

The Spotswood Collaborative – Proposal C

To: City of Lexington, Virginia
From: The Spotswood Collaborative
Date: October 31, 2021

To Members of Lexington City Counsel:

Enclosed please find a proposal to purchase and develop vacant site consisting of three different parcels commonly known as the Spotswood Development Site next to Piovano Building on Spotswood Drive consisting of approximately 2.3 acres, subject to due diligence study. The proposed purchase price is Two Hundred Fifty Thousand Dollars (\$250,000.00)

Main objective of this proposal is to develop and construct a single family community consisting of thirteen single family dwellings with parking accommodations for up to four vehicles per unit while maintaining architectural harmony and balance with neighboring properties. The concept is based on already existing neighborhood in the City - The Weatherburn – located on Chamberlain Loop on the west side of town.

Key features of this development include creation of much needed new housing inventory, expansion of city's tax base, encouragement of majority owner-occupied residences, appropriate on site parking, on site storm water management, architectural appearance in line with existing historic properties in the City, use of latest energy efficient construction practices and sustainability strategies, creation of park-like landscaping features and elements to enhance project's appearance from public venues.

Based on preliminary projections this proposal has high net tax benefit for the City and highest probability of generating other associated property and use taxes from projects' owners and residents.

The Spotswood Collaborative – a group of well respected architectural, building and planning professionals in Lexington – ask for your consideration, evaluation and review of this proposal. As always our team members are available to answer any questions that may arise during this process.

Sincerely,

The Spotswood Collaborative, Team Members:

Max Ivankov, MaxMark Homes, LLC
Arthur Bartenstein, ABL Landscape Architecture
Heidi Schweizer, Architect
Lee Merrill, Architect
Perkins & Orrison, Inc
Bruce Schweizer
Ben Grigsby

– Acquisition and Development, Construction
– Site Planning and Landscape Architecture
– Architectural Design and Development Consultant
– Architectural and Sustainability Consultant
– Project Engineering
– Development and Investment Consultant
– Development and Investment Consultant



Alt C - Single Family
The Spotswood Collaborative

10/15/2021

Spotswood Village

Conceptual Site Plan - C

The Spotswood Collaborative

REVISIONS

	MM/DD/YY	REMARKS
1	10 /31/2021	Pre-Construction Version 1
2	--/--/--	...
3	--/--/--	...
4	--/--/--	
5	--/--/--	

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2. Projected timeline.

Based on projects of similar scope we anticipate the following timeline for completion:

- Due diligence / study period – 12 months from acceptance
- Project design and engineering – 6 months
- Infrastructure and utilities construction – 6 months
- Phase 1 build out – 6 homes – 9 months
- Phase 2 build out – 7 homes – 9 months

Project Completion from Acceptance – 42 months.

3. Proposed property use – single family, detached residential.

As outlined in the New Comprehensive Plan housing availability remains one of the major challenges facing the City in the future. Our proposal carefully examines the subject property and surrounding it neighborhoods and developments. The single family village concept will introduce thirteen moderately priced homes to help the City get closer to meeting its future housing goals. Based on current real estate market trends today's projected pricing will range from mid-four hundred to mid-five hundred thousand dollars. This concept yields the highest single family density per acre given site's topography and public street access while maintaining perceived open space balance in line with surrounding it neighborhoods and existing homes. This approach will result in the least visually impactful development from public street and will introduce additional landscaping elements like public common area park to further enhance its visual appeal.

4. Proposed purchase price and closing.

Proposed purchase price for the property is Two Hundred Fifty Thousand Dollars (\$250,000.00) subject to twelve (12) month feasibility study period.

5. Taxes generated by project – good faith estimate.

It is our understanding that City staff will conduct its own impact analysis based on internally available data. However, using existing tax rate of \$1.06 per \$100 of assessed value and assuming average assessed value of five hundred thousand dollars (\$500,000.00) for each residence we arrive at \$68,900.00 in real estate tax revenue annually. Additional building permit fees, personal property and use taxes, as well as water and sewer usage will be generated as well.

