

**Industrial Development Authority
of the City of Lexington, VA
Monday, May 20, 2011, 5:30 pm
City Hall, Community Meeting Room, 1st Floor**

1. **Call to Order**
2. **Election of Vice-Chair and Treasurer**
3. **Approval of Minutes of December 6, 2011***
4. **Consideration of the Subordination Agreement between IDA and Robert E. Lee Properties, LLC***
5. **Adjourn**

this feeling to Carilion and gather information concerning the fees charged by other authorities to bring back for a policy determination.

The meeting adjourned at 5:45 pm.

Secretary

Chair

Pertinent sections of R. E. Lee building agreement: Sec. 3 + 4

NOW, THEREFORE, the parties, in consideration of the promises and obligations contained herein, mutually agree as follows:

SECTION 1. RELOCATION FUNDS.

Subject to the terms of this agreement, City agrees to fund a relocation effort for the existing residents administered by the City up to \$100,000.00. Any amounts expended by the City with regard to the relocation effort shall be repaid to the City if Developer fails to perform as required by this agreement. Developer will give notices of lease termination to all tenants sixty (60) days from the date of closing on the property. The City shall have up to 9 months from the time of closing on the property to relocate the current residents from the time of closing and will use best efforts but nothing contained herein is intended to be a guarantee that all such residents will be relocated at the end of the 9 months. The City will use its best efforts, within funding allocated, to relocate all the residents. Further, this commitment shall not apply to any tenants who lease property in the Hotel after adoption of this agreement by City Council. The City's commitment to relocate residents shall not extend beyond the 9 months. Nothing contained herein shall be construed to preclude a mutual agreement to amend or alter the terms hereof.

SECTION 2. BUILDING PERMIT.

Subject to the terms hereof, the City agrees to waive the fee for the building permit for this project. Any amounts expended with regard to the relocation effort and/or lost revenue from the building permit shall be repaid to the City if Developer fails to perform as required by this agreement. Contractors involved in the construction project shall obtain City business licenses.

SECTION 3. SALE OF HOTEL PARKING LOT LAND.

The City agrees through its IDA to sell the land purchased from Rockbridge County lying behind the Hotel property to provide parking spaces for the Hotel facility. The City shall convey said property to the IDA after closing with the County and on or about the time of the closing on the Hotel property. Said sale to Developer shall be for the sum of \$83,300.00. The terms of sale are as follows: IDA financed over a 76 month period with monthly payments of principal only in the amount of One Hundred Seventy Five and No/100 (\$175.00) Dollars or at the option of Developer quarterly in the amount of \$525.00, or semi-annually in the amount of \$1,050.00, or annually in the amount of \$2,100.00 with final payment of principal at the end of such term. The IDA will transfer any and all payments received to the City within 14 days of receipt. The City shall hold a first right of refusal on said property during the 76 month term of said note and any extension thereof, if any, but such right of first refusal shall only be in effect if and when Developer decides to sell the property without selling the Hotel property; separate therefrom. Said right of first refusal shall survive any prepayment of the amount owed. Said first right of refusal shall terminate upon receipt of all payments or at the end of 76 months which ever comes last. Developer shall execute a note and deed of trust acceptable to the IDA which shall be released upon payment in full. Further, in the

event of default Developer agrees to deed the Parking Lot property to the IDA and treat prior payments as rent and/or liquidated damages.

SECTION 4. IDA FORGIVABLE LOAN.

Subject to the terms of this Agreement, the IDA will make a loan to the Developer for the express purpose of facilitating the purchase of the Hotel property. Said loan will be in the amount of \$150,000.00 dollars paid at the time of closing which shall be reduced to writing and a Deed of Trust with a term of 5 years, executed and recorded to secure same. The City shall deposit with the IDA the sum of \$150,000 to provide funds for the Grant on or about the time of the closing on the Hotel property. The IDA agrees to subordinate said lien to any Deed of Trust for the purchase of the Hotel property in a loan amount up to \$1,800,000.00. Said loan will bear interest at the rate of 0 % per annum. No payments shall be due unless and/or until it is determined that Developer has not met the obligations contained in Section 6 hereof and set out in abbreviated form herein which as follows:

1. Demonstrate financial ability which shall include proof of adequate and non-contingent financing and life insurance in at least the amount of \$250,000.00.
2. Complete renovation of Hotel including commercial space on first floor, full service restaurant on second floor, and 35 Hotel rooms within 42 months of the date of this agreement.
3. Expenditure of at least \$2.5 million to develop the Hotel facility.
4. Confirmation that at least 30 new jobs have been created as of the opening of the Hotel and restaurant which may be part time or full time positions.

