle Al's Diner, LLC, Allen Plummer, and Charles Walker, the following financial assistance under the terms and conditions set forth herein:

1. Recipient:

The financial assistance will be in the form of a loan more particularly described in Paragraph 2 of this letter, and the Borrowers will be the recipient of the loan. The loan proceeds will be used to finance certain expenses related to the operation of commercial enterprises by Uncle Al's Diner, LLC at 920 S. Main Street, Danville Virginia (referred to herein as the Property), and payment of fees related thereto, in accordance with this Commitment.

2. Principal Loan Terms:

a. Amount: \$30,000

b. Rate: 5% per annum unless Borrowers default(s); in such event Borrowers shall pay to the note holder a **late charge of five percent (5%) of the amount of such delinquent payment or \$250.00, whichever is less** on any monthly installment not received by the note holder **within ten (10) days** after the installment is due.

c. Term: 60 months

d. Repayment: Repayment made in equal monthly installments of Five Hundred Sixty-Six Dollars and 14/100 Dollars (\$566.14)

e. Acceleration: Noteholder may call the debt due in full upon default in either the terms of this Commitment or the Promissory Note evidencing this indebtedness.

f. Security: The Borrowers shall execute a Promissory Note payable to the IDA in accordance with the terms of this Commitment.

3. Representations:

The IDA has made this Commitment on the basis of and in reliance upon the accuracy of the application and supporting materials furnished by the Borrowers and the representations of persons acting on behalf of the Borrowers. It is understood, therefore, that such application and supporting materials furnished, together with representations made by persons acting on behalf of the Borrowers, were accurate in all material respects when furnished and/or made and have not changed adversely prior to the date of this Commitment. In the event the IDA discovers any such inaccuracy, this Commitment may be terminated and Borrowers shall be deemed in default.

4. No Expense to IDA:

Any expense connected with this transaction, including title examination, loan closing, and recording fees shall be borne by Borrowers who agree to hold the IDA harmless from all expenses related thereto.

5. Documents:

The following documents shall be executed, authenticated, and delivered on or before closing of the loan:

- a. Promissory Note securing the loan in the form approved by the IDA.
- b. Copy of this Commitment Letter.
- c. Loan Agreement

6. Assignability:

This Commitment is not assignable without the IDA's prior written consent.

7. Special Conditions:

a. The Borrowers shall comply with all federal, state and local laws, ordinances and regulations affecting its legal status and be in good standing with all regulatory bodies and with all such laws, ordinances and regulations affecting this transaction, the expenditure of the loan proceeds, and the use of the property.

b. The undersigned certifies, to the best of his/her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the

extension, continuation, renewal, amendment, or modification of any Federal contract, grant, or loan.

- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.)

8. Default:

In the event the Borrowers default on any material term of this commitment or documents referred to or incorporated herein, such default being in the sole and exclusive opinion of the IDA, and should said default not be cured within thirty (30) days of the IDA's written notice to the Borrowers, this Commitment may be terminated by the IDA and all legal remedies may be pursued to recover any damage, loss, or expense sustained by the IDA as a result of the default, including the recovery of reasonable attorney's fees.

9. Enforceability:

The rights and obligations contained in this Commitment shall survive the execution and delivery of the Promissory Note referred to herein, it being the intention of the IDA and the Borrower(s) that this Commitment serve as an independent agreement of the parties. In the event of collection relating to this loan, the Borrower(s) shall reimburse the IDA for all expenses and costs resulting therefrom including but not limited to reasonable attorney fees.

10. Venue:

This Agreement and the performance thereof shall be governed by and enforced under the laws of the Commonwealth of Virginia, and if legal action by either party is necessary for or with respect to the enforcement of any or all of the terms and conditions hereof, then exclusive venue therefore shall lie in the City of Danville, Virginia.

11. Personal Liability:

By their signatures below Allen Plummer, Charles Walker, and, Uncle Al's Diner LLC, a Limited Liability Company formed and organized under the laws of the Commonwealth of Virginia, hereby agree to be jointly and severally liable for the performance and repayment commitments made herein and Vincent Puccio and Thomas Willis further unconditionally agree to be liable in their personal and individual capacities for the performance

and repayment commitments made herein and hereby personally and unconditionally guarantee full and punctual performance and payment by Uncle Al's Diner LLC as required by this Agreement.

12. Acceptance:

This Commitment must be accepted by the Borrower(s) on or before the _____ day of _____, 2024, by endorsing the enclosed copy and returning it to the IDA at its Economic Development offices, 2nd Floor, Municipal Building, P. O. Box 3300, Danville, Virginia 24543. It is understood, however, that the IDA's disbursement of loan proceeds shall occur after the IDA's receipt of the documents set forth in Paragraph 5.

Sincerely yours,

THE INDUSTRIAL DEVELOPMENT
AUTHORITY, CITY OF DANVILLE

By: _____
Chairman

{Signatures on Following Pages}

The undersigned hereby accepts the foregoing Commitment Letter and by acceptance agrees to be bound by the terms hereof, this ____ day of _____, 2024 in his capacity as Member of Uncle Al's Diner, LLC, Borrowers.

_____(SEAL)
Allen Plummer, Member
Uncle Al's Diner, LLC

**COMMONWEALTH OF VIRGINIA
CITY OF DANVILLE**

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Allen Plummer, in his capacity as a Member of Uncle Al's Diner, LLC. Borrowers.

NOTARY PUBLIC

My commission expires: _____

The undersigned **Allen Plummer** hereby accepts the foregoing Commitment Letter and by acceptance agrees to be bound by the terms hereof, this ____ day of _____, 2024 in his **personal and individual capacity** as a Borrower.

_____(SEAL)
Allen Plummer, Borrower

**COMMONWEALTH OF VIRGINIA
CITY OF DANVILLE**

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by Allen Plummer, in his individual personal and capacity as a Borrower.

NOTARY PUBLIC

My commission expires: _____

The undersigned **Charles Walker** hereby accepts the foregoing Commitment Letter and by acceptance agrees to be bound by the terms hereof, this ____ day of _____, 2024 in his **personal and individual capacity** as a Borrower.

_____(SEAL)
Charles Walker, Borrower

**COMMONWEALTH OF VIRGINIA
CITY OF DANVILLE**

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by Charles Walker, in his personal and individual capacity as a Borrower.

NOTARY PUBLIC

My commission expires: _____

IMPORTANT NOTICE

THIS INSTRUMENT CONTAINS A CONFESSION OF JUDGMENT PROVISION WHICH CONSTITUTES A WAIVER OF IMPORTANT RIGHTS YOU MAY HAVE AS A DEBTOR AND ALLOWS THE CREDITOR TO OBTAIN A JUDGMENT AGAINST YOU WITHOUT ANY FURTHER NOTICE.

PROMISSORY NOTE

Principal Amount: \$30,000.00

February __, 2024
Danville, Virginia

FOR VALUE RECEIVED, **UNCLE AL'S DINER LLC, ALLEN PLUMMER**, in his personal and individual capacity **AND CHARLES WALKER**, in his personal and individual capacity ("Borrowers") promise to pay to the order of **INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA (IDA)** a political subdivision of the Commonwealth of Virginia ("Lender"), at P. O. Box 3300, Danville, VA 24543, or at such other place as may be designated in writing by Lender, in immediately available funds and without set-off, deduction or counterclaim, the principal sum of up to Thirty Thousand and No/100 Dollars (\$30,000.00) (the "Loan").

This Note is issued pursuant to the provisions of a certain Commitment Letter between Borrower and Lender dated as of even date herewith and is a "Note" described in the Agreement. Capitalized terms used but not defined in this Note shall have the meanings given to them in the Agreement.

This Note is issued pursuant to the provisions of a certain Loan Agreement (as the same may from time to time be amended or modified, the "Agreement") between Borrower and Lender dated as of even date herewith and is a "Note" described in the Agreement. Capitalized terms used but not defined in this Note shall have the meanings given to them in the Agreement.

From the date hereof and continuing until this Note is paid in full, interest shall be charged on the unpaid principal balance of this Note at a fixed annual rate equal to **Five Percent (5.00%)** (the "Interest Rate"). Upon the occurrence of a "Default" (as defined below), the Interest Rate shall, at Lender's option, be increased by five percentage points (5%) over the rate identified above (the "Default Rate") and shall remain at the Default Rate for so long as such Default continues or is waived.

This Note shall be payable as follows:

(a) In consecutive monthly installments of interest accrued on the unpaid principal balance hereof, due on the first (1st) day of each month until and including _____ 1, 2024, with the first payment due on _____ 1, 2024.

(b) Commencing _____ 1, 2024, and on the same day of each month thereafter until this Note is paid in full, Borrower shall make monthly installments of principal and interest each in an amount of Five Hundred Sixty-Six Dollars and 14/100 (\$566.14), provided, however, the unpaid principal balance of the Loan and all accrued and unpaid interest thereon shall be due and payable on _____, 20__ (the "Maturity Date"), unless the Loan shall be accelerated sooner pursuant to any provision hereof.