6. Anticipated zoning requests.

The Collaborative will work closely with City staff to develop appropriate zoning framework for the proposed project. At this time we anticipate minimal zoning action as our objective remains to work within existing zoning ordinance. Specifically we plan to utilize Planned Unit Development section (Section 420.5) of the ordinance as baseline for development.

7. Description of legal entity.

The Spotswood Collaborative consists of a professional group of likeminded individuals, community members, builders, developers, architects, engineers, realtors and investors; all united by one common goal – responsible, to scale development of existing open space acreage within the City limits. MaxMark Homes, LLC is the proposed owner of record with various members responsible for project design, planning, engineering, architecture, landscaping and sales.

8. Estimate of traffic volumes.

Using a very rough textbook method of traffic generation, according to Virginia Department of Transportation, taking values from the ITE Trip Generation Manual 8th edition, a single family detached housing generates 9.57 trips per weekday per dwelling unit. This will roughly equal to 130 additional trips per day generated by the proposed development up and down Spotswood Drive resulting in roughly 65

additional cars per work day at each intersection – Spotswood & Houston and Spotswood & Nelson. Further breaking down these numbers using linear mathematics we arrive at roughly one additional car at each intersection every 22 minutes throughout a given work day.

9. Estimated utilities usage.

According the Environmental Protection Agency (the EPA) a typical American household uses between 300 to 400 gallons of water per day at home (subject to numerous assumptions). Based on this basic data the proposed development will use somewhere between 4,000 to 5,500 gallons of public water per day.

10. Impact on surrounding properties.

Based on proposed low density and residential nature of the proposed development we do not anticipate measurable negative impact on surrounding properties. On the contrary increased assessment value of newly constructed homes in the neighborhood will most likely pull assessment values and sales prices of existing neighboring properties up – the so-called splash effect. With creative help from our team members we plan to utilize innovative strategies to minimize night time light pollution from the development, focus on green fences and buffer landscaping to minimize visual and sound impact on surrounding properties. Our objective is to create a community nestled in lush greenery with open space park welcoming all passers by.

11. Impact on local business.

The proposed development will generate additional downtown foot traffic, provide housing for people working in the City, create additional employment opportunities, increase consumption of goods and services generated by local business and overall expand local customer base. This will contribute to creating a thriving local business community and lessen dependence on tourist traffic for downtown merchants.

12. Underserved needs met.

Based on the findings from the Comprehensive Plan study this proposal focuses on two important needs of the City – new housing inventory creation and housing availability increase. Combined with pedestrian and bike accessibility, universal design and new construction standards which incorporate ADA accessibility requirements, sustainable design and energy efficient construction – all of these elements offer unprecedented opportunity to create more affordable, less motor vehicle dependent, local economy supporting community with accessibility, both physical and economic for all.

13. Aesthetics of the project.

The Spotswood Collaborative has in its membership several well known local architects with necessary educational and professional experience to ensure success and long lasting aesthetics for this project. With hundreds of projects in their portfolios our members have been working in our community for years creating the same type of architectural heritage that Lexington is known for. It is our goal and desire to create a community which will only improve and enhance our City, the place we all collectively call our home.

14. Sample contract.

Sample contract on next page.

+/- 2.31 acre Spotswood Drive Parcel (TM# 29-1-29, 29-1-30, 29-1-31) PURCHASE, SALE AND DEVELOPMENT AGREEMENT

THIS AGREEMENT OF PURCHASE, SALE AND DEVELOPMENT (hereinafter the "Agreement"), made this ____ day of _____, 2021, between the **CITY OF LEXINGTON, VIRGINIA, a Municipal Corporation of the Commonwealth of Virginia** (hereinafter the "**Seller**"), and **MAXMARK HOMES, LLC** a Virginia limited liability company (hereinafter the "**Buyer**"), and/or its successors and permitted assigns, (each individually a "**Party**" and collectively "**the Parties**").

WHEREAS, Seller owns certain real property, as more particularly described herein, located in the City of Lexington, Virginia; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, the aforementioned real property upon all of the terms and conditions set forth herein.