The IDA agrees to further subordinate said lien to a Deed of Trust securing the construction loan upon proof of financial ability based upon the appraisal of the projected project submitted to the lender or prepared on behalf of the lender for such loan. If developer obtains additional financing or refinances the loan for construction the IDA agrees to subordinate upon receiving similar updated proof of financing and appraised value if changed. If Developer fails to meet the covenants and conditions included in this agreement then said loan will be due and payable forthwith. If Developer satisfies all the obligations contained herein then such loan shall be forgiven and any lien created to secure said loan shall be promptly released.

SECTION 5. IDA ECONOMIC DEVELOPMENT GRANT.

Subject to the terms of this Agreement, the IDA will make quarterly Economic Development Grants (each a "Grant"), the total of which shall be equal to but not exceed \$348,920.00. Based on preliminary data there will be approximately (32) quarterly payments but because such a projection is based on estimated tax revenues to the City and Grant payments will be made based on received tax revenue, there may be more or fewer payments. Said Grants are based on real estate taxes paid

T. Jon Ellestad

From: Steve Grist [grists@rockbridge.net]
Sent: Wednesday, May 15, 2013 3:24 PM
To: T. Jon Ellestad; 'Larry Mann'
Cc: 'Celena Tomlin'; 'Scott Steele'
Subject: FW: R.E. Lee Subordination Agreement
Attachments: R.E. Lee Properties-Subordination Agreement.pdf

Jon,

As you know, Robert E. Lee Properties, LLC has obtained a commitment from CornerStone Bank for construction financing in the amount of \$4.8 million on the Robert E. Lee Hotel building on Main Street. CornerStone's loan commitment is contingent on CornerStone being able to record a first lien deed of trust on the property to secure its loan.⁴

As we discussed this morning, I am writing on behalf of Robert E. Lee Properties, LLC to request that you convene the IDA to obtain its approval to subordinate the two deed of trust liens (\$150,000 and \$83,300 respectively) on the Robert E. Lee Hotel project to the CornerStone Deed of Trust. Contrary to my comment to you this morning, the Bank is not requesting the IDA to subordinate its first right of refusal on the parking spaces. I have confirmed that with Scott Steele and with Celena Tomlin at the Bank, and the attached draft does not provide for the subordination of the first right of refusal.

I have attached a draft of the Subordination Agreement the Bank has approved that will satisfy its requirement for the subordination of the IDA deeds of trust.

We have tentatively set the closing on the CornerStone loan for this Friday, May 17, at 1:00 p.m. Please convene the IDA as soon as possible - and before Friday at 1:00 p.m. if at all possible - so it can consider this request.

Thank you very much for your promptness in replying to this request. Please let me know if there is anything you need from me or my client to assist you in this endeavor.

Best wishes,
Steve

J. Steven Grist
J. Steven Grist, P.C.
202 South Randolph Street
Lexington, VA 24450
540-463-7533 (ph.)
540-463-6664 (fax)

This instrument prepared by:
J. Steven Grist, P.C. VSB No. 29783
202 S. Randolph Street
Lexington, VA 24450

Tax Map Nos. 23-1-185, 23-1-188, 23-1-188A

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT, made and entered into this _____ day of May, 2013, by and between **The Industrial Development Authority of the City of Lexington**, party of the first part ("Noteholder"); and **Robert E. Lee Properties, L.L.C.**, a Virginia limited liability company, party of the second part ("Borrower").

**** WITNESSETH ****

WHEREAS, by two (2) Deeds of Trust dated August 5, 2011, recorded in the Office of the Clerk of the Circuit Court of Rockbridge County, Virginia, as Instrument Nos. 110002333 and 110002334, the parties of the second part conveyed to the Trustee for the parties of the first part, in trust, to secure two (2) Notes of even date therewith, the first in the amount of Eighty-three Thousand Three Hundred and 00/100 Dollars (\$83,300.00) and the second in the amount of One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00), payable to the party of the first part, conditioned as set forth in the aforesaid deeds of trust, the following described real property, to-wit:

Parcel I

Tax Map Nos. 23 1 185 and 23 1 188

All that certain parcel of land, with all improvements thereon, rights and appurtenances thereunto appertaining, containing 0.494 acre, more or less, fronting on the southeasterly side of South Main Street in the **City of Lexington, Virginia**, shown as "Total 0.494 AC" on a plat dated July 28, 2011 made by Farris P. Hotchkiss, L.S., titled "Plat Showing Survey of Robert E. Lee Building, City of Lexington, Virginia" and recorded in the Clerk's Office of the Circuit Court of Rockbridge County, Virginia in Plat Cabinet 4, Slide 479. The 0.494 acre parcel being conveyed consists of two (2) parcels shown on the aforesaid Hotchkiss plat as "TM# 23-1-188 0.408 AC" and "TM# 23-1-185 0.086 AC".