(c) This Note may be prepaid at any time, in whole or in part, without premium or penalty. All payments received hereunder shall be applied in inverse order of maturity, first to late charges, if any, then to accrued interest and the balance, if any, to principal.

Lender is hereby authorized to note the date and principal amount of any Advances hereunder on Lender's books and records (either manually or by electronic entry) and/or on any schedule attached to this Note, which notations shall be prima facie evidence of the accuracy of the information noted.

This Note and all other documents or agreements relating to or otherwise evidencing or securing this Note are hereinafter collectively referred to as the "Loan Documents."

If any payment due under to this Note is not paid within ten (10) days after its due date, Borrower agrees to pay to Lender as a late charge a sum equal to the lesser of five percent (5%) of the amount of such delinquent payment or \$250.00, whichever is less. If this Note is not paid when due, whether at maturity or by acceleration, Borrower agrees to pay all costs of collection, including reasonable attorneys' fees incurred by Lender, whether or not suit is filed hereon. Such costs of collection shall include, without limitation, (i) court costs, reasonable attorneys' fees, expenses of accountants and appraiser and the cost of all appeals, and (ii) all costs and expenses incurred in connection with the protection of or realization upon the collateral securing this Note or for the enforcement of any guaranty hereof and any defense or prosecution of legal proceedings involving any claims made or threatened against Lender arising out of or related to the Loan Documents and the transactions contemplated thereunder.

Additionally, Borrower shall protect, indemnify, defend and hold Lender, any Person owned or controlled by, owning or controlling, or under the common control of or affiliated with, Lender, any participants in the Loan, the directors, officers, employees and agents of Lender, and/or such other Persons, and the heirs, personal representatives, successors and assigns of each of the foregoing, harmless from and against any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including without limitation, fees, costs and expenses of attorneys, consultants, contractors and experts (a "Claim") of any kind or nature whatsoever arising out of or in any way connected with any investigation, enforcement, cleanup, removal, containment, remedial or other private, governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Law against Borrower or Lender with respect to the Project or against or with respect to the Project or any condition, use or activity on the Project or at any time threatened or made by any Person against Borrower or Lender with respect to the Project (or against the Project) or any condition, use or activity on the Project relating to any damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Materials. Upon demand by Lender, Borrower shall diligently defend any such Claim which affects the Project or is made or commenced against Lender, whether alone or together with Lender, Borrower or any other Person, all at Borrower's sole cost and expense and by counsel to be approved by Lender in the exercise of its reasonable judgment. In the alternative, Lender may, to the extent allowed by applicable law, at any time but after consultation with Borrower, elect to conduct its own defense through counsel selected by Lender and at the cost and expense of Borrower.

At the option of Lender, this Note shall become immediately due and payable and/or shall become payable at the Default Rate, without notice, upon the occurrence of any of the following (each a "Default"), and Lender may exercise any right, power or remedy permitted by law or as set forth in any of the Loan Documents, all of which shall be cumulative:

1. Failure by Borrower(s) or any other obligated party to pay when due any payment of interest, principal, principal and interest, commitment fees, deposits or other

payments which are due and payable under this Note, the Commitment Letter, or any other document executed in connection therewith or as security therefor, if such failure continues for ten (10) days after written notice to Borrower(s) that such payment is overdue, provided however, that such grace period shall only apply two (2) times during any twelve (12) consecutive month period.

2. Failure by Borrower(s) or any other party (other than Lender) to keep, perform or observe any covenant, term or condition required to be kept, performed or observed by Borrower(s) or such party under the Note, the Loan Agreement, the Security Documents, or any other document executed in connection therewith or as security therefor, if such failure continues for thirty (30) days after written notice to Borrower(s) of such failure;

3. If Borrower(s) (i) files a petition or has a petition filed against it which is not dismissed within sixty (60) days under the Bankruptcy Code or any proceeding for the relief of insolvent debtors; (ii) benefits from or is subject to the entry of an order for relief by any court of insolvency; (iii) makes an admission of insolvency seeking the relief provided in the Bankruptcy Code or any other insolvency law; (iv) makes an assignment for the benefit of creditors; (v) has a receiver appointed, voluntarily or otherwise, for its property; (vi) permits a judgment in the amount of \$50,000.00 or more to be obtained against it, which is not promptly paid or promptly appealed and secured pending appeal; or (vii) becomes insolvent, however otherwise evidenced;

4. If any material representation, warranty or certificate given by Borrower(s) herein or in connection with the loan evidenced by the Note, or at any time hereafter required to be given by Borrower(s), shall be false or erroneous in any material respect when made, if not corrected or remedied within thirty (30) days after written notice to Borrower(s); or

5. A material breach of or a material failure of performance by Borrower(s) of any provision of or the occurrence of any default under the terms and provisions of the Note, the Security Documents or any document executed in conjunction with this Agreement, if such breach or failure continues for thirty (30) days after written notice to Borrower(s) of such breach or failure.

The failure of Lender to exercise its option to accelerate this Note as provided above, or to exercise any other option or remedy granted to it hereunder or under any of the Loan Documents, or the acceptance by Lender of partial payments or partial performance, shall not constitute a waiver of any Default by Borrower, and all such options and remedies shall remain continuously in force. Acceleration of maturity may, at Lender's option, be rescinded by written acknowledgment to that effect, but the tender and acceptance of partial payment or partial performance alone shall not in any way affect or rescind such acceleration of maturity.

Whenever this Note matures, whether at the stated maturity or by acceleration, Lender may set-off against the balance hereof any and all credits, money, stocks, bonds or other security or property of any nature whatsoever on deposit with, owed or held by, or in the possession of, Lender, to the credit of or for the account of Borrower, without notice to or consent of Borrower.

Confession of Judgment. In accordance with § 8.01-431 et seq., of the Code of Virginia (1950), as amended, and any successor statute, each Borrower hereby constitutes and appoints Ryan Dodson, Alan Spencer, W. Clarke Whitfield, Jr., the City Attorney of Danville Virginia, or his duly designated representative, or any officer or agent of Lender as the Lender may from time to time designate (any of whom may act), as its true and lawful attorney-in-fact, for it and, upon the occurrence of a Default, to appear in Borrower's name, place and stead, and to confess judgment against Borrower, in either the Circuit Court for the City of

Danville, Virginia or the United States District Court for the Western District of Virginia - Danville Division, at Lender's sole option, in favor of Lender for and in the amount of the unpaid principal balance of the Loan then outstanding plus interest accrued and unpaid thereon, all other amounts then due and payable hereunder, costs of suit and reasonable attorney's fees. Pursuant to and in accordance with the provisions of § 8.01-435 of the Code of Virginia (1950), as amended, the holder of this Note may appoint a substitute for any attorney-in-fact authorized to confess judgment that is specifically named in this Agreement, by specifically naming the substitute attorney-in-fact in an instrument appointing the substitute attorney-in-fact and by recording such instrument in the Clerk's Office of the Circuit Court for the City of Danville, Virginia.

Borrower (i) waives and renounces any and all homestead exemption rights and the benefits of all valuation and appraisal privileges as against this debt or any renewal or extension hereof; (ii) waives presentment, demand, protest, notice of nonpayment, notice of dishonor, and any and all lack of diligence or delays in the collection or enforcement hereof; (iii) consents to the release or substitution of any of the collateral securing this Note; and (iv) consents to any extension of the time for payment of this Note and any other indulgence or forbearance by Lender. Any such extension, release, substitution, indulgence, or forbearance may be made without notice to any party and without in any way affecting the personal liability of any party liable hereon.

This Note may not be changed orally, but only by an agreement in writing signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought. This Note shall be binding upon Borrower and its successors and assigns and shall inure to the benefit of Lender and its successors and assigns. This Note shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard to conflicts of law principles. If more than one person or entity signs this Note as "Borrower," each such person or entity is liable, jointly and severally, for all of the obligations under or evidenced by this Note.

Waiver of Jury; Jurisdiction. BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, OTHER LOAN DOCUMENTS, ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. BORROWER ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN AND ENTER INTO THE OTHER LOAN DOCUMENTS. Any legal action or proceeding with respect to this Note or any other Loan Document or any document related hereto or thereto shall be brought in the Circuit Court for the City of Danville, Virginia, and by execution and delivery of this Note, Borrower hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid court. Borrower hereby irrevocably and unconditionally waives any objection, including without limitation, any objection to the laying of venue or based on the grounds of the forum non conveniens which it now or hereafter may have to the bringing of any action or proceeding in such jurisdiction.

{Signatures on the following pages}

IN WITNESS WHEREOF, the undersigned have caused this Note to be executed, delivered, and sealed on the day and year first above written.