NOW, THEREFORE, for the hereinafter described consideration and mutual terms and conditions, the Parties agree as follows:

ARTICLE I - PROPERTY

1.1 Property Description. Seller agrees to sell and Buyer agrees to purchase certain parcels of real property totaling 2.31± acres along Spotswood Drive, together with all improvements, easements and appurtenances thereto belonging, further described as Tax Map #s 29-1-29, 29-1-30, 29-1-31 (the "Property"), subject to all the terms and conditions contained herein.

ARTICLE II – PURCHASE PRICE

2.1 Purchase Price. The purchase price of the Property shall be the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) ("Purchase Price"). The Purchase Price shall be paid as follows: upon the signing of this agreement, Buyer shall pay to Seller Five Thousand Dollars (\$5,000.00) as a non-refundable deposit (the "Deposit"), with the balance of the Purchase Price to be paid in full by the Buyer on the Closing Date, as provided in Section 6.1 of this Agreement.

ARTICLE III – SELLER’S REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS

3.1 Provide Reports/Plans. Within Ninety (90) days of the Effective Date of this Agreement, Seller will provide Buyer with copies of any and all documents pertaining to the Property which are requested by Buyer and which are in Seller’s actual possession ("**Property Documents**"). The "**Effective Date**" shall be the date this Agreement is executed by Buyer. The Property Documents include, but are not limited to, any past survey data and documents, any building plans, any environmental studies or written communications with the Environmental Protection Agency ("EPA") or the Virginia Department of Environmental Quality ("VDEQ") or any other governmental agency, any title reports and any physical inspection reports or warranties that are in Seller’s actual possession. The Seller does not make any representation or warranty with regard to the accuracy, completeness, reliability, or timeliness of the Property Documents, nor does it represent or warrant that any Property Document will be relevant to Buyer’s analysis of the Property. The Seller disclaims any responsibility to update any Property Documents or to provide additional, supplementary, or superseding information, whether oral or written, whether known or unknown to Seller.

3.2 through 3.6 [intentionally omitted]

3.7 Litigation. To the best of Seller's actual knowledge, without inquiry, there is no litigation pending that would affect the title to the Property.

3.8 Authority. Except as otherwise provided herein, Seller has full power, authorization and approval to enter into this Agreement and to carry out its obligations hereunder.

3.9 Provide ALTA Survey. In connection with the preparation of the subdivision plan provided for in Section 6.5 (b) of this Agreement, and on a mutually acceptable time frame, Seller will provide, in both hard copy and editable digital format, an American Land and Title Association ("ALTA") plat for the Property that meets standard ALTA requirements including, but not limited to, related title work, survey, access, encroachment, and contiguity requirements.

3.10 Seller's Obligations. In accordance with terms of the conditions of this Agreement, the Seller agrees to:

1. Process site plan and building permit approvals for the Project of the City prior to the sale of the Property.
2. Provide, at City cost, a current title report for the Property.
3. Provide, at City cost, a Phase 1 Environmental Site Assessment of the Property.
4. Cooperate and support any subdivision, rezoning, Conditional Use Permit and/or Zoning Text Amendment applications that are being prepared and submitted by the Buyer.
5. Process an application for the final site plan through the Lexington City Planning Commission and the Lexington City Council (the "Site Plan") and the Project, as defined in Section 5.1, below.
6. Process an application for the conditional use permit to a zoning district or districts compatible with the Project, if applicable; or process an application for Planned Unit Development on the Property (as defined in Section 5.1, below).
7. Confirm that the water and wastewater system connections for the Property are sufficient for the Project without the purchase of additional tap privileges or requirements to extend the water and wastewater system beyond the Property by Buyer.
8. Provide written verification of water and wastewater utility capacity that will be sufficient for the Property after completion of the Project, without any requirements to extend the water and wastewater system beyond the Property by Buyer, as described in Article V, below.
9. Waive any applicable utility tap or connection fees.
10. Underground sewer lines may need to be relocated to avoid the future footprint of the new buildings. The costs incurred because of the need to relocate the existing sewer lines shall be split equally between the Seller and Buyer. Buyer shall make its best effort to limit any sewer relocation costs. It is understood that these costs will likely be incurred post-Closing.
11. Confirm high-speed Internet service availability to the Property.