The above-described property is the same as that acquired by Robert E. Lee Properties, LLC, a Virginia limited liability company, by Deed dated August 2, 2011, from Robert E. Lee Building, LLC, a Virginia Limited Liability Company, and Buffalo Lumber Company, a Virginia corporation, and of record in the said Clerk's Office as Instrument No. 110002330.

Specifically included with the above conveyed property are all those rights and easements as reserved unto Robert E. Lee Building, L.L.C., and Buffalo Lumber Company and set forth in the Deed to Rockbridge County of record as Instrument No. 000004234 including, but not limited to, the right of first refusal as more particularly described in said deed.

The above conveyed property is conveyed subject to utility easements of record, the "9' Alley" easement as shown on the above referenced Hotchkiss plat and the 4' easement granted Nelson Street Partners, LLC, by Easement Agreement dated September 23, 2004, recorded as aforesaid as Instrument No. 050000361. Specifically included as an appurtenant easement with the above conveyed property is the access easement acquired by Robert E. Lee Building, L.L.C., and Buffalo Lumber Company as described in the aforesaid Easement Agreement.

Parcel II

Tax Map No. 23 1 188A

All of that certain parcel of land with all improvements thereon, rights and appurtenances thereunto appertaining, containing 0.1259 acre. more or less, fronting on Main Street and extending to Randolph Street, designated as "NEW PARCEL 0.1259 AC." on 'Plat Showing Survey for Rockbridge County, Virginia, City of Lexington, Virginia', dated October 18, 2004, revised February 2, 2005, made by Woodrow W. Perkins, LS, recorded in the Clerk's Office of the Circuit Court for Rockbridge County in Plat Cabinet 3, Slide 592, and shown upon the land records of the City of Lexington as Tax Map No. 23-1-188A.

The above-described property is the same as that acquired by Robert E. Lee Properties, LLC, a Virginia limited liability company, by Deed dated July 29, 2011, from the Industrial Development Authority of the City of Lexington, an Industrial Development Authority organized under Chapter 49 of the Code of Virginia, and of record in the said Clerk's Office as Instrument No. 110002329.

This conveyance is made subject to all recorded conditions, reservations, easements and restrictions affecting title to the property herein conveyed. Further this conveyance is expressly made subject to that Performance Agreement dated the 25th day of May, 2011 and a First right of refusal set forth therein namely. The Industrial Development Authority of the City of Lexington, Virginia, reserves a right of first refusal on the property hereby conveyed which right shall be contingent upon any sale of the property conveyed hereby as separate piece of

property without the Hotel property as a whole. If sold as a whole there shall be no such right of first refusal. The term of said right shall be the 76 month term of the note dated May 25, 2011 and secured by a Deed of Trust on said property with the express provision that such right of first refusal shall terminate upon receipt of all payments or at the end of 76 months which ever comes last.

WHEREAS, the two (2) Deeds of Trust constitute valid first and second liens on said property; and

WHEREAS, by Deed of Trust dated May __, 2013, the parties of the second part conveyed said property to David J. Hansen and J. Steven Grist, Trustees, in trust, to secure a certain Deed of Trust Note of even date in the amount of Four Million Eight Hundred Thousand and 00/100 Dollars (\$4,800,000.00) payable to CornerStone Bank, N.A., Lender, and desires that the liens of the two Deeds of Trust, each dated August 5, 2011, respectively, recorded as Instrument No. 110002333 and No. 110002334, be subordinated as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the sum of Ten Dollars (\$10.00) cash in hand paid, the receipt of which is hereby acknowledged, the said parties of the first part, holders of the Eighty-three Thousand Three Hundred Dollar (\$83,300.00) Note and the One Hundred Fifty Thousand Dollar (\$150,000.00) Note, each Note being secured by two (2) separate Deeds of Trust, do hereby agree that the liens of the Deeds of Trust, each dated August 5, 2011, recorded as aforesaid as Instrument No. 110002333 and No. 110002334, be and the same hereby are, subordinated to the lien of the Deed of Trust dated May __, 2013, to David J. Hansen and J. Steven Grist, Trustees, recorded in the aforesaid Clerk's Office as Instrument No. 13_____, but in all other respects the Deeds of Trust subordinated hereby shall remain in full force and effect.

WITNESS the following signatures and seals:

The Industrial Development Authority of the City of Lexington

By: _____
_____ Title

Robert E. Lee Properties, L.L.C.

By: _____
Ugo Benincasa, Member

STATE OF VIRGINIA AT LARGE
_____ OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of May, 2013, by _____, _____ of The Industrial Development Authority of the City of Lexington.

My commission expires _____.

Notary Public

STATE OF VIRGINIA AT LARGE
_____ OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of May, 2013, by Ugo Benincasa, Member of Robert E. Lee Properties, LLC.

My commission expires _____.

Notary Public