THE AUTHORITY:

**INDUSTRIAL DEVELOPMENT AUTHORITY OF
THE CITY OF DANVILLE, VIRGINIA**

ATTEST:

By: _____ (SEAL)
Name: T. Neal Morris
Title: Chairman

By: _____ (SEAL)
Name: John Laramore
Title: Secretary

**COMMONWEALTH OF VIRGINIA
CITY OF DANVILLE**

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by T. Neal Morris, the Chairman of the Industrial Development Authority of the City of Danville, Virginia, a political subdivision of the Commonwealth of Virginia, for and on behalf of the Authority.

Notary Public

My commission expires _____.

**COMMONWEALTH OF VIRGINIA
CITY OF DANVILLE**

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by John Laramore, the Secretary of the Industrial Development Authority of the City of Danville, Virginia, a political subdivision of the Commonwealth of Virginia, for and on behalf of the Authority.

Notary Public

My commission expires _____.

THE COMPANY:

UNCLE AL'S DINER LLC,
a Virginia limited liability company

By: _____ (SEAL)
Name: Allen Plummer
Title: Manager

COMMONWEALTH OF VIRGINIA
CITY OF DANVILLE

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Allen Plummer, the Manager of **UNCLE AL'S DINER LLC**, a Virginia limited liability company, for and on behalf of the company.

Notary Public

My commission expires _____.

The undersigned **Allen Plummer** hereby accepts the foregoing Promissory Note and by acceptance agrees to be bound by the terms hereof, this ____ day of _____, 2024 in his **personal and individual capacity** as a Borrower.

Allen Plummer, Borrower (SEAL)

COMMONWEALTH OF VIRGINIA
CITY OF DANVILLE

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Allen Plummer, in his individual personal and capacity as a Borrower.

Notary Public

My commission expires: _____

The undersigned **Charles Walker** hereby accepts the foregoing Promissory Note and by acceptance agrees to be bound by the terms hereof, this ____ day of _____, 2024 in his personal and individual capacity as a Borrower.

_____(SEAL)
Charles Walker, Borrower

COMMONWEALTH OF VIRGINIA
CITY OF DANVILLE

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Charles Walker, in his **individual personal and capacity** as a Borrower.

Notary Public

My commission expires: _____

LOAN AGREEMENT

THIS LOAN AGREEMENT (“Agreement”) is made as of the ____ day of _____ 2024, by and between the **UNCLE AL’S DINER LLC**, authorized to do business in Virginia, **ALLEN PLUMMER**, in his personal and individual capacity and **CHARLES WALKER**, in his personal and individual capacity (**“Borrower(s)”**), and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (**“Lender”**).

WITNESSETH

For and in consideration of the Loan hereafter described and other good and valuable consideration, the parties to this Agreement do covenant and agree as follows:

Section 1. Recitals: The parties recite the following:

A. Borrower(s) has applied to Lender for a loan in the principal amount not to exceed Thirty Thousand and No/100 Dollars (\$30,000.00) (the **“Loan”**), and Lender has agreed to make the Loan, as more fully set forth in the promissory note dated as of the date of this Agreement and the terms of which are incorporated herein by reference. The Loan is made by Lender to Borrower(s) upon the terms and conditions of this Agreement;

B. Borrower(s) is/are the owner of that certain business located in the City of Danville, Virginia, known as **UNCLE AL’S DINER LLC** whose address is 920 South Main Street Danville, Virginia 24541;

C. The purpose of the loan is related to the operation of commercial enterprises by **UNCLE AL’S DINER LLC**, and payment of fees related thereto; and

D. The parties wish to set forth in this Agreement the terms and conditions of the Loan and the manner of obtaining disbursement of Loan proceeds.

Section 2. Amount of Loan: Lender will Loan to Borrower(s) by advancing for the account of Borrower(s), in accordance with the terms and provisions of this Agreement, the sum which in the aggregate does not exceed Thirty Thousand and No/100 Dollars (\$30,000.00).

Section 3. Note and Security for Loan: The Loan will be evidenced by Borrower(s)’ promissory note (the **“Note”**), in form and substance satisfactory to Lender. Borrower(s) shall, in conjunction with the execution and delivery of the Note, deliver the following documents to Lender duly executed:

- A. A copy of this Loan Agreement;
- B. Promissory Note securing the loan in the form approved by the IDA;
- C. Commitment Letter

This Agreement, together with the Commitment Letter, Promissory Note, and any other documents executed in conjunction with the Loan are collectively referred to as **“Loan Documents”**.

Section 4. Terms of Interest Calculations and Loan Repayment: Lender agrees to make the Loan on the following general terms:

A. The Term of this loan is 60 months.

B. Interest shall accrue at the rate of five percent (5.00%) per annum from the date of this Note until the Note is paid in full. Interest will be charged and calculated on the basis of a three hundred sixty (365) day year and will be paid for the actual number of days elapsed. Principal and accrued interest shall be due and payable on _____, 2029 (the “**Maturity Date**”).

Section 5. Conditions Precedent to the Loan: The obligation of Lender to make the Loan hereunder and permit disbursements of Loan proceeds for and on behalf of Borrower(s) is subject to the following conditions precedent:

A. At the Closing (as hereafter defined), Borrower(s) shall have delivered to Lender, in form and substance reasonably satisfactory to Lender, the following:

- i. This Agreement duly executed by Borrower(s);
- ii. The duly executed Note;
- iii. Appropriate Resolution(s) or other evidence acceptable to Lender that the Loan has been approved by Borrower(s) and identifying those person(s) with authority to execute the Loan Documents on behalf of Borrower(s).

B. Prior to Closing, there shall not have occurred any material adverse change in the financial condition of Borrower(s). For the purposes of this Agreement, “**Closing**” shall mean the closing of the Loan to be held at the offices of _____, Danville, Virginia 24541; and

C. Without limiting the foregoing, Borrower(s) shall have delivered to Lender any reports, assessments, or other documents required as a condition to the Loan, in accordance with the provisions of the Commitment Letter (as hereafter defined).

Section 6. Advances: The proceeds of the Loan shall not be assignable by Borrower(s) nor subject to the process of any Court upon legal action by or against Borrower(s) or by or against anyone claiming under or through it, and for the purposes of this Agreement, the funds shall remain and be considered the money and property of Lender until Borrower(s) complies with each and every provision hereof; provided, however, that nothing herein contained shall be considered as modifying, affecting, or subordinating the obligations heretofore given or to be given by Borrower(s) as security for the Loan, and the same shall be and remain in full force and effect, this Agreement being intended only as additional security and protection for the Loan and to insure its use for the purposes intended by Lender and Borrower(s). Lender shall not be obliged to make any advances of funds under the Loan until: (i) Lender has in its possession all documents required to be furnished by Borrower(s) at the time of the Closing of the Loan; and (ii) all other conditions precedent to the Loan (as set forth in Section 5 of this Agreement) have been met.

Section 7. Representations and Warranties of Borrower(s): Borrower(s) represents and warrants to the Lender that the loan documentation will contain those standard representations and warranties customarily found in credit agreements of this nature, and others appropriate to this transaction, including but not limited to the following:

A. Borrower(s) is a Virginia LLC, duly organized, validly existing, and in good standing under the laws of the Commonwealth of Virginia and is authorized to transact business in all jurisdictions in which Borrower(s) currently conducts any material business.

B. Borrower(s) are duly authorized to enter into the Note, this Agreement, and any other Loan Documents to be executed by Borrower(s).

C. This Agreement, the transactions contemplated herein, and the other Loan Documents to be executed by Borrower(s) have been approved by all necessary action by Borrower(s); and the persons executing this Agreement and any of the Loan Documents contemplated to be executed by Borrower(s) have full and complete authority to execute and deliver the same for and on behalf of Borrower(s).

D. The execution, delivery, and performance of this Agreement, the other Loan Documents, and the consummation of the transactions contemplated thereby by Borrower(s) will not violate, conflict with, or result in any default under, or cause any acceleration of any obligation under, any (i) existing contract, agreement, note, or other document to which Borrower(s) is a party, or by which Borrower(s) is bound; (ii) any orders, decrees, or laws of any jurisdiction applicable to and binding upon Borrower(s); or (iii) any of the governing documents of Borrower(s).

E. This Agreement and all other Loan Documents constitute the legal, binding and enforceable obligations of Borrower(s) in accordance with the terms contained herein or therein.

F. There is no pending or threatened litigation or proceeding against Borrower(s) which may, in any way, adversely affect the financial condition, business operations, or business prospects of Borrower(s).

G. Borrower(s) is not in material default with respect to any other existing indebtedness incurred by it.

H. All financial statements, certificates, resolutions, and other information or documentation furnished by Borrower(s) to Lender prior to Closing are true, correct, and accurate, to the best of Borrower(s)'s knowledge, and no such information fails to disclose or misrepresents any information which could materially affect the Loan; and Borrower(s), to its knowledge, has not failed to disclose any information which could materially affect the Property, the business or financial condition of Borrower(s).