3.11 No Conflict. Neither the Effective Date nor the delivery of this Agreement or the documents contemplated herein, nor the consummation of the conveyance of the Property to Buyer, will conflict with or cause a breach of any of the terms and condition of, or constitute a default under, any agreement, commitment, note, mortgage, lease, bond, license, permit or other instrument or obligation by which Seller is bound.

ARTICLE IV – BUYER’S REPRESENTATIONS, WARRANTIES AND OBLIGATIONS

4.1 Sole Responsibility for Buyer Costs. Buyer shall be solely liable for any costs, fees, matches, reimbursements, or remuneration of any kind associated with Buyer’s activities, of any kind, during or following the Study Period, and will indemnify and defend Seller as provided in Section 7.3.

4.2 Authority. Buyer has full power, authorization and approval to enter into this Agreement and to carry out its obligations hereunder.

4.3 Financing. Buyer represents that it has as of the Effective Date, and will have as of the Closing Date, as defined in Section 6.1 herein, available liquid funds in the amount of the Purchase Price, and that it will obtain the necessary funds to complete the Project.

4.4. Buyer’s Obligations. In accordance with terms of the conditions of this Agreement, the Buyer agrees to:

1. Utilize current zoning ordinance through Planned Unit Development (PUD) process to create the required density and scale.

2. Underground sewer lines may need to be relocated to avoid the future footprint of the new single family buildings. The costs incurred because of the need to relocate the existing sewer lines shall be split equally between the Seller and Buyer. Buyer shall make its best effort to avoid or limit any sewer relocation costs. It is understood that these costs will likely be incurred post Closing.

3. Purchase the Property from the Seller, assuming the results of the Phase 1 Environmental Site Assessment (ESA) and any Phase 2 ESAs are unremarkable and acceptable to the Seller.

4. Build the project as generally described in Section 5.1. e. Commence construction on Property within three hundred sixty (360) days from the date of the Closing.

5. Complete construction of the first building of the Project within twelve (12) months after construction begins. Later phases to be constructed as the market dictates.

4.5 No Conflict. Neither the Effective Date nor the delivery of this Agreement or the documents contemplated herein, nor the consummation of the conveyance of the Property to Buyer, will conflict with or cause a breach of any of the terms and condition of, or constitute a default under, any agreement, commitment, note, mortgage, lease, bond, license, permit or other instrument or obligation by which Buyer is bound.

ARTICLE V – PROJECT

5.1 Development Project. Buyer is acquiring the Property for the purpose of comprehensively developing the Property into new construction detached single family dwellings, related amenities and open space in accordance with Site Plan (the “Project”).

5.2 Project Expectations. Buyer agrees that the conditions listed in Exhibit A “Project Expectations” will be addressed in any site plan and included in the final buildout of the Project, subject to any changes made prior to the City’s approval of any building permit.

ARTICLE VI – CLOSING

6.1 Time and Place. Closing and delivery of title and possession (“Closing”) shall take place no later than sixty (60) days of the expiration of the Study Period defined below in this Agreement (“Closing Date”). Buyer may proceed to Closing sooner than the expiration of the Study Period, provided Buyer

waives any and all Seller obligations that have not been satisfied as of the Buyer's advanced Closing Date. If Buyer proceeds to Closing sooner than the expiration of the Study Period, the remaining time in the Study Period shall be added to the Construction Period defined in Section 6.6, below. Unless otherwise agreed upon, Closing shall be held at the offices of the Title Company.

6.2 Conditions to Closing. Except as otherwise provided in this Agreement, in the event that the Seller's obligations are unsatisfied as of the Closing Date, and are not waived in writing by Buyer, Buyer may, at its election, terminate its obligations under this Agreement, whereupon this Agreement shall become null and void, and no Party shall thereafter have any further right or obligation hereunder except as provided in Section 7.3.