Section 8. Affirmative Covenants: As long as any amounts payable to Lender remain outstanding under the Note or any other Loan Document, Borrower(s) covenants and agrees as follows:

A. Borrower(s) shall provide to Lender annually, within one hundred-twenty (120) days following the end of the Borrower(s)'s fiscal year, Audited Financial Statements for

the preceding year, including all schedules. All financial statements, certificates, or other information furnished or to be furnished to Lender are, and shall be, true and accurate.

B. Borrower(s) shall comply with all other requirements and covenants of the Commitment Letter.

C. Borrower(s) shall notify Lender as soon as reasonably practicable if Borrower(s) becomes aware of the occurrence of any Event of Default (as hereafter defined).

Section 9. Negative Covenants: As long as any amounts payable to Lender remain outstanding under the Note or any other Loan Document, Borrower(s) shall not change its name or enter into any merger, consolidation, reorganization, or recapitalization, without the written consent of Lender.

Section 10. Events of Default and Remedies: Any of the following shall constitute an Event of Default under this Agreement:

A. Failure by Borrower(s) or any other obligated party to pay when due any payment of interest, principal, principal and interest, commitment fees, deposits or other payments which are due and payable under this Note, the Commitment Letter, or any other document executed in connection therewith or as security therefor, if such failure continues for ten (10) days after written notice to Borrower(s) that such payment is overdue;

B. Failure by Borrower(s) or any other party (other than Lender) to keep, perform or observe any covenant, term or condition required to be kept, performed or observed by Borrower(s) or such party under the Note, the Loan Agreement, the Security Documents, or any other document executed in connection therewith or as security therefor, if such failure continues for thirty (30) days after written notice to Borrower(s) of such failure;

C. If Borrower(s) (i) files a petition or has a petition filed against it which is not dismissed within sixty (60) days under the Bankruptcy Code or any proceeding for the relief of insolvent debtors; (ii) benefits from or is subject to the entry of an order for relief by any court of insolvency; (iii) makes an admission of insolvency seeking the relief provided in the Bankruptcy Code or any other insolvency law; (iv) makes an assignment for the benefit of creditors; (v) has a receiver appointed, voluntarily or otherwise, for its property; (vi) permits a judgment in the amount of \$50,000.00 or more to be obtained against it, which is not promptly paid or promptly appealed and secured pending appeal; or (vii) becomes insolvent, however otherwise evidenced;

D. If any material representation, warranty or certificate given by Borrower(s) herein or in connection with the loan evidenced by the Note, or at any time hereafter required to be given by Borrower(s), shall be false or erroneous in any material respect when made, if not corrected or remedied within thirty (30) days after written notice to Borrower(s); or

E. A material breach of or a material failure of performance by Borrower(s) of any provision of or the occurrence of any default under the terms and provisions of the Note, the Security Documents or any document executed in conjunction with this Agreement, if such breach or failure continues for thirty (30) days after written notice to Borrower(s) of such breach or failure.

Section 11. Acceleration: Upon the occurrence of an Event of Default, Lender, at its option, may declare all principal and interest payable under the Note, and any other obligations under any of the Loan Documents, to become immediately due and payable without any further action by Lender. Upon such acceleration, Lender shall have, in addition to any other rights and remedies provided in any of the Loan Documents, all rights and remedies which may be available to Lender in law or in equity to enforce this Agreement and the other Loan Documents. In addition, and notwithstanding any other rights or remedies, Lender, at its option, shall have the right, to charge to Borrower(s) a late charge of an additional five percent (5%) over the rate identified above (the "Default Rate") if Note is paid more than ten (10) days after its due date, as defined in section 4 above.

Should Lender elect not to exercise such option to accelerate on the occurrence of an Event of Default, the same shall not be construed as a waiver of such right, and cause of action on all amounts due and payable hereunder shall accrue on the day following the Maturity Date hereunder. Should the option be exercised, the cause of action shall be deemed to accrue on the day following such exercise. Lender may exercise this option to accelerate during any default by Borrower(s) regardless of any prior forbearance but subject to the notice requirements to the Borrower(s) set forth below.

Section 12. Enforcement by Lender: Lender shall have the right at all times to enforce the provisions of this Agreement and the other Loan Documents in strict accordance with the terms hereof and thereof, notwithstanding any conduct or custom on the part of Lender in refraining from so doing at any time or times. The failure of Lender at any time or times to enforce its rights under any Loan Document shall not be construed as having in any way or manner modified or waived the right of Lender to enforce any and all Loan Documents in accordance with their terms. All rights and remedies of Lender are cumulative and concurring, and the exercise of any right or remedy shall not be deemed a waiver or release of any other right or remedy available to Lender.

Section 13. Reimbursement of Expenses: Borrower(s) will, on demand, reimburse Lender for all expenses, including reasonable attorneys' fees and other legal expenses, incurred by Lender in connection with any default by Borrower(s) under any of the Loan Documents or which may be incurred by Lender in the collection or attempted collection of any obligations of Borrower(s) under the Loan Documents as a result of any default thereunder.

Section 14. Closing Costs and Expenses: Borrower(s) covenants and agrees to pay all costs and expenses incurred by Lender in connection with Lender's review, due diligence, and Closing of the Loan, including reasonable attorneys' fees incurred by Lender in connection with the negotiation and preparation of the Loan documentation and recording fees and recording taxes, if any.

Section 15. Miscellaneous:

A. **Notices.** All notices or demands to a party shall be in writing. Notices or demands shall be deemed to have been duly given: (i) when personally delivered, (ii) three (3) days after mailed by first class mail, postage prepaid, addressed as follows (to the extent applicable for mailing), or (iii) the next Business Day (as hereafter defined) after sent by regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, addressed as follows (to the extent applicable for overnight delivery):

To Borrower(s):

Uncle Al's Diner, LLC
920 South Main Street
Danville, VA, 24541

To Lender:

Industrial Development Authority of Danville, Virginia
421 Municipal Building (24541)
P. O. Box 3300 (24543)
Danville, VA

With a Copy to:

City Attorney
City's Attorney's Office
P. O. Box 3300
Danville, VA 24543

Any party may change the address to which notices hereunder are to be sent to it by giving written notice of such change, in the manner herein provided, to all other parties. A notice given hereunder may be delivered by hand delivery, deposit with the United States Postal Service properly addressed and postage prepaid, or delivery to a courier service properly addressed with all charges prepaid, as appropriate. For the purposes of this Agreement, "**Business Day**" shall mean any day other than a Saturday, Sunday or legal holiday in the Commonwealth of Virginia or observed by the City of Danville.

B. **No Waiver - Cumulative Remedies.** No failure by Lender to exercise and no delay by it in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies under this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

C. **Construction and Jurisdiction.** This Agreement, the Note, and the other Loan Documents, and the rights and obligations of the parties thereunder, shall be construed in accordance with the laws of the Commonwealth of Virginia. The parties agree and consent to the exclusive jurisdiction of the Circuit Court of Danville, Virginia, or other court of competent jurisdiction located in Danville, Virginia, with respect to any disputes or actions under this Agreement or any other Loan Document.

D. **Survival of Agreements.** All agreements, representations, and warranties made in this Agreement shall survive the making of the advances hereunder.

E. **Successors.** This Agreement shall be binding upon and inure to the benefit of Borrower(s) and Lender and their respective successors and to the assigns of Lender.

F. **Counterparts.** This Agreement may be executed in any number of counterparts and each counterpart shall be deemed to be an original.

G. **Entire Agreement.** This Agreement and the other Loan Documents contain the entire agreement and understanding of the parties to this Agreement, with respect to the subject matter of this Agreement; and this Agreement supersedes all prior understandings and agreements of the parties with respect to the subject matter hereof. The parties agree that the Commitment Letter is incorporated in and made a part of this Agreement, provided, however, that in the event of any conflict between the terms of the Commitment Letter and this Agreement, or any other Loan Document, the provisions of this Agreement or any other Loan Document shall control.

H. **Severability.** Any provision or provisions of this Agreement which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect.

Section 16. Personal Liability: By their signatures below **ALLEN PLUMMER**, and **CHARLES WALKER** and **UNCLE AL'S DINER LLC**, hereby agree to be jointly and severally liable for the performance and repayment commitments made herein and **ALLEN PLUMMER**, and **CHARLES WALKER** further unconditionally agree to be liable in their personal and individual capacities for the repayment commitments made herein and hereby personally and unconditionally guarantee full and punctual performance and payment by **UNCLE AL'S DINER LLC** as required by this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this **LOAN AGREEMENT** to be executed and delivered as of the day and year first above written.

{Signatures on the following pages}

BORROWER(S):

UNCLE AL'S DINER LLC,
a Virginia limited liability company

By: _____ (SEAL)

Name: Allen Plummer

Title: Manager

COMMONWEALTH OF VIRGINIA
CITY OF DANVILLE

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Allen Plummer, the Manager of **UNCLE AL'S DINER LLC**, a Virginia limited liability company, for and on behalf of the company.

Notary Public

My commission expires _____.

The undersigned **Allen Plummer** hereby accepts the foregoing Promissory Note and by acceptance agrees to be bound by the terms hereof, this ____ day of _____, 2024 in his **personal and individual capacity** as a Borrower.

_____(SEAL)
Allen Plummer, Borrower

COMMONWEALTH OF VIRGINIA
CITY OF DANVILLE

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Allen Plummer, in his individual personal and capacity as a Borrower.

Notary Public

My commission expires: _____

The undersigned **Charles Walker** hereby accepts the foregoing Promissory Note and by acceptance agrees to be bound by the terms hereof, this ____ day of _____, 2024 in his **personal and individual capacity** as a Borrower.

_____(SEAL)
Charles Walker, Borrower

COMMONWEALTH OF VIRGINIA
CITY OF DANVILLE

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Charles Walker, in his individual personal and capacity as a Borrower.

Notary Public

My commission expires: _____

LENDER:

**INDUSTRIAL DEVELOPMENT AUTHORITY
OF DANVILLE, VIRGINIA, a political
subdivision of the Commonwealth of Virginia**

By: _____
T. Neal Morris, Chairman

**COMMONWEALTH OF VIRGINIA, AT LARGE
CITY OF DANVILLE, to-wit:**

The foregoing instrument was acknowledged before me in my jurisdiction aforesaid on this _____ day of _____, 2024, by T. Neal Morris, acting in his capacity as Chairman of the INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA, a political subdivision of the Commonwealth of Virginia.

Notary Public

My commission expires: _____



STAFF REPORT

DATE: February 13, 2024
TO: Industrial Development Authority
FROM: Kelvin Perry, Assistant Director of Economic Development and Tourism
RE: A resolution approving and authorizing the Industrial Development Authority of Danville, Virginia executing a partial assignment of economic interest in North Union Properties, LLC to the Downtown Danville Association dba River District Association for real property located at 206-208 N. Union Street.

Request Approval of the Partial Assignment of Economic Interest between North Union Properties, LLC and Downtown Danville Association DBA River District Association. As you may recall, the River District Association received \$150,000 through the Vote Your Main Street Program to invest in the redevelopment of 206-208 N Union Street for an equity investment in the aforementioned N. Union Properties, LLC. Once the project was final, calculations equated to a 19% equity ownership in the N Union Properties, LLC the attached resolution and agreement transfers to the River District Association a nineteen percent (19%) equity interest in N Union Properties, LLC.

ATTACHMENTS

1. 1132 RES Equity Agreement between IDA-RRD
2. 1132 Attachment Partial Assignment of Economic Interest

PRESENTED: February 13,2024

ADOPTED February 13, 2024

RESOLUTION NO. 2024-____.____

A RESOLUTION APPROVING AND AUTHORIZING THE INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA EXECUTING A PARTIAL ASSIGNMENT OF ECONOMIC INTEREST IN NORTH UNION PROPERTIES, LLC TO THE DOWNTOWN DANVILLE ASSOCIATION DBA RIVER DISTRICT ASSOCIATION FOR REAL PROPERTY LOCATED AT 206-208 N. UNION STREET.

NOW THEREFORE, BE IT RESOLVED, by the Industrial Development Authority of Danville, Virginia that it hereby authorizes and approves the IDA assigning a nineteen percent (19%) Economic Interest in North Union Properties, LLC, to the Downtown Danville Association DBA River District Association, substantially in the form attached hereto; and

BE IT FURTHER RESOLVED, that IDA Danville Manager, LLC and North Union Properties, LLC, are agreeable to said assignment; and

BE IT FINALLY RESOLVED that the Chairman, or in his absence any Officer, be, and hereby is, authorized to execute any and all documents necessary for this partial assignment of economic interest and such other documents as needed to complete this transaction.

APPROVED:

Chairman

ATTEST:

Secretary

Approved as to
Form and Legal Sufficiency:

City Attorney

THIS PARTIAL ASSIGNMENT OF ECONOMIC INTEREST (this "**Partial Assignment**"), made and entered into as of the _____ day of 2024, by and among the **INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "**IDA**"); **IDA DANVILLE MANAGER, LLC**, a Virginia limited liability company ("**Managing Member**"); **NORTH UNION PROPERTIES, LLC**, a Virginia limited liability company (the "**LLC**"); and **DOWNTOWN DANVILLE ASSOCIATION**, a Virginia nonstock corporation, doing business as River District Association ("**RDA**"), whose mailing address is 208 N. Union Street, Suite 101, Danville, VA 24541;

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Section 1. - Recitals. The parties recite the following facts:

a. The IDA, holding ninety-nine (99) membership Units in the LLC (the "**IDA Units**"), and Managing Member, holding one (1) membership Unit in the LLC (the "**Managing Member Unit**"), are all of the members of the LLC. The IDA Units and the Managing Member Unit comprise all of the outstanding membership Units in the LLC.

b. The IDA Units, the Managing Member Unit and the economic interests underlying such Units are subject to that certain Limited Liability Company Operating Agreement dated December 28, 2017, as amended, by and between the IDA and Managing Member.

c. The IDA wishes to assign, and the LLC and Managing Member are agreeable to the assignment of, a Nineteen percent (19%) economic interest in the LLC to RDA, under the terms and conditions below.

Section 2. - Assignment of 19% Economic Interest Only. The IDA hereby assigns, transfers and grants to RDA, and RDA hereby accepts, a Nineteen percent (19%) economic interest in the LLC (the "**Assigned Economic Interest**") underlying Nineteen (19) membership Units of the IDA Units, and no other interests or rights in the LLC. The Assigned Economic Interest shall include the right to receive Nineteen percent (19%) allocations of profits and losses and to receive Nineteen percent (19%) distributions. Without limiting the preceding sentence, the Assigned Economic Interest shall specifically exclude any right to vote or to participate in the management and affairs of the LLC or to become or to exercise any other rights of a Member. Such assignment, transfer and grant of the Assigned Economic Interest by the IDA are hereby made without any warranty whatsoever and are assigned, transferred and granted, "**AS IS**", "**WHERE IS**" and "**WITH ALL FAULTS**".

Section 3. - Acknowledgments by the Parties of the Members of the LLC. The parties hereby acknowledge and agree that as a result of the assignment, transfer and grant hereunder, the Members of the LLC are the IDA, Managing Member and no other.

Section 4. - Adjustment of Assigned Economic Interest. If at any time the number of outstanding membership Units in the LLC is increased or decreased, the number of membership Units in the LLC underlying the Assigned Economic Interest shall be adjusted in proportion to such increase or decrease in outstanding membership Units in the LLC.

Section 5. - Restrictions on RDA. RDA shall not sell, transfer, assign, pledge or otherwise encumber the Assigned Economic Interest without the prior written consent of the LLC, which consent may not be unreasonably withheld, delayed or conditioned.

Section 6. - Headings. The descriptive headings in this Partial Assignment are inserted for convenience only and do not constitute a part of this Partial Assignment.

Section 7. - Gender and Number. Throughout this Partial Assignment, wherever the context requires or permits, the neuter gender shall be deemed to include the masculine and feminine, and the singular number to include the plural, and vice versa.

Section 8. - Counterparts. This Partial Assignment may be executed in one (1) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Partial Assignment.

Section 9. - Binding Effect. This Partial Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

[SIGNATURES ON FOLLOWING PAGES]

WITNESS the following signatures to this **PARTIAL ASSIGNMENT OF ECONOMIC INTEREST** as of the date first above written.

The IDA:

INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA, a political subdivision of the Commonwealth of Virginia

By: _____
T. Neal Morris, Chairman

Managing Member:

IDA DANVILLE MANAGER, LLC, a Virginia limited liability company

By Industrial Development Authority of Danville, Virginia, a political subdivision of the Commonwealth of Virginia, its Managing Member

By: _____
T. Neal Morris, Chairman

WITNESS the following signatures to this **PARTIAL ASSIGNMENT OF ECONOMIC INTEREST** as of the date first above written.

The LLC:

NORTH UNION PROPERTIES, LLC, a Virginia limited liability company

By its Members below:

**INDUSTRIAL DEVELOPMENT
AUTHORITY OF DANVILLE,
VIRGINIA**, a political subdivision of the
Commonwealth of Virginia

By: _____
T. Neal Morris, Chairman

IDA DANVILLE MANAGER, LLC, a
Virginia limited liability company

By Industrial Development Authority of
Danville, Virginia, a political
subdivision of the Commonwealth of
Virginia, its Managing Member

By: _____
T. Neal Morris, Chairman

WITNESS the following signature to this **PARTIAL ASSIGNMENT OF ECONOMIC INTEREST** as of the date first above written.