6.3 Title. Seller shall convey title to the Property by Special Warranty Deed ("Deed") subject to any rights, covenants, privileges, encroachments or easements encumbering the Property, whether located above, upon, or under the surface, either presently in use or of record. Subject to the terms of this Agreement, title to the Property shall be insurable in a form satisfactory to Buyer, by a nationally recognized title insurance company selected by Buyer. Title and possession of the Property shall be transferred to Buyer at Closing.

6.4 Title Examination. Buyer shall have twelve (12) months from the Effective Date ("Study Period"), at Buyer's sole expense, to make an examination of title of the Property. In the event the title examination discloses defects of title unsatisfactory to Buyer, in Buyer's sole discretion, Buyer shall notify Seller in writing, prior to the expiration of the Study Period, of such title defects to which Buyer objects (an "Objection Notice"). Seller shall notify Buyer in writing within five (5) business days after receiving an Objection Notice if it believes that the Objection Notice makes reference to any title defect that Seller cannot cure or elects in Seller's sole discretion not to cure ("Objection Response"). Upon receipt of an Objection Response from Seller, and with written notice to Seller, Buyer shall have the option within forty-five (45) days to either (i) terminate this Agreement or (ii) accept the defects, exceptions or other matters referenced in such Objection Response and proceed to Closing. In the event Buyer fails to notify Seller of its intention to terminate this Agreement, then it shall be conclusively deemed that Buyer accepts the defects, exceptions or other matters referenced in such Objection Response. In the event Seller fails to notify Buyer with an Objection Response as set forth in the preceding paragraph, Seller shall have the period until the Closing Date within which to correct all defects, exceptions or other matters that it is required to cure. If Seller fails to cure such defects, exceptions or other matters, Buyer may elect to terminate this Agreement and neither Party shall have any further obligations hereunder, except as provided in Section 7.3, or Buyer may accept the defects, exceptions or other matters.

6.5 Study Period. During the Study Period, Buyer may determine in its sole discretion that the condition of the Property is satisfactory for the intended use of Buyer.

1. Seller shall give to Buyer and its designated agents and representatives full access to the Property during normal business hours throughout the Study Period, including the right, at Buyer's own risk, cost and expense, to cause its agents or representatives to enter upon the Property for the purpose of making surveys or soil borings, engineering, water, environmental, topographic and other similar tests, investigations or studies as Buyer may desire.
2. During the Study Period, Buyer in its sole discretion may prepare and submit for approval the Subdivision Plan, Text Amendment application, Site Plan, rezoning application, conditional use permit application, planned unit development application, financing application, and any other third party or regulatory approvals necessary for Closing.

3. Provided that Buyer has undertaken work on steps listed in subparagraphs 6.5(1) or 6.5(2) above, Buyer may extend the Study Period one time for a period of up to twelve (12) additional months by giving written Notice to the Seller within the original Study Period. Any further extension of the Study Period shall be by written agreement of the Buyer and Seller. The Buyer may terminate this Agreement during the Study Period in accordance with Section 6.8 of this Agreement, and neither Party shall have any further obligations thereafter, except as provided in Section 7.3.

6.6 Initiate Construction. Buyer will commence construction on the Property within three hundred sixty (360) days from the date of the Closing (“the Construction Period”). If, however, Buyer has gone to Closing before the end of the Study Period, the Construction Period will be extended on a day-for-day basis for every day remaining in the Study Period as of Closing. If construction has not commenced within the Construction Period, then Seller shall have the option to reacquire title to the Property by special warranty deed free and clear of liens and encumbrances other than (i) those encumbering the Property at the time conveyed by Seller to Buyer; (ii) those contained in the Deed from Seller to Buyer; or (iii) those otherwise created or approved by Seller, and by paying to Buyer the Purchase Price theretofore paid by Buyer to Seller (the “Repurchase Option”). For the avoidance of doubt, the Repurchase Option shall terminate when construction commences. As used in this Section, the term “commence” shall mean when the Buyer’s Contractor has begun substantial soil disturbance for the purpose of constructing the new apartment buildings on the Property, as determined by the Seller. The City Manager may waive the Repurchase Option for up to ninety (90) days if necessary to facilitate construction financing.