RDA: **DOWNTOWN DANVILLE ASSOCIATION**, a
Virginia nonstock corporation

By: _____
William Crumpton, President



STAFF REPORT

DATE: February 13, 2024
TO: Industrial Development Authority
FROM: Corrie Bobe, Director of Economic Development and Tourism
RE: A Resolution of the Industrial Development Authority of Danville, Virginia approving and authorizing an agreement with Timmons Group in an amount not to exceed \$23,500.00 for geotechnical services at Lynn Street parcels 21745 and 21746 and Shelton Street parcel 22329, Danville, Virginia.

At the IDA's December 2023 meeting, a contract with SKA Consultants was approved to lead the engineering and design for a proposed parking structure on Lynn Street. To keep SKA in line with their timeline for completion, and to better understand the costs to construct such a structure, SKA has requested permission to begin geotechnical work on this site. Timmons Group will be the consultants to conduct this work at a cost not to exceed \$23,500. Staff recommends the approval of this contract, with revisions by the City Attorney.

ATTACHMENTS

1. 1162 RES Agmt IDA and Timmons Group Resolution
2. 2024-01-30 Lynn Street Parking Deck - Geotech_Rev

PRESENTED: February 13, 2024

ADOPTED February 13, 2024

RESOLUTION NO. 2024-____.____

A RESOLUTION OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA APPROVING AND AUTHORIZING AN AGREEMENT WITH TIMMONS GROUP IN AN AMOUNT NOT TO EXCEED \$23,500.00 FOR GEOTECHNICAL SERVICES AT LYNN STREET PARCELS 21745 AND 21746 AND SHELTON STREET PARCEL 22329, DANVILLE, VIRGINIA.

NOW THEREFORE, BE IT RESOLVED that the Industrial Development Authority of Danville, Virginia does hereby approve and authorize the execution of an agreement with Timmons Group for geotechnical services at Lynn Street Parcels 21745 and 21746 and Shelton Street Parcel 22329 in an amount not to exceed Twenty-Three Thousand Five Hundred and 00/100 dollars (\$23,500.00) subject to revisions by the City Attorney; and

BE IT FURTHER RESOLVED that the Industrial Development Authority of Danville, Virginia does hereby authorize its Chairman, or in his absence any officer, to execute any and all documents necessary to complete the above referenced transaction.

Approved:

Chairman

Attest:

Secretary

Approved as to
Form and Legal Sufficiency:

City Attorney

LETTER OF AGREEMENT

Client:	City of Danville – Industrial Development Authority of Danville	Date:	January 30, 2024
Contact:	T. Neal Morris	Principal:	Nathan Reeves
Phone No:	(434) 799-5122	Project Manager:	Nathan Reeves
E-mail:	tnealmorris@gmail.com	Project Name:	Lynn Street Parking Deck – Geotechnical Services

Dear Mr. Morris:

Timmons Group is pleased to offer this proposal for professional services for the planning phase of a new parking deck to be located on a City-owned vacant lot at the corner Lynn and Shelton Streets in Danville, Virginia. We look forward to working with you to achieve your vision for this project.

Thank you for allowing Timmons Group to provide professional services on this project. We will provide the requested services, complying with established standards, while being mindful of costs to the Client (the “Client”) named above according to the terms and conditions of this Letter of Agreement (the “Agreement”). Prior to submittal to a public agency, all documents will be sent to the Client, if requested, to ensure a complete understanding by all parties.

We will proceed upon receipt of this signed Agreement. Please note that fees quoted are valid for sixty (60) days from the date first written above.

SCOPE AND SCHEDULE OF SERVICES:

Timmons Group will provide the services as detailed on the Scope of Services attached as Exhibit A (the “Scope of Services”).

We will provide services in a timely and efficient manner and will keep you informed of the job status and any necessary changes. Any changes required to the Scope of Services must be approved in writing before such changes take effect. As of the date first written above, any changes in the Scope of Services caused by governing codes or Client revisions may require a schedule and/or fee change.

PAYMENT SCHEDULE: Owner agrees to pay Timmons Group for its Services as selected and set forth below:

☒ **FIXED FEE**

Fees for this Agreement will be billed on a monthly basis as a fixed fee per the Scope of Services in Exhibit A.

☐ **TIME AND MATERIALS**

Fees for this Agreement will be billed on a time and materials basis based upon actual services provided during the prior calendar month and at the rates specified in the attached rate schedule.

Unless otherwise provided under the terms of this Agreement, all payments are due upon receipt. Interest shall accrue at the rate of twelve percent (12%) per annum on all unpaid invoices older than thirty (30) days. We reserve the right to stop work on any Client account that becomes sixty (60) days past due and to notify local officials that professional seals should be removed from plans associated with the Client.

LETTER OF AGREEMENT

EXHIBITS: The following Exhibits are attached hereto and expressly made part of this Agreement.

☒ EXHIBIT A SCOPE OF SERVICES

☒ EXHIBIT B TERMS AND CONDITIONS

This Agreement shall be controlled by the provisions listed above and the Terms and Conditions in the attached Exhibit B. If there is any conflict between the provisions of this Letter of Agreement and the Terms and Conditions, the Terms and Conditions shall control.

☒ EXHIBIT C REIMBURSEMENT SCHEDULE [UNCHECK THIS BOX IF INAPPLICABLE]

In addition to the Total Fee for the services provided under the Scope of Services above and any General Reimbursements needed, the items and materials listed on the Project Reimbursement Schedule attached as Exhibit C will be invoiced on a monthly basis as applicable. An additional 15% is added to these charges.

REIMBURSEMENTS:

Any services and costs such as submittal fees, printing, courier, mileage and outside consultants not listed in the Scope of Services ("General Reimbursements") will be invoiced separately in addition to the professional services provided under this Agreement. Reimbursements may include a reasonable handling charge of up to 15% of cost. The Scope of Services may specify an additional Project Reimbursement Schedule to be attached as Exhibit C if applicable.

We will proceed upon receipt of this signed agreement. Should you have any questions, you can reach Adam Carroll directly at (336) 478-3346 or via email at adam.carroll@timmons.com.



1/9/2024

Timmons Group

Date

ACKNOWLEDGED AND ACCEPTED:

On behalf of the Client, this Agreement, including Exhibit A [Scope of Services] and Exhibit B [Terms and Conditions], is accepted and agreed to as of the date written below.

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

SCOPE OF SERVICES

Under this Agreement, Timmons Group will provide professional services relative to the project located at [PIN# 21745] in [Danville, Virginia].

Base Scope

Task 1: Geotechnical Services.....\$23,500

Our proposed scope of geotechnical services will consist of geotechnical borings, performance of laboratory testing on representative soils, and preparation of a geotechnical engineering report. We understand proposed construction will consist of a multi-level parking deck. We expect that a deep foundation system will be required to support this structure. As such, the borings will be extended down to rock. Proposed tasks are discussed below.

Assumptions

The following assumptions have been made regarding our geotechnical services. If these assumptions are not correct, we request the opportunity to revise our scope and fee prior to authorization.

- Fieldwork can be conducted during the normal weekday hours of 8 AM to 5 PM.
- There are no private underground utilities on the site.
- The majority of the site is easily accessible to an all-terrain drill rig. Some hand clearing of vegetation will be required to access a wooded area in the south part of the site.
- Bedrock is present within 60 feet of the existing ground surface.
- The parking deck will occupy a footprint of approximately 40,000 square feet
- The parking deck will be between three and seven levels.
- Column loads for the parking deck could range from 500 to 1,500 kips.
- Maximum cut depths to mass grade the site will range from approximately 2 feet in the north portion of the site to be approximately 20 feet in the south portion of the site.

Field Exploration

The field exploration will consist of the following:

- A geotechnical professional will perform a site reconnaissance and locate borings in the field using GPS equipment.
- We will contact MISS Utility to mark existing underground utilities near boring locations. We assume there are no private underground utilities on the site.
- Perform six (6) Standard Penetration Test (SPT) borings with a mechanical drill rig in accordance with ASTM D1586. Borings will be performed to auger refusal (i.e., top of bedrock), estimated to be within 60 feet of the existing ground surface. Total proposed drilling is 360 feet. Within borings, split-spoon samples will be collected in conjunction with SPT testing. Split-spoon samples will be collected at 2-foot depth intervals in the top 10 feet and at 5-foot intervals thereafter.
- Within 2 borings, auger refusal materials (rock) will be sampled using NQ-size coring techniques. Cores will be extended approximately 15 feet below the rock surface.
- Upon completion of borings, borehole water levels will be recorded, and the boreholes will be backfilled with drill cuttings up to the original ground surface. Soil and rock samples will be returned to our office for visual classification and laboratory testing.

EXHIBIT A

SCOPE OF SERVICES

- Excess soil cuttings will be spread on site.