6.7 Intentionally Omitted.

6.8 Termination. Buyer may terminate this Agreement by giving Seller written notice of termination at any time prior to the expiration of the Study Period, if the results of such inspections are not satisfactory to Buyer, as foresaid. Buyer will commence such inspections forthwith upon the Effective Date of this Agreement. If Buyer fails to give Seller such written notice of termination before the expiration of the Study Period, then, and in such event, Buyer shall be deemed to have accepted the results of such inspections and shall proceed to Closing in accordance with the terms of the Agreement.

6.9 Pre-Settlement Termination. In the event that this Agreement is terminated before Closing by either Party, neither Buyer nor Seller shall have any obligation to the other, and except for damage to the Property occasioned by Buyer or its representatives, each Party shall be responsible for its own expenses, including, but not limited to, legal fees and expenses incurred in connection herewith.

6.10 Condition of the Property. Seller will convey the Property to Buyer “AS IS” and makes no representations or warranties regarding the Property except those effected by a special warranty conveyance. This sale is made subject to restrictions, covenants, agreements, and easements of record and existing leases. In this regard, Seller states that it has no knowledge of any outstanding restrictions, covenants, agreements, easements of record, or leases as of the Effective Date of this Agreement. This sale is conditioned upon the Property being in substantially the same condition on the Closing Date as the same are in on the date of this Agreement, except for the work required of the Parties under this Agreement. Risk of loss or damage to the Property shall be the responsibility of Seller until the Closing, except that Seller shall have the right, at its sole discretion, to terminate this Agreement at any time before the Closing if the Property is substantially and/or materially damaged, in its sole and absolute discretion, by an act of God or otherwise. If said casualty occurs, Seller shall notify Buyer by certified mail within thirty (30) days of said occurrence, and each Party shall have no further actions

against one another for any fees, fines, penalties, liability, or expenses of or related to the Property, except for claims arising due to the Buyer's obligations under Section 4.1 and 7.3 hereof.

6.11 Intentionally Omitted

6.12 Outside Closing Date. Seller shall have the right to terminate this Agreement if Closing does not occur within twenty-four months of the Effective Date of this Agreement.

6.13 Prorations; Closing Costs. Seller assumes the expense of preparing the ALTA survey and Deed, related title work, and paying its own attorneys as needed. All other expenses in connection with the purchase of the Property, including without limitation title examination, inspections, Buyer's recordation costs and Buyer's settlement agent's fees shall be borne by Buyer. Assessments, utility charges and other apportionable items, if any, shall be prorated as of the Closing Date.

6.14 Nature of Deposit. If, for any reason, the purchase herein is not consummated, the Five Thousand Dollar (\$5,000.00) non-refundable deposit shall remain the property of the seller.

ARTICLE VII - MISCELLANEOUS

7.1 Notices. Any notice which a Party to this Agreement is required or may desire to give the other Party shall be in writing, addressed as provided below, and may be personally delivered or given by prepaid United States registered or certified mail, return receipt requested, or overnight mail service. Notices shall be deemed made and complete when personally delivered or mailed.

SELLER: CITY OF LEXINGTON
300 East Washington Street
Lexington, Virginia 24450 Attention: CityManager

With copy to: Jared R. Jenkins, City Attorney
Mann Legal Group, PLLC
15 East Nelson Street
Lexington, Virginia 24450

or to such other address or person as Seller may direct in writing.

BUYER: MaxMark Homes, LLC
PO Box 44
Lexington, VA 24450

With copy to: Alisha M. Grubb, Attorney
Gentry Locke Rakes & Moore, PLLC
10 Franklin Road, Suite 900
Roanoke, Virginia 24011

or to such other address or person as Buyer may direct in writing.