Laboratory Testing

We will perform laboratory testing on representative split-spoon soil samples and rock samples for the purpose of classifying the soils and estimating geotechnical engineering properties. We plan to perform Atterberg limits, grain size analysis, natural moisture content, Standard Proctor, and California Bearing Ratio (CBR) tests on soils. A few unconfined compression strength tests will be performed on samples of rock core.

Geotechnical Engineering Report

A geotechnical engineering report will be prepared based on performed borings, laboratory testing, and our engineering analysis. The report will include the following:

- Site plan showing boring locations.
- Description of the exploration sampling methods as well as soil test boring logs.
- Water levels encountered in the borings.
- Laboratory test results
- Depth and location of unsuitable materials, if encountered in borings.
- Recommendations for parking deck foundation type, allowable capacity, embedment, and estimated settlement. A range of foundation alternatives may be presented depending on encountered subsurface conditions.
- General information regarding site preparation including re-use of on-site soils as fill, identification of deleterious soils encountered in the borings, impact of weather and construction equipment on grading, fill compaction recommendations, and preparation of soil subgrades.
- Seismic site classification recommendation in general accordance with the current Virginia Building Code.
- Recommended pavement thickness

EXHIBIT B

TERMS AND CONDITIONS

1. **SCOPE OF SERVICES:** The Scope of Services performed under this Agreement shall be as described in Exhibit A of the Letter of Agreement. Separate Change Orders signed by authorized representatives of Timmons Group and the Client may, from time to time, describe additional or different services to be performed under this Agreement, such Change Orders are incorporated by reference herein. These Terms and Conditions shall apply to the Change Orders except to the extent expressly modified by such Change Order. Timmons Group services with regard to the specific properties covered by this Agreement and subsequent Change Orders, if any, shall hereinafter be referred to as the "Project" or "Projects."
2. **STANDARD OF CARE AND CODE COMPLIANCE:** Timmons Group shall provide its services under this Agreement consistent with the professional skill and care ordinarily provided by members of the same profession practicing in the same or similar locality under the same or similar circumstances. Timmons Group shall exercise usual and customary professional care in its efforts to comply with all applicable codes, laws, regulations and the policies of regulatory agencies in effect as of the date of the Agreement (collectively, "legal requirements"). Design changes made necessary by newly enacted codes, laws, regulations and the policies of regulatory agencies after the date of this Agreement shall be treated as an additional service subject to an executed Change Order, and Timmons Group shall be entitled to appropriate additional compensation. Timmons Group shall not be liable for any damages arising from conflicting interpretations of any legal requirements by different officials. In the event of a conflict between legal requirements applicable to the Project, Timmons Group shall notify the Client of the nature and impact of such conflict, and the Client agrees to cooperate and work with Timmons Group in an effort to resolve the conflict.
3. **INSTRUMENTS OF SERVICE:** All documents, including, but not limited to, drawings, specifications, plans, reports and other forms of electronic data prepared and furnished by Timmons Group, are Instruments of Service pursuant to this Agreement and remain the property of Timmons Group. Client may retain one such copy of all such documents, for record purposes, which documents may only be used for the Project. Any adaptation by Client of said documents, whether intentional or inadvertent, without Timmons Group's verification shall be at Client's sole risk and without liability or legal exposure to Timmons Group or Timmons Group's employees. Client agrees to assume all risks associated therewith and to hold Timmons Group harmless and indemnify it from and against any claims, liabilities, damages, losses and costs, including but not limited to attorney's fees, arising therefrom or in connection therewith.
4. **GOVERNING LAW:** This Agreement shall be governed according to the laws of the of the place of the Project, without regard to its conflicts of laws provisions.
5. **THIRD PARTY RIGHTS:** This Agreement shall not create any rights or benefits to parties other than the Client and Timmons Group.
6. **ASSIGNMENT:** This Agreement may not be assigned without the prior written consent of the Client and Timmons Group, such consent not to be unreasonably withheld.
7. **PROJECT SITE SAFETY:** Timmons Group's Project site responsibilities are limited solely to the activities of Timmons Group and Timmons Group's employees on the Project site. These responsibilities shall not be inferred by any party to mean that Timmons Group has responsibility for Project site safety. The Client and Timmons Group agree that Project site safety is the sole and exclusive responsibility of the Project's owners or contractor(s). The parties likewise agree that the Project contractor(s) is solely responsible for Project means, methods, techniques, sequences of operation and procedures, and that Timmons Group shall have no obligations relating to these contractor(s) duties.

EXHIBIT B

TERMS AND CONDITIONS

- 8. LIMITATION OF LIABILITY:** To the fullest extent permitted by law, except as expressly stated in this Agreement, Timmons Group makes no representations or warranties, express or implied. Notwithstanding any other provision of this Agreement, the maximum liability, in the aggregate, to the Client and anyone claiming by or through the Client, of Timmons Group and its officers, directors, shareholders, partners, employees, agents and subconsultants, and any of them, for any and all claims, losses, or damages, including attorney's fees, in any way related to or arising from the Project or this Agreement, shall not exceed Timmons Group's total fee under this Agreement, or \$50,000, whichever is less.
- 9. DISPUTE RESOLUTION:** In the event of any action or proceeding brought by either party against the other under this Agreement, other than default on payment, the prevailing party shall be entitled to recover all costs and expenses, including its court reporter fees, expert witness fees, and reasonable attorney's fees. In the event the account is forwarded for collection based on default of payment, the Client will be responsible for all costs incurred including attorney's fees in an amount equal to 33% of the outstanding balance. The parties agree to litigation in a court of competent jurisdiction in the jurisdiction where the Project is located.
- 10. INDEMNIFICATION:** Timmons Group agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees, against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, to the extent caused solely and directly by the negligent performance of professional services by Timmons Group or its agents under this Agreement. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Timmons Group, its officers, directors, employees and agents, against all damages, costs and liabilities, including reasonable attorney's fees, caused solely by the Client's negligent acts in connection with the Project or that of its Contractor(s), subcontractors or consultants or anyone for whom the Client is legally liable. Neither Timmons Group nor the Client shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.
- 11. MISCELLANEOUS:** This Agreement constitutes the entire agreement of the Parties. All prior agreements, whether written or oral, are merged herein and shall be of no force or effect. This Agreement cannot be changed, modified or discharged orally, but only in an agreement in writing. If any term, condition, or provision of this Agreement is found unenforceable by a court of law or equity, this Agreement shall be construed as though that term, condition, or provision did not exist, and its unenforceability shall have no effect whatsoever on the rest of this Agreement. This represents drafting by both parties and in the event of ambiguities, the principle of interpretation against the drafter shall not apply.

EXHIBIT C

PROJECT REIMBURSEMENT SCHEDULE

<u>Resource</u>	<u>Unit Description</u>	<u>Unit Charge</u>
Printing – Plotter Bond B&W	Per Sq. Ft.	\$0.22
Printing – Plotter Bond Color	Per Sq. Ft.	\$0.72
Printing – Small Format B&W	11x17	\$0.16
Printing – Small Format B&W	8.5x14	\$0.08
Printing – Small Format B&W	8.5x11	\$0.08
Printing – Small Format Color	11x17	\$0.80
Printing – Small Format Color	8.5x14	\$0.40
Printing – Small Format Color	8.5x11	\$0.40
Mileage	per mile	\$0.535
Postage	N/A	Cost

** Accounting applies an additional 15% onto all reimbursable charges*

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STAFF REPORT

DATE: February 13, 2024
TO: Industrial Development Authority
FROM: Corrie Bobe, Director of Economic Development and Tourism
RE: A resolution of the Industrial Development Authority of Danville, Virginia approving and authorizing a temporary easement to 424 Memorial Drive LLC on parcel numbers 21322, 23568, 23264, 23263, 22028, and 23110 for the purpose of installing a temporary sediment pond.

424 Memorial Drive LLC has requested to install a temporary sediment pond on IDA-owned parcels adjacent to the parking lot they will be constructing along Memorial Drive to serve the residential tenants within the Dan River Falls building. IDA parcels include ID numbers: 21322, 23568, 23264, 23263, 22028, and 23110. This pond will be installed in accordance to Virginia Stormwater regulations and for a period of time not to exceed the estimated completion of the full project (the contractors are anticipating a period of approximately four months). The pond will be filled in and brought back to its current condition after work is completed. Staff recommends the approval of this easement request.

ATTACHMENTS

1. 1163 RES -Temp Easement City-424 Memorial Drive
2. 1163 Attachment Easement Deed Memorial Dr
3. Sediment Trap

PRESENTED: February 13, 2024

ADOPTED February 13, 2024

RESOLUTION NO. 2024-____.____

A RESOLUTION OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE, VIRGINIA APPROVING AND AUTHORIZING A TEMPORARY EASEMENT TO 424 MEMORIAL DRIVE LLC ON PARCEL NUMBERS 21322, 23568, 23264, 23263, 22028, AND 23110 FOR THE PURPOSE OF INSTALLING A TEMPORARY SEDIMENT POND.

NOW THEREFORE, BE IT RESOLVED, by the Industrial Development Authority of Danville, Virginia that it hereby approves and authorizes, to 424 Memorial Drive LLC, a temporary easement, on Parcels #21322, 23568, 23264, 23263, 22028, and 23110 for the purpose of installing a temporary sediment pond, which location map is attached hereto, and made a part hereof this resolution; and

BE IT FURTHER RESOLVED, by the Industrial Development Authority of Danville, Virginia that the Chairman is hereby authorized to execute the easement and sign any other documentation necessary to complete the above-described transaction.

APPROVED:

Chairman

ATTEST:

Secretary

Approved as to
Form and Legal Sufficiency:

City Attorney

THIS CONVEYANCE IS EXEMPT FROM GRANTEE'S TAX PURSUANT TO VA. CODE § 58.1-811 (A) (3) AND GRANTOR'S TAX PURSUANT TO VA. CODE § 58.1-811 (C) (5) .

PIN: #21322

This **DEED OF EASEMENT**, made this the 13th day of February, 2024, by and between the **INDUSTRIAL DEVELOPMENT AUTHORITY OF DANVILLE VIRGINIA, GRANTOR**, and **424 MEMORIAL DRIVE LLC, a Virginia limited liability company, GRANTEE**.

WHEREAS, the Grantor is the owner of certain real property located within the City of Danville, Virginia (the "Property"), commonly known as PIN #21322, PIN #23568, PIN #23264, PIN # 23263, PIN # 22028, PIN #23110.

WHEREAS, it is the desire of the Grantor to convey to the Grantee a temporary construction easement for the purpose of constructing, installing, or maintaining a temporary sediment basin, and other temporary erosion & sediment controls as needed or directed, upon the Property in connection with that set of plans entitled; "WHITE MILL REDEVELOPMENT", on Sheet ERO-5, and as shown on the attached Exhibit A.

W I T N E S S E T H :

That for good and valuable consideration, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Grantor does grant and convey unto the Grantee, its agents, employees, successors, and assigns, a temporary easement to construct, enlarge, repair, maintain, and operate a temporary sediment basin, and other temporary erosion & sediment controls as needed or directed, along with all necessary fixtures or appurtenances thereto, including (without limitation) conveyance channels, pipes, access chambers or manholes, and any other system, facility, or appliance, either natural or man-made, of such size and kind as the Grantee may deem

necessary, which may be installed or positioned through, under, or across the Property hereafter called the "Easement Property." The temporary construction easement shall run with the land until the White Mill Redevelopment project is complete; at which point the temporary construction easement and associated rights of ingress, egress, and regress shall expire. Said temporary easement shall in any case terminate by September 1, 2025.

The Grantee shall perform all construction or maintenance work in a timely and workmanlike manner. After any construction or repair work, the Grantee shall attempt to return the Easement Property to the same grade as existed prior to such work being performed, and shall, if necessary, reseed the area, returning it to reasonably the same condition and physical appearance as before such work, except for any trees or bushes removed during such work, which will not be replaced.

All rights, title, and privileges herein granted, including all benefits and burdens, shall run with the land and shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, successors, assigns, and legal representatives.

(remainder of page intentionally left blank)

WITNESS the following signatures and seals, on this the date first above stated:

**INDUSTRIAL DEVELOPMENT
AUTHORITY OF DANVILLE VIRGINIA,
GRANTOR**

BY: _____

TITLE: _____

COMMONWEALTH OF VIRGINIA
CITY OF DANVILLE, to-wit:

The foregoing instrument was acknowledged before me this the ____ day of
_____, 2024, by _____. Grantor.

NOTARY PUBLIC

My commission expires: _____

**424 MEMORIAL DRIVE LLC,
GRANTEE**

BY: _____

TITLE: _____

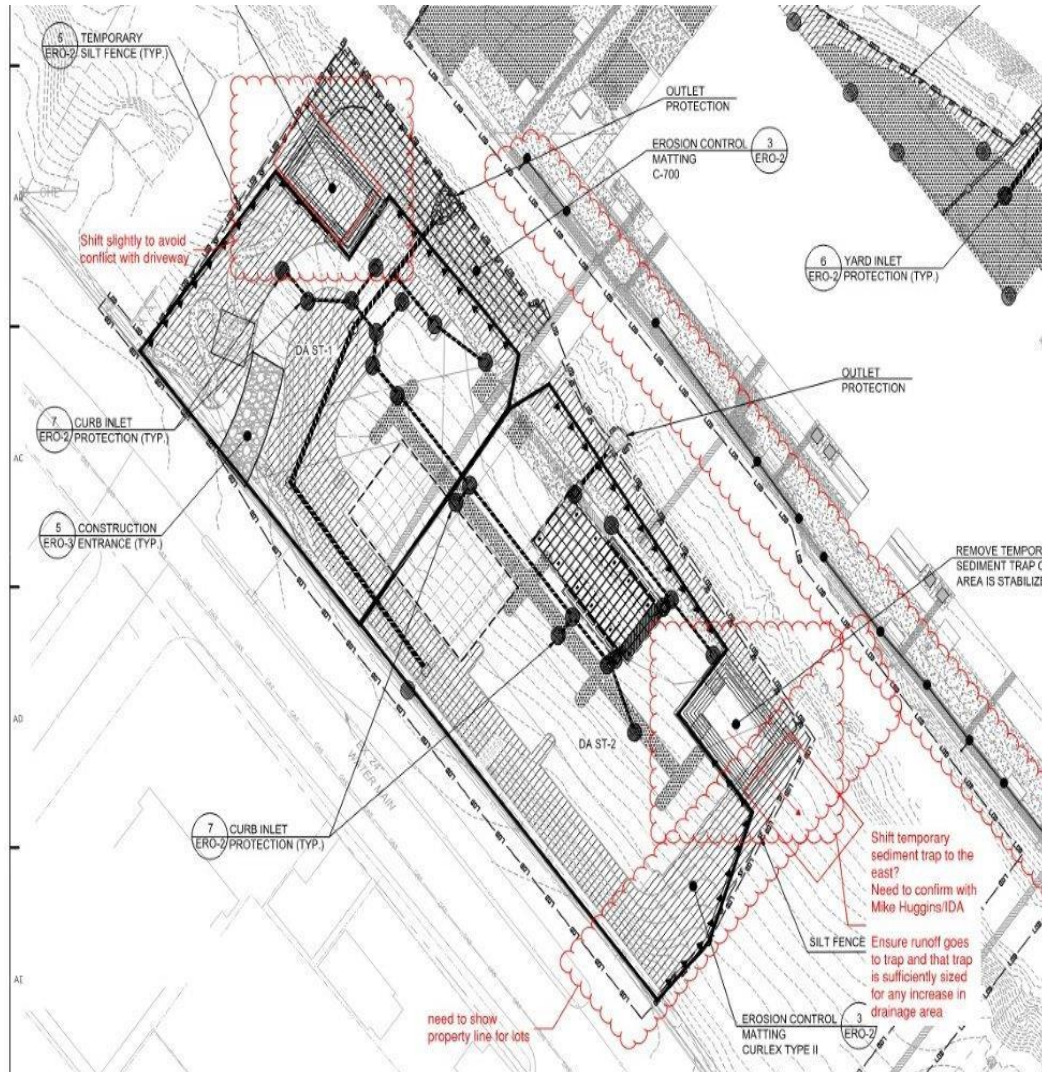
COMMONWEALTH OF VIRGINIA
CITY OF DANVILLE, to-wit:

The foregoing instrument was acknowledged before me this the ____ day of
_____, 2024, by _____, Grantee.

NOTARY PUBLIC

My commission expires: _____

EXHIBIT A



5 TEMPORARY
ERO-2 SILT FENCE (TYP.)

OUTLET
PROTECTION

EROSION CONTROL
MATTING
C-700

3
ERO-2

Shift slightly to avoid
conflict with driveway

6 YARD INLET
ERO-2 PROTECTION (TYP.)

DA ST-1

OUTLET
PROTECTION

7 CURB INLET
ERO-2 PROTECTION (TYP.)

5 CONSTRUCTION
ERO-3 ENTRANCE (TYP.)

REMOVE TEMPORARY
SEDIMENT TRAP ON
AREA IS STABILIZED

DA ST-2

7 CURB INLET
ERO-2 PROTECTION (TYP.)

Shift temporary
sediment trap to the
east?
Need to confirm with
Mike Huggins/IDA

SILT FENCE Ensure runoff goes
to trap and that trap
is sufficiently sized
for any increase in
drainage area

need to show
property line for lots

EROSION CONTROL
MATTING
CURLEX TYPE II

3
ERO-2