7.2 Risk of Loss. All risk of loss or damage to the Property, or any part thereof, by fire or other casualty or cause shall remain upon Seller until Closing. In the event of damage to or destruction of any improvements prior to Closing, Buyer may declare this Agreement to be null and void and neither Party shall have any further obligations hereunder except as provided in Section 6.3.

7.3 Indemnification. To the extent allowed by law, Buyer shall indemnify and hold Seller harmless from and against any and all claims, judgments, damages, fines, penalties, liability, costs and expenses (including reasonable fees for attorneys, consultants and experts) arising from Buyer's (or its designated agent's and representative's) exercise of any rights hereunder. In the event Buyer for any reason does not purchase the Property, or the Buyer purchases the property but the Seller exercises its Repurchase Option, Buyer, at Buyer's expense, shall restore the Property to its prior condition to the extent of any changes made as a result of Buyer's (or its designated agent's and representative's) exercise of any rights hereunder. This Section shall survive Closing and termination of this Agreement.

7.4 Assignment. Buyer may assign this Agreement to any entity in which Max Ivankov is a stakeholder, only with the written consent of Seller, which consent may not be unreasonably withheld. If consent is given, Buyer shall nevertheless remain liable for performance hereunder. Buyer shall provide contemporaneous notice to the Seller of such assignment. This Agreement shall be binding on the heirs, personal representatives, successors in interest and permitted assigns of the Parties.

7.5 Condemnation. In the event of condemnation or threat of condemnation of any part of the Property prior to Closing, Buyer shall have the option, in its sole discretion, to (i) terminate this Agreement or (ii) proceed to Closing without decrease in the Purchase Price conditioned upon any condemnation award being paid, credited or assigned, as appropriate, to Buyer at Closing.

7.6 Default. In the event of any default, the non-defaulting Party shall be entitled to pursue any remedies at law or in equity in connection with the default of the other Party. The election to terminate this Agreement under the terms hereof shall not constitute a default. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of Seller or the Commonwealth of Virginia.

7.7 Entire Agreement. This Agreement, including any Exhibits attached hereto, contains the entire agreement between Seller and Buyer and all other representations, negotiations and agreements, written and oral, including any letters of intent which pre- date the Effective Date hereof, with respect to the Property or any portion thereof, are superseded by this Agreement and are of no force and effect. This Agreement may be amended and modified only by an instrument in writing executed by both Seller and Buyer.

7.8 Approval. This Agreement, and any amendment hereto, shall not be in effect or binding until and unless approved by duly authorized agents of the City Council of the City of Lexington, Virginia, and Buyer. In the event that this Agreement shall not be approved, neither Party shall have any further obligations hereunder.

7.9 Agents and Brokers. Both Seller and Buyer represent and warrant that they did not consult or deal with any broker or agent, real estate or otherwise, with regard to this Agreement or the transactions contemplated herein. Agency Disclosure: Max Ivankov is a licensed Realtor in the State of Virginia.

7.10 Time is of the Essence. The Parties hereby agree that time is of the essence with respect to performance of each of the Parties' obligations under this Agreement.

7.11 Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included, and the last day of the period so computed will be included, unless it is a Saturday, Sunday or legal holiday

recognized as such in Lexington, Virginia, in which event the period runs until the end of the next day which is not a Saturday, Sunday or such legal holiday. As used in the Agreement, "day" shall mean "calendar day" unless the term "business day" is used; "business day" shall mean a day which is not a Saturday, Sunday or legal holiday recognized as such in the Commonwealth of Virginia.

7.12 Captions. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

7.13 Applicable Law. This Agreement shall be construed by and controlled under the laws of the Commonwealth of Virginia, without regard to its conflicts of laws principles.

7.14. Survival. Notwithstanding any presumption to the contrary, all obligations, covenants, conditions, representations, warranties and agreements of the Seller and Buyer contained in this Agreement shall be restated as true and correct as of Closing. Each provision of this Contract which creates a right or imposes a duty that by its nature can be exercised after Closing shall survive Closing.

7.15 Interpretation. All parties hereto acknowledge that they have had the benefit of independent counsel with regard to this Agreement and that this Agreement has been prepared as a result of the joint efforts of all parties and their respective counsel. Accordingly, all parties agree that the provisions of this Agreement shall not be construed or interpreted for or against any Party hereto based upon authorship. The terms "herein," "hereof," "hereto," "hereunder," and "herewith" refer to the Agreement as a whole, and not to the Section where they appear, unless the context clearly indicates otherwise.

7.16 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument.

7.17 No Waiver. The failure of a Party to enforce any provision of this Agreement shall not be construed to be a waiver of such or any other provision, nor in any way to affect the validity of all or any part of this Agreement or the right of such Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

IN WITNESS WHEREOF, this Agreement is executed on behalf of the City of Lexington, Virginia, by the Mayor _____, as authorized by the Lexington City Council; and on behalf of Buyer by Max Ivankov, its Manager and duly authorized representative.

[SIGNATURES ON THE FOLLOWING PAGES]

SELLER:

CITY OF LEXINGTON, VIRGINIA

By: _____

James M. Halasz, City Manager

Date

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

I, _____, Notary Public for the Commonwealth of Virginia do hereby certify that James M. Halasz, City Manager of the City of Lexington, Virginia, who has the authority to sign on behalf of the Seller, City of Lexington, Virginia, signed the foregoing document dated the _____ day of _____ 2021, and has acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand and seal this _____ day of _____, 2021.

My commission expires: _____

Notary Public

BUYER:

MaxMark Homes, LLC

By: _____

Max Ivankov, Managing Partner

Date

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

I, _____, Notary Public for the Commonwealth of Virginia do hereby
certify that _____, as _____ of _____,
whose name is signed to the foregoing document dated the ____ day of _____ 2021, has
acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand and seal this _____ day of _____, 2021.

My commission expires: _____

Notary Public

EXHIBIT A

Spotswood Drive Parcel – Project Expectations

Expansion of City's Tax Base: Provide optimum ratio of density / value per dwelling for expansion of City's Tax Base.

Promote Home Ownership: Develop project with home owner occupancy in mind with focus on new detached single family dwellings.

Bike and Pedestrian Amenities: Maximize opportunities for biking and pedestrian connections to the community through paths/walks along the street frontage, within the site and across other connecting properties with the consent of the owners of those properties.

Parking: Maximize on-site parking and minimize parking overflow to neighboring public streets.

Access Management: No more than 2 access points will be provided onto Spotswood Street, with one to align with Taylor Street if two points are provided. Additional access to Health Lane should be considered with the adjacent owner to promote cross-access. Pedestrian access should be designed to line-up across from the cemetery entrance.

Lighting Features: Provide dark sky lighting only on the site. Focus (or shield) lighting away from adjacent residential property. Use energy-efficient lighting, to include consideration of photovoltaic and/or solar-charged lighting.

Stormwater Management: Provide rain gardens and/or other bio-retention structures on-site, within the required green space. Consider the use of pervious pavement to minimize stormwater leaving the site. All stormwater management plans require approval of both the City and DEQ.

Site Buffers: A minimum 10 foot buffer must be maintained on the boundary adjacent to residential properties on Houston Street. Parking will not be allowed in the 10 feet directly adjacent to those properties. The relocation of the sanitary sewer adds an additional 5 foot buffer in these areas. These buffers must include additional fencing and/or landscaping to assure appropriate separation and screening. Existing trees in these buffer areas must be maintained. Waste disposal facilities shall be located to minimize disturbance of directly adjacent residential properties.

Landscaping and Green Spaces: The site developer is to work with the City Arborist to select landscape species best suited to the site and confer with the City Arborist when creating the landscape plan. Landscaping of the site shall, as is practical, conform to the City goals of achieving tree canopy improvements within the City. The City Arborist will review and approve these plans. Additional green spaces are encouraged within the context of the overall site design.

Support for Service Agencies: Piovano Building which houses RARA & the Community Table is not subject to this Purchase Agreement.

Affordable Housing Goals: The developer shall work with the City explore housing affordability within the scope of the proposed project to further City's affordable housing goals.